Texas Municipal Courts Education Center

2013

Legislative Update

LUBBOCK
August 15, 2013

HOUSTON
August 20, 2013

AUSTIN
August 23, 2013

Funded by a grant from the Texas Court of Criminal Appeals

TEXAS MUNICIPAL COURTS EDUCATION CENTER

TMCEC has moved to its new headquarters, located at 2210 Hancock Drive in Austin. The building was purchased in August 2012 by the Texas Municipal Courts Association as a permanent home for the Center.

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TMCEC IS A PROJECT OF THE TEXAS MUNICIPAL COURTS ASSOCIATION

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2013 Legislative Update
Agenda

9:00 a.m. **PART I: Morning Session**

A. WELCOME AND ANNOUNCEMENTS
B. THE 83RD TEXAS LEGISLATURE
C. THE LEGACY OF THE MICHAEL MORTON CASE
D. CLASS C MISDEMEANORS AND JAIL
E. FAMILY VIOLENCE
F. MENTAL HEALTH

10:15 – 10:30 a.m. **BREAK**

G. THE IMPLICATIONS OF CERTAIN NEW LAWS ON MUNICIPAL COURTS
1. Is it Us?
2. It is Not Us!

H. TOPICS DU JOUR
1. Guns, Explosives, and Knives
2. Law Enforcement
3. Animals, Plants, and Bugs

11:20 – 11:30 a.m. **BREAK**

I. AT THE COURT HOUSE
1. Judicial Perks
2. Court Costs
3. Do You Understand?
4. Municipal Court Jurisdiction

12:00 – 1:00 p.m. **LUNCH**

1:00 p.m. **PART II: Afternoon Session**

A. IN MEMORIAM
B. TRAFFIC and TRANSPORTATION
1. State of the Plate Update
2. Proof of Financial Responsibility
3. "I Need to See Your Driver's License, Registration, and Inspection
4. Don't Drink and Drive! Don't Hit and Run!
5. On the Road
6. Who Pays?
7. Things with Wheels

2:00 – 2:15 p.m. **BREAK**

C. JUVENILE JUSTICE
1. Confidentiality of Juvenile Records
2. Alcohol Awareness and Community Service
3. Excused Absences

2:50 PM – 3:00 p.m. **BREAK**

4. School Discipline

4:00 PM – 4:10 p.m. **BREAK**

D. QUESTION AND ANSWER SESSION
Questions Can Be Submitted:
- By Dropping Us a Note at the Registration Desk
- On Line:
  Via Twitter
  Via Facebook
  Via Live Stream (Austin Only)
- We will answer as many questions as we can on-line during the Update or during the Q&A Session. Make sure to leave your contact information. We will follow up with you if we don't get to your question while at the Update.

Introduction to Materials

FOREWARD

Just in terms of legislation relating to school discipline and municipal courts, 2013 has been a monumental legislative year. The Texas 83rd Regular Legislature convened on January 8, 2013. The Texas Municipal Courts Education Center (TMCEC) tracked 771 bills during the course of this session. 140 days later, only 158 of the bills tracked (or 20.5 percent) became law. There were two Special Sessions, but neither had implications on municipal courts. Another one has just begun. Notably, this Session will be remembered for major reforms aimed at curtailing the perceived outsourcing of school discipline from the vice principal's office to municipal and justice courts. Additionally, municipal and justice courts were also given express authority to take pleas from defendants charged with Class C misdemeanor while in jail.

This publication contains 162 bill summaries divided into seven distinct categories: Courts, Court Costs, and Administration of Justice; Magistrate Duties, Domestic Violence, and Mental Health; Ordinance and Local Government Related; Procedural Law; Substantive Criminal Law; Traffic Safety, Transportation, and Transportation Code Amendments. Admittedly many of these bills defy efforts to pigeonhole them into one single category. If you prefer to read bill summaries organized numerically, rather than by topic, an alternate version of the legislative issue of *The Recorder* will be available online at www.tmcec.com later in the summer.

While such categorization has its place, it is not necessarily the most efficient way to discuss the bills with an audience. In Lubbock, Houston, and Austin, we will be discussing more than 85 bills using a new approach that allows us to talk about more bills than we have in past years. If you are attending the TMCEC Legislative Update, you will still want to have this publication and its appendix handy.

NOTE: The summaries contained in this publication were written during the months of May, June and July. Thus, when a summary refers to "current law," it is referring to the law prior to the day of the legislative enactment. Most amendments, except where noted, are effective September 1, 2013.

TMCEC could not bring this compilation to you and maintain our educational mission without the assistance of the State of Texas, more specifically, the House Research Organization (HRO), the Senate Research Center (SRC), and the Legislative Budget Board (LBB). While in some instances we have made non-substantive edits and/or adaptations, the bill summaries contained in this compilation are derived from the work product of the State of Texas and the forenamed agencies. We are most appreciative for their efforts.

Many of the summaries are followed by commentary. The commentary is the collaborative efforts of the TMCEC staff attorneys. Thanks to Mark Goodner, Katie Tefft, Brenna McGee, and Regan Metteauer for their contributions throughout this project. I also want to thank our summer interns, Colin Norman, who is a third year law student at the University of Texas at Austin, and Sara Kincaid, who is a third year law student at Baylor University. Colin and Sara were critical in facilitating this project.

I also want to thank Patty Thamez, Hope Lochridge, Jameson Crain, Chris Clontz, and the rest of the TMCEC staff for their commendable efforts in bringing this information to the courts and the people of Texas.

Finally special thanks to the Legislative Update faculty who volunteered their time and energy to make the Legislative Updates a reality: Brian Holman, Pam Liston, Vikram Deivanayagam, and Julie Escalante. Your service to our courts and to TMCEC's educational mission is much appreciated.

Ryan Kellus Turner
General Counsel & Director of Education, TMCEC
August 2, 2013

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About the Speakers

VIKRAM (VIK) DEIVANAYAGAM

Vikram (Vik) Deivanayagam is a Municipal Judge for the City of Woodway. He is Board Certified by the State of Texas in Criminal Law, and has practiced criminal defense law at the Law Offices of Rod Goble since 1996. He received his undergraduate degree from the University of Memphis, and he received his Juris Doctorate from Baylor School of Law, where he also teaches Juvenile Justice as an Adjunct Professor and coaches the Client Counseling team, both of which since 2008. In 2002 he was named McLennan County Young Lawyer of the Year. Judge Deivanayagam is also a husband and a father of three children.

JULIE ESCALANTE

Julie K. Escalante is the Presiding Judge for the City of Baytown. Prior to being appointed as the full time judge, she was the prosecuting attorney for the City of Baytown. She has had an active career in both the non-profit and public sectors of the law. Judge Escalante is currently serving as a board member on the Texas Municipal Courts Association representing Region IX, where she serves on both the education and nominating committees. She is an active board member for the Baytown Kiwanis Club and actively participates in her local Domestic Violence Task Force.

Judge Escalante was born in San Antonio Texas and grew up in the Houston area. She attended Texas Tech University where she received her B.A. degree. In 1990, she received her Law degree from Southwestern University in Los Angeles, California. She currently resides in the Clear Lake area, with her three children.

MARK GOODNER

Mark Goodner serves as the Presiding Judge for the City of Woodcreek and is the Program Attorney and Deputy Counsel for the Texas Municipal Courts Education Center. Prior to joining the Center, he worked in civil litigation in Austin. Mr. Goodner graduated from the University of Texas School of Law with a juris doctorate and certification in the Graduate Portfolio Program in Dispute Resolution in May of 2007. While in law school, he worked in the mediation clinic, was a finalist in the Thad T. Hutcheson Moot Court Competition, and served on the executive board of Assault & Flattery.

BRIAN S. HOLMAN

Brian Holman is the Presiding Judge for the City of Lewisville as well as the prosecutor for the City of Northlake and the City of Justin. Prior to taking the bench full-time, he had a solo law practice for 10 years in Denton, Texas, with an emphasis in family law and criminal defense. Judge Holman is currently serving as President for the Texas Municipal Courts Association (TMCA) and has been on the faculty of the Texas Municipal Courts Education Center since 2001.

Judge Holman was born and raised in San Diego, California and attended Brigham Young University where he received a bachelor's degree in Political Science. He later went on to receive his law degree from the University of Arkansas. While living in Spain, Judge Holman developed a fluency in the Spanish language which he continues to use as judge. He currently resides in Denton with his wife and two daughters.

PAMELA H. LISTON

Pamela H. Liston, born in Lubbock, Texas, is a partner in The Liston Law Firm, P.C. Her practice consists primarily of representation of clients in the areas of public and criminal law. She was recently appointed associate judge for the City of Rowlett.

Judge Liston is noted for her work in municipal court prosecution and appellate practice and has extensive experience and training in that area. She has been a featured author twice published in the "Municipal Court Recorder," and has served as faculty of the Texas Municipal Court Education Center Prosecutor's School. She is also a past Course Director for TMCEC.

Judge Liston is a member of the Criminal Justice Act Panel which provides legal services to indigent criminal defendants in the federal system. She has served in this capacity since 1998 and enjoys her work in this area immensely. She has recently completed an appeal in the United States Court of Appeals for the Fifth Circuit and

has filed a petition for certiorari to the United States Supreme Court in that case.

Judge Liston received her B.A. degree in English in 1989 and her J.D. degree in 1994 both from Texas Tech University. During law school, she was a member of the Texas Tech University School of Law Marshall Moot Court National Team. She was admitted to the State Bar of Texas in 1994 and is licensed to practice in Texas, the United States District Court for the Northern District of Texas, the United States Court of Appeals for the Fifth Circuit, and the United States Supreme Court.

Judge Liston has two published municipal court cases of *Ex Parte Rinkevich*, No. 05-06-01506-CR (Tex. App. – Dallas 2007) and *State v. Morales*, 05-09-00159-CR (Tex. App. – Dallas).

She is the wife of her law partner, Paul J. Liston, and is the mother of four wonderful children.

KATIE TEFFT

Katie Tefft is the Program Director for the TMCEC. She joined the TMCEC staff in January of 2009 as the Program Attorney. Prior to joining the Center, she worked as Project Attorney on the 7th edition of Dawson's Texas Juvenile Law under contract with the former Texas Juvenile Probation Commission (TJPC) and as a Drafting Attorney in the Attorney General's Open Records Division. Ms. Tefft received her Bachelor's degree with honors in Sociology and Economics from Southwestern University in Georgetown, Texas, and her Juris Doctorate with honors in May of 2007 from Mercer University School of Law in Macon, Georgia. She also received a certificate in Legal Writing and Research from Mercer. While in law school, Ms. Tefft clerked in the Narcotics Division of the Bibb County District Attorney's Office.

RYAN KELLUS TURNER

Ryan Kellus Turner is General Counsel and Director of Education for the Texas Municipal Courts Education Center. Prior to joining the Center, he served as Briefing Attorney for Judge Sharon Keller at the Texas Court of Criminal Appeals. Mr. Turner obtained his juris doctorate from Southern Methodist University School of Law. He received his Bachelor's Degree in Psychology with highest honors from St. Edward's University, Austin, Texas, where he now teaches as an adjunct faculty member in the School of Behavioral and Social Sciences. In 2004 he received the School's Adjunct Teaching Excellence Award.

Mr. Turner is currently Deputy City Attorney for the City of Dripping Springs and previously served as a Special Assistant County Attorney for Kendall County.

A native Texan, Mr. Turner was raised in the north Texas town of Vernon. He is the co-author of the books *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System* and *The Municipal Judges Book*.

He is currently an advisory committee member on the Texas Judicial Council's Juvenile Justice Committee which is charged with assessing the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and identifying judicial policies or initiatives that work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources.

Courts, Court Cost, and Administration of Justice

H.B. 62
Prohibited Interest in Private Correctional or Rehabilitation Facility; Violation of Code of Judicial Conduct 19
H.B. 1222
Venue for Certain Alleged Violations or Offenses Under the Water Safety Act 19
H.B. 1448
Justice Court Technology Fund 20
H.B. 1562
Notification of Bail Bond Default Provided to Surety 20
H.B. 2021
Collection Contracts for Unpaid Fines, Fees, and Costs in Civil Cases 21
H.B. 2025
Concurrent Jurisdiction of Municipal Courts of Certain Neighboring Municipalities to Hear Criminal Cases 21
H.B. 2090
Written Statements Made by an Accused from a Custodial Interrogation 21
H.B. 2302
Statewide Electronic Filing System 22
H.B. 3068
Surcharges on Debit Card Purchases 23
H.B. 3561
Conducting Court Proceedings in Contiguous Incorporated Municipality 23
S.B. 107
Restricting Disclosure of Criminal History Information Subject to Order of Nondisclosure 23
S.B. 209
Changes to the Functions and Operation of the State Commission on Judicial Conduct 24
S.B. 389
Assessment of Court Costs Based on Date of Conviction in Higher Courts 25
S.B. 390
Repeal of Exceptions to Delayed Implementation of Court Costs 26
S.B. 391
Judge-Ordered Obligation to Pay Fines Independent of Community Supervision Obligations 26
S.B. 392; H.B. 1435
Notice to Attorney General of Challenges to Constitutionality of Statutes 27
S.B. 462
Specialty Court Programs 27
S.B. 686
TCLEOSE Changes Name to TCOLE 28
S.B. 966
Creation of the Judicial Branch Certification Commission; Oversight of Licensed Court Interpreters 28
S.B. 1289
Duty of Accuracy in the Publication of Criminal Record Information 29
S.B. 1317
Authority of Retired Municipal Judges to Conduct Marriages; Expiration of Marriage License 30
S.B. 1419
Juvenile Case Managers and Creation of the Truancy Prevention and Diversion Fund 30

S.B. 1620
Communication Access Realtime Translation (CART) Providers 32
S.B. 1630
Vexatious Litigants 32
S.B. 1896
Confidentiality of Information in Ad Valorem Tax Appraisal Records 33
S.B. 1908
Study to Identify and Repeal Court Costs 33
S.J.R. 42
Amends the Texas Constitution to Authorize the SCJC to Use Its Full Range of Disciplinary Actions Following a Formal Proceeding 34

Juvenile Justice and Child-Related Matters

H.B. 232
Online Alcohol Awareness/Community Service in Lieu of Alcohol Awareness Program for Certain Minors 35
H.B. 455
Excusing Medical-Related Absences of Students with Children 35
H.B. 528
Total Confidentiality for Records of Children Charged with Fine-Only Misdemeanors 36
H.B. 694
Access by Military Recruiters to Juvenile and Criminal History Information 37
H.B. 1009
School Marshals 37
H.B. 1020
Certification of Alcohol Awareness Programs Required for Minors Convicted of or Receiving Deferred Disposition for Certain Alcohol Offenses 38
H.B. 1206
Law Enforcement Duties Regarding Certain Missing Children 39
H.B. 1479
Establishing Committees in Certain Counties to Recommend a Uniform Truancy Policy 39
H.B. 1952
Professional Development Training for Certain Public School Personnel on Student Disciplinary Procedures 40
H.B. 2058
Administration of High School Equivalency Examinations 40
S.B. 92
Designation of Juvenile Court and Creation of Program for Juvenile Victims of Human Trafficking 40
S.B. 260
Excusing Absences of a Student to Visit with a Parent, Step-Parent, or Guardian Who Will Be or Has Been Deployed on Military Duty 41
S.B. 393
Procedural and Substantive Law Relating to Children Accused of Committing Certain Class C Misdemeanors 41
S.B. 394
Conditional Confidentiality for Records of Children Receiving Deferred Disposition for Certain Fine-Only Misdemeanors 48

S.B. 395
Fines and Costs Imposed on a Child in a Criminal Case 49
S.B. 553
Excusing Absences of High School Students Serving as Early Voting Clerks in an Election 49
S.B. 670
Copying Certain Records and Files Relating to a Child's Juvenile Justice Proceeding 50
S.B. 1114
School Law Enforcement and the Prosecution of Certain Class C Misdemeanor Offenses Committed by Children 50
S.B. 1541
Discipline of Public School Students by School Bus Drivers 54

Magistrate Duties, Domestic Violence, and Mental Health

H.B. 8
Prosecution and Punishment of Human Trafficking Offenses and Certain Protections for Victims of Human Trafficking 55
H.B. 570
Issuance of a Magistrate's Order for Emergency Protection 57
H.B. 798
Loss of Certain Occupational Licenses on Domestic Violence Conviction 57
H.B. 978
Transportation of Patients to Mental Health Facilities 58
H.B. 1421
Disposition of Seized Weapons 58
H.B. 1690
Controlling the Spread of Communicable Diseases in Texas 59
H.B. 1738
Emergency Detention of a Person Who May Have Mental Illness 59
H.B. 2268
Search Warrants Issued by Certain Magistrates for Customer Data, Communications, and Related Information Held in Electronic Storage 60
H.B. 2620
Task Force on Domestic Violence 61
S.B. 367
Disposition of Abandoned or Unclaimed Property Seized at Arrest 61
S.B. 743
Penalties for Repeated Violations of Court Orders, Magistrate's Orders of Emergency Protection, or Conditions of Bond in a Family Violence Case 62
S.B. 893
Protective Orders and Conditions of Bond in Certain Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Cases 63
S.B. 946
Right to Terminate a Lease or Avoid Liability for a Victim of Certain Sexual Offenses, or Stalking 64
S.B. 1192
Rights of Certain Victims of Sexual Assault 64
S.B. 1360
Criminal Offense of Tampering with a Witness in a Case Involving Family Violence 65

Ordinance and Local Government Related

H.B. 195
Online Posting of Contributions and Expenditure for County and Municipal Offices 66
H.B. 970
Regulation of Cottage Food Industry 66
H.B. 1554
Liens for Costs of Abatement of Floodplain Ordinance Violations 66
H.B. 1724
Collection of Municipal and County Hotel Occupancy Taxes 67
H.B. 1813
Possession of Unopened Fireworks in Certain Municipalities 67
H.B. 1847
Continuing Legal Education for County and District Attorneys 68
H.B. 1931
Authority to Distribute Funds to Property Owners with Damages from Criminal Pursuit 68
H.B. 3015
Recall Elections for Officials of El Paso County General Law Municipalities 68
H.B. 3674
Municipal Eligibility for the Historic Courthouse Preservation Program 68
H.B. 3739
Municipal Employees Who Become Candidates for Public Office 69
H.J.R. 87; H.B. 1372
Authorizing Procedures in Home-Rule Municipalities for Filling Governmental Vacancies 69
S.B. 186
Mosquito Abatement in Stagnant Water on Uninhabited Residential Property 69
S.B. 458
Exempting Motor Vehicle Titles from Mandatory Disclosures 70
S.B. 654
Civil Actions to Enforce Water Conservation and Animal Control Ordinances 70
S.B. 837
Municipal Power to Regulate Certain Nuisances on Real Property 71
S.B. 987
Injunctions Against Municipalities and Counties Adopting Prohibited Firearms Regulations 71
S.B. 1400
Municipal and County Power to Regulate Air Guns 71
S.B. 1437
Filing Documents Electronically with the County Clerk 72
S.B. 1512
Confidentiality of Certain Crime Scene Photographs and Video Recordings 72
S.C.R. 21
Municipal Courts Weeks 2013 and 2014 72

Procedural Law

H.B. 1125
Extradition Warrants and Justices of Peace 73
H.B. 2679
Authorizing the Entering of a Plea for Defendants in Jail for Class C Misdemeanors 73
S.B. 344
Habeas Corpus Procedures Related to Certain Scientific Evidence 74

S.B. 484
Creation of a Prostitution Prevention Program 74
S.B. 825
Disciplinary Standards and Procedures Applicable to Prosecutorial Misconduct Grievances 75
S.B. 1189
Disposition of Firearms Seized by a Law Enforcement Agency During an Emergency Mental Health Evaluation 75
S.B. 1237
Referral of Criminal Cases for Alternative Dispute Resolution and Fees 76
S.B. 1611
Discovery in a Criminal Case 77

Substantive Criminal Law

H.B. 124
Addition of Salvia Divinorum to the Texas Controlled Substances Act 80
H.B. 333
Requiring Notice of Hotel Firearms Policies 80
H.B. 489
Protecting Public Use of Service Animals by Persons with Disabilities 80
H.B. 555
Criminal Offenses for Unscrupulous Metal Recyclers 81
H.B. 705
Penal Code Definition of "Emergency Services Personnel" Expanded 82
H.B. 912
Texas Privacy Act and the Use of Unmanned Aircraft 82
H.B. 1043
Radio and Television Broadcast Uses of Sound Recordings 83
H.B. 1284
Notification of Penalty for Making False Alarms 83
H.B. 1305
Acting as an Insurance Agent After License Suspension or Revocation 83
H.B. 1494
Department of Agriculture Regulatory Program Penalties 84
H.B. 1523
Redefining "Funds" Related to Money Laundering Offenses 84
H.B. 1606
Prosecution of Harassment and Stalking 84
H.B. 1807; S.B. 1095
Fever Tick Eradication 85
H.B. 1862
Decriminalizing Switchblade Knives 85
H.B. 1951
Criminal Offense to Appoint or Retain an Unlicensed Telecommunicator 85
H.B. 2311
Repeal of Class C Misdemeanor for Failure to Comply with State Animal Identification Program 86
H.B. 2377
Criminal Penalties for the Use of Legislatively Produced Audio and Visual Materials 86
H.B. 2539
Computer Technicians Required to Report Child Pornography 86

H.B. 2649; S.B. 1432
Reporting Requirements for Trapping Permits 86
H.B. 2781
Rainwater Harvesting 87
H.B. 3279
Ban on Uprooting Seagrass Plants 87
S.B. 124
Tampering with Certain Governmental Reporting Records for School Districts and Open-Enrollment Charter Schools 88
S.B. 299
Intentional Display of a Handgun by a Person with a Concealed Carry License 88
S.B. 529
Creation of the Offense of Installation, Transfer, Use, or Possession of an Automated Sales Suppression Device or Phantom-ware 88
S.B. 701
Defense to Criminal Trespass for Certain Utility Companies' Employees and Agents 88
S.B. 821
Prosecution of Criminal Offenses Involving Insufficiently Funded Accounts for Electronic Funds Transfers 89
S.B. 900
Administrative, Civil, and Criminal Penalties for Pipeline Violations 89
S.B. 972
Repeal of Criminal Offenses Relating to TDLR Regulated Occupations 89
S.B. 1010
Access to Certain Facilities by Search and Rescue Dogs and Their Handlers 90
S.B. 1427
Criminal Penalty for Violations of the Citrus Budwood Certification Program 90
S.B. 1536
Imposing Criminal Penalties Relating to the Texas Military 91

Traffic Safety, Transportation, and Transportation Code Amendments

H.B. 38
Increasing Penalty for Installing Counterfeit Airbags 92
H.B. 115
Requirements for Identification Numbers on Vessels 92
H.B. 120; H.B. 1514; H.B. 2485
Specialty License Plates with Exemptions from Parking Meter Fees 92
H.B. 338
Jurisdiction for Towed Motor Vehicle Hearings 93
H.B. 347
Prohibiting Use of a Wireless Communication Device While Operating a Motor Vehicle on School Property 93
H.B. 434
Persons Authorized to Take Blood Specimens for Intoxication-Related Offenses 94
H.B. 438
Justice Courts Authorized to Issue an Occupational Driver's License 94
H.B. 567
Definition of an Authorized Emergency Vehicle 95
H.B. 625
Fixing the Penalty for Operating a Vehicle Without a License Plate 95

H.B. 719
Operating a Golf Cart or Utility Vehicle on a Public Highway in Certain Counties 96
H.B. 802
Definition of an Authorized Emergency Vehicle 96
H.B. 894
Use of Dealer's License Plates by Independent Dealers..... 96
H.B. 949
Insurance Coverage for Vehicles Acquired During Policy Term 97
H.B. 1044
Operating All-Terrain Vehicles and Recreational Off-Highway Vehicles on Beaches 97
H.B. 1097
Speeding Violations in a Construction or Maintenance Work Zone..... 98
H.B. 1106
Water Safety Act Updates; New Offense for Failure to Have Working Visual Distress Signals on Vessels..... 98
H.B. 1174
Increasing the Penalties for Illegally Passing a Stopped School Bus 98
H.B. 1294
Child Passenger Safety Seats; Fine Range and Defense to Prosecution..... 99
H.B. 1607
Increased Speed Limits on County Roads 99
H.B. 2204
Establishing a Variable Speed Limit Pilot Program..... 100
H.B. 2304
Certification of Sheriffs and Deputy Sheriffs to Enforce Commercial Motor Vehicle Safety Standards in Certain Counties..... 100
H.B. 2305
Creating a Combined Vehicle Inspection and Registration System..... 100
H.B. 2690
Towing a Vehicle that is for Sale by an Unlicensed Seller 101
H.B. 2741
New Offenses and Amendments to the Transportation Code 101
H.B. 3031
Fare Enforcement Officers for Metropolitan Rapid Transit Authorities..... 105
H.B. 3483
Restrictions for Drivers Under 18 Years of Age; Driver Education Requirements 105
H.B. 3668
Changes to Stop and Render Aid Law 106
H.B. 3676
Restrictions on Drivers with Hardship Licenses Under 18 Years of Age 106
H.B. 3838
Requirements for Motorcycle Endorsement, Equipment, and Training 107
S.B. 181
Verification of Motor Vehicle Financial Responsibility Information on a Wireless Communication Device 107
S.B. 223
Definition of an Authorized Emergency Vehicle 108
S.B. 229
Exception to the Domicile Requirement for Issuance of a CDL for Certain Military Personnel ... 108

S.B. 275
Increasing the Penalty for Leaving the Scene of a Collision that Involves Personal Injury or Death 109
S.B. 487
Definitions of All-Terrain Vehicles and Recreational Off-Highway Vehicles 109
S.B. 510
Expanding the Vehicles to Which the "Move Over/Slow Down Law" Applies 110
S.B. 763
Requirements for Motorcycle Endorsement and Training 110
S.B. 1061
Parking Privileges for Disabled Veterans at Higher Education Institutions 110
S.B. 1567
Required Disclosures on Named-Driver Insurance Policies 111
S.B. 1705
Administration of Driving Tests 112
S.B. 1729
Agreements Between DPS and Certain Counties for Driver's License Services 112
S.B. 1757
New Offense Relating to License Plate Flippers 113
S.B. 1792
Nonpayment of Tolls 113
S.B. 1917
Definition of an Authorized Emergency Vehicle 114

H.B. 62
Subject: Prohibited Interest in Private Correctional or Rehabilitation Facility; Violation of Code of Judicial Conduct
Effective: January 1, 2015

H.B. 62 adds Section 21.010 to the Government Code to prohibit a justice or judge of the Supreme Court, Court of Criminal Appeals, a court of appeals, a district court, a county court, a county court at law, or a statutory probate court from having, on the date the person takes office or while serving as a justice or judge, a significant interest in a business entity that owns, manages, or operates the following: a community residential facility; a correctional or rehabilitation facility; or any other facility intended to provide housing, supervision, counseling, personal, social, and work adjustment training, or other programs to a person who is housed in the facility while serving a sentence of confinement following conviction of an offense or an adjudication of delinquent conduct or who is housed in the facility as a condition of community supervision, probation, parole, or mandatory supervision. The bill sets out the conditions under which a justice or judge is considered to have a significant interest in such a business entity for the purposes of the bill's provisions. The bill establishes that a violation of the prohibition by a justice or judge is considered a violation of Canon 4D(1) of the Code of Judicial Conduct. H.B. 62 requires a justice or judge who has such an interest to report that to the State Commission on Judicial Conduct (SCJC).

TMCEC: Although the list of judicial officers included in H.B. 62 does not include municipal judges, municipal judges are nonetheless required to comply with Canon 4D(1) (See, Canon 6C). What makes this bill remarkable, interesting, and rare, is that the Legislature is determining what constitutes a violation of a canon of judicial conduct. Such a determination is normally made by the SCJC. Note that the original version of H.B. 62 mandated that judicial violators be removed from office.

H.B. 1222
Subject: Venue for Certain Alleged Violations or Offenses Under the Water Safety Act
Effective: May 25, 2013

The Water Safety Act (Chapter 31 of the Parks & Wildlife Code) provides for various measures, including criminal penalties, to protect public safety on Texas waterways. Under current law, venue for any alleged violation or offense under the Water Safety Act is restricted to the justice court or county court that has jurisdiction where the violation or offense occurs. Interested parties observe that some municipal police are equipped with citation forms or automated ticket writers that are connected to the municipal court system and which they are unable to use for violations or offenses under the Water Safety Act because of the venue restrictions. Such restrictions create inefficiency and threaten the public interest in areas where municipal police are the primary means of enforcing water safety laws. H.B. 1222 adds the municipal court as an authorized venue for such violations and offenses in an effort to make the system used to enforce water safety laws more closely resemble the efficient and effective system that has been implemented with regard to policing the roads and highways.

TMCEC: While there has long been confusion over whether municipal courts have jurisdiction over Class C Parks & Wildlife Code misdemeanors (punishable by a fine only of not less than $25 or more than $500), the Legislature has expressly made it clear that municipal courts do have jurisdiction over Water Safety Act violations and offenses. H.B. 1222 amends Section 31.126(a) of the Parks & Wildlife Code to specifically provide for venue in Water Safety Act violations to be in the justice court, county court, *or municipal court* having jurisdiction where the offense or violation was committed. This amendment applies only to offenses or violations committed on or after the effective date.

Municipal courts will now have to abide by the procedural rules governing the prosecution of these Water Safety Act violations in Chapter 31. One issue when handling these cases deals with the remittance of the fine to the

Parks & Wildlife Department (PWD). Section 31.128 provides that a justice of the peace, a clerk of any court, or any other officer of this state receiving any fine imposed by a court for a violation of the chapter shall send the fine, along with certain information, to the PWD within 10 days after receipt. In cases filed as the result of an arrest by a game warden, justice courts shall remit 85 percent of the fine, while county courts shall remit 80 percent. There is no mention of the percentage to remit in cases filed in a municipal court as the result of an arrest by a game warden. See, Ryan Turner and Katie Tefft's discussion of Tex. Atty. Gen. Op. GA-0745: "Case Law and Attorney General Opinion Update" *The Recorder* (December 2010) at 23.

Should municipal courts follow the provisions for justice courts, or should such courts remit the entire fine given there is no express mention of municipal courts? Thankfully, this uncertainty only applies to Water Safety Act violations filed by game wardens. For Water Safety Act violations filed as the result of an arrest by a marine safety enforcement officer (as which municipal police would need to be certified to enforce the violations), 60 percent of the fine shall be remitted.

This express venue in a municipal court only pertains to Chapter 31 violations. For the rest of the Parks & Wildlife Code, venue is governed by Section 12.106, which provides that a peace officer who arrests a person for a violation of the Parks & Wildlife Code may deliver to the alleged violator a written notice to appear before the justice court, county court, *or another court having jurisdiction of the offense* not later than 15 days after the date of the alleged violation. As municipal courts have concurrent jurisdiction with justice courts over state law offenses punishable by a fine only, ostensibly municipal courts have jurisdiction over Class C Parks & Wildlife Code misdemeanors.

H.B. 1448
Subject: Justice Court Technology Fund
Effective: September 1, 2013

H.B. 1448 allows the use of the justice court technology fund to assist constables or other county departments with technological enhancements or related costs if the enhancements are related to the operation or efficiency of a justice court. The use of justice court technology funds will assist constables with technology upgrades, such as computers in the vehicles, air cards, software purchase, and ticket writers, and, in turn, will directly improve the operation of the justice courts.

TMCEC: The bill provides that Article 102.0173(f) of the Code of Criminal Procedure applies only to a county that has a population of 125,000 or more, is not adjacent to a county with a population of two million or more, and contains portions of both the Guadalupe River and Interstate Highway 10. Thus, it only applies to Guadalupe County. It does not have any effect on the municipal court technology fund. Yet, like S.B. 1521, 82nd Legislature (2011) (allowing the municipal court building security fund to be used for warrant officers and related equipment) it expands the permissible uses of dedicated funds to benefit departments other than the court. Such use of court costs warrants critical analysis by local governments.

H.B. 1562
Subject: Notification of Bail Bond Default Provided to Surety
Effective: September 1, 2013

Under current law, a person who acts as a surety on a bail bond and is in default on payment of the bond is subsequently disqualified to sign as a surety until the bond is paid. Current law requires a clerk of the court where the bond is in default to give notice of the default only to the sheriff, chief of police, or other peace officer. H.B. 1562 amends Article 17.11 of the Code of Criminal Procedure to require a court clerk to send notice of default on a bail bond taken for offenses other than Class C misdemeanors to the last known address of the surety.

H.B. 2021
Subject: Collection Contracts for Unpaid Fines, Fees, and Costs in Civil Cases
Effective: June 14, 2013

Interested parties have raised concerns regarding the lack of available tools to recover unpaid court costs on civil cases compared to the available tools to recover the respective costs for criminal cases. Interest has been shown regarding outsourcing the collection of these amounts in a manner similar to the outsourcing of the collection of criminal court costs in which a collection fee may be added to the amounts to be collected.

H.B. 2021 adds Section 140.009 to the Local Government Code, authorizing the governing body of a municipality or the commissioners court of a county to contract with a private attorney or public or private vendor for the collection of an amount owed to the municipality or county relating to a civil case, including an unpaid fine, fee, or court cost, if the amount is more than 60 days overdue. The bill authorizes the municipality or county contracting with an attorney or a vendor to authorize the addition of a collection fee of 30 percent of the amount referred and limits the use of the fee to the compensation of the attorney or vendor who collects the debt. The bill's provisions do not apply to the collection of commercial bail bonds.

TMCEC: The "interested parties" were district clerks with concerns about collecting unpaid costs in child support cases and protective order requests. It is debatable whether this bill has much of an impact on how municipal courts currently operate for two reasons. First, a municipal court's civil jurisdiction is limited, and municipal courts only assess civil fines, fees, or costs in few instances. Second, nothing in Article 103.0031 of the Code of Criminal Procedure (Collection Contracts) prohibited cities from turning over fees or costs in civil cases to their contracted third party collection agency, except perhaps the mistaken belief that the statute's location in the Code of Criminal Procedure meant its utility was limited to criminal matters.

H.B. 2025
Subject: Concurrent Jurisdiction of Municipal Courts of Certain Neighboring Municipalities to Hear Criminal Cases
Effective: June 14, 2013

H.B. 2025 amends current law relating to the concurrent jurisdiction of the municipal courts of certain neighboring municipalities to hear criminal cases.

H.B. 984, 82nd Legislature (2011) allowed neighboring municipalities to enter into an agreement to establish concurrent jurisdiction for their municipal courts in certain cases and to provide original jurisdiction in those cases to a municipal court in either municipality. The provisions of H.B. 984 applied only to an offense committed or conduct that occurs after the effective date of an agreement, meaning that an offense committed or conduct that occurred before the agreement would remain under the sole jurisdiction of the municipality in which the case was originally brought.

H.B. 2025 allows each municipality that enters into a concurrent jurisdiction agreement to have original jurisdiction over offenses committed or conduct that occurs in either of the municipalities before the date of the agreement.

TMCEC: H.B. 2025 amends no statute. Rather, it specifies that the changes made by H.B. 984 adding Section 29.003(i) to the Government Code and Article 4.14(g) to the Code of Criminal Procedure apply to an offense committed before, on, or after the May 19, 2011 effective date of H.B. 984.

H.B. 2090
Subject: Written Statements Made by an Accused from a Custodial Interrogation
Effective: September 1, 2013

The U.S. Constitution provides that no person shall be compelled in any criminal case to be a witness against

himself. Procedural safeguards under the U.S. Constitution and federal and state statutes protect this right, but the Texas Code of Criminal Procedure does not currently require a written statement that is signed by an accused or on which the accused makes a mark in lieu of such signature to be written in a language the accused can read and understand. Thus, a non-English speaker potentially could sign a statement in English without understanding the content of the statement; prosecutors could then compel the accused to be a witness against himself or herself in violation of the individual's constitutional right. To address this issue, H.B. 2090 amends Section 1, Article 38.22 of the Code of Criminal Procedure to require a statement signed by or bearing the mark of the accused to be made in a language the accused can read or understand.

H.B. 2302
Subject: Statewide Electronic Filing System
Effective: September 1, 2013

A recent order of the Supreme Court of Texas mandates electronic filing, or e-filing, in civil cases by attorneys in appellate courts, district courts, statutory county courts, constitutional county courts, and statutory probate courts. H.B. 2302 establishes a statewide e-filing system fund, in an effort to offset the cost of implementing a statewide e-filing system, by implementing an e-filing transaction fee for civil cases and an additional court cost to be collected on certain criminal convictions.

H.B. 2302, in added provisions to Chapter 51 of the Government Code, requires the clerk of the Supreme Court, court of appeals, district court, county court, statutory county court, or statutory probate court to collect an additional $20 fee on the filing of any civil action that requires a filing fee. The clerk of a justice court must collect an additional $10 fee on such a filing. The bill further requires a person to pay an additional $5 as a court cost on conviction of any criminal offense in a district court, county court, or statutory county court.

The bill adds Section 72.031 to the Government Code−a temporary provision set to expire September 1, 2019−authorizing a local government (defined as a county or municipality) or appellate court that uses the e-filing system to charge a fee of $2 for each e-filing transaction if: (1) the fee is necessary to recover the actual system operating costs reasonably incurred by the local government or appellate court to accept electronic payment methods or interface with other technology information systems; (2) the fee does not include an amount to recover local government or appellate court employee costs, other than costs for directly maintaining the system; (3) the governing body of the local government or the appellate court approves the fee using the local government or appellate court's standard approval process for fee increases; and (4) the local government or appellate court annually certifies to the Office of Court Administration (OCA) that the amount of the fee is necessary to recover the actual system operating costs incurred by the local government or appellate court. A governmental entity not otherwise required to pay a filing fee may not be required to pay this fee; and a court shall waive payment of the fee for an individual the court determines is indigent. A local government or appellate court that uses the e-filing system may accept electronic payments.

The OCA, not later than December 1, 2018, must file a report detailing the number of local governments and appellate courts collecting an e-filing system fee and the necessity of the local governments and appellate courts to continue collecting the fee.

H.B. 2302 makes conforming changes to the Government Code, Family Code, Local Government Code, and Tax Code.

TMCEC: The authorization to charge the $2 e-filing transaction fee is included in Section 103.027 of the Government Code. Though municipal courts, thankfully, are not included as one of the courts to collect an additional filing fee or criminal court cost, the question remains as to when the municipality, as a local government, would choose to collect the new $2 e-filing transaction fee. It is unclear. The bill analysis suggests that this statewide e-filing system would be for civil matters. Few municipal courts actively handle civil case filings, and those that do (e.g., code enforcement cases where concurrent jurisdiction lies in the district courts) are often instituted by

the government, which is exempt from paying a filing fee. However, if the municipal court's civil jurisdiction continues to expand in coming legislative sessions, this will be a cost deserving attention.

H.B. 2302 also adds Section 21.011 to the Government Code authorizing a judge to sign an electronic or digital court document (including an order, judgment, ruling, notice, commission, or precept) electronically, digitally, or through another secure method. A document signed in this manner becomes the official document issued by the court. In conjunction with Article 45.012(h) of the Code of Criminal Procedure, currently authorizing a signature captured on an electronic device, it is clear that judges can use electronic signatures.

H.B. 3068
Subject: Surcharges on Debit Card Purchases
Effective: September 1, 2013

Current law restricting surcharges on credit card transactions was enacted at a time when debit card transactions were limited. As debit cards have become a preferred method of payment for many consumers, the need has grown to provide similar protections to these consumers. H.B. 3068 updates the law to give debit cards the same standing in Texas as other payment methods, offering protection to consumers, and smaller community banks that issue debit cards far more than credit cards, from discriminatory surcharges on debit card purchases.

TMCEC: H.B. 3068 amends Chapter 59 of the Finance Code by adding Subchapter E, prohibiting merchants from imposing surcharges on buyers who use debit cards to purchase goods or services. The prohibition does not apply to state agencies, local governmental entities, or other governmental entities that accept debit cards for the payment of fees, taxes, or other charges.

H.B. 3561
Subject: Conducting Court Proceedings in Contiguous Incorporated Municipality
Effective: June 14, 2013

Current law allows the municipal court of a municipality with a population of 700 or less to conduct its court proceedings within the corporate limits of a contiguous incorporated municipality. H.B. 3561 amends Section 29.104 of the Government Code to allow a municipality with a population of 3,500 or less to conduct municipal court proceedings within the corporate limits of a contiguous incorporated municipality.

TMCEC: Where a court can hold proceedings is not explicitly proscribed under Texas statutory law; however, cities under a certain size do have express statutory authority to conduct court proceedings in a contiguous municipality. Contiguous is defined by *Black's Law Dictionary* (8th Ed.) as "touching at a point or along a boundary." According to the *2012 Annual Statistical Report for the Texas Judiciary*, published by the Office of Court Administration, this change could potentially affect 427 cities that have a population between 700 and 3,500.

S.B. 107
Subject: Restricting Disclosure of Criminal History Information Subject to Order of Nondisclosure
Effective: September 1, 2013

Current law regarding the disclosure of criminal history record information allows a person who is placed on deferred adjudication, who subsequently receives a discharge and dismissal, and who satisfies certain requirements to petition a court for an order of nondisclosure, thereby prohibiting the disclosure of the person's criminal history record information to the public. Critics assert that the law is unclear and could be interpreted as not expressly requiring court clerks to keep certain court records confidential. S.B. 107 amends Section 411.081(g-3) of the Government Code to prohibit a court from disclosing to the public any information contained in the court records that is the subject of an order of nondisclosure issued under Section 411.081. The bill authorizes the court to disclose information contained in the court records that is the subject of an order of nondisclosure only to criminal justice agencies for criminal justice or regulatory licensing purposes, to certain specified noncriminal justice

agencies and entities, or to the person who is the subject of the order. The bill requires the clerk of the court issuing the order of nondisclosure to seal any court records containing information that is the subject of the order as soon as practicable after the date the clerk of the court sends all relevant criminal history record information contained in the order or a copy of the order to the Department of Public Safety as required by law.

TMCEC: Do not panic; nondisclosure orders are not coming back to municipal courts. However, those cases involving children in which a nondisclosure order was entered between June 19, 2009 and the repeal of nondisclosure on June 17, 2011, are still subject to that nondisclosure order. This is a reminder: do not improperly disclose such information.

S.B. 209
Subject: Changes to the Functions and Operation of the State Commission on Judicial Conduct
Effective: September 1, 2013, except for Sections 1 and 8, which are subject to voter approval on November 5, 2013

The State Commission on Judicial Conduct (SCJC) was created in 1965 through a constitutional amendment, proposed by the 59th Legislature and approved by voters, to investigate allegations of judicial misconduct or judicial disability, and to discipline judges. The SCJC's mission is to protect the public from judicial misconduct; promote public confidence in the integrity, independence, competence, and impartiality of the judiciary; and encourage judges to maintain high standards of conduct both on and off the bench.

The SCJC is subject to review but not abolishment under the Sunset Act. As a result of its review, the Sunset Advisory Commission recommended several statutory modifications to Chapter 33 of the Government Code, which became S.B. 209.

Section by Section Analysis

Sections 1, 7-8: Complaint Process and Appeal

Section 7 amends Section 33.033, requiring the SCJC to include, in its notice that informs individuals that the SCJC has dismissed their complaint (against a judge), an explanation of each reason why the conduct alleged in the complaint failed to constitute judicial misconduct. This explanation must be in plain and easily understandable language.

Sections 1 and 8 authorize the SCJC to issue a *public sanction* (admonition, warning, reprimand, or order of education) following a *formal* proceeding, in addition to its current authority to issue a public censure or recommend removal or retirement of a judge or justice. The bill also authorizes a court of review to hear appeals of *sanctions* following formal proceedings, in the same manner as it hears appeals of censures (conducting a review of the record of the formal proceeding and allowing new evidence with good cause shown) instead of by trial de novo as is currently done for appeals of sanctions issued in informal proceedings.

Sections 1 and 8 will take effect on the date the constitutional amendment proposed in S.J.R. 42 takes effect. If that amendment is not approved by the voters, these sections will have no effect.

TMCEC: Until this constitutional amendment is voted on and passes, Sections 33.001 and 33.034 of the Government Code remain as they are under current law. If the amendment takes effect, judges could, following a formal proceeding, receive a lesser sanction as opposed to a censure or removal, and would have the opportunity to appeal that sanction with greater protections (i.e., a review on the record and the right to a trial by jury).

Sections 2-6, 9: Role and Transparency of the SCJC

S.B. 209 amends Section 33.002 of the Government Code (the SCJC's enabling statute) to state that the SCJC

does not have the power and authority of a court, but is instead a state agency within the judicial branch that administers judicial discipline.

The bill makes a one-time change to provide for the next Sunset review to occur in six years (2019). It also maintains the requirement for the SCJC to distribute an annual report on its activities to protect the public from judicial misconduct in the preceding fiscal year but requires that the report be provided to the Legislature in an electronic format only.

S.B. 209 adds Section 33.0055, requiring the SCJC to hold an open public meeting at least once every even-numbered year to seek public input on the SCJC's mission and operations. The Secretary of State shall post notice on the Internet for at least seven days before the hearing and provide members of the public access to view the notice consistent with the laws under the Open Meetings Act.

S.B. 209 also adds Section 33.0322, clarifying that the SCJC's confidentiality and privilege provisions do not authorize the SCJC to withhold from the Sunset Advisory Commission staff access to any confidential document, record, meeting, or proceeding to which Sunset staff determines access is necessary for a review. The bill clarifies that Sunset staff must maintain the same level of confidentiality as the SCJC staff and, as a result, is entitled to access whatever components of the SCJC's process Sunset staff deems necessary.

The bill requires the SCJC to study its procedural rules for needed updates to reflect changes in case law, statute, and the constitution, and to assess needed updates to improve its operations or increase efficiency, and to report these findings to the Supreme Court on an as-needed basis. Its first assessment and report must be done no later than December 31, 2013.

TMCEC: These provisions, all meant to clarify the role of the SCJC, stem from the latest Sunset Review process, in which SCJC staff denied Sunset Advisory Commission staff access to closed session informal proceedings and to memoranda that SCJC staff attorneys prepared to aid the SCJC in its decisions. This controversy received much media attention, and TMCEC shared several news accounts on its Facebook feed. In Tex. Atty. Gen. Op. GA-0979 (December 4, 2012), the Attorney General ruled in favor of the SCJC on the confidentiality issue. These provisions ultimately supersede that opinion.

S.B. 389
Subject: Assessment of Court Costs Based on Date of Conviction in Higher Courts
Effective: June 14, 2013

TMCEC: S.B. 389 originally sought to end confusion over whether the assessment of court costs should be based on the costs in effect at the time the violation occurred (as is the fine) or the costs in effect on the date the defendant was convicted. The bill analysis states: "Each time a new criminal court cost is enacted by the Texas Legislature, court clerks have to recalculate the costs imposed on defendants. Interested parties observe that the enactment of such new costs causes confusion in those instances when a defendant commits a violation but is not brought to trial for several years." The bill, as originally filed, provided that the court costs collected by a clerk of a district, county, statutory county, municipal, or justice court from a criminal defendant must be based on the amount under the law in effect on the date of conviction. It spurred almost an immediate flurry of activity amongst the municipal courts.

At the Senate Committee Hearing on February 19, the presiding judge from Houston, the court administrator from Austin, and a representative of the Texas Court Clerks Association registered to testify against the bill. Although the Legislative Budget Board stated that three counties (of varying size) estimated they would not incur significant expenditures or require major changes to their computer systems, four Texas municipalities (Houston, Amarillo, Georgetown, and Stafford) had previously reported that cities would face costs associated with redesigning and reprogramming their court software systems in addition to the problems that would be

encountered with outstanding warrants and inaccurate court costs. As a result of a committee substitute removing municipal and justice court clerks from the provision, those who had registered to testify against the bill were ultimately registered as appearing "for" the bill.

S.B. 389, as signed by the Governor, adds Section 51.608 to the Government Code and provides that notwithstanding any other law, the amount of a court cost imposed on a defendant in a criminal proceeding in a district, county, or statutory county court must be the amount established under the law in effect on the date the defendant is convicted of the offense. Nothing for municipal or justice courts is changed by this new law.

A little background: The issue of when court costs should be calculated necessitates a discussion about the intent behind the collection of court costs. The Court of Criminal Appeals, in *Weir v. State*, 278 S.W.3d 364 (Tex. Crim. App. 2009), unanimously agreed that the statutory requirement that only convicted defendants pay court costs does not indicate that such costs were intended by the Legislature to be punitive and part of the sentence. The Court also held that Section 102.021 of the Government Code, authorizing court costs against convicted defendants, was intended by the Legislature as a recoupment of the costs of judicial resources, not punishment. Thus, court costs are administrative, not punitive. As such, the prohibition against ex post facto laws would not apply to administrative consequences like court costs.

S.B. 390
Subject: Repeal of Exceptions to Delayed Implementation of Court Costs
Effective: June 14, 2013

Current law requires that all new criminal court costs imposed during a legislative session become effective on January 1 of the following year; however, there are exceptions to this requirement for certain court costs. Interested parties contend that these exceptions complicate an already confusing criminal court cost structure by requiring court clerks to charge different costs during various times of the year. S.B. 390 repeals Section 51.607(d) of the Government Code, relating to the exception to the delayed implementation of a cost or fee if the law imposing or changing the amount of the cost or fee expressly provides that such provisions are inapplicable to the imposition or change in the amount of the cost or fee or if the law takes effect before August 1 or after the next January 1 following the regular session of the Legislature at which the law was enacted.

TMCEC: S.B. 390 repeals an exception in Texas law that has historically caused confusion. Veterans of multiple legislative sessions will recall waiting for the Comptroller to prepare a list to be published in the *Texas Register* prior to August 1 and the confusion regarding trying to ascertain the actual effective date of the court cost. Now, all new costs or fees take effect the following January 1.

S.B. 391
Subject: Judge-Ordered Obligation to Pay Fines Independent of Community Supervision Obligations
Effective: September 1, 2013

In 2005, the Legislature enacted laws requiring certain cities and counties to implement court cost collection improvement programs based on model rules adopted by the Office of Court Administration. These programs have been largely successful; however, some local governments have had difficulty collecting past due fines and court costs from defendants placed into community supervision programs after the completion of such supervision. These difficulties have been attributed to an interpretation of a 2005 Attorney General opinion as prohibiting the collection of fines and court costs from defendants following the completion of community supervision programs. S.B. 391 amends Section 11 of Article 42.12 of the Code of Criminal Procedure to clarify that a defendant's obligation to pay a fine or court cost as ordered by a judge exists independently of any requirement to pay the fine or court cost as a condition of the defendant's community supervision. The bill specifies that a defendant remains obligated to pay any fine or court cost after the expiration of the defendant's period of community supervision.

TMCEC: This is another example of how deferred adjudication (Article 42.12) is *not* deferred disposition (Article 45.051). (See, generally, Ryan Turner, "Deferred Disposition is not Deferred Adjudication" *The Recorder* (August 2002) at 13.) A defendant's obligation to pay a special expense fee and/or court costs is part of the conditions of deferred disposition, and if the defendant fails to pay, the defendant is not entitled to the dismissal under the statute. Rather, the defendant would be convicted (following a show cause hearing, of course) and still remain obligated to pay the monies.

S.B. 392; H.B. 1435
Subject: Notice to Attorney General of Challenges to Constitutionality of Statutes
Effective: September 1, 2013

In 2011, the Legislature passed H.B. 2425, which added Section 402.010 to the Government Code to require courts to give notice to the Attorney General when a party asserts a challenge to the constitutionality of a state statute or rule. This requirement gives the Attorney General the opportunity to protect Texas' interest when the Attorney General is not a party involved in the litigation that raises the constitutional challenge.

TMCEC: Interestingly, neither H.B. 1435 nor S.B. 392 defines what constitutes a "statute of this state." While, ostensibly, these bills do not have significant impact on municipal courts, they could. In identical provisions, the bills delete a provision in Section 402.010 that requires a court give notice to the Attorney General to identify the statute in question; state the basis for the challenge; and specify the petition, motion, or other pleading that raises the challenge. In its place, a party asserting a challenge must file with the court a form that the Office of Court Administration is required to adopt. This form must indicate the pleading, in which the Attorney General is not involved, that the court should serve on the Attorney General.

H.B. 1435 goes one step further and provides that a party's failure to file the form does not deprive the court of jurisdiction or forfeit an otherwise timely filed claim or defense based on the challenge to the constitutionality of a statute of this state.

H.B. 1435 also amends provisions relating to certain notices, reports, and duties of courts and clerks. It amends Section 58.110(c) of the Family Code to remove a Class C misdemeanor offense involving failure of a juvenile court clerk to report the disposition of a case to the Texas Juvenile Justice Department.

S.B. 462
Subject: Specialty Court Programs
Effective: September 1, 2013

The use of specialty courts in Texas began in 1990 with the establishment of the first drug court. Since then, the drug court model has often been replicated in order to divert nonviolent offenders suffering from mental health or substance abuse issues away from the criminal justice system and into intensive treatment programs. Concerns have been raised that although government funding has been directed to drug courts, performance measures were not established to determine the success and cost-effectiveness of the use of specialty courts in Texas.

S.B. 462 amends the Government Code (in Chapters 121-125 and 772) and transfers provisions relating to family drug court programs, drug court programs, veterans court programs, and mental health court programs from the Family Code and the Health & Safety Code to the Government Code in order to consolidate statutory provisions relating to specialty courts.

S.B. 462 prohibits a specialty court program from operating until the judge, magistrate, or coordinator provides to the Criminal Justice Division of the Governor's Office written notice of the program, any resolution or other official declaration under which the program was established, and a copy of the applicable community justice plan that incorporates duties related to supervision that will be required under the program, and the judge, magistrate, or coordinator receives from the division written verification of the program's compliance with that requirement.

The bill requires a specialty court program to comply with all programmatic best practices recommended by the Specialty Courts Advisory Council and approved by the Texas Judicial Council and to report to the criminal justice division any information required by the division regarding the performance of the program. The bill makes a specialty court program that fails to comply with such requirements ineligible to receive any state or federal grant funds administered by any state agency.

TMCEC: Ostensibly, this bill will not impact municipal courts, which more likely operate specialty dockets as opposed to specialty courts.

S.B. 686
Subject: TCLEOSE Changes Name to TCOLE
Effective: May 18, 2013, but change takes effect January 1, 2014

In the 47 years since it was created, the role of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) has dramatically evolved, through legislative direction, from a training-only role to include regulatory authority. The need to re-brand the agency has become apparent to address confusion about the agency's role and clarify the agency's mission. The proposed name change from TCLEOSE to simply the Texas Commission on Law Enforcement (TCOLE), makes the agency name consistent with other regulatory agencies that do similar work in other venues.

S.B. 966
Subject: Creation of the Judicial Branch Certification Commission; Oversight of Licensed Court Interpreters
Effective: September 1, 2014, except Sections 3.02(a) and (b), which take effect September 1, 2013

Currently, the Court Reporters Certification Board, the Guardianship Certification Board, and the Process Server Review Board all exist as separate regulatory entities. The Licensed Court Interpreter Advisory Board is currently an advisory board to the Texas Department of Licensing and Regulation (TDLR). Interested parties observe that since these boards all function to assist with the certification of judicial agents or those individuals who assist the court, efficiencies could be realized through a consolidation of efforts.

S.B. 966 consolidates the Court Reporters Certification Board, the Guardianship Certification Board, and the Process Server Review Board into an entity to be known as the Judicial Branch Certification Commission (the "Commission") and moves oversight of the Licensed Court Interpreter Advisory Board to this new entity, which is administratively attached to the Office of Court Administration.

Creation of the Judicial Branch Certification Commission

S.B. 966 adds Chapters 151, 152, and 153 to the Government Code setting out provisions to govern the Commission and enforcement of the regulated professions. The bill requires the Commission to prepare information of public interest describing the functions of the Commission and the procedure by which complaints are filed and resolved (about regulated persons) and to make the information available to the public and appropriate state agencies. The Commission shall administer and enforce provisions regarding the court professions subject to regulation; develop and recommend to the Supreme Court rules for each regulated profession in consultation with appropriate advisory boards; set fees in amounts reasonable and necessary to cover the costs of administering the programs or activities; and, in consultation with appropriate advisory boards, establish qualifications for certification, registration, and licensing for the regulated professions.

S.B. 966 sets deadlines for notifying a person who takes an examination issued by the Commission of the examination results, and, if requested in writing by a person who fails an examination, to furnish the person with an analysis of their performance. The Commission may waive any prerequisite to obtaining a certification, registration, or license for certain applicants that hold a certification, registration, or license by another jurisdiction

under certain circumstances. The bill requires the Supreme Court to adopt rules on applicants' ineligibility for certification, registration, or licensing based on the person's criminal history or other information that indicates the person lacks the honesty, trustworthiness, or integrity to hold the certification, registration, or license.

The Supreme Court and the Commission may require continuing professional education for persons regulated by the Commission and may set certain standards relating to continuing education reporting, course content, and number of hours required. The Commission, by rule, can exempt certain persons from all or a portion of the continuing education requirements.

S.B. 966 requires the commission to publish a code of ethics for each regulated profession after adoption by the Supreme Court and, after such publication, to propose to the Supreme Court a rule stating that a person who violates the code of ethics is subject to an administrative penalty under the bill.

Court Reporters; Private Process Servers; Guardians

S.B. 966 adds Chapters 154 (governing court reporter certification), 155 (governing guardianship certification), and 156 (governing private process servers) to the Government Code, as well as other conforming changes.

Court Interpreters Licensing

S.B. 966 redesignates provisions of the Government Code into newly added Chapter 157 relating to the licensure of court interpreters for individuals who can hear but who do not comprehend English or communicate in English to reflect the transfer of the functions of the TDLR related to such licenses to the Judicial Branch Certification Commission.

TMCEC: S.B. 966 removes the definition of "licensed court interpreter" from Section 57.001(5) of the Government Code, and makes a conforming change to Article 38.30 of the Code of Criminal Procedure. The new definition is in Section 157.001 of the Government Code, and the rest of Subchapter C of Chapter 57 of the Government Code (Court Interpreters for Individuals Who Do Not Communicate in English) is relocated to new Chapter 157.

S.B. 966 does not change any of the current rules or procedures for examinations, licensing, continuing education, or the basic/master license designation that took effect in September 2011. The bill does say that a court interpreter's license issued by TDLR is continued in effect as a license of the Commission, effective September 1, 2014.

S.B. 1289
Subject: Duty of Accuracy in the Publication of Criminal Record Information
Effective: September 1, 2013

Currently, there are several businesses that post criminal record information, including mug shots, and then charge a fee to remove, correct, or modify the publicly-posted criminal record. In an effort to ensure fair and accurate publishing of publically accessible criminal record information, S.B. 1289 provides a person with a clear and free avenue for disputing the accuracy and completeness of the published information. The bill amends the Business & Commerce Code to add Chapter 109, requiring business entities that publish such information to ensure the information the entity publishes is complete and accurate.

The bill requires a business entity to clearly publish contact information to enable a person who is the subject of the criminal record information to dispute the accuracy or completeness of the information published. Business entities must respond to disputes in a timely manner, and investigate and correct any errors free of charge. A business entity that finds incomplete or inaccurate criminal record information after conducting such an investigation must promptly remove the inaccurate information from the website or other publication or promptly correct the information, as applicable. A business entity is prohibited from publishing any criminal record information in

its possession with respect to which the business entity has knowledge or has received notice that an order of expunction or an order of nondisclosure has been issued.

S.B. 1289 makes a business entity that publishes criminal record information in violation of the bill's provisions liable to the state for a civil penalty in an amount not to exceed $500 for each separate violation and, in the case of a continuing violation, an amount not to exceed $500 for each subsequent day on which the violation occurs. The bill authorizes the Attorney General or an appropriate prosecuting attorney to sue to collect such a civil penalty.

S.B. 1317
Subject: Authority of Retired Municipal Judges to Conduct Marriages; Expiration of Marriage License
Effective: September 1, 2013

A judge or magistrate of a federal court of Texas and a judge of a municipal court are currently authorized to conduct a marriage ceremony. Interested parties contend that a person who is retired from either position should also be allowed to conduct a marriage ceremony. S.B. 1317 amends Section 2.202 of the Family Code to include a retired judge of a municipal court and a retired judge or magistrate of a federal court of Texas among the persons authorized to conduct a marriage ceremony.

TMCEC: It took 30 years for municipal judges to gain the authority to conduct weddings. Since September 1, 2009, thanks to the passage of S.B. 935 (81st Legislature), municipal judges have had that authority. The issue soon arose, however, as to a retired municipal judge's ability to conduct weddings.

Tex. Atty. Gen. Op. GA-0948 examined whether a retired judge or magistrate of a federal court was authorized to conduct a marriage ceremony, with the Attorney General ruling that the placement of the phrase "retired judge or justice of those courts" in Section 2.202 did not cover a federal judge. Under the same analysis, a retired municipal judge would be not authorized to conduct a marriage ceremony. See, Ryan Turner and Regan Metteauer, "Case Law and Attorney General Opinion Update: TMCEC Academic Year 2013," *The Recorder* (December 2012) at 21.

S.B. 1317 began as a bill to allow retired judges or magistrates of federal courts in Texas to conduct marriages; the inclusion of a retired municipal judge was tacked on by a Senate floor amendment. A retired judge is a former judge who is vested in the Judicial Retirement System of Texas Plan One or Two or who has an aggregate of at least 12 years of service as a judge or justice of any type of court listed in Subsection (a)(4) of Section 2.202. Interestingly, there was no opposition this go-round.

S.B. 1317 also amends Section 2.201 of the Family Code to provide that the marriage license expires on the 90th day after the license is issued, not the 31st day.

S.B. 1419
Subject: Juvenile Case Managers and Creation of the Truancy Prevention and Diversion Fund
Effective: September 1, 2013

S.B. 1419 amends Article 45.056 of the Code of Criminal Procedure (Juvenile Case Managers) to expand the types of cases for which a juvenile case manager may be employed by a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity to include cases involving juvenile offenders referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, and conditions the employment of such a juvenile case manager on the consent of the juvenile and the juvenile's parents or guardians. The bill authorizes a juvenile case manager employed by a county court, justice court, municipality, or municipal court to provide prevention services to a child considered at risk of entering the juvenile justice system and intervention services to juveniles engaged in misconduct prior to cases being filed, excluding traffic offenses.

S.B. 1419 adds Article 102.015 to the Code of Criminal Procedure establishing the Truancy Prevention and Diversion Fund as a dedicated account in the general revenue fund. The bill requires a person convicted in municipal or justice court of an offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, to pay as a court cost $2 in addition to other court costs, and establishes that, for purposes of the bill's provisions, a person is considered to have been convicted if a sentence is imposed or the defendant receives deferred disposition in the case. The bill establishes that such court costs are collected in the same manner as other fines or costs and requires an officer collecting the costs to keep separate records of the funds collected as costs under the bill's provisions and to deposit the funds in the county treasury or municipal treasury, as applicable.

S.B. 1419 requires the custodian of a county treasury or municipal treasury, as applicable, to keep records of the amount of funds on deposit collected under the bill's provisions. The bill requires such a custodian to send to the Comptroller of Public Accounts before the last day of the first month following each calendar quarter the funds collected during the preceding quarter, except that the custodian may retain 50 percent of the collected funds for the purpose of operating or establishing a juvenile case manager program, if the county or municipality has either (1) established or is (2) attempting to establish a juvenile case manager program. The bill requires the custodian of the treasury, if no funds due as costs under the bill's provisions are deposited in a county treasury or municipal treasury in a calendar quarter, to file the report required for the quarter in the regular manner and to state that no funds were collected.

S.B. 1419 requires the Comptroller to deposit the funds received under the bill's provisions to the credit of the Truancy Prevention and Diversion Fund and authorizes the Legislature to appropriate money from the account only to the Criminal Justice Division of the Governor's Office for distribution to local governmental entities for truancy prevention and intervention services. The bill authorizes a local governmental entity to request funds from the Criminal Justice Division of the Governor's Office for providing truancy prevention and intervention services and authorizes the division to award the requested funds based on the availability of appropriated funds and subject to the application procedure and eligibility requirements specified by division rule. Funds collected under the bill's provisions are subject to audit by the Comptroller.

TMCEC: The amendment to Article 45.056 in Section 1 of S.B. 1419 is derived from S.B. 393 with a notable exception. The language in Article 45.056(c) attempts to further clarify what was already widely understood: local governments that enter into interlocal agreements jointly employ case managers for purposes of Chapters 102 of both the Code of Criminal Procedure and the Government Code. Because the amendments to Article 45.056(a) and (c) in S.B. 1419 received a final record vote three days after the final passage of S.B. 393, the language contained in S.B. 1419 controls.

Notably, the monies that local governments may retain under S.B. 1419 are in addition to those collected under Article 102.0174 of the Code of Criminal Procedure (Juvenile Case Manager Fund). However, unlike the local juvenile case manager fee, which can only be collected if the local government employs a juvenile case manager (see, S.B. 1489, 82nd Legislature, amending Article 102.0174(b), Code of Criminal Procedure), a local government may retain $1.00 if it is attempting to establish a juvenile case manager program. Local governments that have no intention of establishing a juvenile case manager program send 100 percent of the costs collected to the Comptroller on a quarterly basis. It is worth repeating that all funds retained locally under the newly created Article 102.015 of the Code of Criminal Procedure are subject to audit by the Comptroller. Pursuant to Section 51.607 of the Government Code, cities will begin collecting this cost January 1, 2014.

Since 2001, when Article 45.056 first became law, the Governor's Office has had the authority to seek reimbursement for juvenile case managers. However, until now, with the creation of Section 103.034 of the Government Code (Truancy Prevention and Diversion Fund), there has been no state-based funding mechanism for the Governor's Office to make authorized awards to local governments. S.B. 1419 provides no definition for what constitutes "truancy prevention and intervention services." Notably, nothing in the S.B. 1419 expressly states that money must be awarded to local governments that employ juvenile case managers. Nevertheless, through interlocal

agreements between local governments and possible assistance from the Governor's Office, it is possible that more local governments will continue to establish local juvenile case manager programs.

S.B. 1620
Subject: Communication Access Realtime Translation (CART) Providers
Effective: June 14, 2013

Interested parties assert that translators who are able to immediately translate the spoken word into English text would be able to benefit parties to court proceedings where interpreters are needed. These translators are known as communication access realtime translation (CART) providers. S.B. 1620 amends Sections 57.001 and 57.002 of the Government Code to allow parties to a court proceeding to request a certified CART provider for an individual who has a hearing impairment in addition to having the option to request a certified court interpreter for such an individual.

A certified CART provider is defined in added Section 57.001(9) as an individual who holds a certification to provide CART services, at an advanced or master level and issued by the Texas Court Reporters Association or another certification association selected by the Department of Assistive and Rehabilitative Services (DARS), for an individual who has a hearing impairment if a motion for the appointment of a provider is filed by a party or requested by a witness in a civil or criminal proceeding or on the court's own motion. The bill repeals the definition of "real time captioning" contained in Section 57.001(6) of the Government Code. The DARS shall maintain a list of certified CART providers.

TMCEC: In sum, S.B. 1620 provides an alternative to using a certified court interpreter for deaf or hard of hearing persons by instead authorizing the use of a certified CART provider. However, the bill only amends Chapter 57 of the Government Code−that governs both criminal and civil matters−and does not amend Article 38.31 of the Code of Criminal Procedure, which requires a court to appoint a "qualified interpreter" for a deaf or hard of hearing party or witness to a criminal proceeding. A qualified interpreter is defined as an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the DARS. If the Texas Court Reporters Association issues the certification, would that qualify the person as a "qualified interpreter?" Perhaps the way around this is to have the DARS be the certification association selected by itself to issue CART certifications.

It also remains to be seen how this will change when the provisions in S.B. 966, establishing and transferring the regulation of court reporters to the Judicial Branch Certification Commission, take effect in September 2014.

S.B. 1630
Subject: Vexatious Litigants
Effective: September 1, 2013

Interested parties contend that current law relating to vexatious litigants has created confusion with respect to the law's applicability and with respect to determining who may declare a person a vexatious litigant and what the effects of that declaration may be. The parties also contend that current law is unclear regarding the responsibilities of court clerks and the Office of Court Administration (OCA) after a person is determined to be a vexatious litigant.

S.B. 1630 amends Chapter 11 of the Civil Practice & Remedies Code to redefine "plaintiff," for purposes of statutory provisions relating to vexatious litigants, to mean an individual who commences or maintains a litigation pro se. It also establishes that the provisions governing vexatious litigants do not apply to (1) an attorney licensed to practice law in Texas unless the attorney precedes pro se or (2) a municipal court.

TMCEC: *Black's Law Dictionary* (8th Ed.) defines a vexatious litigant as "a litigant who repeatedly files frivolous lawsuits." Chapter 11 of the Civil Practice & Remedies Code contains procedures for a court to declare a plaintiff to be a vexatious litigant and issue a pre-filing order, effectively prohibiting the litigant from filing further frivolous

lawsuits. The clerk of the court in which the plaintiff is declared vexatious is, under Chapter 11, required to notify OCA when the pre-filing order is entered, and OCA keeps a list of vexatious litigants online. Consider this the "naughty list." S.B. 1630 excludes municipal courts from using these procedures, despite the fact that such courts encounter the same vexatious litigants as other trial courts. Ostensibly, this is because municipal courts are primarily criminal courts. Nevertheless, it is not altogether clear why this bill expressly excludes municipal courts. S.B. 1630 provides that a pre-filing order entered by a justice or constitutional county court applies only to the court that entered the order, while a pre-filing order entered by a district or statutory county court applies to every court in Texas. It also prohibits a vexatious litigant subject to a pre-filing order from filing new litigation in a court to which the order applies without first getting the local administrative judge's permission. It further provides procedures for when a clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a pre-filing order.

S.B. 1896
Subject: Confidentiality of Information in Ad Valorem Tax Appraisal Records
Effective: May 25, 2013

Interested parties observe that the home addresses of certain judges are available in property tax appraisal records, unlike the addresses of other judges. These judges conduct business that can and has resulted in parties who feel aggrieved, leaving the judges vulnerable to threats and worse at their homes. Recently, a statutory probate judge was threatened with death by a person placed under a guardianship upon the person finding out that his driver's license was revoked. The threat was made to the home phone of this judge, and the person gave the judge's address in his threat.

S.B. 1896 amends Section 25.025 of the Tax Code to expand the definition of "state judge," for purposes of confidentiality of information in property tax appraisal records that identifies a state judge's home address, to include a judge, former judge, retired judge, associate judge, former associate judge, or retired associate judge of a statutory probate court or a constitutional county court; a master, magistrate, referee, hearing officer, or associate judge appointed under related Government Code provisions; and a municipal judge.

TMCEC: Municipal judges and their spouses join county jailers, commissioned security officers, current or former peace officers or employees of a district, county, or municipal attorney with criminal jurisdiction, among others, in being able to elect to restrict public access to information on an appraisal record that identifies their home address in connection with their name. The statute does not provide how to go about making the election, though it does provide that such a choice would remain valid until rescinded in writing by the individual.

S.B. 1908
Subject: Study to Identify and Repeal Court Costs
Effective: September 1, 2013

S.B. 1908 amends the Government Code, in provisions set to expire January 1, 2016, to require the Office of Court Administration, not later than September 1, 2014, to conduct a study on court fees and costs that identifies each statutory law imposing a court fee or cost in a court in Texas; to determine whether each identified fee or cost is necessary to accomplish the stated statutory purpose; to compile a list of the identified fees and costs and of each fee or cost the office determines is necessary; to publish the list on OCA website and in the *Texas Register*; and to provide a copy of the list and determinations to the Governor, Lieutenant Governor, and Speaker of the House of Representatives. The bill requires OCA, in conducting the study, to consult with local government representatives as determined appropriate.

S.B. 1908 also requires the Texas Legislative Council to prepare for consideration by the 84th Legislature a revision of statutes as necessary to reflect the court fees and costs identified by this study as not necessary.

TMCEC: Although municipal courts have overall been spared with few new or amended court costs in the last two legislative sessions, changes may be coming in 2015. Local governments, accordingly, are encouraged to remain vigilant.

S.J.R. 42
Subject: Amends the Texas Constitution to Authorize the SCJC to Use Its Full Range of Disciplinary Actions Following a Formal Proceeding
Effective: January 1, 2014, subject to voter approval on November 5, 2013

S.J.R. 42 amends Section l-a(8) of Article V of the Texas Constitution to authorize the State Commission on Judicial Conduct (SCJC) to issue an order of public admonition, warning, reprimand, or a requirement to obtain additional training or education following a formal hearing or after considering the record and report of a Master; in addition to its current authority to issue a public censure or recommend removal or retirement of a judge or justice.

The resolution adds a temporary provision to the Constitution that establishes the amendment's effective date as January 1, 2014, and clarifies that the amendment applies only to a formal proceeding instituted by the SCJC on or after that date. The resolution also provides that this temporary provision expires January 1, 2016.

TMCEC: Also see the summary for S.B. 209.

H.B. 232
Subject: Online Alcohol Awareness/Community Service in Lieu of Alcohol Awareness Program for Certain Minors
Effective: June 14, 2013

Minors placed on deferred disposition or convicted of an alcohol related offense are required to attend an alcohol awareness course. Defendants in rural areas may not have access to such a course due to a lack of approved providers in their community. Consequently, these individuals have to travel long distances in order to meet the mandatory requirement. H.B. 232 amends current law relating to allowing certain minors convicted of certain alcohol offenses to perform community service instead of attending an alcohol awareness program. H.B. 232 amends Section 106.115, Alcoholic Beverage Code, by adding Subsections (b-1), (b-2), and (b-3).

Subsection (b-1) authorizes a court, if a defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county, to allow the defendant to either (1) take an online alcohol awareness program [if the Department of State Health Services (DSHS) approves online courses], or (2) require the defendant to perform not less than eight hours of community service related to alcohol abuse prevention or treatment and approved by DSHS under Subsection (b-3) instead of attending the alcohol awareness program. Notably, that community service ordered under this subsection *is in addition* to community service ordered under Section 106.071(d) (relating to requiring a court to order certain minors to perform community service as a punishment for an alcohol-related offense).

Subsection (b-2) authorizes a court, for purposes of Subsection (b-1), if the defendant is enrolled in an institution of higher education located in a county in which access to an alcohol awareness program is readily available, to consider the defendant to be a resident of that county. If the defendant is not enrolled in such an institution of higher education or if the court does not consider the defendant to be a resident of the county in which the institution is located, the defendant's residence is the residence listed on the defendant's driver's license or personal identification certificate issued by the Department of Public Safety (DPS). If the defendant does not have a driver's license or personal identification certificate issued by DPS, the defendant's residence is the residence on the defendant's voter registration certificate. If the defendant is not registered to vote, the defendant's residence is the residence on file with the public school district on which the defendant's enrollment is based. If the defendant is not enrolled in public school, the defendant's residence is determined per Alcoholic Beverage Commission rule.

Subsection (b-3) requires DSHS to create a list of community services related to alcohol abuse prevention or treatment in each county in the state to which a judge is authorized to sentence a defendant under Subsection (b-1).

TMCEC: While courts will appreciate that the Legislature recognizes that the alcohol awareness programs are not always readily available, the final version of this bill substantially differs from what was introduced. The requirements in the final bill are cumbersome. Online alcohol awareness or alcohol awareness programs are only available to defendants who reside in a county with a population of less than 75,000. It requires courts to determine the population of where the defendant resides via a complex means of determining residency. See also, H.B. 1020 relating to the certification of alcohol awareness programs and drug and alcohol awareness programs required for minors convicted of or receiving deferred disposition for certain alcohol offenses.

H.B. 455
Subject: Excusing Medical-Related Absences of Students with Children
Effective: June 14, 2013

In 2010, Texas ranked 4th nationally in the number of teen births, with a total of 48,456. The National Campaign to Prevent Teen Parenting stated that overall, only about 51 percent of teen moms have a high school diploma.

Safeguarding against any unnecessary unexcused absences will help make a difference in the lives of teen parents and their children by helping the parent to accomplish their educational goals. It is important that students with dependents be encouraged to continue to excel in their academic endeavors after becoming parents. It is also important that adequate medical care for the young children of these students be supported. In order for students to secure the health of their young children, it is necessary that these students receive excused absences from school when they must take their child to an appointment with a physician.

Prior to H.B. 455, the Education Code did not mandate that students with dependents receive excused absences from school when they must take their child to an appointment with a physician.

H.B. 455 amends Section 25.087(b) of the Education Code to require a school district to excuse a student from attending school under certain circumstances, including for a temporary absence resulting from an appointment with health care professionals for the student or the student's child if the student commences classes or returns to school on the same day of the appointment.

TMCEC: This is one of three bills relating to excused absences from school. See also, S.B. 260 relating to the absence of a student from school to visit with a parent, stepparent, or guardian who will be or has been deployed on military duty and S.B. 553, relating to high school students serving as early voting clerks in an election.

H.B. 528
Subject: Total Confidentiality for Records of Children Charged with Fine-Only Misdemeanors
Effective: January 1, 2014

TMCEC: Under current law, the records of a child convicted of a fine-only misdemeanor, other than a traffic offense, are confidential *contingent upon satisfaction of the judgment* (i.e., "conditional confidentiality"). Critics claim that conditional confidentiality is insufficient and that children accused of such crimes should have confidentiality identical to children civilly adjudicated in juvenile court under Title 3 of the Family Code. Supporters of conditional confidentiality believe that total confidentiality from the inception of a criminal case runs afoul of society's expectation of being able to access information about criminal cases. While the Senate Research Center states that the intent of H.B. 528 is to close "an unintended loophole" in current law which allows public inspection of records of a child who have been charged with or who are appealing their cases, H.B. 528 actually is a repeal of key provisions from H.B. 961 (82nd Legislature), a bill passed in 2011 that was supported by the Texas Judicial Council and the Texas Municipal Courts Association.

This bill could have broad and profound implications. While the media will still be able to access criminal records pertaining to a child certified to stand trial for murder in criminal courts, they will no longer be able to access criminal case records of children accused of non-traffic fine-only misdemeanors. Local governments ostensibly will no longer be able to share information pertaining to non-traffic offenses with third party vendors, including private non-profit teen court providers and collection services. This approach is very different from that taken in S.B. 393 and S.B. 394, which expands the use of conditional confidentiality to include deferred disposition.

Important: It will be argued by opponents of H.B. 528 that under the Code Construction Act (Section 311.025, Government Code), H.B. 528 and S.B. 393 contain irreconcilable provisions that cannot be harmonized. If this argument prevails, because the last legislative vote taken on S.B. 393 was one day after H.B. 528, then S.B. 393 prevails over H.B. 528 (specifically, Sections 1-3 detailed below). Because S.B. 393 did not amend Section 58.0711 of the Family Code and because it can be reconciled and harmonized, ostensibly Section 4 of H.B. 528 prevails (see, below). Of course, if supporters of H.B. 528 successfully argue that the bills can be harmonized, then it does not matter which bill passed last in time.

Ultimately, local governments will have to wait for an Attorney General opinion before we will know whether H.B. 528 and S.B 393/394 can be harmonized or if S.B. 393 prevails. An opinion has been requested by the Office

of Court Administration. The only consolation to local governments is that S.B. 393 is effective September 1, 2013 and H.B. 528 is not effective until January 1, 2014.

Section by Section Analysis:

Section 1 amends Article 44.2811 of the Code of Criminal Procedure so that no criminal record may be inspected by the public once a non-traffic fine-only misdemeanor case involving a child is appealed from either a municipal or justice court to county court. If a case is appealed trial de novo from either a municipal or justice court and the child is again convicted in county court, the child will no longer have to satisfy the judgment before all records become confidential.

Sections 2 and 3 amend Article 45.0217 of the Code of Criminal Procedure repealing all provisions pertaining to conditional confidentiality. Non-traffic related criminal records of children will now be confidential when the child is (1) charged, (2) convicted, (3) acquitted, or (4) granted deferred disposition. Information subject to inspection is exclusively limited to the public officials, agencies, and individuals listed in Article 45.0217(b).

Section 4 amends Section 58.0711 of the Family Code to conform with the amendments to Article 45.0217 of the Code of Criminal Procedure. Justice and municipal courts are required to notify the juvenile court in their county of any pending complaints against children for fine-only misdemeanors other than traffic offenses and must send a copy of the final disposition to the juvenile court. This means that juvenile courts will have records and files that may relate to a conviction of a child for a fine-only misdemeanor offense. This amendment makes confidential all such records in the possession of juvenile courts.

Section 5 provides that Articles 44.2811 and 45.0217 of the Code of Criminal Procedure, and Section 58.00711 of the Family Code, as amended by this Act, apply to an offense committed before, on, or after the effective date of the act.

H.B. 694
Subject: Access by Military Recruiters to Juvenile and Criminal History Information
Effective: June 14, 2013

Under current law, the criminal history records of juveniles are sealed, with certain exceptions. Interested parties note that a background check will be flagged if a person has a juvenile record but information as to the nature of the offense will not be provided. As a result of this policy, military personnel cannot access a juvenile record of an applicant for enlistment in the U.S. military, even with the applicant's written consent. There is concern that an applicant with a minor, nonviolent juvenile record can be denied entrance into the military because the recruiter cannot access the juvenile record. H.B. 694 seeks to remedy this situation by allowing military personnel, on written consent of an applicant for enlistment, to access the applicant's juvenile record.

TMCEC: Despite its caption and the preceding analysis, this bill does not pertain to criminal records maintained by municipal courts or local governments. H.B. 694 amends Chapter 58 of the Family Code and Chapter 411 of the Government Code. The amended provisions pertain to the criminal and juvenile records maintained by the Department of Public Safety.

H.B. 1009
Subject: School Marshals
Effective: June 14, 2013

In light of the recent Sandy Hook Elementary School shooting, reported to be the most deadly shooting at a public elementary school and the second-deadliest school shooting in U.S. history, school safety and the protection of America's children have become critical issues of concern for parents, administrators, lawmakers, and members of the public. Interested parties note that there are limited school safety options for school districts in Texas. Some

larger school districts employ a dedicated police force tasked with protecting all schools in the district, and others use school resource officers. A few schools have adopted policies that allow teachers who are concealed handgun license holders to carry a firearm in school buildings and on school grounds.

In an effort to provide an additional option for protecting students, faculty, and other staff in Texas schools, H.B. 1009 adds Section 37.0811 to the Education Code, authorizing a school district or open-enrollment charter school to appoint school marshals to prevent or abate the commission of an offense in the event of a life-threatening situation that occurs on school premises. School marshals would be required to successfully complete a rigorous training course administered by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and be certified by TCLEOSE to be eligible for appointment under the new Section 1701.260 of the Occupations Code.

TMCEC: Rather than adding another classification of peace officer to the lengthy list contained in Article 2.12, H.B. 1009 amends the Code of Criminal Procedure by adding Article 2.127, governing the breadth of authority granted to school marshals. It also specifies the rights, restrictions, limitations, and responsibilities of school marshals. Notably, among the restrictions, a school marshal may not issue a traffic citation. H.B. 1009 also requires that a person's school marshal license be revoked if the person's concealed handgun license is suspended or revoked and, under the added Section 411.1871 of the Government Code, the Department of Public Safety must notify TCLEOSE of any suspension or revocation of a school marshal's concealed handgun license. Notably, under S.B. 686, TCLEOSE will be renamed the Texas Commission on Law Enforcement (TCOLE), effective January 1, 2014.

When read in conjunction with the amendment made to Chapter 37 of the Education Code contained in S.B. 393, prohibiting all peace officers from issuing citations to students for non-traffic offenses on school-owned property, H.B. 1009 reflects the sentiment that Texans prefer law enforcement to focus more on preparing for a life-threatening situation that occurs on school grounds and not on cutting citations to the children they are tasked to protect.

H.B. 1020
Subject: Certification of Alcohol Awareness Programs Required for Minors Convicted of or Receiving Deferred Disposition for Certain Alcohol Offenses
Effective: June 14, 2013

H.B. 1020 relates to the certification of alcohol awareness programs required for minors convicted of or receiving deferred disposition for certain alcohol offenses. While the Texas Department of State Health Services (DSHS) certifies Drug and Alcohol Driving Awareness Programs (DADAP), the law has been unclear as to whether the Texas Education Agency (TEA) regulated DADAP courses are considered state-approved. As its name implies, DADAP is a course that teaches about the dangers of driving after using drugs and/or alcohol. The course also teaches about Texas driving while intoxicated laws and defensive driving strategies, as well as how alcohol affects a person's body and mind generally. H.B. 1020 seeks to clarify this issue by authorizing TEA regulated DADAP courses to be deemed as state approved by amending Section 106.115(a) of the Alcoholic Beverage Code. This will end any confusion for citizens, courts, and judges, and will create a much larger network of quality courses to ensure that defendants get the education they need to effectively reduce recidivism.

TMCEC: While this bill will create a much larger network of quality courses, it remains to be seen if it "will end any confusion for citizens, courts, and judges." More than nine years ago, TMCEC first reported on DADAP courses and why they could not be used to meet the alcohol awareness requirement of Section 106.115. "DADAP versus AAPM," *The Recorder (*December 2004) at 2. More recently, Cathy Riedel revisited the issue in her article "Online Alcohol Awareness Classes," *The Recorder* (May 2009) at 15. The problem was not with the curriculum or content of DADAP courses. Simply, DADAP courses (which are approved by TEA) were not approved by Texas Commission on Alcohol and Drug Abuse (TCADA), now DSHS. The problem is solved.

H.B. 1020 makes it clear that minors placed on deferred disposition for certain alcohol offenses may attend either an alcohol awareness course approved by DSHS or a DADAP course approved by TEA. What is less clear is how H.B. 1020 will impact H.B. 232. The bills amend different sections of Section 106.115 and are not in conflict. Nevertheless, it will be interesting to see if by expanding the pool of eligible course, to include DADAP courses, it will alleviate the need in rural parts for online courses or community service under the more cumbersome provisions added by H.B. 232.

H.B. 1206
Subject: Law Enforcement Duties Regarding Certain Missing Children
Effective: September 1, 2013

Absent court-ordered custodial rights, nothing in the law prohibits one spouse from abducting the individual's child from the other spouse.

H.B. 1206 amends Article 63.009 of the Code of Criminal Procedure by adding Subsection (a-1). This subsection requires law enforcement to actively investigate the location of a child taken from a parent and missing for a period of at least 48 hours, which deprived that parent of access to or possession of the child. Subsection (a-1) further requires law enforcement, upon finding the child, to assess the well-being of the child and to follow standard protocol to notify the Department of Family and Protective Services (DFPS) if the child is suspected to be the victim of abuse or neglect as defined in the Family Code.

H.B. 1206 also amends Article 63.009 by adding Subsection (a-2). This subsection authorizes DFPS, upon receiving notice under Subsection (a-1), to initiate an investigation into the allegation of abuse or neglect under Section 261.301 of the Family Code, concerning investigations of child abuse reports and take possession of the child under Chapter 262, concerning procedures to protect the health and safety of a child.

H.B. 1479
Subject: Establishing Committees in Certain Counties to Recommend a Uniform Truancy Policy
Effective: June 14, 2013

Truancy in Texas limits students' educational opportunities, increases the likelihood of students engaging in harmful behavior, and reduces the amount of funding that local school districts receive through the state school finance system. Efforts to address truancy in places such as Bexar County are complicated by the large number of local jurisdictions, disparate filing methods, and a high level of student mobility between school districts. In Bexar County alone, for example, more than 15 independent school districts file truancy cases using different approaches. Districts may choose to file a case with any one of six justices of the peace or with the municipal court.

TMCEC: While H.B. 1479 refers to truancy, ostensibly it also includes Parent Contributing to Nonattendance (Section 25.093, Education Code) and Failure to Attend School (Section 25.094, Education Code). H.B. 1479 adds Section 25.0916 to the Education Code to require a county to form a committee to recommend a uniform truancy policy for each school district in the county. This section only applies to a county with a population of 1.5 million or more; that has at least 15 school districts within the majority of district territory; and has at least one school district containing a student enrollment of 50,000 or more and an annual dropout rate spanning grades 9-12 of at least five percent. No later than September 1, 2014, the committee must recommend: a uniform process for filing truancy cases; uniform administrative procedures; uniform deadlines for processing truancy cases; effective prevention, intervention, and diversion methods to reduce truancy and referrals to a county, justice, or municipal court; a system for tracking and sharing truancy information among school districts and open-enrollment charter schools in the county; and any changes to statutes or state agency rules the committee determines are necessary to address truancy. Compliance with these committee recommendations is voluntary.

H.B. 1952
Subject: Professional Development Training for Certain Public School Personnel on Student Disciplinary Procedures
Effective: June 14, 2013

The 74th Legislature passed the Safe Schools Act, which included a key provision allowing teachers to remove disruptive students from their classrooms and restricting the authority of administrators to return such students to class without the teacher's consent. Failure by administrators to correctly apply this provision of the Safe Schools Act has frustrated teachers' efforts to exercise their discretionary authority to remove disruptive students from the classroom.

H.B. 1952 corrects this problem by adding Section 37.0181 to the Education Code. This section requires an administrator who oversees student discipline to, at least once every three school years, attend professional development training regarding the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b). The bill specifies that the training may be provided using available agency resources in coordination with regional education service centers. The training should make the Safe Schools Act more effective and prevent misunderstandings about its requirements.

H.B. 2058
Subject: Administration of High School Equivalency Examinations
Effective: June 14, 2013

Current law allows an adult lacking a high school diploma to earn a certificate of high school equivalency through equivalency testing. County juvenile probation departments administer high school equivalency examinations to students at risk of dropping out, many of whom are 16 or 17 years old. Recent legislation prohibits a person under 18 years old from taking the examinations online, the manner in which the examinations are commonly administered.

H.B. 2058 clarifies the current exceptions for the high school equivalency examination and allows certain individuals under 18 years old in the court-ordered custody of a state agency to take the examination online.

H.B. 2058 amends Section 7.111(a) of the Education Code to authorize a person who does not have a high school diploma to take the examination in accordance with rules adopted by the State Board of Education (SBOE) under certain circumstances, including if the person is required to take the examination under a court order, rather than under a justice or municipal court order issued under Article 45.054(a)(1)(C) of the Code of Criminal Procedure (Failure to Attend School Proceedings). The bill also removes the existing requirement that the SBOE have rules prohibiting a person under 18 years old from taking high school equivalency examinations online.

S.B. 92
Subject: Designation of Juvenile Court and Creation of Program for Juvenile Victims of Human Trafficking
Effective: September 1, 2013

The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. S.B. 92 addresses this concern by providing for such a program and by amending certain statutes relating to juvenile courts.

S.B. 92 creates a Trafficked Persons Program for juveniles who may be the victim of human trafficking as defined in Section 20A.02 of the Penal Code. The bill adds Section 51.0413 to the Family Code to allow certain designated juvenile courts to exercise jurisdiction simultaneously over proceedings under Title 3 and Subtitle E of

Title 5 of the Family Code if the child in the proceedings may be a victim of human trafficking. This section also allows a court that cannot exercise jurisdiction simultaneously to transfer the case to another court that does have jurisdiction over a proceeding under Subtitle E of Title 5 of the Family Code, if the receiving court agrees and if there is evidence presented that the child was a victim of human trafficking.

Section 52.032 of the Family Code is amended to prevent the informal disposition of a child's case under Section 52.03 if the court may exercise simultaneous jurisdiction over proceedings under Title 3 and Subtitle E of Title 5 and if there is probable cause that the child is a victim of human trafficking as defined in Section 20A.02 of the Penal Code.

The bill also adds Section 54.0326 to the Family Code to allow certain juvenile courts to defer adjudication proceedings under Section 54.03 until the child's 18th birthday and require the child to participate in the Trafficked Persons Program if the child is a potential victim of human trafficking and presents to the court an oral or written request to participate in the program. Once a child completes the program, the court shall dismiss the case with prejudice. The bill adds Section 54.04011 to the Family Code to allow courts to require a child adjudicated, who may be the victim of human trafficking, to participate in the Trafficked Persons Program and to periodically appear in court for monitoring and compliance purposes.. The court may order the child's case records sealed after completion of the program as provided by Section 58.003(c-7) and (c-8) of the Family Code.

S.B. 260
Subject: Excusing Absences of a Student to Visit with a Parent, Step-Parent, or Guardian Who Will Be or Has Been Deployed on Military Duty
Effective: June 14, 2013

Current law requires a school district to excuse a student from school for events such as religious holy days, required court appearances, and naturalization oath ceremonies. Students are allowed a reasonable time to make up work they may have missed during such absences, and districts are not penalized financially for those types of absences. There is broad support for the extension of the same treatment for the absence of a student from school to visit with a parent or guardian who will be or has been deployed on active military duty. The supporters maintain that this will provide valuable time together for military families as they deal with the emotions of a parent's or guardian's departure and return from deployment. S.B. 260 seeks to provide for this type of excused student absence while preserving the average daily attendance funding a school district receives for students who are granted an excused absence under the bill.

S.B. 260 amends Section 25.087 of the Education Code by adding (b-4) to require a school district to excuse a student for not more than five days in a school year to visit with the student's parent or legal guardian if the parent or legal guardian is an active duty member of the U.S. military and has been called to duty for, is on leave from, or has immediately returned from continuous deployment of at least four months outside the locality where the parent or guardian regularly resides. The bill requires such an excused absence to be taken not earlier than the 60th day before the date of deployment nor later than the 30th day after the date of the return from deployment.

TMCEC: This is one of three bills relating to excused absences from school. See also, H.B. 455, relating to medical-related absences of students with children and S.B. 553, relating to high school students serving as early voting clerks in an election.

S.B. 393
Subject: Procedural and Substantive Law Relating to Children Accused of Committing Certain Class C Misdemeanors
Effective: September 1, 2013

TMCEC: In recent years, the adjudication of children for fine-only misdemeanors has piqued the attention of critics and, in turn, the media. Laws passed recently suggest that the Texas Legislature and Governor Perry

realize that the criminalization of misbehavior by children should be subject to restraints and that the unbridled outsourcing of school discipline from the schoolhouse to the courthouse is bad public policy. Yet, at the same time, efforts to decriminalize truancy in 2011 and substantially curtail ticketing at schools in 2009 and 2011 failed to gain traction at the Capitol. While critics assert that such cases should be returned to the civil juvenile justice system, neither juvenile courts nor juvenile probation services are prepared to shoulder the caseload of conduct indicating a need for supervision (CINS) petitions which have been shifted to municipal and justice courts in the form of Class C misdemeanors.

In January 2012, Chief Justice Wallace Jefferson of the Texas Supreme Court formed the Juvenile Justice Committee of the Texas Judicial Council. The judicial members of the committee, chaired by Travis County District Judge Orlinda Naranjo, and 14 advisory committee members were charged to: "[a]ssess the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and identify judicial policies or initiatives that: work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources for students who are in need of this type of intervention."

After multiple meetings in which members were able to hear presentations and opinions from various stakeholders and diverse views on issues, the Juvenile Justice Committee made four recommendations:

> The Legislature should expressly authorize local governments to implement "deferred prosecution" measures in Class C misdemeanors to decrease the number of local filings from schools.
>
> The Legislature should amend applicable criminal laws to ensure that local courts are the last and not the first step in school discipline (i.e., Amend Section 8.07 of the Penal Code to create a rebuttable presumption that a child younger than age 15 is presumed to not have criminal intent to commit Class C misdemeanors – with exception for traffic offenses). This could be limited to Chapter 37, Education Code offenses but would make more sense to apply to all children.
>
> The Legislature should amend offenses relating to Disruption of Class, Disruption of Transportation, and Disorderly Conduct so that age (not grade level) is a prima facie element of the offense.
>
> The Legislature should amend existing criminal law and procedures to increase parity between "criminal juvenile justice in local trial courts" and "civil juvenile justice in juvenile court and juvenile probation."

The four recommendations were the basis for a 20 page legislative proposal that was adopted by the judicial members of the Juvenile Justice Committee in August 2012. In November 2012, the Texas Judicial Council unanimously adopted the recommendations of the Juvenile Justice Committee. Various parts of the proposal were sponsored by members of the Senate and House (most notably, S.B. 393, S.B. 394, and S.B. 395). S.B. 393, S.B. 394, and S.B. 395 were supported by the Texas Municipal Courts Association. All three bills enjoyed bipartisan support and were signed into law by the Governor. Notably, S.B. 393 was amended in the House to contain nearly all of the provisions of both S.B. 394 and S.B. 395.

Important: The introduction of S.B. 393, S.B. 394, and S.B. 395 early in the session set the stage for other legislators to file similar juvenile justice bills. Some of these bills are in conflict with S.B. 393 (notably, H.B. 528 and, to a lesser degree, S.B. 1114). Certain sections, noted below, appear to have irreconcilable conflicts with these bills. If such conflicts are deemed irreconcilable, then S.B. 393 will prevail because it received the last record vote. The Office of Court Administration has requested an Attorney General opinion. Ultimately, local governments will have to wait for an Attorney General opinion to be issued before it is known whether the conflicting bills can be harmonized or if S.B. 393 prevails.

Section by Section Analysis:

Sections 1, 2, 5, and 6: Fines and Court Costs Imposed on Children

It is a fundamental tenet of criminal law: imposed fines and costs in a criminal case are solely the burden of the defendant. Thus, when a child defendant is ordered to pay fines and costs, the child (not their parents or legal guardians) is obligated to satisfy the judgment.

Fines are not imposed in juvenile courts; yet they are a staple in criminal courts with jurisdiction of fine-only offenses. While there is reason to believe that most municipal judges, justices of the peace, and county judges find children to be indigent or allow alternative means of discharging the judgment, there is no law expressly governing the imposition of fines on children. Under current law, a judge could impose a fine and costs on someone as young as age 10 and order it paid immediately. Current law allows criminal courts to waive fines and costs if performing community service would be an undue hardship on a defendant. However, statutory law does not necessarily afford such latitude for courts to waive fines and costs imposed on children although most, ostensibly, are indigent and the performance of community service may pose an undue hardship.

These sections make four amendments to the Code of Criminal Procedure. The amendments to Article 42.15 (applicable in county courts) and Article 45.041 (applicable in municipal and justice courts) reflect the belief that fines and costs should not be procedurally imposed on children in the same manner as adults. The best way to balance youth accountability with fairness to children is to require the child to have a say in how the judgment will be discharged (via election of either community service, payment, or as otherwise allowed by law) and to have parents and guardians involved in documenting the decision. Amendments to Article 43.091 (applicable in county courts) and Article 45.0491 (applicable in municipal and justice courts) provide more leeway to criminal judges in dealing with fines imposed on children. If the facts and circumstances warrant it, judges now have the discretion to waive fines and court costs accrued by defendants during childhood if the performance of community service under Article 45.049 or Article 45.0492 or the discharge of fine and costs through tutoring permitted under Article 45.0492 would be an undue hardship.

Section 21 provides that amendments made by this section relating to the authority to waive fines and costs imposed on children apply *before*, on, or after the effective date of this enactment. The other provisions apply prospectively.

Sections 3, 4, and 22: Conditional Confidentiality Extended to Deferral of Disposition for Certain Offenses

In 2009, in an effort to provide some semblance of parity between the civil and criminal juvenile justice systems, the Legislature passed S.B. 1056. The bill added Subsection (f-1) to Section 411.081 of the Government Code, requiring criminal courts to automatically issue a non-disclosure order upon the conviction of a child for a fine-only misdemeanor offense. While the intentions of the new law were applauded, non-disclosure was plagued with deficiencies that rendered it ineffective. By 2011, it was clear that the system for processing non-disclosure orders (via the Department of Public Safety) was ill-equipped to handle the large volume of convictions involving children that occur in municipal and justice courts.

In 2011, H.B. 961 repealed and replaced non-disclosure laws pertaining to children convicted of Class C misdemeanors with laws providing children with conditional confidentiality (except for traffic offense convictions). The 2011 shift from non-disclosure to confidentiality struck the correct balance between "the public's right to know" in criminal cases and privacy for children convicted of certain Class C misdemeanors.

This section builds on the 2011 amendments to provide confidentiality to a greater number of children adjudicated in municipal and justice courts without running afoul of the 1st Amendment or the public's expectation of transparency in all criminal cases. Currently, the law only allows confidentiality in instances where children are "convicted" of certain Class C misdemeanor offenses and satisfy the judgment. There are no similar provisions for children placed on deferred disposition, other types of deferred in Chapter 45, or deferred adjudication upon the dismissal of a complaint following completion of probation.

This section, amending Articles 44.2811 and 45.0217 of the Code of Criminal Procedure extends confidentiality to the greater number of children who have avoided being found guilty by *successfully completing* some form of probation.

Section 22 provides that amendments made to Articles 44.2811 and 45.0217 apply to a complaint dismissed by a court upon deferral or suspension of final disposition *before*, on, or after the effective date of this enactment.

Important: The sections in S.B. 393 pertaining to expanding conditional confidentiality are in conflict with H.B. 528 (see, Summary S.B. 394 and Summary H.B. 528). Pending a resolution via an Attorney General opinion, the only consolation to local governments is that S.B. 393 is effective September 1, 2013 and H.B. 528 is not effective until January 1, 2014.

Section 7: Juvenile Case Managers and Diversion from Court

Conceptualized and advocated by University of Texas Professor Robert O. Dawson until his death in 2005, juvenile case manager programs are still a relatively new and emerging addition to the municipal and justice court. In places like the City of Houston, where juvenile case managers have become integral to informal "deferred prosecution" measures of Class C misdemeanors, case filings have decreased and prosecutorial and judicial resources have been conserved. Efforts to decrease the number of cases adjudicated by municipal and justice courts through diversion efforts at the local government level should be encouraged. Accordingly, Article 45.056 of the Code of Criminal Procedure is amended to allow juvenile case managers to be involved in diversion measures without the entry of any formal court order and to expressly allow juvenile case managers to provide prevention services to juveniles considered at-risk and intervention services to juveniles engaged in misconduct prior to cases being filed.

Section 8: Truancy Prevention Measures

In 2011, Section 25.0915 of the Education Code was added to ensure that schools first attempt truancy prevention measures to address non-attendance before referring a child to juvenile court or pursuing criminal charges against the child in county, justice, or municipal court. Anecdotal evidence from some courts suggests that such measures help reduce the number of school attendance cases being filed and conserve limited local judicial resources. This amendment clarifies legislative intent from 2011. Specifically, if a complaint or referral is not made in compliance with Section 25.0915, a court shall dismiss the allegation. This is identical to the legal requirement governing what is to occur when a school does not timely file a school attendance complaint (Section 25.0951(d), Education Code). Because most children accused of not attending school do not have the assistance of counsel, such provisions are necessary to ensure the execution of the Legislature's intent.

Section 9: First Offender Programs and School Law Enforcement

Under current law, school law enforcement officers are authorized to arrest a child in the same manner as other peace officers, but unlike other peace officers, they are not expressly authorized to dispose of a case without referral to a court or by means of a First Offender Program. This limits school law enforcement's options.

As amended, Section 37.081 of the Education Code authorizes, but does not require, school law enforcement to dispose of such cases without referral to a court or by means of a First Offender Program. This potentially increases school law enforcement's options and diverts more cases from municipal and justice courts.

Sections 10, 11, and 19: Disruption of Class, Disruption of Transportation, and Disorderly Conduct

In 2011, the Education Code and Penal Code were amended to make it an exception to the offenses of Disruption of Class (Section 37.124, Education Code), Disruption of Transportation (Section 37.126), and Disorderly Conduct (Section 42.01) that the accused, at the time of the offense, was a student in the sixth grade or lower. Under

Section 2.02 of the Penal Code, when an exception to a criminal offense is created, the prosecuting attorney must negate the existence of an exception in the accusation charging a commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception. The purpose of the amendment in 2011 was to prevent young children from being subjected to criminal prosecution for disruptive and disorderly behavior. However, under current law, some sixth graders as young as 10 years of age may still be prosecuted. Furthermore, there appears to be consensus among law enforcement and prosecutors that it is easier to prove age than grade level. This amendment is a clarification of the changes to the respective laws made in 2011.

Note: S.B. 1114 fundamentally refocuses the offenses of Disruption of Class and Disruption of Transportation while expanding the scope of Disorderly Conduct (see, Summary S.B. 1114) These changes combined with other amendments in S.B. 393 will dramatically curtail the number of related case filings.

Section 12: New Education Code, Chapter 37, Subchapter E-1: Criminal Procedure

While Chapter 37 of the Education Code contains subchapters governing "Law and Order" (Subchapter C allows schools to have their own police departments), "Protection of Buildings and School Grounds" (Subchapter D which tasks justice and municipal courts with jurisdiction for certain school offenses), and "Penal Provisions" (Subchapter E contains certain offenses specific to school settings), no subchapter in the Education Code governs criminal procedure. This omission has contributed to existing disparities in the legal system and has resulted in greater consumption of limited local judicial resources.

The creation of a new subchapter in the Education Code (Subchapter E-1, Criminal Procedure), while limited in scope, will balance the interest of the other subchapters with due process and procedural protections for children accused of criminal violations. In conjunction with other proposed amendments, Subchapter E-1 will help reduce referrals to court without having a negative impact on school safety.

Subchapter E-1 consists of seven new statutes.

Section 37.141 (DEFINITIONS). Definitions of "child" and "school offense" are provided. A "child" under this Subchapter is a person who is between ages 10 and 16 and is a student. This section states that Subchapter E-1 provides criminal procedures to be utilized when a child is alleged to have committed an offense on property under the control and jurisdiction of a school district which is a Class C misdemeanor, excluding traffic offenses. It aims to preserve judicial resources for students who are most in need of formal adjudication.

Section 37.142 (CONFLICT OF LAWS). Provides that to the extent of any conflict, Subchapter E-1 controls over any other law applied to a school offense alleged to have been committed by a child. This is important because until now such cases were exclusively controlled by the Code of Criminal Procedure.

Section 37.143 (CITATION PROHIBITED: CUSTODY OF CHILD). Under current law, peace officers routinely instigate criminal cases against children by using citations on school grounds Ensuring that justice is done in cases involving children should take precedence over the utility and convenience that accompanies issuing citations to children who are students at Texas public schools. There is precedent for limiting the use of citations. Texas law does not allow citations to be issued to corporations, associations, or people who are publicly intoxicated. Because public schools are authorized and expected by the public to handle misbehavior without immediately resorting to the criminal justice system, special rules governing the use of citations for fine-only offenses on school property are warranted.

Section 37.143 prohibits the issuance of citations at public schools for non-traffic offenses. (In lieu of using citations, a system of enhanced complaints is proscribed in Section 37.146). It is important to note that Section 37.143 does not preclude law enforcement from issuing a citation to a student who is not a child (i.e., a person legally an adult, 17 years of age or older). Section 37.143 neither affects a peace officer's authority to arrest a child nor precludes school officials or employees from filing charges in court.

Section 37.144 (GRADUATED SANCTIONS FOR CERTAIN SCHOOL OFFENSES). Under current law, nothing prohibits a school district from instigating criminal allegations against a child as a first response to any misconduct which is illegal. Criminal courts with jurisdiction over school grounds in school districts that employ police officers report that their juvenile dockets are ballooning with cases involving disruptive behaviors and that such cases consume significant amounts of judicial resources.

Under Section 37.144, Education Code, school districts that employ law enforcement may, but are not required to, adopt a system of progressive sanctions before filing a complaint for three specific offenses: (1) disruption of class; (2) disruption of transportation; and (3) disorderly conduct.

Note that Section 37.144 is entirely discretionary for all school districts and does not apply to school districts that do not hire commissioned peace officers but rather have an assigned school resource officer assigned by a local law enforcement agency.

Section 37.145 (COMPLAINT). Authorizes a school, if a child fails to comply with or complete graduated sanctions under Section 37.144, to file a complaint against the child with a criminal court in accordance with Section 37.146.

Section 37.146 (REQUISITES OF COMPLAINT). Under current law, some school-based offenses are already instigated by complaint (e.g., Failure to Attend School). However, the information in the complaint rarely provides ample information to assess the merit of the allegation. Currently, there is no requirement that a school-based complaint be attested to by a person with personal knowledge giving rise to probable cause. There is also no way for a prosecutor, defense attorney, or judge to determine if probable cause exists or if the child is a student who is either eligible for or receiving special education services. Enhanced complaints under Section 37.146 provide greater information to prosecutors, defense lawyers, and judges for all non-traffic, school based offenses as the complaint must be accompanied by additional information that prosecutors and judges need to know in order to ensure fair and proper administration of justice for children.

Section 37.146 requires that a complaint alleging the commission of a school offense, in addition to the requirements imposed by Article 45.019 (Requisites of Complaint), Code of Criminal Procedure: (1) be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and (2) be accompanied by a statement from a school employee stating whether the child is eligible for or receives special services under Subchapter A (Special Education Program), Chapter 29 (Educational Programs) and the graduated sanctions, if required under Section 37.144, were imposed on the child before the complaint was filed.

Section 37.146 authorizes the issuance of a summons under Articles 23.04 and 45.057(e) of the Code of Criminal Procedure. After a complaint has been filed under this subchapter. Judges and clerks are reminded that under Article 23.04 a summons may only be issued upon request of the attorney representing the state. In other words, unless a prosecutor requests a summons, none shall be issued by a court.

Section 37.147 (PROSECUTING ATTORNEYS). Akin to provisions governing prosecutions in juvenile court, Section 37.147 gives local prosecutors the discretion to implement filing guidelines and obtain information from schools. Some prosecutors have experienced opposition from schools when attempting to procure additional information before allowing a school-initiated complaint against a child to proceed. Expressly authorizing such guidelines and allowing prosecutors to obtain such information is necessary to ensure that only morally blameworthy children are required to appear in court and enter a plea to criminal charges. Federal law precludes punishing special education students when the student's misbehavior is a manifestation of a disability. Prosecutors should be able to ascertain if a child is eligible for or is receiving special education services, has a behavioral intervention plan (BIP), or has a disorder or disability relating to culpability prior to the filing of charges. Prosecutors should also be able to easily ascertain from schools what disciplinary measures, if any, have already been taken against a child to ensure proportional and fair punishment.

Section 37.147 authorizes an attorney representing the state in a court with jurisdiction to adopt rules pertaining to the filing of a complaint under this subchapter that the state considers necessary in order to determine whether there is probable cause to believe that the child committed the alleged offense, review the circumstances and allegations in the complaint for legal sufficiency, and see that justice is done.

Sections 13 and 18: Child with Mental Illness, Disability, or Lack of Capacity; Mandatory Transfer to Juvenile Court

Current law does not provide direction to criminal court judges who encounter children accused of fine-only misdemeanors who are suspected of having mental illness or developmental disabilities, who lack the capacity to understand the proceedings in criminal court or assist in their own defense, or who are otherwise unfit to proceed.

Chapter 8 of the Penal Code adds Section 8.08. On motion by the state, the defendant, a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision shall determine if there is probable cause to believe that a child, including a child with mental illness or developmental disability, (1) lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed or (2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform their conduct to the requirements of the law. If the court determines that probable cause exists, after giving notice to the prosecution, the court may dismiss the complaint. The prosecution has the right to appeal such determinations per Article 44.01 of the Code of Criminal Procedure. This scope of Section 8.08 is limited to Class C misdemeanors (other than traffic offenses).

Section 13 contains a related amendment. Once a court exercising jurisdiction of a fine-only misdemeanor has concluded that a child has a mental illness, disability, lack of capacity, or is otherwise unfit to proceed similar subsequent cases should not continue to be adjudicated in that criminal court. Section 51.08 of the Family Code is amended to mandate that after a criminal court has dismissed a complaint per Section 8.08 of the Penal Code, the court would be required to waive its jurisdiction and transfer subsequent eligible cases to the civil juvenile justice system where they can be addressed as conduct indicating a need for supervision (CINS).

The mandatory transfer to juvenile court created by Section 51.08(f) applies regardless if the criminal court employs a juvenile case manager.

Sections 14-16: Disposition without Referral to Court; First Offender Program

The existing language in Sections 52.03 and 52.031 of the Family Code gives juvenile boards the discretion to create informal disposition guidelines that do not entail referral to court and the authority to implement First Offender Programs (i.e., diversions). When identical misconduct is alleged as conduct indicating a need for supervision (CINS), rather than a Class C misdemeanor, such diversions may be utilized. However, under current law there is no authorization for children accused of Class C misdemeanors to have their cases disposed of in the same manner as a CINS case. This is unfair to children accused of non-traffic Class C misdemeanors that could have instead been alleged to have engaged in CINS. It limits the options of law enforcement and has created criminal dockets in municipal and justice courts involving children that are five times the size of those in juvenile court.

In conjunction with the previously described conforming change made to Section 37.081 of the Education Code, Chapter 52 of the Family Code is amended to give juvenile boards the authority, if they so choose, to include Class C offenses in local law enforcement efforts to dispose of cases without referral to courts and by use of First Offender Programs. As amended, Sections 52.03 and 52.031 of the Family Code are expanded to include non-traffic Class C misdemeanors. This would allow, but not require, juvenile boards to utilized existing laws governing disposition without referral to court and First Offender Programs and divert cases that otherwise would require formal adjudication by a criminal court and consume limited local criminal court resources.

SECTION 17: Age Affecting Criminal Responsibility

Under current law, the Legislature's classification of an offense as a Class C misdemeanor singularly determines whether a child is to be held criminally responsible for his or her conduct. The penalty classification for an offense may be altogether irrelevant to whether a defendant is morally blameworthy. Currently, Section 8.07 of the Penal Code, a statutory formulation of the common law defense of infancy, expressly prohibits the prosecution of the relatively small number of children in Texas who commit "more serious" jailable offenses, while providing no similar prohibition against prosecuting the large number of children who commit "less serious" fine-only criminal offenses. An unintended consequence of existing law is that more children in Texas are being adjudicated in criminal court for fine-only offenses than in juvenile courts. Adjudicating such a large number of children as criminals consumes limited judicial resources at the expense of local government and defies Texas' long-standing commitment to juvenile justice being distinct from criminal justice.

This amendment to Section 8.07 clarifies current law: children under age 10 are not to be prosecuted or convicted of fine-only offenses. It also creates a presumption that children between ages 10-14 are presumed not to be criminally responsible for *any* misdemeanors punishable by fine only or a violation of a penal ordinance of a political subdivision (with the exception of juvenile curfew ordinances). This presumption can be refuted by a preponderance of evidence showing that the child is morally blameworthy. Notably, the presumption would have no application to fine-only traffic offenses created by state law or ordinance, and the prosecution would neither be required to prove that the child knew that the act was illegal at the time it occurred or understood the legal consequences of the offense.

In light of the fact that few children in municipal or justice court are represented by counsel, Section 8.07 and Section 8.08 of the Penal Code (detailed in Section 13 and 18) provide municipal judges and justices of the peace much needed tools to ensure the 6th Amendment rights of children are not violated.

S.B. 394
Subject: Conditional Confidentiality for Records of Children Receiving Deferred Disposition for Certain Fine-Only Misdemeanors
Effective: September 1, 2013

TMCEC: S.B. 394 is part of the legislative package developed and submitted to the Legislature by the Texas Judicial Council. Like the other parts of the legislative package (S.B. 393 and S.B. 395), it was sponsored in the Senate by Senator Royce West of Dallas. As explained in the summary of H.B. 528, in the 83rd Session there were two competing approaches regarding the confidentiality of records in criminal cases involving children accused of Class C misdemeanors: "conditional confidentiality" (S.B. 393 and S.B. 394) and "confidentiality from inception" (H.B. 528).

Utilizing the Code Construction Act (Section 311.025, Government Code) because the last legislative vote was taken on H.B. 528 six days after S.B. 394, and because the bills contain irreconcilable provisions that cannot be harmonized, H.B. 528 prevails over S.B. 394. With one exception, noted below, the language in S.B. 394 was added to S.B. 393 by Representative Tryon Lewis of Odessa.

The last legislative vote was taken on S.B. 393 one day after H.B. 528. Assuming, per Section 311.025 of the Government Code, that the bills contain irreconcilable provisions that cannot be harmonized, then S.B. 393 prevails over H.B. 528 (specifically, Sections 1-3). Consequently, except as noted, S.B. 393 resurrected most of the provisions in S.B. 394 that were superseded by H.B. 528 as follows:

Section 1: See, Summary S.B. 393(Section 3).

Section 2: See, Summary S.B. 393(Section 4).

Section 3: See, Summary H.B. 528(Section 4).

Section 4: See, Summary S.B. 393(Section 22).

Important: Ultimately, local governments will have to wait for an Attorney General opinion before we will know whether H.B. 528 and S.B 393/394 can be harmonized or if S.B. 393 prevails. An opinion has been requested by the Office of Court Administration.

S.B. 395
Subject: Fines and Costs Imposed on a Child in a Criminal Case
Effective: September 1, 2013

S.B. 395 is part of the legislative package developed and submitted to the Legislature by the Texas Judicial Council. Like the other parts of the legislative package (S.B. 393 and S.B. 394), it was sponsored in the Senate by Senator Royce West of Dallas. Its provisions were duplicated in S.B. 393 as follows:

Section 1: See, Summary S.B. 393(Section 1).

Section 2: See, Summary S.B. 393(Section 2).

Section 3: See, Summary H.B. 528(Section 5).

Section 4: See, Summary S.B. 393(Section 6).

Section 5: See, Summary S.B. 393(Section 21).

S.B. 553
Subject: Excusing Absences of High School Students Serving as Early Voting Clerks in an Election
Effective: June 14, 2013

Students who get involved in the voting process at a young age are more likely to continue to vote throughout their life. In 2009, Texas law was amended to permit high school students on election days to participate in voting clerkships and to learn about the democratic process in a hands-on manner. These students must get permission from their schools to participate in the clerkships. SB 553 allows students to participate as early voting clerks, thereby expanding the opportunity to participate in the election process.

S.B. 553 amends Section 25.087 of the Education Code by adding Subsection (b-1) and (e) and amending Subsection (d). Subsection (b-1) authorizes a school district to adopt a policy excusing a student from attending school for service as a student early voting clerk in an election. Subsection (d) prohibits a student whose absence is excused under Subsection (b-1), in addition to certain other subsections, from being penalized for that absence and requires that the student be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student, whose absence is excused under Subsection (b-1), in addition to certain other subsections, must be allowed reasonable time to make up school missed on those days. Subsection (e) authorizes a school district to excuse a student for the purposes provided by Subsections (b)(1)(E) (relating to a student's absence from school to serve as an election clerk being excused) and (b-1) for a maximum of two days in a school year.

TMCEC: This is one of three bills relating to excused absences from school. See also, H.B. 455, relating to medical-related absences of students with children, and S.B. 260, relating to the absence of a student from school to visit with a parent, stepparent, or guardian who will be or has been deployed on military duty.

S.B. 670
Subject: Copying Certain Records and Files Relating to a Child's Juvenile Justice Proceeding
Effective: May 24, 2013

There is concern that a provision of law regarding the inspection of certain records and files relating to a child's juvenile justice proceeding is being interpreted differently throughout the state. For example, some counties allow the defense attorney of a child who is a party to such a proceeding to make copies of offense reports in the district attorney's case file, while other counties claim that state law prevents the district attorney's office from allowing such copies to be made. S.B. 670 clarifies this issue by adding language to Section 58.007 of the Family Code stating that the records and files relating to a child's juvenile justice proceeding may be inspected or copied by certain persons or entities.

TMCEC: Notably, Section 58.007 of the Family Code does not apply to municipal court proceedings and no similar amendment was made to Section 58.00711 (Record Relating to Children Convicted of Fine-Only Misdemeanors).

S.B. 1114
Subject: School Law Enforcement and the Prosecution of Certain Class C Misdemeanor Offenses Committed by Children
Effective: September 1, 2013

TMCEC: S.B. 1114 in conjunction with S.B. 393 constitutes a major paradigm shift in the relationship between schools, school discipline, and the role of criminal courts.

The distinction between the bills is that S.B. 393 is the work product of the Texas Judicial Council and was championed by members of the judiciary, including Chief Justice Wallace Jefferson and supported by the Texas Municipal Courts Association. While S.B. 1114 contains provisions that are included in S.B. 393, it also contains provisions that were not vetted by the Texas Judicial Council. S.B. 1114 and its counterpart, S.B. 1234, were predominantly supported by child and civil rights advocacy groups. (Notably, S.B. 1234 was vetoed by Governor Perry. In his veto statement, the Governor stated that S.B. 1234 conflicted with S.B. 393.)

Unlike H.B. 528, containing provisions that conflict with S.B. 393, most of S.B. 1114 either complements or mirrors provisions in S.B. 393. Important exceptions, however, are noted below. In certain ways, S.B. 1114 goes further to curtail the outsourcing of discipline to local courts than the balanced approach favored by S.B. 393. It is for this reason that it is also more likely to be criticized as going too far.

Section by Section Analysis:

Section 1: Curtailing Use of Citations and Complaints for Offenses Occurring on School Property or on a Vehicle Owned or Operated by an ISD or County

This section amends Article 45.058 of the Code of Criminal Procedure (Children Taken into Custody), by adding Subsections (i) and (j). (Notably, as discussed below in Section 5, neither of these Subsections has any bearing on the authority to take a child into custody.) There is reason to doubt that these amendments prevail over those made by S.B. 393.

Subsection (i) requires a law enforcement officer who issues a citation or files a complaint in the manner provided by Article 45.018 (Complaint) for conduct by a child (age 12 through 16) alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district (ISD), to submit to the court the offense report, a statement by a witness to the alleged conduct, and a statement by a victim of the alleged conduct, if any. Notably, Subsection (i) also prohibits an attorney representing the state from proceeding in a trial of an offense unless the law enforcement officer complied with the requirements of this subsection.

Subsection (j) prohibits a law enforcement officer, notwithstanding Subsection (g) (relating to authorizing a law enforcement officer to issue a field release citation in place of taking a child into custody for a traffic offense) or (g-1) (relating to authorizing a law enforcement officer to issue a field release citation in place of taking a child into custody only if the officer releases the child to the child's parent or responsible adult), from issuing a citation or filing a complaint in the manner provided by Article 45.018 for conduct by a child younger than 12 years of age that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district.

S.B. 1114 provisions limiting the use of citations and complaints in Article 45.058 have to be harmonized with S.B. 393 (Section 12). To the degree they conflict, S.B. 393 ostensibly prevails. S.B. 393 passed last in time and in Section 12 has an express conflict of law provision (i.e., Section 37.142, Education Code). The notion that citations may be issued to children at school to children between the ages of 12-16 in Subsections (i) and (j) clearly conflict with provisions in S.B. 393 (e.g., Sections 37.143, 37.146, and 37.147, Education Code) prohibiting the use of citations for non-traffic, school offenses.

Section 2: Consequences of a School District's Failure to Attest to Truancy Prevention Measure in a Criminal Complaint

This amendment, which also appears in S.B. 393 (Section 8) amends Section 25.0915 of the Education Code, by adding Subsection (c), to require a court to dismiss a complaint or referral made by a school district under this section that is not made in compliance with Subsection (b) (relating to required information for complaints filed to courts).

Section 3: Student Code of Conduct

This section amends Section 37.001(a) of the Education Code to require the student code of conduct, in addition to establishing standards for student conduct, to specify the circumstances, in accordance with this subchapter, under which a student is authorized to be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district and provide, as appropriate for students at each grade level, methods, including options, for managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district.

Section 4: School District Peace Officers and Security Personnel

This section amends Sections 37.081(b), (c), and (f) of the Education Code. Subsection (b) provides that, in a peace officer's jurisdiction, a peace officer commissioned under this section is authorized to, in accordance with Chapter 52 (Proceedings Before and Including Referral to Juvenile Court), Family Code, or Article 45.058 (Children Taken into Custody) of the Code of Criminal Procedure, take a child, rather than juvenile, into custody. Subsection (d) requires a school district peace officer to perform law enforcement duties, rather than administrative and law enforcement duties, for the school district as determined by the board of trustees of the school district. Subsection (f) requires the chief of police of the school district police department to be accountable to the superintendent and to report to the superintendent, rather than to the superintendent or the superintendent's designee.

Section 5: Prohibiting Arrest Warrants for Children Who Commit Education Code Class C Misdemeanors

This section amends Subchapter C, Chapter 37 of the Education Code by adding Section 37.085, which states "[n] othwithstanding any other provisions of law, a warrant may not be issued for the arrest of a person for a Class C misdemeanor under this code committed when the person was younger than 17 years of age."

The creation of Section 37.085 of the Education Code is likely to be the most discussed provision in S.B. 1114. Advocates for children and civil rights will claim it as a big win. Other will criticize as a hallmark in Texas criminal justice: the birth of "non-arrestable crimes." The reality is likely somewhere in between.

This bill will prohibit courts from issuing arrest warrants for any Class C misdemeanor proscribed in the Education Code (most notably, Section 25.094, Failure to Attend School). Ostensibly, the prohibition of issuing an arrest warrant for such offenses is tied to the age of the defendant at the time of the alleged criminal conduct. Even when the child reaches adulthood an arrest warrant cannot be issued for a Class C misdemeanor defined in the Education Code.

However, by its plain language Section 37.085 hardly precludes courts from ordering that children be taken into custody. Article 45.014 (Warrant of Arrest) and Article 45.015 (Detention in Jail) of the Code of Criminal Procedure generally govern procedures pertaining to arrest and detention in Class C misdemeanor cases. These provisions, however, are inapplicable to cases involving children. Both statutes are trumped by a specific statute prescribing the procedure for securing the presence of a child via an order of non-secured custody: Article 45.058 of the Code of Criminal Procedure (Children Taken into Custody). It deserves emphasis that authorization for a child to be taken into custody under Article 45.058 is not affected by this bill. (See, Section 1). Accordingly, municipal and justice courts may continue to procure the custody of children accused of Education Code offenses through an order of non-secured custody but they may not issue an arrest warrant for such offense regardless of whether the defendant is a child or has reached adulthood.

What does this mean in terms of JNA (Juveniles Now Adults) procedures? It means nothing. H.B. 1114 does not affect the JNA capias pro fine provisions in Article 45.045(b) of the Code of Criminal Procedure. The arrest warrant issued for young adults per Article 45.060 of the Code of Criminal Procedure is unaffected as it is not a Class C misdemeanor created by the Education Code. Similarly, this bill does not preclude a child from being taken into custody for Failure to Appear (Section 38.10, Penal Code).

It is likely to be argued that Section 37.085 was intended to preclude the arrest of all children. However, these arguments are likely to come up short for two reasons. First, there is no general warrant requirement for taking a child into custody, rather when probable cause exists, a child may be taken into custody pursuant to the law of arrest. (See, Section 52.01, Family Code). Second, the Legislature distinguished the capias, capias pro fines, and arrest warrant during the 80th Legislature (H.B. 3060). Despite efforts to distinguish the different writs used to procure custody, many continue to misuse them. Readers are once again advised not everything is an "arrest warrant." S.B. 1114 serves as a reminder that what an order to procure custody is called is not simply a matter of semantics.

As Section 10 makes this amendment retroactive, all affected Class C misdemeanor arrest warrants for Education Code offenses should be recalled by September 1, 2013.

Section 6-7: Redefining Disruption of Class and Disruption of Transportation

Section 37.124(a) of the Education Code (Disruption of Class) is amended to provide that a person other than a primary or secondary grade student enrolled in the school commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities.

Section 37.126(a) of the Education Code (Disruption of Transportation) is amended to provide that, except as provided by Section 37.125 (Exhibition of Firearms), a person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children.

Redefining the elements of these two commonly filed offenses is likely to substantially reduce the number of the Class C misdemeanor criminal offenses filed by public schools against school children. While S.B. 393 clarifies exceptions to both offenses, S.B. 1114 redefines them.

These amendments shift the focus of each criminal offense from students who disrupt class and transportation to *people who are not enrolled* in that particular primary or secondary school.

These amendments substantially narrow the focus of each criminal offense. What may not be evident on first impression are children who remain within the scope of criminal law, and there is a subtle yet substantial difference between the changes to Disruption of Class and the changes to Disruption of Transportation. Under these amendments the only children who can commit Disruption of Class are children who are not enrolled at that particular school (e.g., expelled students and students from other schools). The only children who can commit Disruption of Transportation are children who are not primary or secondary grade students−there is no specification that the children are students *enrolled in the school* as there is with the Disruption of Class changes. S.B. 393 (Sections 10 and 11) provide an exception that such children are younger than age 12 at the time of the offense. However, even those children are initially presumed to not be criminally responsible. (See, S.B. 393, Section 17).

Presumably in an effort to balance the amendments narrowing the focus of Disruption of Class and Disruption of Transportation, S.B. 1114 expands the scope of Section 42.01 of the Penal Code (Disorderly Conduct). See, Section 9, below.

Section 8: Title 3, Family Code Diversions Expanded to Accommodate Class C Misdemeanors

This section amends 52.031 of the Family Code by adding Subsection (a-1) and amending Subsections (d), (f), (i), and (j). The intent of the amendment is to allow local governments to utilize existing diversion programs currently utilized exclusively by juvenile cases to include Class C misdemeanors.

While this section attempts to do the same thing as S.B. 393 (Section 16), differences in how the amendments are structured make them irreconcilable. Assuming this to be true, as S.B. 393 received the last record vote, its language would prevail.

Section 9: Disorderly Conduct at School

This section amends 42.01, Penal Code (Disorderly Conduct), by adding Subsection (a-1), to provide that, for purposes of Subsection (a) (relating to a person committing an offense), the term "public place" includes a public school campus or the school grounds on which a public school is located.

This amendment should be read in light of those detailed in Sections 6 and 7 of S.B. 1114. It is aimed at lingering and recurring arguments that the offense of Disorderly Conduct cannot occur at a school because it is not truly a place open to the public even though most primary and secondary school are funded by the public.

Does this mean that all school children who, prior to S.B. 1114, were charged with Disruption of Class or Disruption of Transportation should, going forward, be charged with Disorderly Conduct? The answer is no. S.B. 393 provides a wide array of new procedural requirements aimed at making sure that courts are a rare and last resort for disruptive behavior cases and disorderly conduct. See, S.B. 393: Section 10 (making it an exception to Disorderly Conduct that the defendant was younger than 12), Section 12 (creating Section 37.144, Graduated Sanction for Certain School Offenses), and Section 17 (amending Section 8.07, Age Affecting Criminal Responsibility).

Section 10: Application

Except for the provisions in Section 5 (prohibiting arrest warrants for children who commit Education Code Class C misdemeanors) application of the changes in law made by S.B. 1114 are prospective.

S.B. 1541
Subject: Discipline of Public School Students by School Bus Drivers
Effective: June 14, 2013

Current law specifies the circumstances under which a student can be removed from a classroom, campus, or disciplinary alternative education program and details the procedure for a teacher to remove a student from a classroom. These items must be included in each school district's code of conduct adopted by the district board of trustees.

S.B. 1541 includes school buses among the places from which a student can be removed. The bill amends Section 37.001 of the Education Code to require the student code of conduct adopted by the board of trustees of an independent school district to specify the circumstances under which a student may be removed from a school bus.

S.B. 1541 also amends Section 37.0022 of the Education Code. This provision allows a school bus driver to send a student to the principal in order to maintain discipline on a school bus that is transporting students to or from school or a school-related activity or event. The bill requires the principal to respond by employing appropriate discipline management techniques consistent with the student code of conduct. The bill makes statutory provisions regarding the placement of students with disabilities applicable to any placement under the bill's provisions of a student with a disability who receives special education services.

Magistrate Duties, Domestic Violence, and Mental Health

H.B. 8
Subject: Prosecution and Punishment of Human Trafficking Offenses and Certain Protections for Victims of Human Trafficking
Effective: September 1, 2013

The 81st Legislature created the Human Trafficking Prevention Task Force in an effort to create a statewide partnership among law enforcement agencies, social service providers, nongovernmental organizations, legal representatives, and state agencies that fight against human trafficking. The task force developed policies and procedures to assist in the prevention and prosecution of human trafficking crimes and proposed legislative recommendations that better protect victims. H.B. 8 helps to prevent and eliminate the crime of human trafficking by enacting recommendations made by the task force in its recent report to the Legislature.

Sections 2-5, 22: Protective Orders

H.B. 8 amends Article 7A.01(a) of the Code of Criminal Procedure to allow all victims of a trafficking offense under Section 20A.02 of the Penal Code to file an application for a protective order and to allow all parents or guardians acting on behalf of a minor who is a victim of a trafficking offense to file an application for a protective order. Article 7A.02 is amended to allow a district or county court to enter a temporary ex parte order for the protection of an applicant who is in clear and present danger of sexual abuse or trafficking as determined from the information in their application for a protective order. Article 7A.03 is amended to include victims of sexual abuse or trafficking in the list of those to whom the court shall issue a protective order. The bill also amends Article 7A.07(b) to authorize the following persons to file at any time an application with the court to rescind the protective order: a victim of an offense listed in Article 7A.01(a)(1), rather than a victim, who is 17 years of age or older; a parent or guardian acting on behalf of a victim who is younger than 17 years of age; a victim of an offense listed in Article 7A.01(a)(2); or a parent or guardian acting on behalf of a victim who is younger than 18 years of age.

Section 6: Parole

Section 508.145(d)(1) of the Government Code is amended to allow the Board of Pardons and Parole to consider parole from prison for persons convicted of these crimes only after they have served an appropriate portion of their sentence. Offenders must now serve at least half their sentences or 30 years, without consideration of good conduct time, instead of the default that allows parole consideration when time-served plus good conduct time equals one-quarter of a sentence.

Section 7: Educational Materials Concerning Pardons for Victims of Trafficking

Article 48.06 was added to the Code of Criminal Procedure to require the Board of Pardons and Paroles to develop educational materials for victims of trafficking who are convicted of or placed on deferred adjudication community supervision for an offense the person committed solely as a victim of trafficking. The educational materials will describe the process for the person to submit a request to the board for a written recommendation advising the Governor to grant the person a pardon. Such materials must be placed on the board's website.

Section 9: Victim's Compensation Fund

H.B. 8 amends Article 54.42(d) of the Code of Criminal Procedure to entitle child victims of trafficking and prostitution to receive payments from the crime victim's compensation fund for relocation expenses. This amendment gives trafficking victims the same help as victims of family violence and of sexual assault in the home.

Sections 10-12: Address Confidentiality Program

H.B. 8 also amends Articles 56.81 through 56.83 of the Code of Criminal Procedure to allow trafficking victims to participate in an address confidentiality program run by the Attorney General. This program allows some crime victims to use a substitute post office box address in place of their true address and requires the Attorney General to forward mail to the victims.

Section 13: Community Supervision

H.B. 8 places compelling prostitution and human trafficking in the same category as other serious offenses for which juries cannot recommend community supervision by amending Section 4(d)(7) of Article 42.12 of the Code of Criminal Procedure. These offenses already are included in the list of serious offenses that cannot receive judge-ordered community supervision.

Sections 15-19: Penalties

H.B. 8 increases the penalties for certain offenses related to child prostitution. It expands the current second-degree felony penalty for soliciting children younger than 14 years old to now include soliciting children younger than 18 years old in an amendment to Section 43.02(c) of the Penal Code. The penalty applies regardless of whether the defendant knew the age of the person being solicited. The current third-degree felony penalty for soliciting a person age 14 to 17 years old is eliminated. Section 43.03(b) is amended to increase the penalty for certain offenses of promotion of prostitution. It is now a second-degree felony to solicit a child younger than 18 years old to engage in prostitution with another person or to receive money or property under an agreement to take part in the proceeds of prostitution by a person younger than 18. Section 43.03(b) is amended to increase the penalty for the aggravated promotion of prostitution from a third-degree felony to a first-degree felony if the prostitution ring used one or more people under 18 years old as a prostitute.

The bill amends Section 43.251(c) of the Penal Code to eliminate one of two sets of Penal Code provisions adopted by the 82nd Legislature that established different penalties for employment harmful to children. It eliminates provisions making the offense a state jail or third degree felony for repeat offenders and retains provisions making the offense a second-degree felony or, if the child was younger than 14, a first-degree felony.

H.B. 8 amends Section 43.23(h) of the Penal Code to increase the penalty for offenses related to obscene material involving children younger than 18. The penalty for persons acting as wholesale promoters of obscene materials or devices is increased from a third degree to a second degree felony. Offenses for promoting or possessing with intent to promote obscene materials or devices or for involvement in an obscene performance are increased from a state jail felony to a second-degree felony.

Section 20: Offense of Possession or Promotion of Child Pornography

H.B. 8 amends Section 43.26(a) of the Penal Code to create an offense if a person knowingly or intentionally accesses with the intent to view visual material that depicts a child younger than 18 years old at the time the image was captured who is engaging in sexual conduct, including sexual conduct engaged in as a victim of trafficking under Section 20A.02(a)(5), (6), (7), or (8) of the Penal Code. Section 43.26(h) of the Penal Code is also amended to provide a defense to the prosecution of an offense under Section 43.26(a) or (e) of the Penal Code to law enforcement officials or school administrators who accessed such visual material or allowed other law enforcement or school administrative personnel to possess such material as appropriate under Subdivision (l).

Section 21: Organized Criminal Activity

This provision amends Section 71.02 of the Penal Code to add the offenses of continuous sexual abuse of a young

child and solicitation of a minor to the list of crimes that, when committed under certain circumstances, constitute the offense of engaging in organized criminal activity.

TMCEC: Human trafficking remains a topic of foremost importance in contemporary criminal justice. H.B. 8 contains a host of amendments that potentially involve municipal judges in their capacity as magistrates. After the 82nd Legislative Session, Texas was left with two versions of Chapter 7A as well as Chapter 7B of the Code of Criminal Procedure all relating to protective orders although segregated for either "trafficking or sexual assault," "sexual assault or trafficking," or "victims of trafficking of persons." H.B. 8, along with S.B. 893, should consolidate these by eliminating Chapter 7B and creating one Chapter 7A to now be titled "Protective Order for Victims of Sexual Assault or Abuse, Stalking, or Trafficking."

H.B. 570
Subject: Issuance of a Magistrate's Order for Emergency Protection
Effective: June 14, 2013

H.B. 570 amends Article 17.292 of the Code of Criminal Procedure relating to issuance of a magistrate's order for emergency protection (MOEP). As amended, Article 17.292(d) provides that the victim of an offense involving family violence or a Penal Code offense under Section 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 42.072 (Stalking), need not be present when the MOEP is issued. Article 17.292(j) provides that a MOEP is effective on issuance, and the defendant is required to be served a copy of the order by the magistrate or the magistrate's designee in person or electronically. The magistrate must make a separate record of the service in written or electronic format. H.B. 570 deletes existing text requiring that the defendant be served a copy of the order in open court.

TMCEC: H.B. 570 is an example of a law being amended to conform to commonly accepted practice. The service of a MOEP almost always occurs in jail, not in open court. Providing a copy of the order to a defendant in open court creates safety concerns for the magistrate, law enforcement officers, and members of the general public present. The change in this law likely precludes an otherwise ripe argument for appeal: failure to properly serve the MOEP in open court invalidates the order.

H.B. 798
Subject: Loss of Certain Occupational Licenses on Domestic Violence Conviction
Effective: September 1, 2013

Under current law, individuals convicted of Class C misdemeanors are often denied occupational licenses under Chapter 53 of the Occupations Code. The penalty for conviction of a Class C misdemeanor offense, in almost all instances, is a fine only with no incarceration. Interested parties contend that these offenses do not warrant the denial of a license to practice an occupation.

H.B. 798 amends current law relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who has been convicted of a Class C misdemeanor.

TMCEC: Section 53.021 of the Occupations Code provides that a person convicted of an offense related to their profession or of any other offense within the previous five years may have certain occupational licenses suspended, revoked, denied, or may be denied the opportunity to sit for a licensing exam. H.B. 798 makes this statute inapplicable to convictions for Class C misdemeanors unless (1) the person is an applicant for or holder of a license that authorizes him/her to possess a firearm and (2) the offense of which the person was convicted is a "misdemeanor crime of domestic violence" as defined by federal law. The bill applies to applications for licensure or disciplinary proceedings pending on or filed after the effective date.

The Texas Legislature has long struggled with its treatment of Class C domestic violence (yes, it does exist) and federal requirements. This bill is yet another example of Texas attempting to comport with federal law. It will,

inevitably, lead to concerns about admonishments and may result in trial or appeal tactics similar to those engaged in by CDL holders, who also face the loss of an occupational license.

Chapter 53 does not apply to certain professions, including applicants or licensees under Chapter 1701 of the Occupations Code (e.g., peace officers and jailers) or under the Supreme Court's "authority on behalf of the judicial department of government." With the passage of S.B. 966, presumably, the licensing denial or revocation would not apply to court reporters, guardians, process servers, or foreign language interpreters.

H.B. 978
Subject: Transportation of Patients to Mental Health Facilities
Effective: September 1, 2013

As the population of Texas grows, more persons are being incarcerated who need to be transferred to mental health facilities. Some patients require transportation to facilities across the state.

Current law requires law enforcement officials to transport persons with mental illness. The growing need for transportation of these patients increases the strain on the sheriff's departments. These departments, ill-equipped for medical transport, are diverted from their duties in protecting citizens while better-equipped entities are not being utilized.

The bill amends Section 574.045(a) of the Health & Safety Code, regarding the parties, ordered by priority, authorized to transport a committed or detained patient to a designated health facility. A relative or other responsible person who has an interest in the patient's welfare and receives no remuneration, except for actual and necessary expenses, is moved from the third party, by order of priority, to the sixth party authorized to transport a patient.

This bill also adds Section 574.0456 to the Health & Safety Code to provide that unless there is a court order, a person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services under Chapter 574.

TMCEC: H.B. 978 is one of multiple bills amending the Health & Safety Code that pertains to mental health issues and municipal judges in their roles as magistrates. See also, H.B. 1738 and H.B. 1690.

H.B. 1421
Subject: Disposition of Seized Weapons
Effective: September 1, 2013

Under current law, law enforcement agencies are authorized to seize and hold firearms involved in the commission of certain weapons-related offenses until a magistrate makes a ruling regarding the disposition of the weapon. The weapon may be returned, upon request, within a specified time to the rightful owner if the magistrate determines that there will be no prosecution or conviction for an offense involving the weapon seized. However, when the weapon is not timely requested, the magistrate shall order the weapon to be destroyed or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory. H.B. 1421 amends Article 18.19 of the Code of Criminal Procedure by adding the option for the magistrate to order the sale of a seized weapon at a public sale by the law enforcement agency in possession of the weapon or by a licensed auctioneer.

TMCEC: It should be noted that only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at public sale under these new changes. Any proceeds from the sale of a seized weapon shall be transferred, after the deduction of any court costs owed to the district court clerk under Article 59.05 of the Code of Criminal Procedure followed by the deduction of auction costs, to the law enforcement agency the held the weapon.

H.B. 1690
Subject: Controlling the Spread of Communicable Diseases in Texas
Effective: September 1, 2013

Although current law authorizes public health officials to prevent, control, and treat communicable diseases, recent health concerns in certain areas of the state have exposed gaps in the communicable disease control laws that impede officials' abilities to protect the public from disease. H.B. 1690 expands law enforcement authority for communicable disease control purposes, limit exposure to communicable diseases during court proceedings, and establish criminal penalties for noncompliance with certain protective custody orders.

The bill amends provisions of Chapter 81 of the Health & Safety Code to authorize law enforcement officials to use reasonable force to secure persons or property subject to court orders issued for the purpose of controlling the spread of communicable diseases. Amended Section 81.162 authorizes a judge or magistrate to direct a peace officer to prevent a person who is the subject of a protective custody order from leaving a facility in which the person is detained so as to prevent the spread of a communicable disease if the court finds a public health threat exists because the person may try to leave the facility. Under amended Sections 81.163 and 81.185, respectively, a court issuing a protective custody order or temporary detention order at the request of a health authority may direct an emergency medical services provider to provide immediate ambulance transportation for the person who is the subject of the order.

New Section 81.212 establishes a Class A misdemeanor offense for a person, who is the subject of protective custody order or temporary detention order, to resist or evade apprehension by an official enforcing the order or resists or evades transport to a health care facility required by the order. It is also a Class A misdemeanor offense for a person to aid a person who is the subject of a protective custody order or temporary detention order in resisting or evading apprehension or transport to a health care facility.

TMCEC: Applications and motions for orders under Chapter 81 of the Health & Safety Code must be filed with the district court, so generally municipal courts and municipal judges will not be involved in the process. However, under Section 81.161(e), the judge of the district court in which an application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

H.B. 1738
Subject: Emergency Detention of a Person Who May Have Mental Illness
Effective: September 1, 2013

Subtitle C (Texas Mental Health Code), Title 7 (Mental Health and Mental Retardation), Health & Safety Code, has not been substantially revised since 1985. During this time, the Texas mental health system has undergone dramatic change, and an update is necessary to address those changes. Currently, police officers are transporting persons in mental health emergencies across the state, but officers and mental health facilities across the state do not all use the same detention forms which guide decision-making processes. The detention forms contain valuable information on the detained person's condition, circumstances of apprehension, and potential risks, and goes into the person's medical file and may be used to make treatment, as well as commitment determinations.

H.B. 1738 amends current law relating to the emergency detention by a peace officer of a person who may have mental illness, including information provided to the person subject to detention and a standard form of notification of detention to be provided to a facility by a peace officer.

Section by Section Analysis:

Section 1 amends Section 573.001 of the Health & Safety Code by adding Subsection (g) to require a peace officer who takes a person into custody under Subsection (a) (relating to authorizing a peace officer, without a warrant, to take a person into custody under certain circumstances) to immediately inform the person orally in simple,

nontechnical terms of the reason for the detention, and that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

Section 2 amends Section 573.002 to require a peace officer to immediately file with a facility a notification of detention after transporting a person to that facility in accordance with Section 573.001 (Apprehension by Peace Officer Without Warrant) and sets forth the required form on which the peace officer is required to give the notification of detention. The facility where the person is detained must include the notification of detention described by this section in the detained person's clinical file. A mental health facility or hospital emergency department is prohibited from requiring a peace officer to execute any form other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001 of the Health & Safety Code.

Section 3 amends Section 573.021(a) of the Health & Safety Code to require a facility to temporarily accept a person for whom an application for detention is filed or for whom a peace officer files a notification of detention under Section 573.002(a).

Section 4 amends Section 573.025 of the Health & Safety Code to provide that a person apprehended, detained, or transported for emergency detention under this chapter (Emergency Detention) has certain rights, including the right to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare. Section 4 further requires a person apprehended, detained, or transported for emergency detention under this subtitle (Texas Mental Health Code) to be informed of the rights provided by this section and this subtitle in a manner prescribed by rule from the executive commissioner of the Health and Human Services Commission.

TMCEC: Chapter 573 of the Health & Safety Code contains the subchapter authorizing the issuance of a magistrate's order for emergency apprehension and detention. H.B. 1738 is one of two bills that amend Section 573.001 pertaining to the emergency detention of the mentally ill. The other is S.B. 1189 related the disposition of firearms seized from a person in a mental health crisis.

H.B. 2268
Subject: Search Warrants Issued by Certain Magistrates for Customer Data, Communications, and Related Information Held in Electronic Storage
Effective: June 14, 2013

Internet communications companies often hold information and data vital to prosecute an offense under state law, particularly relating to internet crimes. Although electronic communications may take place within a state, law enforcement officers previously had to apply for a local search warrant in an internet company's jurisdiction, often found out of state. This limitation hampered law enforcement's efforts to obtain evidence on internet criminals, who were able to remove or change identifying data much faster than law enforcement could obtain warrants. In response to this problem, several other states including Florida, California, and Minnesota have enacted computer data warrant statutes that take advantage of "long-arm," or out-of-state, jurisdiction when dealing with internet data.

H.B. 2268 amends the Chapter 18 of the Code of Criminal Procedure to authorize a district judge to issue a search warrant for electronic customer data held in electronic storage by a provider of an electronic communications service or a provider of a remote computing service, regardless of whether the data is held at a location in Texas or in another state. The bill sets out requirements regarding application for and issuance of such a warrant, including probable cause that a specific offense has been committed and that the data sought constitutes related evidence and is held in electronic storage by the service provider on which the warrant is served. The bill limits the data that may be seized under the warrant to the data described in the sworn affidavit, provides for the sealing of the affidavit for the issuance of the warrant, and establishes a new 10 day deadline by which a peace officer must execute the warrant.

TMCEC: H.B. 2268 represents a continuing trend in which the Legislature grapples with the incorporation of current technology into the letter of the law. While this bill is sure to be the focus of much media discussion, it must be emphasized that although the bill references search warrants being issued by magistrates this specific kind of search warrant may only be issued by district judges. Conforming changes are made to Articles 18.02, 18.06, 18.07, 18.20, and 18.21 of the Code of Criminal Procedure allowing data search warrants to reach beyond the boundaries of Texas and likewise gives weight to similar warrants from other states served on Texas providers.

H.B. 2620
Subject: Task Force on Domestic Violence
Effective: June 14, 2013

Pregnant women are twice as likely to become victims of domestic violence. For an unborn child, many harmful fetal outcomes–including miscarriage, still-born birth, preterm labor and delivery, direct fetal injury, fetal hemorrhage, and placental abruption–are directly attributable to the physical trauma that stems from domestic violence committed against the mother. Although pregnancy is a time of increased risk and vulnerability for violence, for many women pregnancy also presents a unique opportunity for repeated contact with health care providers–for this reason, pregnancy can be an important and ideal window of opportunity for violence prevention and intervention.

Texas has wisely focused attention and funds on the critical times of pregnancy and very early childhood based on their importance on significant health outcomes. A variety of state, private, and federally funded programs (e.g., Texas Healthy Babies Initiative, Nurse Family Partnership, and home visitation programs) have emerged to improve birth outcomes and enhance infant health and long term child well-being through parent education. The presence of domestic violence undermines most of these programs' outcomes without effective preventative and intervention approaches.

H.B. 2620 adds Subchapter C to Chapter 32 of the Health & Safety Code to establish a task force to examine and address the impact of domestic violence on the health of women and children during the perinatal period through the first two years of life to better promote healthy Texas families.

This task force will identify the gaps, needs, and opportunities across the health care spectrum to address this issue; support the inclusion of domestic violence information into education, standards, and protocols for clinical and community based health care providers and educators; and design health system responses to domestic violence against women who are pregnant and postpartum that include universal information, early screening and detection, and public awareness efforts.

S.B. 367
Subject: Disposition of Abandoned or Unclaimed Property Seized at Arrest
Effective: May 18, 2013

People arrested for Class C misdemeanors may be booked into jail with property that is too large to be stored in the jail. These items, such as large bags, bicycles, and hard hats, must be taken to a property room for storage. These items are not held as evidence, but instead are simply stored for safekeeping until the individual is released.

Under current law, a person designated by a municipality is required to mail a notice to the last known address of the owner of abandoned or unclaimed property by certified mail. This notice provides a description of the property held and states that if the owner does not claim the property within 90 days from the date of the notice, the property will be disposed of. No provision allows for personal notification.

S.B. 367 provides a more effective and efficient means of providing notice to persons arrested for Class C

misdemeanors, adding a provision to Section 18.17 of the Code of Criminal Procedure (Disposition of Abandoned or Unclaimed Property). Section 18.17 allows the option of presenting a written notice in person to an individual being released from jail on a misdemeanor offense. If the written notice is presented and signed for by the property owner, the time frame for claiming the property is reduced from 90 days to 30 days.

TMCEC: S.B. 367 provides a new property disposition procedure specific to cases where people are arrested for Class C misdemeanors. It should be noted that the notice provided by the amended Section 18.17 may be also be provided at the time the person is taken into custody. On receipt of the notice, the owner of the seized property must provide a thumbprint along with the signature. If the property is not claimed before the 31st day, it may be sold or donated without further notice, and the proceeds must be deposited into the treasury of the municipality or county disposing of the property.

S.B. 743
Subject: Penalties for Repeated Violations of Court Orders, Magistrate's Orders of Emergency Protection, or Conditions of Bond in a Family Violence Case
Effective: September 1, 2013

Currently, violating a protective order is a Class A misdemeanor under Section 25.07 of the Penal Code. Repeat violations can be prosecuted as a third degree felony if two or more violations are adjudicated within a 12-month period. However, it can take more than a year to adjudicate each violation, thereby leaving victims exposed to harm from offenders who repeatedly violate the order.

S.B. 743 creates Section 25.072 of the Penal Code to create a new criminal offense for a repeated violation of a protective order. Under this offense, offenders can be prosecuted for a third degree felony for two or more violations within a 12-month period, even if they are still being adjudicated. Additionally, S.B. 743 amends Section 25.07(g) of the Penal Code providing that an offense under this section is a Class A misdemeanor, except the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of an offense under this section or two or more times of an offense under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072.

S.B. 743 also amends Article 5.07 of the Code of Criminal Procedure to provide that the venue for an offense under Section 25.07 or 25.072 of the Penal Code is in the county in which the order was issued or, without regard to the identity or location of the court that issued the protective order, in the county in which the offense was committed.

S.B. 743 also amends two sections of the Government Code, amending Section 411.081(e) to provide that a person is not entitled to petition the court for an order of nondisclosure if the person was placed on the deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for an offense under Section 25.072 of the Penal Code or other certain offenses. Section 411.1711 is amended to provide that a person is not convicted, as that term is defined by Section 411.171, if an order of deferred adjudication was entered against the person on a date not less than 10 years preceding the date of the person's application for a license to carry a concealed handgun unless the order of deferred adjudication was entered against the person for a felony offense under Section 25.072 of the Penal Code or other certain felony offenses.

S.B. 743 also requires the Texas Board of Nursing, under Section 301.4535 of the Occupations Code to suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072 of the Penal Code punished as a felony, or other certain offenses.

S.B. 893
Subject: Protective Orders and Conditions of Bond in Certain Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Cases
Effective: September 1, 2013

Although Texas law creates protections for victims of sexual assault, certain statutes require strengthening in order to provide these victims with the same level of protections afforded to victims of family violence. While courts have the explicit authority to prevent communication of any kind between victims of family violence and an assailant, current law regarding sexual assault protective orders only prohibits communications of a "threatening or harassing" nature for sexual assault cases, which is considered a Class A misdemeanor. In addition, current law considers a violation of bond conditions in family violence cases at least a Class A misdemeanor. There is, however, no offense for violating bond conditions in sexual assault cases. Furthermore, current law requires information relating to protective orders to be entered into the Texas Crime Information Center (TCIC) while information relating to bond conditions is not required.

S.B. 893 amends Article 7A.05 of the Code of Criminal Procedure to authorize a court, in issuing a protective order relating to a victim of sexual assault or abuse, stalking, or trafficking, to prohibit the alleged offender from communicating in any manner with the protective order applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition. S.B. 893 amends Section 38.112 of the Penal Code to make it a Class A misdemeanor to violate an order by communicating in such a manner.

S.B. 893 amends Section 411.042 of the Government Code to require the bureau of identification and records to collect pertinent information with regard to active protective orders about persons subject bond conditions imposed for the protection of the victim in any family violence, sexual assault or abuse, or stalking case and to require the inclusion of the bond conditions in TCIC. The authority of the Department of Public Safety (DPS) to adopt reasonable rules relating to active protective orders and certain reporting procedures applies to active protective orders generally, rather than only active protective orders against family violence. DPS may also adopt reasonable rules relating to active bond conditions imposed on a defendant for the protection of a victim in any family violence, sexual assault or abuse, or stalking case, as well as reporting procedures that ensure that information relating to the issuance modification, or removal of the bond conditions is reported to the victim and to local law enforcement for entry into TCIC.

S.B. 893 amends Section 25.07 of the Penal Code to make it at least a Class A misdemeanor to knowingly or intentionally commit certain acts in violation of a condition of bond set in a sexual assault or abuse or stalking case and related to the safety of a victim or the safety of the community.

TMCEC: After the 82nd Session, Texas was left with two versions of Chapter 7A and Chapter 7B of the Code of Criminal Procedure all relating to protective orders although segregated for either "trafficking or sexual assault," "sexual assault or trafficking," or "victims of trafficking of persons." S.B 893, along with H.B. 8, consolidate these by eliminating Chapter 7B and creating one Chapter 7A, titled "Protective Order for Victims of Sexual Assault or Abuse, Stalking, or Trafficking." While magistrates may see instances where individuals are accused of committing crimes stemming from violations of orders under 7A, such protective orders should not be confused with magistrate's orders of emergency protection issue under Article 17.292. Reporting information relating to bond conditions to TCIC is a major step forward in sharing information that can be used to interdict family violence. TMCEC will keep you up-to-date as DPS adopts reporting procedures.

S.B. 946
Subject: Right to Terminate a Lease or Avoid Liability for a Victim of Certain Sexual Offenses, or Stalking
Effective: January 1, 2014

Under current law, a tenant who is a victim (or a parent or guardian of a victim) of sexual assault, aggravated sexual assault, or continuous sexual abuse of a child has the right to terminate a lease early and avoid liability for future rent and other amounts due under the lease under certain circumstances. S.B. 946 extends that right to the victims or parents or guardians of victims of certain other offenses or attempts to commit those offenses.

S.B. 946 amends Section 92.0161 of the Property Code to include a tenant who is a victim (or a parent or guardian of a victim) of indecency with a child, sexual performance by a child, or stalking among those tenants who are authorized to terminate the tenant's rights and obligations under a lease, vacate the dwelling, and avoid liability for future rent and certain other sums due under the lease. The offense must take place during the preceding six-month period on the premises or at any dwelling on the premises. The tenant must provide the landlord (or the landlord's agent) a copy of certain documentation regarding the assault or abuse, attempted assault or abuse, or stalking of the victim.

S.B. 946 updates the language regarding those rights required to be included in a lease agreement, failing which a tenant who terminates a lease under such circumstances is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant. The bill requires that a tenant who is a parent or guardian of a victim actually reside with the victim. The bill prohibits a person who receives information from a tenant to satisfy the conditions of terminating a lease under such circumstances from disclosing that information to any other person except for a legitimate or customary business purpose or as otherwise required by law.

S.B. 1192
Subject: Rights of Certain Victims of Sexual Assault
Effective: September 1, 2013

Current law entitles certain victims of sexual assault to general crime victims' rights within the criminal justice system and additional rights to counseling and testing for certain sexually transmitted diseases. More offenses should be considered sexual assault for purposes of victims' rights. S.B. 1192 revises Texas statutes with regard to sexual assault and victim's rights.

S.B. 1192 amends Article 56.01 of the Code of Criminal Procedure to expand the definition of "sexual assault," for purposes of crime victim's rights, to include the offenses of indecency with a child by engaging in sexual contact with a child or causing the child to engage in such contact; sexual assault; and aggravated sexual assault. The bill adds Article 56.021 to entitle a victim of sexual assault, guardian of such a victim, or close relative of such a victim who is deceased, in addition to the general crime victim's rights, to three additional rights, if requested. The first is the right to a disclosure of information regarding any evidence that was collected during the investigation of the offense, unless disclosing the information would interfere with the investigation or prosecution, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed. The second is the right to a disclosure of information regarding the status of any analysis being performed of any evidence that was collected during the investigation of the offense. The third is the right, if requested, to be notified at the time a request is submitted to a crime laboratory to process and analyze any evidence collected during the investigation of the offense, notified at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in a state or federal DNA database, and notified of the results of the comparison, unless disclosing the

results would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which those results are expected to be disclosed.

S.B. 1192 requires a victim, guardian, or relative who requests notification to provide a current address and telephone number to the attorney representing the state and the law enforcement agency that is investigating the offense and to inform the attorney and agency of any change in that address or phone number. The bill authorizes a victim of a sexual assault, or a guardian or relative, to designate a person, including an entity that provides services to victims of sexual assault, to receive any such notice requested by the victim.

The bill establishes that a law enforcement agency, prosecutor, or other participant in the criminal justice system is not required to use a victim impact statement form that complies with the bill's provisions until January 1, 2014.

S.B. 1360
Subject: Criminal Offense of Tampering with a Witness in a Case Involving Family Violence
Effective: September 1, 2013

According to the U.S. Department of Justice, witness intimidation is widespread and increasing. In domestic violence cases, witness tampering is the most common crime. Without the victim's testimony, prosecutors face significant legal and practical barriers to moving forward with a criminal case against the batterer.

The doctrine of "forfeiture of wrongdoing" represents a U.S. Supreme Court-sanctioned and constitutional tool for holding battering wrongdoers accountable when the batterer's own bad acts have caused the victim's unavailability in court. Texas has not created rules for courts to make this determination, and as a result, this tool is not being utilized to hold batterers accountable.

S.B. 1360 amends the Penal Code as it relates to the punishment of tampering with a witness and the evidence that may be offered to show that offense. Under the provisions of this bill, the punishment for tampering is enhanced to a second degree felony from a third degree felony or the most serious offense charged in the criminal case if the proceeding involves family violence or the defendant has previously been convicted of an offense involving family violence.

TMCEC: Last session H.B. 1856 made the punishment for witness tampering correspond to the most serious criminal offense that is charged in the case and is the basis of the intimidation. Remarkably, witness tampering in a Class C misdemeanor is only a Class C misdemeanor. S.B. 1360 suggests that the Legislature may be realizing that H.B. 1856 "painted with too broad of a brush." S.B. 1360 amends Section 36.05 of the Penal Code providing that a person coerces a witness or prospective witness when that person commits an act of family violence, as defined by Section 71.004 of the Family Code, that is perpetrated in part with the intent to cause the witness's or prospective witness's unavailability or failure to comply.

Ordinance and Local Government Related

H.B. 195
Subject: Online Posting of Contributions and Expenditure for County and Municipal Offices
Effective: September 1, 2013

In an effort to make more information on campaign contributions available to the voting public, H.B. 195 requires clerks of populous counties and municipalities to post on the internet campaign contributions and expenditures of candidates for county and municipal offices. Amended Section 254.0401 of the Election Code requires county clerks of counties with a population of 800,000 or more and clerks of municipalities with a population of 500,000 or more to post online contribution and expenditure reports filed with the clerk by a candidate, officeholder, or specific-purpose committee in connection with the public offices of the county or municipality, respectively. County and municipal clerks must post a report on the internet within five days of receiving the report. While the bill takes effect September 1, 2013, the amended sections apply only to political contribution and expenditure reports required to be filed on or after January 1, 2014.

H.B. 970
Subject: Regulation of Cottage Food Industry
Effective: September 1, 2013

Interested parties assert that foods produced by local farmers and local small businesses are becoming increasingly vital to both urban and rural areas as a source of employment and quality foods and products. As a result of recent legislation, individuals who meet certain criteria can produce specific types of foods in their homes and sell directly to consumers without being regulated by a local health department. Interested parties observe that the laws regulating the cottage food industry have led to the establishment and growth of numerous small businesses in this state, with very few problems reported. Interested parties contend, however, that restricting the sale of these foods to such an individual's home has created unnecessary barriers and has even led to conflict with zoning authorities in some areas. These parties also observe that some other states allow for the production of more types of foods under similar laws.

H.B. 970 expands the types of foods allowed to be produced by a cottage food production operation and the locations at which such an individual can sell the products, establishes additional regulations regarding the sale of cottage food products, and amends current law relating to a local government authority's authority to regulate cottage food production operations.

TMCEC: Currently, Section 437.0192 of the Health & Safety Code provides that a local health authority may not regulate the production of food at a cottage food production operation. H.B. 970 expands that prohibition on regulation to local government authorities. The bill also adds Section 211.032 to the Local Government Code, provides that a municipal zoning ordinance may not prohibit the use of a home for cottage food production operations; however, added Section 211.033 clarifies that the right of a person to bring a cause of action under other law against an individual for nuisance is not affected.

H.B. 1554
Subject: Liens for Costs of Abatement of Floodplain Ordinance Violations
Effective: September 1, 2013

H.B. 1554 amends Section 54.012 of the Local Government Code to explicitly provide that a municipality may bring a civil action to enforce an ordinance regarding floodplain control and administration. The bill resolves confusion about a municipality's authority to pursue civil remedies in order to protect the interests of property owners susceptible to flash floods.

The bill also adds Section 54.020 to the Local Government Code, which authorizes a municipality, in addition to other available remedies, to abate a violation of a floodplain management ordinance by causing the work necessary to bring real property into compliance, if the municipality gives the property owner reasonable notice and opportunity to comply with the ordinance and the owner fails to do so. A municipality may assess the costs incurred against the property and take a lien on the property for costs incurred plus interest accruing at the annual rate of 10 percent on the remaining balance owed to the municipality. The bill specifies that the lien is privileged, subordinate only to tax liens and liens for street improvements. A municipality may perfect the lien by filing a written notice, in compliance with certain requirements, with the county clerk of the county in which the property is located.

H.B. 1724
Subject: Collection of Municipal and County Hotel Occupancy Taxes
Effective: September 1, 2013

Current law imposes a statute of limitations on the state's authority to bring suit to collect delinquent state hotel occupancy taxes. However, current law does not impose a statute of limitations on suits to collect municipal or county hotel occupancy taxes. Local hotel operators have no way to predict how long to maintain tax records because of the lack of a statute of limitations on the assessment of hotel occupancy taxes. H.B. 1724 allays these concerns by aligning municipal and county hotel occupancy tax collection more closely with state hotel occupancy tax collection.

TMCEC: The bill amends Section 351.004 of the Tax Code, requiring suits for the collection of delinquent hotel occupancy taxes to be brought within four years of the date the tax becomes due. A municipality is entitled, under new Section 351.0042 to collect interest on delinquent taxes and certain municipalities may use portions of the revenue from the hotel occupancy tax to conduct audits of hotel operators who must first collect the tax from hotel guests. The bill also amends Section 352.004 to impose on counties a similar four year statute of limitations on bringing suits to collect delinquent taxes. The respective statutes of limitations do not apply if a hotel operator files fraudulent tax reports with the intent to evade the hotel occupancy tax or if the hotel operator never filed a report for the tax at issue.

H.B. 1813
Subject: Possession of Unopened Fireworks in Certain Municipalities
Effective: June 14, 2013

Current law authorizes certain municipalities to regulate fireworks within their jurisdictions. Individuals who purchase fireworks legally in other municipalities may need to transport the fireworks through these municipalities, subjecting themselves to ordinance citations and confiscation of the fireworks. Allowing transportation of fireworks through these municipalities would prevent unnecessary confiscations and citations where no violation of the law is intended. H.B. 1813 resolves this concern by prohibiting certain municipalities from confiscating packaged, unopened fireworks being transported through the municipality's limits.

Chapter 342 of the Local Government Code pertains to municipal fire protection. H.B. 1813 amends Section 342.003 of the Local Government Code to specify that a Type A general law municipality authorized to prohibit or regulate the use of fireworks may not confiscate packaged, unopened fireworks. The bill also adds Section 342.013 to Subchapter B, regarding home-rule municipalities. The new section prohibits a home-rule municipality that regulates fireworks from confiscating packaged, unopened fireworks.

The bill establishes an affirmative defense to prosecution for fireworks possession brought under a municipal ordinance if the defendant was operating or was a passenger in a motor vehicle that was being operated in a public place, and the fireworks were not in the passenger area of the vehicle. Passenger area is defined as the seating area of the vehicle, not including a locked glove compartment or storage area, the truck, or the area behind the last upright seat in a vehicle not having a trunk.

H.B. 1847
Subject: Continuing Legal Education for County and District Attorneys
Effective: January 1, 2014

All attorneys in Texas, including prosecutors, are required to meet minimum continuing legal education requirements set by the State Bar of Texas. However, there is concern that there is no specific requirement for prosecutors to complete training on the subject of prosecutorial misconduct. H.B. 1847 amends the Government Code by adding new Section 41.111 to require county and district attorneys representing the state in criminal cases other than Class C misdemeanors, within 180 days of assuming their duties, to complete at least one hour of education on ethics related to the prosecutor's duties and prosecutorial misconduct. The bill directs the Court of Criminal Appeals to adopt rules related to the training and to develop an appropriate training program.

TMCEC: The wrongful conviction, and recent exoneration, of Michael Morton spurred much discussion and important changes regarding prosecutorial misconduct can also be seen in S.B. 825 and S.B. 1611.

H.B. 1931
Subject: Authority to Distribute Funds to Property Owners with Damages from Criminal Pursuit
Effective: September 1, 2013

Under current law, a municipality or county may hold auctions for abandoned vehicles, aircraft, watercraft, or outboard motors and transfer auction proceeds, held for more than 90 days, in excess of $1,000 to the municipality's or county's general revenue account. These funds are used by law enforcement agencies to compensate property owners whose property was damaged as a result of a criminal pursuit. H.B. 1931 amends Section 683.015 of the Transportation Code to extend the authority to compensate property owners in that manner to attorneys representing the state, if the abandoned vehicle, aircraft, watercraft, or outboard motor was located in a county with a population of less than 150,000. Added Section 683.015(h) defines an attorney representing the state as "a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney."

H.B. 3015
Subject: Recall Elections for Officials of El Paso County General Law Municipalities
Effective: June 14, 2013

Texas municipalities with populations below 5,000 are governed by general law, which provides no direct mechanism for removing elected officials except through lawsuit. Because these municipalities may not create their own charters, they cannot develop alternative means for removing elected officials. In situations that call for immediate removal of elected officials, lawsuits offer an inadequate remedy because they are too costly and slow to resolve in such circumstances. H.B. 3015 provides an alternative means for voters in general law municipalities in El Paso County to remove elected officials.

H.B. 3015 adds Subchapter C to Chapter 21 of the Local Government Code to allow voters to file a notice of recall and circulate a petition for recall that meets certain requirements set out in the bill. Upon the petitioners' meeting these requirements and receiving certification from the municipal clerk, and unless the official whose removal is sought chooses to resign, the municipality will hold a recall election. On a majority vote in favor of recall, the official's position immediately becomes vacant, to be filled as prescribed by existing law.

H.B. 3674
Subject: Municipal Eligibility for the Historic Courthouse Preservation Program
Effective: September 1, 2013

The Texas Historical Commission maintains the Texas Historic Courthouse Preservation Program that awards grants to counties for the restoration of historic courthouses. Observers note that there are certain municipalities

that also wish to take steps to preserve local history and legacy through courthouse renovation. H.B. 3674 amends Section 442.001 of the Government Code to include in the definition of "historic courthouse" a municipally-owned structure that previously functioned as the official county courthouse. Roughly five buildings will become eligible for funding from this program, all of which previously served as county courthouses and are more than 100 years old. Allowing municipalities to apply for this funding will level the playing field for local government entities seeking to preserve historic buildings that once served as courthouses, and will stimulate local economies by generating jobs, providing a site for community events, increasing local property values, attracting tourism and film projects, and giving local citizens tangible connection to the past. The bill also makes conforming changes to Chapter 442 of the Government Code to reflect this changed definition, specifying that a historic courthouse eligible for preservation funding could be owned by either a county or a municipality.

H.B. 3739
Subject: Municipal Employees Who Become Candidates for Public Office
Effective: June 14, 2013

Recently, some municipal employers have terminated or disciplined municipal employees because they have become candidates for public office. These punishments often occur because of a misunderstanding of current election and municipal laws.

H.B. 3739 remedies this problem by adding Subchapter C to Chapter 150 of the Local Government Code. This subchapter clarifies that a municipality may not prohibit an employee from becoming a candidate for public office, nor may it take disciplinary action against an employee for the sole reason that the employee is running for office.

H.J.R. 87; H.B. 1372
Subject: Authorizing Procedures in Home-Rule Municipalities for Filling Governmental Vacancies
Effective: November 5, 2013, subject to voter approval on November 5, 2013

Texas Constitution, Article XI, Section 11 provides that home-rule cities may set the terms of service of city council members at two, three, or four years. While cities with two year terms may specify, in its city charter, the procedure for filling a vacancy for the remainder of the term, cities with three or four year terms must fill a vacancy via mandatory special election, regardless of the procedure provided for in the city charter and regardless of the length of the remainder of the term. Home-rule cities with three or four year terms face an undue burden in filling vacancies when the remaining length of term is less than 24 months, because of the substantial investment of time and financial resources required to conduct a special election.

H.J.R. 87, in conjunction with H.B. 1372, would alleviate this burden somewhat by allowing a home-rule city to provide, in its city charter, for the procedure for filling vacancies when the remaining length of term is 12 months or less.

TMCEC: H.J.R. 87, as enrolled, was amended from the introduced version in one simple but significant way: home-rule cities may establish procedures for filling vacancies when the remaining length of term is 12 months or less, rather than 24 months or less as first introduced.

S.B. 186
Subject: Mosquito Abatement in Stagnant Water on Uninhabited Residential Property
Effective: May 10, 2013

During the summer of 2012, Texas saw a record number of cases of the West Nile virus, a disease spread to humans by a bite from infected mosquitoes. It was determined that homes that had been abandoned or foreclosed and that contained water features or pools were a breeding ground for mosquitos carrying the disease. Research has shown that one of the most effective treatments to eradicate mosquitoes carrying the disease is to treat stagnant

water with larvicide. In order to prevent the spread of this disease, counties and municipalities need authority to treat properties that have been abandoned or foreclosed.

S.B. 186 gives counties and municipalities the authority, in added Section 341.019 of the Health & Safety Code, to treat stagnant water with a mosquito larvicide in properties that have been abandoned or foreclosed.

TMCEC: S.B. 186 gives municipalities the authority to abate, without notice, a public health nuisance (mosquitoes in stagnant water) that is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure and is an immediate danger to the health, life, or safety of any person. A public official, agent, or employee charged with enforcing health, environmental, or safety laws may enter the premises at a reasonable time to inspect, investigate, or abate the nuisance through treatment with a mosquito larvicide.

S.B. 458
Subject: Exempting Motor Vehicle Titles from Mandatory Disclosures
Effective: May 18, 2013

Current law does not subject a motor vehicle title or registration, issued by an agency in this or another state or country and held by a governmental body, to mandatory disclosure under the Texas Public Information Act. However, each time a request for such records is made, the governmental body must request a decision from the Attorney General whether the information must be disclosed. S.B. 458 seeks to exclude these motor vehicle records from mandatory disclosure under state public information law.

The bill amends Section 552.130(c) of the Government Code to authorize a governmental body to redact information described by Subsection (a) (relating to information excluded from the requirements of Section 552.021 (Availability of Public Information)), rather than Subsections (a)(1) (relating to a motor vehicle operator's or driver's license or permit issued by an agency of this or another state or country) and (a)(3) (relating to a personal identification document issued by an agency of this or another state or country).

S.B. 654
Subject: Civil Actions to Enforce Water Conservation and Animal Control Ordinances
Effective: September 1, 2013

Current law authorizes a municipality to prosecute water conservation and animal control ordinance violations as Class C misdemeanors. Interested parties assert proceedings to prosecute these violations in municipal court drain personnel resources by requiring officials to leave active field service in order to provide testimony and other litigation support. S.B. 654 seeks to enable municipalities to enforce these ordinances more cost-effectively and successfully through civil actions and quasi-judicial enforcement.

S.B. 654 amends Section 54.012 of the Local Government Code to add ordinances relating to animal care and control as well as water conservation measures to a list of certain ordinances for which a municipality may bring a civil action for enforcement.

The bill also amends Section 54.032 to add ordinances relating to animal care and control, and ordinances relating to water conservation measures to a list of certain ordinances to which Subchapter C, concerning quasi-judicial enforcement of health and safety ordinances, exclusively applies.

TMCEC: Chapter 54, Subchapter C (Quasi-Judicial Enforcement of Health and Safety Ordinances) of the Local Government Code leaves many questions unanswered. Local governments that attempt to use "quasi-judicial" enforcement that entails the municipal court raises particular questions. See, Cathy Riedel, "Civil Jurisdiction in Municipal Courts: Evolving or Mutating?" *The Recorder* (June 2012).

S.B. 837
Subject: Municipal Power to Regulate Certain Nuisances on Real Property
Effective: June 14, 2013

Subchapter A of Chapter 342 of the Health & Safety Code authorizes municipalities to regulate sanitation. Currently, Section 342.004 provides explicit authority for municipalities to require real property owners to keep the property free of certain conditions; however Section 342.002 contains ambiguous language regarding the conditions that constitute "unsanitary matter." S.B. 837 amends ambiguous provisions in Section 342.004 by conforming them to the clearer standards provided in Section 343.011, concerning regulation of public nuisances in a county's unincorporated areas.

The bill amends Section 342.004 to authorize a municipality to require a real property owner to keep the property free from weeds, brush, and a condition constituting a public nuisance under Section 343.011(c)(1), (2), or (3). Under those provisions, a public nuisance is: keeping refuse on the property, unless contained in a close receptacle; keeping rubbish, including such things as newspapers or abandoned vehicles, on the property unless the rubbish is enclosed in a building or is not visible from a public street; or maintaining the property in an unsanitary manner likely to attract mosquitoes, rodents, or other pests.

S.B. 987
Subject: Injunctions Against Municipalities and Counties Adopting Prohibited Firearms Regulations
Effective: June 14, 2013

Current law prohibits municipalities and counties from adopting regulations regulating the ownership, transfer, possession, transport, licensing, or regulation of firearms, ammunition, or firearm supplies. They are further prohibited from regulating the discharge of firearms at sport shooting ranges. Interested parties claim there have been recent instances of counties disregarding state law by attempting to adopt various firearms regulations.

S.B. 987 adds Subsection (f) to Section 229.001 of the Local Government Code to empower the Attorney General to seek an injunction against a municipality adopting a regulation in violation of Section 229.001. The bill also adds Subsection (b) to Section 236.002 of the Local Government Code to empower the Attorney General to seek an injunction against a county adopting a regulation, other than a regulation under Section 236.003 regarding certain regulations of sport shooting ranges, in violation of Section 236.002.

S.B. 1400
Subject: Municipal and County Power to Regulate Air Guns
Effective: June 14, 2013

Certain municipalities in Texas have passed regulations to prohibit persons from selling, giving, or placing a BB gun in the possession of a person under the age of 16. As a result, in these municipalities no one under the age of 16 may receive or possess a BB gun at any time. Interested parties assert these regulations place undue restrictions on parents and educational programs, such as Reserve Officers' Training Corps and shooting classes, that may wish to provide minors with hands-on experience with BB guns. S.B. 1400 amends current law to prevent municipalities and counties from completely restricting the use of air guns by persons under the age of 16.

New Subsection (e) of Section 229.001 of the Local Government Code defines an "air gun" as any gun that discharges a pellet, BB, or paintball by means of compressed air, gas propellant, or a spring. S.B. 1400 further amends Section 229.001 to prohibit a municipality from adopting regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of air guns or air gun supplies. However, a municipality may regulate certain uses of air guns, and under new Subsection (b)(8), may regulate the carrying of an air gun by a minor on public property or private property without the property owner's consent.

The bill amends Sections 235.023 and 236.002 to prohibit the commissioners court of a county or a county, respectively, from regulating the transfer, ownership, possession, transportation, or registration of air guns. A commissioners court of a county or a county may regulate the discharge of air guns on lots that are 10 acres or smaller and are located in the unincorporated area of the county in a subdivision.

S.B. 1437
Subject: Filing Documents Electronically with the County Clerk
Effective: June 14, 2013

S.B. 1437 amends the Local Government Code to allow municipal clerks to file documents electronically for recording with a county clerk that accepts electronic filing. The bill adds municipal clerks to a list of parties, including attorneys, state agencies, and title companies that already have this ability. Additionally, new Subsection (a-1) of Section 195.003 of the Local Government Code allows a county with a population of 500,000 or more to authorize a person to file documents electronically with the county clerk if the county enters into a memorandum of understanding with that person for that purpose.

S.B. 1512
Subject: Confidentiality of Certain Crime Scene Photographs and Video Recordings
Effective: September 1, 2013

Certain crime scene information is not exempt from disclosure under state public information law and certain crime scene pictures, particularly pictures that depict a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depict a deceased person's genitalia, should not be subject to an open records request. Credentialed Texas newspapers are unlikely to reproduce these pictures in the paper; rather, the problem lies in ordinary people being able to request the pictures and reproduce them on the internet, making it difficult for a victim's family to heal and move on after losing a loved one.

TMCEC: S.B. 1512 adds Section 552.1085 to the Government Code to provide that certain sensitive crime scene photos are exempt from Section 552.021, concerning the availability of public information. Only specified persons are allowed to view or copy sensitive crime scene photos under the statute, and the government must notify the deceased person's next of kin of the request. Curiously, and in a conceivably broad exception, among those allowed to view or copy a sensitive crime scene photo is a person who establishes an interest in the image that is based on, connected with, or in support of the creation, in any medium, of an expressive work.

S.C.R. 21
Subject: Municipal Courts Weeks 2013 and 2014
Effective Date: May 24, 2013

Municipal courts are the courts most routinely experienced by Texans. Municipal courts are the level of the judiciary closest to the greatest number of Texas citizens. Our municipal courts provide a local forum where questions of law and fact can be resolved with respect to alleged state law and municipal ordinance violations. The municipal courts play a vital role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior.

The Texas Legislature recognizes the important work of the municipal courts in our state and resolves that each of the weeks of November 4-8, 2013 and November 3-7, 2014 will be recognized as Municipal Courts Week.

H.B. 1125
Subject: Extradition Warrants and Justices of Peace
Effective: June 14, 2013

Texas counties that border other states often have defendants in custody who require extradition. Currently defendants may go before such magistrates for extradition; however in rural counties a magistrate is not always a judge in a court of record. Until a magistrate can hear the matter, which can be for weeks at a time, the county bears the cost of housing the defendant. H.B. 1125 amends Chapter 51 of the Code of Criminal Procedure to allow a justice of the peace serving a precinct that is located in a county bordering another state to accept a voluntary waiver of extradition proceedings, which would allow the immediate transfer of the defendant. H.B. 1125 requires a justice of the peace, before the waiver is executed, to inform the prisoner of the prisoner's right to the issuance and service of an extradition warrant and right to obtain a writ of habeas corpus. All defendants would be allowed the opportunity to discuss this voluntary waiver with their attorney prior to signing. If the prisoner or the prisoner's counsel states the desire to test the legality of the arrest, the justice of the peace would direct the prisoner to a court of record for purposes of obtaining a writ of habeas corpus.

TMCEC: Chapter 51 of the Code of Criminal Procedure pertains to fugitives from justice. When a complaint is made, magistrates in Texas have a duty to issue warrants for fugitives under Article 51.03. This is distinct from a warrant for extradition which can only be issued by the Governor. Procedures for extradition are governed by the Uniform Criminal Extradition Act (UCEA) (Article 51.13). The UCEA has been adopted by most states. H.B. 1125 seems to disregard that the UCEA is intended to be a uniform act. Under the UCEA, a person who is arrested on an extradition warrant is required to be brought before a judge of a court of record. H.B. 1125 amends Section 10 of Article 51.13 to allow that that such a person can be brought before a justice of the peace (justice courts are not courts of record). Notably, no similar provision is made for bringing a person before a municipal judge of a non-record court that is located in a county bordering another state.

As amended, Section 25a (Written Waiver of Extradition Proceedings), requires a justice of the peace who is not an attorney to receive training from the Texas Justice Court Training Center (TJCTC) that focuses on extradition law before a justice who is not an attorney is authorized to perform a duty authorized by H.B. 1125. It also requires TJCTC to develop such training. A justice of the peace who performs a duty or function permitted by Section 25a must ensure that the applicable proceeding is transcribed or videotaped and that the record of the proceeding is retained in the records of the court for at least 270 days.

H.B. 2679
Subject: Authorizing the Entering of a Plea for Defendants in Jail for Class C Misdemeanors
Effective: September 1, 2013

Accepting a plea from an arrested person who is detained in jail for an unadjudicated fine-only offense is widely practiced in jurisdictions across Texas, as this method is convenient for both the court and the defendant. However, the practice is neither expressly sanctioned nor prohibited and concerns have been raised that the location of a plea may create a coercive atmosphere that impairs the voluntary aspect of the plea.

H.B. 2679 amends current law relating to permitting an alternative plea for a defendant detained in jail pending trial for a Class C misdemeanor and endorses the efficient and convenient administration of the Texas criminal justice system by specifically authorizing such practices.

H.B. 2679 amends Article 45.023 of the Code of Criminal Procedure authorizing or judge of a justice or municipal court to permit a defendant who is detained in jail to enter a plea of guilty or not guilty, a plea of nolo contendere, or the special plea of double jeopardy. The justice or judge, after complying with the statutory duties of a magistrate

and advising a defendant of the right to trial by jury, to accept the defendant's plea; assess a fine, determine costs, and accept payment of the fine and costs; give the defendant credit for time served; determine whether the defendant is indigent; or discharge the defendant, as appropriate. The bill requires a motion for new trial following a plea of guilty or nolo contendere to be made not later than 10 days after the rendition of judgment and sentence, and not afterward, and if the plea was entered while the defendant was detained in jail requires the justice or judge to grant a motion for new trial made under the bill's provisions.

TMCEC: The topic of "jail house pleas" has generated a lot of discussion in recent years. Ryan Turner analyzed the issue in "Jail House Pleas: Is *Rothgery* a Tap on the Shoulder or a 'Fly in the Ointment' of Local Trial Court Expediency," *The Recorder* (August 2010). The article outlined arguments touting the practice's utility, efficiency, and the perceived benefit to defendants. It also explained that the practice is neither authorized nor contemplated in the Code of Criminal Procedure. The focus on jail house pleas recently intensified after the holding in *Lilly v. State*, 365 S.W.3d 321 (Tex. Crim. App. 2012), provided insight into how the Court of Criminal Appeals might handle an appeal challenging a jail house plea as violative of the constitutional and statutory requirements that criminal defendants, even those who are imprisoned, be afforded access to a courtroom open to the public. See, Ryan Turner & Regan Mettauer, "Case Law and Attorney General Opinion Update TMCEC Academic Year 2012," *The Recorder* (December 2012) at 14. H.B. 2679 aims to bring a measure of resolution to the matter by providing a procedural glide path that does not give more weight to the interests of convenience than to the 6th Amendment rights guaranteed to all criminal defendants by the U.S. Constitution.

In July 2012 at the Texas Municipal Courts Association (TMCA) annual meeting in Fredericksburg, a majority of participants polled strongly supported TMCA proposing legislation to authorize the taking of a plea in jail for people arrested for Class C misdemeanors in light of the *Lilly* opinion. A majority of the TMCA Board of Directors agreed. TMCA was instrumental in drafting, filing, and testifying in support of H.B. 2679, which informed by the *Lilly* opinion.

S.B. 344
Subject: Habeas Corpus Procedures Related to Certain Scientific Evidence
Effective: September 1, 2013

S.B. 344 amends the Code of Criminal Procedure by adding Article 11.073 relating to procedures for applications for writs of habeas corpus based on relevant scientific evidence of false and discredited forensic testimony utilized in trial to convict an individual. The bill specifies that evidence to contradict scientific evidence presented at trial is among the types of claims or issues that can affect court consideration of an application for a writ of habeas corpus. Recent examples of such evidence include dog-scent lineups, misinterpreted indicators of arson, and infant trauma. To the extent that the bill modifies claims that can be considered by the Court of Criminal Appeals, the rule change is not anticipated to increase the workload of that court.

S.B. 344 requires a court to grant a convicted person relief, on a properly filed application for a writ of habeas corpus, containing sufficient specific facts. This legislation prohibits a convicting court from denying relief on an authorized application based solely on the applicant's plea, confession, or admission. The bill authorizes a court to grant relief on the basis of relevant scientific evidence not available at the time of the convicted person's trial.

S.B. 484
Subject: Creation of a Prostitution Prevention Program
Effective: September 1, 2013

Interested parties have expressed concerns about the significant number of offenders charged with prostitution under control of the Texas Department of Criminal Justice, along with the high annual costs associated with housing such offenders in state jails and prisons. Critics assert that rehabilitation programs specifically designed for prostitutes have been identified as a viable, cost-effective alternative to incarceration, at a much lower cost to

taxpayers. To more directly address the needs of this specific population, S.B. 484 authorizes the establishment of prostitution prevention programs to provide certain prostitution offenders access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse.

TMCEC: S.B. 484 adds several sections to Chapter 169A, Subtitle H, Title 2 of the Health & Safety Code. Sections 169.002 and 169.0025 give counties the authority to create county or regional prostitution prevention programs. The bill also adds Section 169A.0055, which makes it mandatory for a county to create a prostitution prevention program if: (1) the county has a population of more than 200,000; (2) a municipality in the county has not already established a prostitution prevention program; and (3) the county receives sufficient federal or state funding specifically for that purpose. The bill adds Section 169A.001, which provides that a defendant who successfully completes a prostitution prevention program can get an order of nondisclosure from the court; the effect of the nondisclosure order is as if the defendant had received a discharge and dismissal of all records and files related to the offense for which the defendant entered the program. A court may also suspend the requirement that a participant in the program works a specified number of community service hours and, upon completion of the program, may excuse a participant from any condition of community supervision previously suspended under Section 169A.006. Section 169A.002 does, however, create a limitation on a defendant's eligibility for the program by providing that the defendant must have the consent of the state's attorney to participate. Finally, Section 169A.005 authorizes a prostitution prevention program to collect fees from participants.

S.B. 825
Subject: Disciplinary Standards and Procedures Applicable to Prosecutorial Misconduct Grievances
Effective: September 1, 2013

Under the Texas Disciplinary Rules of Professional Conduct, a prosecutor is required to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. Currently, the statute of limitations for filing a grievance against a prosecutor who violates the prosecutor disclosure rule, otherwise known as a *Brady* violation, begins to run when a violation is discovered or should have been discovered. S.B. 825 addresses the barriers to seeking and pursuing accountability and justice for wrongfully convicted individuals. The bill also enhances open government and public confidence in the prosecutor disciplinary process by prohibiting the use of a private reprimand as a means of discipline for such a violation.

TMCEC: The wrongful conviction of Michael Morton spurred much discussion and some important changes including S.B. 825 as well as S.B. 1611 (the Michael Morton Act). S.B. 825 adds Subsection (b-1) to Section 81.072 of the Government Code to toll the statute of limitations for a wrongfully imprisoned person to file a grievance for a disclosure rule violation. The statute of limitations is tolled until the date on which the wrongfully imprisoned person is released from prison. Notably, S.B. 825 also requires the Commission for Lawyer Discipline to adopt rules prohibiting the use of a private reprimand for the violation of a disciplinary rule requiring a prosecutor to disclose information that tends to negate the guilt of the accused or mitigates the offense.

S.B. 1189
Subject: Disposition of Firearms Seized by a Law Enforcement Agency During an Emergency Mental Health Evaluation
Effective: September 1, 2013

Peace officers are often dispatched to calls involving a person in a mental crisis. On occasion, these incidents involve persons who are in possession of a firearm at the time of their crisis. The individual in crisis may be suicidal, delusional, psychotic, and a danger to self or other persons. If the person is believed to be a danger to self or others, he or she is detained under an emergency detention order, pursuant to the Health & Safety Code, and taken to a hospital for a mental health evaluation. Because of the severity of the illness, often there are no criminal charges filed on these individuals. If the person in crisis had a firearm on their person or in their immediate control,

officers will often take custody of the firearm and place it in the police property room for safekeeping. This is primarily the case when the person in crisis is in a public place and there is no safe place to leave the firearm. Law enforcement officials cannot return the weapon to a person ordered into inpatient psychiatric treatment because federal law prevents such a person from possessing a firearm. Currently, there is no requirement that police agencies be informed of the outcome of the emergency mental health evaluation.

In situations where the firearm is on or near the person in crisis, peace officers have a duty to secure the weapon and place it in the police property room. Although, this is accepted as providing the "community caretaking" function on the part of the police, there is no legal authority for the police to confiscate the firearm in these incidents, to secure the firearm until a determination is made on the person's mental stability, or to return the firearm if appropriate.

Chapter 573.001 of the Health & Safety Code currently allows peace officers to take a person in custody without a warrant, when the officer believes the person is in a mental health crisis and a danger to themselves or others. State law only addresses the procedures for the disposition of weapons seized in connection with an offense involving the use of a weapon or an offense under Chapter 46 of the Penal Code. State law does not address the disposition of weapons confiscated by peace officers from those persons in a mental health crisis who are detained under an emergency detention order and subsequently taken for an emergency mental health evaluation.

S.B. 1189 amends Chapter 573.001 of the Health & Safety Code by adding Subsection (g) which incorporates language to specifically authorize peace officers to hold any firearm found on or about a person who is in a mental health crisis, is determined to be a danger to self or others, and is being detained and transported for an emergency mental health evaluation. Additionally, S.B. 1189 adds Article 18.191 to the Code of Criminal Procedure, to provide law enforcement with the necessary time to conduct follow-up investigations of the person taken for an emergency evaluation to determine whether the case was dismissed or the person was court ordered into in-patient psychiatric treatment. This bill requires the concerned courts of each county to verify for the investigating law enforcement agency if the person received court ordered in-patient psychiatric treatment, so that the agency will know whether or not it is permissible to return the firearm. Article 18.191 also includes procedures for law enforcement agencies to return the weapon to the owner or another potential party.

TMCEC: S.B. 1189 provides law enforcement with the express authority to sell the firearm under Article 18.191(h) if the person given written notice under Article 18.191(b) of the Code of Criminal Procedure or a lawful owner of the firearm does not timely submit a written request for the return of the firearm. The law enforcement agency must provide the owner with the proceeds from the sale of the firearm, minus the administrative costs. Under the bill, an unclaimed firearm seized under Section 573.001 of the Health & Safety Code may not be destroyed or forfeited to the state.

S.B. 1189 covers similar territory as other bills do regarding both the disposition of weapons and the emergency commitment of a person who may have mental illness. See H.B. 1421 for another bill that deals with the disposition of seized weapons. See H.B. 1738 for another bill regarding the emergency detention of a person who may have mental illness.

S.B. 1237
Subject: Referral of Criminal Cases for Alternative Dispute Resolution and Fees
Effective: September 1, 2013

Current law does not expressly authorize courts to refer adult criminal cases to mediation or victim-offender conferencing for a fee. Such programs help resolve the offender's acts against a victim without formal judicial intervention by directly redressing a victim's losses and the victim's needs. Research shows that the use of victim-offender conferencing in other jurisdictions results in high rates of both agreement completion and victim satisfaction and reduces recidivism rates. Victim-offender conferencing more often results in payment of restitution

and victim satisfaction than does handling cases through the formal justice system processes. The diversion of cases to criminal alternative dispute resolution reduces costs to taxpayers by reducing the number of cases that must be resolved through traditional court proceedings. S.B. 1237 amends Sections 152.002, 152.003, 152.006, and adds Section 152.007 to the Civil Practice & Remedies Code, establishing procedures through which a court may refer a criminal case to a participating county's alternate dispute resolution system and addresses the fees that certain dispute resolution service providers may collect.

TMCEC: Municipal judges are not listed as able to refer cases to alternative dispute resolution, while the judges of district, county, statutory county, probate, and justice courts all made the cut. Municipal judges, however, are not prevented from using mediation and other alternative dispute resolution methods as described more broadly elsewhere in Title 7 of the Civil Practice & Remedies Code first adopted as *The Alternative Dispute Resolution Act*. For more on the topic see Joan Kennerly's article "Mediation Referrals and Orders from Municipal Courts" *The Recorder* (May 2003). Notably, another bill, H.B. 167 authorized the use of victim-offender mediation in certain criminal cases in municipal court. H.B. 167 was poised for passage but failed to receive a final vote in the Senate in waning days of the 83rd Legislature.

S.B. 1611
Subject: Discovery in a Criminal Case
Effective: January 1, 2014

S.B. 1611, to be known as the Michael Morton Act, amends the Code of Criminal Procedure to revise provisions relating to discovery in a criminal case. These changes are made in an effort to uphold a defendant's constitutional right to a defense, minimize the likelihood of wrongful convictions, save thousands in taxpayer dollars, promote an efficient justice system, and improve public safety, all while increasing the public's confidence in the criminal justice system.

S.B. 1611 removes statutory language in Article 39.14(a) of the Code of Criminal Procedure requiring a court in which a criminal action is pending to order the state to produce information to the defense. Instead the state must, as soon as practicable after receiving a timely request from the defendant and subject to certain restrictions, produce and permit the inspection and the electronic duplication, by or on behalf of the defendant, of offense reports and recorded statements of witnesses, including statements by law enforcement officers, which contain evidence material to any matter involved in the action and are in the possession, custody, or control of the state or any person under a state contract. This requirement excludes privileged work product. The state can provide electronic duplicates of documents or information, butthe bill does not authorize the removal of documents, items, or information from the state's possession.

S.B. 1611 establishes that if only a portion of the applicable document, item, or information is subject to discovery, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and is authorized to withhold or redact that portion. The state must inform the defendant that a portion of the document, item, or information has been withheld or redacted, and the court, on request of the defendant, must conduct a hearing to determine whether withholding or redaction is justified by law.

The state, if a court orders the state to produce and permit the inspection of a document, item, or information in the case of a pro se defendant, must permit the pro se defendant to inspect and review the document, item, or information, but does not have to allow electronic duplication of those materials in such a case.

S.B. 1611 prohibits the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant, except as otherwise provided in the bill, from disclosing to a third party any documents, evidence, materials, or witness statements received from the state under the bill's provisions unless a court orders the disclosure upon a showing of good cause or unless the documents, evidence, materials, or witness statements have already been publicly disclosed. The bill authorizes

the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, to allow a defendant, witness, or prospective witness to view the information provided under the bill's provisions, but prohibits allowing that person to have copies of the information provided, other than a copy of the witness's own statement. S.B. 1611 requires the person possessing the information, before allowing such a person to view a document or the witness statement of another, to redact certain identifying personal information contained in the document or witness statement. The defendant may not be the agent for the attorney representing the defendant for such purposes.

S.B. 1611 prohibits its provisions from being interpreted to limit an attorney's ability to communicate regarding his or her case within the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness or any information that by reference would make it possible to identify a victim or witness. That prohibition does not prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purpose of making a good faith complaint.

S.B. 1611 requires the state to disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged. The state must electronically record or otherwise document any document, item, or other information provided to the defendant under the bill's provisions. Each party, before accepting a plea of guilty or nolo contendere or before trial, must acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the defendant under the bill's provisions. The state must promptly disclose any exculpatory, impeachment, or mitigating document, item, or information discovered at any time before, during, or after trial.

S.B. 1611 authorizes a court to order the defendant to pay costs related to discovery under the bill's provisions that do not exceed the charges for providing copies of public information under state public information law. The bill's provisions prevail to the extent of any conflict with state public information law. The bill's provisions do not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required by the bill.

TMCEC: This bill uses a "one size fits all" approach that does not distinguish Texas trial courts that adjudicate felonies from those that adjudicate fine-only misdemeanors. Consequently, despite being rooted in the best intentions, S.B. 1611 will likely leave judges and prosecutors in municipal and justice courts, scratching their heads and hoping for clarification next session.

S.B. 1611 arguably places a significant burden on the prosecutors by requiring them, absent any action of the court, to produce materials as soon as practicable after receiving a timely request from the defendant. Notably, however, the prosecutor's obligation only applies to items that are in the possession, custody, or control of the state or any person under contract with the state. (See, Article 39.14(b), Code of Criminal Procedure). Essentially, this amendment merely codifies the "open file" system that many prosecutors already utilize.

Frankly, the distinction between "the defendant" and "pro se defendant" in S.B. 1611 is odd. While the former certainly includes people represented by counsel, and the later does not, a pro se defendant is nonetheless a defendant who, ostensibly, would have equal standing when it comes to discovery. Yet, under S.B. 1611 it is hardly clear.

In the case of a pro se defendant, if the court orders inspection, the state must allow a pro se defendant to inspect and review but the state does not have to allow "electronic duplication" (a term which is not defined but is presumably distinct from "copying" or "photographing" which are also referenced in Article 39.14(a)). Article 39.14(d) seems to assume that either pro se defendants will not be making discovery requests directly to the state or that when the defendant is pro se that a court order is necessary, however previous language referring to motions to the court for discovery has been removed. S.B. 1611 amendments to Article 39.14 leave such procedural questions unanswered.

While S.B. 1611 was intended to remove trial courts from the front end of the discovery process and ensure justice for criminal defendants, in cases involving pro se defendants, its implications are hardly clear. In light of the Legislature's history of creating specific rules for specific courts it seems unfortunate that a more specific rule was not tailored for courts governed by Chapter 45 of the Code of Criminal Procedure.

H.B. 124
Subject: Addition of Salvia Divinorum to the Texas Controlled Substances Act
Effective: September 1, 2013

H.B. 124 amends Section 481.104(a) of the Health & Safety Code to add Salvia divinorum and its derivatives and extracts to Penalty Group 3 of the Texas Controlled Substances Act.

The bill prohibits derivatives and extracts of the Salvia divinorum plant, including all parts of the plant, whether growing or not, and seeds of the plant. Leaves of the naturally growing Salvia divinorum plant contain the compound Salvinorin A, which is believed to be the active ingredient inducing the hallucinogenic high experienced by individuals through inhalation or tincture. Suspected side effects include spatial disorientation, lack of pain sensation, and incapacitation. The Legislature is attempting to eliminate commercial trade in this substance, by making its production, distribution, possession, and use a punishable offense in Texas.

TMCEC: After failing to secure passage last session, this time it passed. Along with synthetic marijuana, there has been notable interest in criminalization of Salvia divinorum. See, Cathy Riedel, "K2: What's the Buzz About?" *The Recorder* (January 2011). Notably, H.B. 124 does not add unharvested Salvia divinorum growing in its natural state to Penalty Group 3 of the Texas Controlled Substance Act. However, all parts of a harvested plant are included within the Penalty Group. This means that the offense, depending on the amount in possession, can range from a Class A misdemeanor to felony of the first degree. In cities where the use or sale of the Salvia divinorum plant and its derivatives and extracts has been prohibited by ordinance, city attorneys and municipal judges should be aware that such ordinances may now be preempted by state law.

H.B. 333
Subject: Requiring Notice of Hotel Firearms Policies
Effective: September 1, 2013

Visible firearms policies in hotels provide concealed handgun license holders and gun owners with notice of firearms prohibitions prior to unknowingly violating these policies. Current Texas law does not require hotels and lodging business to notify guests of policy prohibitions of firearms. H.B. 333 seeks to resolve this confusion by adding Subchapter C to Chapter 2155 of the Occupations Code, requiring hotels and lodging businesses to notify all potential guests if the hotel has policies prohibiting or restricting possession, storage, or transportation of firearms by guests. The bill requires hotels and lodging businesses to make their firearms policies more visible to guests visiting the businesses and more accessible to potential guests communicating with the businesses by telephone or on the internet.

TMCEC: The bill only imposes notification requirements on hotels that have policies prohibiting or restricting firearms. Hotels with policies prohibiting firearms must include those policies on the hotel's internet reservation website, and direct guests making reservations by telephone how they may access the hotel's firearms policies. Hotel owners and keepers not in compliance with Section 255.103(c) of the Occupation Code commit a misdemeanor punishable by a fine not to exceed $100.

H.B. 489
Subject: Protecting Public Use of Service Animals by Persons with Disabilities
Effective: January 1, 2014

Service animals provide valuable assistance to persons with various disabilities, yet not all service animals are given equal access to public places. H.B. 489 seeks to protect the legitimate use of service animals in public areas by persons with disabilities, and raise awareness of the rights and responsibilities of persons with disabilities.

The bill amends the Human Resources Code and Health & Safety Code to redefine a "service animal" as a canine specially trained to assist persons with disabilities. The bill also expands the definition of a "person with a disability" to include persons with intellectual or developmental disabilities, or post-traumatic stress disorder. Under Section 121.003 of the Human Resources Code, public facilities may not deny admission to service animals and may not generally challenge a disabled person's legitimate use of a service animal, except to inquire whether the service animal is required because of the person's disability and what type of work the service animal is trained to perform. New Section 437.023 of the Health & Safety Code specifies that food service establishments and retail food stores may not deny admission of service animals to any area of the establishment open to the public and not used to prepare food.

TMCEC: The amendment to the Health & Safety Code creates no new criminal offense but rather makes conforming changes that should be read in light of substantive law additions made to the Human Resources Code. The bill amends Section 121.004 of the Human Resources Code, imposing criminal penalties for discrimination under Section 121.003. A violation of Section 121.003 is a misdemeanor offense, punishable by a fine not to exceed $300 and a mandatory imposition of 30 hours of community service performed for a governmental or nonprofit entity that serves persons with disabilities, to be completed within a one year period. Notably, a defendant who violates Section 121.003 is deemed to have deprived a person with a disability of his or her civil liberties. A person with disabilities so deprived is entitled to a presumption of damages of at least $300, increased from $100, in a subsequent civil lawsuit.

The bill also amends Section 121.006 of the Human Resources Code, concerning persons who use trained animals and hold the animals out to be specially trained service animals though training has not in fact occurred. Using a trained animal in this way is a misdemeanor punishable by a fine of not more than $300 and a mandatory imposition of 30 hours of community service performed for a governmental or nonprofit entity that serves persons with disabilities, to be completed within a one year period.

H.B. 555
Subject: Criminal Offenses for Unscrupulous Metal Recyclers
Effective: September 1, 2013

Recent reports indicate a rash of metal thefts in the Houston area, costing taxpayers heavily. Thieves steal valuable metals, often damaging the underlying structures, and attempt to sell the metal to recycling facilities. While recycling facilities must adhere to reporting requirements designed to deter metal thefts, some facilities fail to always perform due diligence. H.B. 555 seeks to further criminalize transactions involving stolen metal and deny metal thieves an easy buyer.

H.B. 555 adds Section 1956.204 to the Occupations Code, creating a Class C misdemeanor offense as a general penalty for violations of Section 1956, regulating metal recycling entities. The bill establishes that, if conduct that constitutes an offense under Section 1956.204 also constitutes an offense under other statutory provisions relating to metal recycling entities, the person may be prosecuted only under the other provisions.

Additionally, the bill amends Section 1956.040(a-2) of the Occupations Code to increase from a general misdemeanor to a Class A misdemeanor with a maximum fine of $10,000 the penalty for knowingly violating statutory provisions relating to the registration requirements of a metal recycling entity, the term of a certificate of registration for a metal recycling entity, the furnishing of a certain required report to the Department of Public Safety, and the hours authorized for purchasing regulated material.

TMCEC: Under Section 1956.003 of the Occupations Code, local governments may enact ordinances or rules that are more stringent, but do not conflict with, state law provisions regulating metal recycling entities.

H.B. 705
Subject: Penal Code Definition of "Emergency Services Personnel" Expanded
Effective: September 1, 2013

Research from a national emergency nurses association shows that the emergency services environment is a dangerous setting for health care personnel because of potential violence from patients and visitors. Current Texas law enhances the penalty for assault from a Class A misdemeanor to a third degree felony if committed against emergency services personnel while they are providing emergency services. However, current law does not include hospital emergency room personnel. H.B. 705 extends protections to emergency room personnel by revising the statutory definition of emergency services personnel contained in Section 22.01(e)(1) of the Penal Code to include emergency room personnel.

H.B. 912
Subject: Texas Privacy Act and the Use of Unmanned Aircraft
Effective: September 1, 2013

H.B. 912 creates the Texas Privacy Act, adding Chapter 423 to the Government Code, regulating the use of unmanned aircraft to capture images. New Section 423.001 defines an image as any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property or a person on that property. Due to the rapidly expanding use and capabilities of these aircraft (commonly referred to as "drones"), the Legislature finds it necessary to establish proper purposes and manners in which these aircraft may be used, as well as establish necessary privacy provisions for individuals.

Section 423.002 establishes various lawful purposes for which an unmanned aircraft may be used to capture images, including capturing images with consent of the property owner or lawful occupier. The bill protects law enforcement officials capturing images according to a valid search warrant or in pursuit of an individual reasonably believed to have committed an offense other than a misdemeanor or other offense punishable by fine only.

Section 423.003 of the Government Code creates the Class C misdemeanor offense for the illegal use of unmanned aircraft to capture images of an individual or privately owned real property with the intent to conduct surveillance. The bill establishes a defense to prosecution if the person destroys the image as soon as the person knew a violation was committed and did not disclose, display, or distribute the image to a third party.

Section 423.004 of the Government Code creates an offense for capturing an image in violation of Section 423.003 and possessing, disclosing, displaying, distributing, or using that image. Capture and possession of an image is a Class C misdemeanor, while disclosure, display, distribution, or other use of an image is a Class B misdemeanor. Each image captured and used in violation is a separate offense. The bill establishes a defense to prosecution for possession if the person destroys the image as soon as the person knew a violation was committed or stopped subsequent use, and a defense to prosecution for use if the person stopped subsequent use of an image as soon as the person knew a violation was committed.

Images captured illegally or incident to legal capture are not subject to disclosure or means of legal compulsion, and may not be used as evidence in any criminal, civil, juvenile, or administrative proceeding. However, images may be disclosed and used as evidence to prove a violation of Chapter 423.

Individuals who, or whose property, are the subject of an illegally captured image may, among other remedies, recover a civil penalty of either $5,000 or $10,000 and court costs and attorney's fees.

TMCEC: Municipal, justice, and county courts of Texas, welcome to the exciting brave new world of aviation law and the protection of privacy in the 21st Century. The first five pages of this 10 page bill attempts to limit

the application of its enforcement provisions. Most notably Section 423.002(7), making it inapplicable to instances where drones were used pursuant to a valid search or arrest warrant. What follows is a hodgepodge of misdemeanors, civil penalties, rules for law enforcement, and reporting requirements. Any law attempting to regulate the use of photography by members of the public inevitably raises free speech questions. H.B. 912 is no different. Before you are halfway through reading this bill, you realize that this bill, a sign of the technological times, is in new territory. Will H.B. 912 fly? It will take time to see how each provision is construed and applied in conjunction with other law.

H.B. 1043
Subject: Radio and Television Broadcast Uses of Sound Recordings
Effective: June 14, 2013

Though federal law governs the protection of sound recordings made after February 15, 1972, the protection of sound recordings fixed before that date is left to the states. In adopting laws to protect against the unauthorized duplication of pre-1972 recordings, most states have included express exemptions for activities such as broadcasting. Current Texas law, however, does not provide for such exemptions.

H.B. 1043 adds Section 641.051(e) to the Business & Commerce Code to expressly exempt from recording duplication offenses persons who use pre-1972 sound recordings for television or radio broadcasting or archival purposes. The bill clarifies state law prescribing felony and misdemeanor punishments on this subject and conforms state law to that of other states. The exemption provided for by H.B. 1043 does not apply to a recording duplication offense under Section 641.051 committed before the June 14, 2013 effective date.

H.B. 1284
Subject: Notification of Penalty for Making False Alarms
Effective: June 14, 2013

Recently, multiple instances of false bomb threats have disrupted Texas institutions of higher education. These false alarms waste valuable education resources and, worse, create potentially dangerous situations by breeding complacency.

H.B. 1284 amends Section 42.06(b) of the Penal Code to enhance the penalty for the offense of initiating, communication, or circulating a knowingly false emergency report from a Class A misdemeanor to a state jail felony if the false report regards an emergency involving a public or private institution of higher education.

H.B. 1284 adds Section 51.219 to the Education Code to require Texas institutions of higher education to notify all incoming students, as soon as practicable, of the false reporting penalty. A temporary provision, set to expire August 1, 2014, exempts a private or independent institution of higher education from mandatory compliance with the notification requirement if that institution determines that compliance is not feasible. A temporary provision, set to expire December 13, 2013, requires all Texas institutions of higher education to notify all *enrolled* students of the false reporting penalty.

H.B. 1305
Subject: Acting as an Insurance Agent After License Suspension or Revocation
Effective: September 1, 2013

H.B. 1305 seeks to prevent unauthorized persons from acting as insurance agents after the revocation or suspension of their licenses. Current Texas law penalizes persons from acting as insurance agents after license revocation or suspension with fines up to $5,000 and imprisonment for up to two years. H.B. 1305 amends Section 4005.151(b) of the Insurance Code to enhance the penalty for this offense to a third degree felony, punishable with imprisonment

for two to 10 years and a fine up to $10,000. Changes in law made by the bill apply only to offenses committed before the September 1, 2013 effective date.

H.B. 1494
Subject: Department of Agriculture Regulatory Program Penalties
Effective: September 1, 2013

Last session, Texas Department of Agriculture (TDA) regulatory programs were shifted to full cost recovery models. H.B. 1484 seeks to maximize efficiencies in TDA services, minimize fee increases, and save TDA resources.

H.B. 1494 amends Sections 13.041 and 13.122 of the Agriculture Code, designating violations of certain provisions of Chapter 13, relating to weights and measures of commodities, as Class C misdemeanor offenses. The bill makes such violations, currently Class C misdemeanors, punishable by the imposition of civil penalties.

H.B. 1494 also adds Subchapter I to Chapter 13 of the Agriculture Code. New Section 13.464 creates an offense for violations of new Sections 13.455 and 13.456, requiring TDA issued service licenses for technicians and companies performing device maintenance. A violation of either section is a Class B misdemeanor, unless the person has been previously convicted of a Section 13.464 offense, in which case the violation is a Class A misdemeanor. These new sections take effect March 1, 2014.

H.B. 1523
Subject: Redefining "Funds" Related to Money Laundering Offenses
Effective: September 1, 2013

Texas law enforcement agencies have reported an increase in the number of people being detained with stored value cards on principal drug trafficking corridors in Texas. Drug traffickers often use these cards for money laundering activities, since the cards function as currency and offer anonymity protections attractive to criminals.

H.B. 1523 amends Section 34.01(2) of the Penal Code to expand the definition of "funds" to now include stored value cards as defined by Section 604.001 of the Business & Commerce Code.

TMCEC: Section 34 of the Penal Code creates the felony offense for money laundering. Penalties range from a state jail felony if the value of the funds is $1,500 or more but less than $20,000 up to a first degree felony if the value of the funds is $200,000 or more.

H.B. 1606
Subject: Prosecution of Harassment and Stalking
Effective: September 1, 2013

H.B. 1606 protects victims of harassment and stalking by modifying statutory definitions of harassment and stalking in Sections 42.07 and 42.072, respectively, of the Penal Code. The bill clarifies the relationship between the two offenses by including behavior that constitutes a harassment offense as a criterion for a stalking offense if the actor knowingly engages in the behavior on a repeated or systematic basis.

Current stalking law requires a showing that the actor knew or reasonably believed the victim would regard the conduct as threatening bodily injury against the victim or victim's family or damage to the victim's property. This bill replaces the ambiguous "reasonably believed" standard with a showing that the actor reasonably should have known the other person would regard the conduct as threatening. The bill revises the definition of property relating to stalking offenses to include pets, companion animals, and assistance animals.

H.B. 1606 recognizes that harassing behavior is conducted by various means. The bill removes the condition that certain types of harassment be committed by telephone, in writing, or by electronic communication.

H.B. 1807; S.B. 1095
Subject: Fever Tick Eradication
Effective: September 1, 2013

H.B. 1807 amends the Agriculture Code to broaden the scope of statutory provisions relating to tick eradication by providing for the treatment of animals, rather than solely the dipping of livestock. Ticks capable of carrying Babesia, protozoa that attacks the host animal's red blood cells causing the tick fever disease, prey on livestock as well as other animals. The bill amends Section 167.001 of the Agriculture Code to broaden the definition of animals subject to tick eradication treatment, and to broaden the scope of statutorily recognized treatments beyond livestock dipping.

TMCEC: Chapter 167 of the Agriculture Code establishes offenses related to tick eradication, ranging from Class C misdemeanors to Class B misdemeanors, usually reserved for repeat offenders. Notably, the criminal offense in Section 167.141 is expanded in scope to penalize failure to provide required treatment of livestock.

H.B. 1862
Subject: Decriminalizing Switchblade Knives
Effective: September 1, 2013

H.B. 1862 removes switchblade knives, defined by Section 46.01 of the Penal Code, from the prohibited weapons list enumerated in Section 46.05 of the Penal Code. Under current law, owners of switchblade knives may present the affirmative defense that the knife was possessed as an antique or collectible. This bill eliminates the unnecessary distinction between reasons for possession by removing the switchblade knife from the prohibited weapons list.

TMCEC: Since 1974, the Penal Code has prohibited the possession of switchblade knives. After knife manufacturers began production of knives designed to be opened by one handed operation ("one handed openers" or "assisted openers"), H.B. 4456 (2009) amended Section 46.01 of the Penal Code by exempting one handed openers and assisted openers from the definition of switchblade knife and freeing their owners from fear of arrest. Apparently, however, in terms of satisfying knife aficionados, H.B. 4456 did not make the cut.

H.B. 1951
Subject: Criminal Offense to Appoint or Retain an Unlicensed Telecommunicator
Effective: September 1, 2013; January 1, 2014

The Occupations Code includes telecommunicators employed by or serving certain law enforcement agencies among the law enforcement personnel regulated by provisions relating to certain duties of the Texas Commission on Law Enforcement. However, recent high profile instances regarding 9-1-1 operators suggest that minimum licensing and training requirements are necessary to ensure that public safety is protected. H.B. 1951 amends current law relating to the licensing and regulation of telecommunicators.

TMCEC: H.B. 1951 amends Section 1701.551 of the Occupations Code to make it an offense punishable by a fine of not less than $100 or not more than $1,000 to appoint or retain another person as, in addition to an officer or county jailer, a telecommunicator without a license under Chapter 1701. The offense takes effect January 1, 2014.

H.B. 2311
Subject: Repeal of Class C Misdemeanor for Failure to Comply with State Animal Identification Program
Effective: May 25, 2013

Intrastate and interstate animal identification plans have recently been developed and implemented on federal and state levels for the purpose of establishing a means to enable animal health officials to more rapidly and effectively respond to animal health emergencies. There is a need for clarification of state statutes due to disparities in federal and state programs. H.B. 2311 addresses this need by clarifying provisions relating to a state animal identification program. In so doing, the bill repeals the authorization of the Texas Animal Health Commission to recognize certain identification numbers as official identification numbers in Texas and the Class C misdemeanor offense in Section 161.056(g) of the Agriculture Code for failure to comply with an order or rule adopted under provisions relating to the state animal identification program.

H.B. 2377
Subject: Criminal Penalties for the Use of Legislatively Produced Audio and Visual Materials
Effective: September 1, 2013

For years, legislative information has been available to the public through the internet. To adapt to the technology, relevant state law was amended to prohibit legislatively produced audio or visual materials from being used in political advertising and for commercial use. These measures were intended to protect applicable copyrights and private contracts with the state and to avoid unintentional alterations of the material. H.B. 2377 imposes additional limits on the use of audio or visual materials produced by or under the direction of the Legislature.

TMCEC: Under current law it is a Class C misdemeanor under Section 306.006 of the Government Code for a person to use video material produced by or under direction of the Legislature, or of a house, committee, or agency of the Legislature for a commercial purpose without permission (subject to certain exceptions). H.B. 2377 amends Section 306.006, changing the language in the statute from "video materials" to "visual materials" as defined in amended Section 306.005. This change in language expands the Class C misdemeanor offense to include certain legislatively produced photographs and other visual materials for certain purposes (rather than just prohibiting the use of video materials).

H.B. 2539
Subject: Computer Technicians Required to Report Child Pornography
Effective: September 1, 2013

Current Texas law does not require a computer service technician to report the discovery of child pornography. H.B. 2539 amends current law by adding Chapter 109 to the Business & Commerce Code. This bill requires computer technicians to now report images of child pornography and makes the intentional failure of computer service technicians to report such images a Class B misdemeanor. The bill provides a defense to prosecution if the actor fails to report an image because the child in the image appeared to be at least 18 years old.

H.B. 2649; S.B. 1432
Subject: Reporting Requirements for Trapping Permits
Effective: June 14, 2013

The Texas Parks and Wildlife Department (TPWD) maintains regulations for fair and humane fishing and hunting practices within the state. To facilitate better wildlife management, TPWD also issues permits for trapping, transporting, and transplanting game animals and game birds. These permits have certain reporting requirements, violations of which may carry various penalties. H.B. 2649 enhances uniformity throughout the Parks & Wildlife Code by aligning penalties for similar offenses.

The bill amends Section 43.062 of the Parks and Wildlife Code, decreasing from a Class B Parks & Wildlife Code misdemeanor to a Class C Parks & Wildlife Code misdemeanor the penalty for violations of the reporting requirements or terms related to reporting requirements of a permit to trap, transport, or transplant game animals and game birds.

TMCEC: This bill converts many pre-existing crimes into fine-only offenses. Municipalities with state parks within their territorial limits may, consequently, may see increased filings. The bill retains Section 43.062(a) of the Parks &Wildlife Code, which establishes a general penalty of a Class B Parks & Wildlife misdemeanor for offenses under Subchapter E of Chapter 43, regulating permits for trapping, transporting, and transplanting game animals and game birds. These offenses concern terms of permits issued under Subchapter E that *do not* relate to reporting requirements.

H.B. 2781
Subject: Rainwater Harvesting
Effective: September 1, 2013

Recognizing Texas' history of promoting rainwater use, recently enacted legislation advanced private citizens' rainwater use by allowing individual rainwater harvesting systems to be used within a dwelling serviced by a public water supply. H.B. 2781 continues the promotion of rainwater harvesting and other water conservation practices by amending statutory provisions related to the rights and responsibilities of private citizens who use a rainwater harvesting system.

TMCEC: As its main objective, the bill amends Section 341.042 of the Health & Safety Code. The bill requires operators of rainwater harvesting systems to install and maintain certain structural safeguards to ensure the sanitary standards of public water systems connected to the rainwater harvesting systems. Section 341.047 of the Health & Safety Code establishes a Class C misdemeanor offense for violating certain provisions of Subchapter C of Chapter 341, with each day a person remains in violation constituting a separate offense. These provisions generally concern maintaining the sanitary standards of public drinking water. While a private citizen operating a rainwater harvesting system could be prosecuted under Section 341.047 (if the person furnishes water from the harvesting system for drinking), violations of Section 341.042 may also be punished under Section 341.048. This section establishes a civil penalty of not less than $50 nor more than $1,000 for violations of Subchapter C of Chapter 341. The Texas Commission on Environmental Quality, the county, or the municipality may bring a suit in certain district courts to enforce this civil penalty.

H.B. 3279
Subject: Ban on Uprooting Seagrass Plants
Effective: September 1, 2013

Seagrass meadows provide many benefits to coastal ecosystems in Texas. Various interested parties have expressed concerns regarding the detrimental impact of certain boating activities to these important shallow-water habitats. In an effort to protect seagrass meadows and preserve access to coastal waters by all user groups, H.B. 3279 establishes an offense under new Section 66.024 of the Parks & Wildlife Code for uprooting or digging out seagrass in certain circumstances.

TMCEC: The bill creates a Class C Parks & Wildlife misdemeanor for uprooting, by means of a propeller, any seagrass plant, as defined in Section 66.024(a), from a saltwater bottom area within the jurisdiction of this state without authorization by commercial license or Parks and Wildlife Department permit. The bill establishes defenses to prosecution for this offense for the use of anchors and electronic trolling motors, as well as the operation of a vessel consistent with acceleration required to reach and stay on plane.

S.B. 124
Subject: Tampering with Certain Governmental Reporting Records for School Districts and Open-Enrollment Charter Schools
Effective: September 1, 2013

Under current law, it is a third degree felony to falsify or otherwise impair the accuracy of a public school record, report, or assessment instrument. S.B. 124 amends Sections 37.10(c)(2) of the Penal Code to also make it a third degree felony to falsify data reported through the Public Education Information Management System (PEIMS). The bill also amends Section 39.03(d) to increase the penalty for official oppression offenses from a Class A misdemeanor to a third degree felony if the public servant actor committed the offense with the intent to impair the accuracy of data reported through the PEIMS system.

S.B. 299
Subject: Intentional Display of a Handgun by a Person with a Concealed Carry License
Effective: September 1, 2013

Current law criminalizes the intentional failure to conceal a handgun by a person licensed to carry a concealed handgun. S.B. 299 amends Section 46.035(a) of the Penal Code to clarify that the failure to conceal a handgun is only illegal when the gun is displayed in plain view of another person in a public place. This bill also amends Section 46.035(h) of the Penal Code to provide an affirmative defense to prosecution for this offense if the weapon was displayed pursuant to a justified use of force, as well as deadly force, under Chapter 9 of the Penal Code.

S.B. 529
Subject: Creation of the Offense of Installation, Transfer, Use, or Possession of an Automated Sales Suppression Device or Phantom-ware
Effective: September 1, 2013

Automated sales suppression devices and phantom-ware are devices or software used to commit tax fraud. They falsify sales data on electronic cash registers at the point of sale. Merchants using these devices and software collect the full sales tax from their customers, but remit only a portion of those collections to the state.

Current law prohibits the act of committing tax fraud, but says nothing about the software or devices used to commit the fraud. S.B. 529 makes it a state jail felony to willfully and knowingly sell, purchase, install, transfer, or possess any automated sales suppression device, or phantom-ware by adding Chapter 326 to the Business & Commerce Code. This bill also amends Subdivision (2) of Article 59.01 of the Code of Criminal Procedure, adding automated sales suppression devices and phantom-ware to the list of contraband items.

S.B. 701
Subject: Defense to Criminal Trespass for Certain Utility Companies' Employees and Agents
Effective: September 1, 2013

In 2009, the Legislature amended Section 30.05(e) of the Penal Code to allow an employee or agent of a utility performing a duty within the scope of his or her employment or agency to claim an affirmative defense to a charge of trespass. The problem with the 2009 legislation is that it failed to include employees and agents of all electric and gas utilities among those able to claim the affirmative defense. S.B. 701 amends Section 30.05(e) of the Penal Code, clarifying that employees and agents of municipally owned utilities, gas utilities, and electric cooperatives can claim the same affirmative defense as those who work for other utilities.

S.B. 821
Subject: Prosecution of Criminal Offenses Involving Insufficiently Funded Accounts for Electronic Funds Transfers
Effective: September 1, 2013

Currently, prosecutors lack the authority to file charges against individuals or corporations that submit insufficiently funded accounts for electronic funds transfers, otherwise known as "hot drafts." S.B. 821 allows the prosecution of those who pay with "hot drafts."

TMCEC: S.B. 821 amends Section 31.06 of the Penal Code, clarifying that a drawee (i.e., the party on which an order for the payment of money is drawn) or third-party holder in due course who negotiated an order is included as an owner of property for purposes of theft-related offenses under Sections 31.03 and 31.04 of the Penal Code. This bill also amends Section 162.409(a) of the Tax Code to clarify that a check or similar sight order is defined by Section 1.07 of the Penal Code. An offense of issuing a bad check or similar sight order under Section 162.409 of the Tax Code is a Class C misdemeanor.

S.B. 900
Subject: Administrative, Civil, and Criminal Penalties for Pipeline Violations
Effective: September 1, 2013

S.B. 900 increases statutory penalties for pipeline safety violations in Texas to bring them into line with federal law.

TMCEC: The criminal penalty for a violation of Section 117.053 is increased from $25,000 to $2 million in an amendment to Section 117.053(b) of the Natural Resources Code. However, this is not a fine-only offense. The Legislature also added Section 117.053(c) to the Natural Resources Code to allow sentences of confinement to run concurrently for multiple offenses under Section 117.053 with the cumulative total of fines imposed under this Section not to exceed the maximum amount for a single offense under this section, and providing that such offenses under this section are part of the same criminal episode.

S.B. 900. increases the criminal penalty for an offense under Section 117.054 from $25,000 to $2 million and reduces the term of imprisonment in the Texas Department of Criminal Justice to not more than five years. Additionally, amended Section 117.054 provides that sentences of confinement would run concurrently for multiple offenses, and the cumulative total of fines imposed under this section are not to exceed the maximum amount for a single offense under this section. Multiple offenses are also the part of the same criminal episode under Section 117.054.

Section 121.310 of the Utilities Code is amended to increase the criminal penalty for an offense under that section relating to pipeline safety. For a violation not related to pipeline safety the criminal penalty will remain a fine of not less than $50 and not more than $1,000. However, this also is no a fine-only offense as Section 121.310 allows for incarceration ranging from 10 days to six months. The criminal penalty for an offense relating to pipeline safety has increased to a fine of not more than $2 million. For multiple offenses under this section, all offenses related to pipeline safety are part of the same criminal episode, sentences of confinement will run concurrently, and the cumulative total of fines imposed under this section for offenses relating to pipeline safety may not exceed the maximum amount imposed for a conviction of a single offense under this section.

S.B. 972
Subject: Repeal of Criminal Offenses Relating to TDLR Regulated Occupations
Effective: June 14, 2013

The Texas Department of Licensing and Regulation (TDLR) oversees dozens of occupational regulatory programs and, as part of its regulatory responsibilities, enforces various provisions of the Health & Safety Code, Labor

Code, and Occupations Code by utilizing remedies that include warnings and reprimands, administrative and civil penalties, and, in some cases, criminal penalties. Critics claim that it is unnecessary and inappropriate for statutory provisions relating to occupational regulation, which is a civil matter, to contain criminal penalties. In an effort to decriminalize the governing statutes for TDLR occupational regulatory duties, S.B. 972 repeals several misdemeanor offenses relating to certain occupations regulated by TDLR in the Health & Safety Code, Labor Code, and Occupations Code.

TMCEC: This bill repeals Class C misdemeanors including: failure to remedy elevator non-compliance 60 days after receiving notice of noncompliance (Section 754.024, Health & Safety Code); failure to register by a property tax professional (Section 1151.251, Occupations Code); and violation of provisions of the Occupation Code relating to cosmetologists (Section 1602.554, Occupation Code).

S.B. 1010
Subject: Access to Certain Facilities by Search and Rescue Dogs and Their Handlers
Effective: September 1, 2013

Texas faces numerous emergency situations every year, including hurricanes, tornadoes, and wildfires. When these disasters strike, search and rescue teams often travel with little advance notice to locations across Texas. While traveling, search and rescue teams frequently experience difficulties in securing lodging, food, and public transportation.

In an effort to make traveling and lodging more convenient for search and rescue teams, S.B. 1010 prohibits discrimination against search and rescue dogs and their handlers by public facilities. The bill provides that a person may ask to see proof that the handler is a peace officer, firefighter, or a certified member of a nationally recognized search and rescue agency.

TMCEC: S.B. 1010 adds Chapter 785 to the Health & Safety Code, to create a misdemeanor offense punishable by not less than $300 or more than $1,000 for public facilities to deny access to or discriminate against search and rescue dogs and their handlers. The bill provides a defense to prosecution if the actor requested the dog's handler to show the appropriate credentials and the handler failed to do so. The bill also provides certain civil remedies against a handler whose dog causes property damage or personal injury.

S.B. 1427
Subject: Criminal Penalty for Violations of the Citrus Budwood Certification Program
Effective: September 1, 2013

Citrus Greening Disease is a bacterial disease spread by an insect vector known as the Asian Citrus Psyllid. This disease is regarded as the most devastating citrus disease worldwide, killing citrus plants and slashing citrus production, with no applicable cure or treatment for an infected tree. Since the disease was first discovered in Florida several years ago, it has negatively impacted that state's citrus industry and that the disease was recently discovered in Texas. Accepted solutions for controlling the disease are vector control, removal of infected trees, and provision of clean, disease-free trees. In order to avoid the challenges the Florida citrus industry recently faced, the state must ensure that a clean source of nursery stock is maintained. S.B. 1427 addresses this issue by establishing provisions relating to the administration of the citrus budwood certification program and the creation of the citrus nursery stock certification program.

S.B. 1427 amends Section 19.012 of the Agriculture Code to create a Class C misdemeanor offense to sell or offer to sell citrus nursery stock falsely claiming that it is certified or that it comes from a designated foundation grove or a certified citrus nursery; to sell or offer to sell in the citrus zone citrus nursery stock that has not been propagated in a certified citrus nursery; to operate, in the citrus zone for the propagation of citrus nursery stock, a citrus nursery that is not a certified citrus nursery or that is not in compliance with applicable provisions or rules; or to operate, outside of the citrus zone for the propagation of citrus nursery stock for sale in the citrus zone, a

citrus nursery that is not a certified citrus nursery or that is not in compliance with applicable provisions or rules.

S.B. 1536
Subject: Imposing Criminal Penalties Relating to the Texas Military
Effective: September 1, 2013

S.B. 1536 implements recommended updates to state law regulating Texas military forces.

S.B. 1536 adds Chapter 437 to the Government Code. New Section 437.210 establishes the Class B misdemeanor offense of physically and intentionally hindering, delaying, or obstructing or intentionally attempting to hinder, delay, or obstruct a portion of the Texas military forces on active duty in performance of a military duty. This offense, formerly punishable as a misdemeanor offense with a fine of not less than $100 or more than $1,000 or imprisonment for not less than one month or more than one year was previously located in Section 431.012 of the Government Code, which was repealed by this bill.

Traffic Safety, Transportation, and Transportation Code Amendments

H.B. 38
Subject: Increasing Penalty for Installing Counterfeit Airbags
Effective: September 1, 2013

The National Highway Traffic Safety Administration issued a report in 2012 showing that automobile repair shops nationwide have been using counterfeit airbags as replacement parts. Because these airbags have been shown to malfunction and pose a risk of bodily harm or death to vehicle occupants, the Legislature increased penalties for installation of counterfeit airbags.

H.B. 38 amends Section 547.614 of the Transportation Code to increase the penalty from a Class A misdemeanor to a state jail felony for the following offenses: knowingly installing a counterfeit airbag; purporting to install an airbag and failing to do so; making or selling a counterfeit airbag to be installed in a motor vehicle; intentionally altering an airbag that is not counterfeit in a manner that causes the airbag to not meet all applicable federal safety regulations for an airbag designed to be installed in a vehicle of a particular make, model, and year; representing to another person that a counterfeit airbag installed in a motor vehicle is not counterfeit; or causing another person to commit such a violation or assisting a person in such a violation. The bill enhances the penalty for such an offense to a felony of the first degree if it is shown at trial that the offense resulted in the death of a person. Enhancements to third or second degree felonies are still in place for subsequent convictions or offenses resulting in serious bodily injury, respectively.

H.B. 115
Subject: Requirements for Identification Numbers on Vessels
Effective: September 1, 2013

Interested parties contend that the broadness of the current requirements for the placement of identification numbers and registration decals on aquatic vessels has led to visibility problems, especially on vessels with complex hull structures, and issues involving the placement of identification numbers in locations susceptible to being rendered unrecognizable in the process of wear and tear. Situations that arise from such complications cost time and resources for enforcement agencies. H.B. 115 amends Sections 31.021, 31.032, and 31.033 of the Parks & Wildlife Code to make identification markings on vessels more visible by revising the requirements for the location and manner of placement of identification number and registration decals.

TMCEC: The offense of operating, giving permission to another to operate, docking, mooring, or storing a vessel without a properly displayed identifying number, contained in Section 31.021, is a Class C Parks & Wildlife Code misdemeanor, punishable by a fine of not less than $100 or more than $500. Section 31.127 provides a discretionary compliance dismissal for the offense if the person was charged with operating a vessel with an expired certificate of number if: (1) the person remedies the defect not later than the 10th working day after the date of the offense; (2) the person pays an administrative fee not to exceed $10; and (3) the certificate of number has not been expired more than 60 days.

Although the changes made by H.B. 115 are of more concern to officers enforcing the Water Safety Act, courts should be aware of the changes in the event a defendant brings in proof of remedying an expired certificate of number to be sure the placement complies with the new requirements.

H.B. 120; H.B. 1514; H.B. 2485
Subject: Specialty License Plates with Exemptions from Parking Meter Fees
Effective: September 1, 2013

TMCEC: These three bills provide for vehicles displaying certain armed forces specialty license plates to be

exempt from paying parking fees collected through parking meters charged by a governmental authority, other than a branch of the federal government, under Section 681.008(b) of the Transportation Code.

H.B. 120 creates a specialty plate for recipients of the Defense Superior Service Medal by adding Section 504.319 to the Transportation Code, and provides them with parking privileges. H.B. 1514 does not create a new specialty plate, but adds veterans who display World War II veteran specialty license plates to the list of those who are exempt from paying parking meter fees. H.B. 2485 creates a specialty license plate for recipients of the Air Medal and Air Medal with Valor by adding Subsection (a-1) to Section 504.315 of the Transportation Code, and also provides holders of these license plates with an exemption from paying parking meter fees.

H.B. 338
Subject: Jurisdiction for Towed Motor Vehicle Hearings
Effective: June 14, 2013

H.B. 338 amends Section 2308.453 of the Occupations Code to require a hearing regarding a towed motor vehicle to be held in any justice court having jurisdiction in the county, rather than in the precinct, from which the vehicle was towed. The bill also revises Section 2308.455, regarding the required contents of the notice for such a hearing, to require that the notice include a statement of the person's right to request a hearing in any justice court having jurisdiction in the county from which the vehicle was towed or in which the booted vehicle is stored, and to require that the notice include, in addition to certain contact information for each justice court, the address of an internet website maintained by the Office of Court Administration that contains such information.

TMCEC: Just as a reminder, municipal courts do not have jurisdiction to conduct towed motor vehicle hearings, but do have jurisdiction over the criminal offense of illegal towing. (See, Section 2308.405 of the Occupation Code.) As fines for illegal towing and booting range from $500 to $1,500, ostensibly, restitution orders stemming from convictions in such cases can negate the need for a separate towed motor vehicle hearings.

H.B. 347
Subject: Prohibiting Use of a Wireless Communication Device While Operating a Motor Vehicle on School Property
Effective: September 1, 2013

Under current law, drivers are prohibited from using cell phones in a school crossing zone unless the vehicle is stopped or they are using a hands-free device. However, areas on school property such as pick-up and drop-off lanes or parking lots are excluded. This unnecessarily places young students at risk of being hit by a distracted driver. According to the Center for Disease Control and Prevention, more than nine people are killed and more than 1,600 people are injured every day in the United States as a result of distracted driving, which includes using a cell phone. H.B. 347 provides additional protection to students and staff on school grounds by expanding the current limitations on cell phone use in a school crossing zone to the property of a public elementary, middle, junior high, or high school for which a local authority has designated a school crossing zone. Cell phone use is only restricted during the time a reduced speed limit is in effect for the school crossing zone. Further, it does not apply to vehicles that are stopped, or to drivers using a hands-free device. Provisions in the current law that create exceptions to the law or that create an affirmative defense for drivers who use a cell phone to make an emergency call also apply to a person who makes such a call while driving on school property. This law will improve safety and reduce the risks posed to young students in Texas by distracted drivers.

TMCEC: H.B. 347, as originally filed, simply added *school property* to the existing statute in Section 545.425 of the Transportation Code governing cell phone use in a school crossing zone. The bill, as signed by the Governor, instead adds a new Section 545.4252, creating almost an identical offense to cover cell phone use on school property. The only difference is that there are no signs required to be posted under Section 545.4252, as there are required to be posted at each entrance to the school crossing zone under Section 545.425.

Interestingly, now drivers can face arrest and prosecution for driving on school property while using a cell phone before they ever enter the school crossing zone where they are given notice that the behavior is an offense.

The new law preempts any local ordinances, rules, or regulations relating to the use of a wireless communication device by the operator of a motor vehicle, unless the city has prohibited the use of a wireless communication device while operating a motor vehicle throughout the entire jurisdiction.

H.B. 434
Subject: Persons Authorized to Take Blood Specimens for Intoxication-Related Offenses
Effective: September 1, 2013

Under current law, only a physician, qualified technician, chemist, registered nurse, or licensed vocational nurse is authorized to take a blood specimen at the request or order of a peace officer for purposes of intoxication-related offenses. Satisfying this requirement involves time and cost in transporting the individual suspect to facilities such as hospitals. In an effort to minimize time and costs spent on blood draws under these circumstances, H.B. 434 revises the list of persons authorized to take blood specimens at the request or order of a peace officer.

H.B. 434 amends Section 724.017 of the Transportation Code to authorize a licensed or certified emergency medical technician-intermediate or emergency medical technician-paramedic to take a blood specimen at a peace officer's request or order under statutory implied consent provisions for certain intoxication-related offenses. The bill conditions that authority on the authorization by the medical director of the entity employing the technician-intermediate or technician-paramedic.

H.B. 434 requires the taking of the specimen to be according to a protocol developed by the medical director that provides direction to the technician-intermediate or technician-paramedic for the taking of a blood specimen at a peace officer's request or order. The bill authorizes such a developed protocol to address whether a technician-intermediate or technician-paramedic engaged in the performance of official duties is entitled to refuse to go to the location of a person from whom a peace officer requests or orders the taking of a blood specimen solely for the purpose of taking that blood specimen; to refuse to take a blood specimen if the technician-intermediate or technician-paramedic reasonably believes that complying with the peace officer's request or order to take the specimen would impair or interfere with the provision of patient care or the performance of other official duties; or to refuse to provide the equipment or supplies necessary to take a blood specimen. The bill requires a peace officer to observe the taking of the specimen by a licensed or certified emergency medical technician-intermediate or emergency medical technician-paramedic at a peace officer's request or order and to immediately take possession of the specimen for purposes of establishing a chain of custody.

H.B. 434 removes a chemist from the persons authorized to take a blood specimen at a peace officer's request or order for purposes of implied consent.

H.B. 438
Subject: Justice Courts Authorized to Issue an Occupational Driver's License
Effective: September 1, 2013

In Texas, an occupational driver's license authorizes the operation of a noncommercial motor vehicle in connection with a person's occupation, religious purposes, educational purposes, or the performance of essential household duties when an individual's driver's license has been suspended for reasons other than a physical or mental disability or a conviction under Section 49.04 of the Penal Code (Driving While Intoxicated). Legislation enacted decades ago authorized a person to obtain an occupational driver's license by filing a verified petition only in a district court. In an attempt to unclutter the dockets of district courts and to save money for the state and the applicant for the occupational license, subsequently enacted legislation expanded the authorized filing venues to include a county court. H.B. 438 amends Section 521.242 of the Transportation Code to expand the authorized

venues in which an eligible person whose driver's license has been suspended may petition to apply for an occupational driver's license to include a justice court with jurisdiction over the precinct in which the person resides or the offense occurred for which the license was suspended.

TMCEC: The original version of H.B. 438 would have expanded venue to include both the justice and municipal courts. Many cities objected. Consequently, the version that was signed into law by the Governor *does not* include municipal courts as an authorized venue for applications for occupational driver's licenses.

H.B. 567
Subject: Definition of an Authorized Emergency Vehicle
Effective: June 14, 2013

Currently, in Transportation Code provisions relating to the rules of the road, an "authorized emergency vehicle" includes public and private ambulances operated by licensed persons. However, emergency services providers are increasingly using vehicles that are not ambulances for first response to medical emergencies, particularly when a regular ambulance is not immediately available or when additional emergency personnel are necessary. Since these vehicles were not included within the statutory definition of an "authorized emergency vehicle," they must comply with certain traffic laws and parking restrictions when responding to an emergency call and cannot operate with certain emergency lighting and sound equipment.

H.B. 567 amends Section 541.201 of the Transportation Code and redefines "authorized emergency vehicles" to include an emergency medical services vehicle authorized under an emergency medical services provider license issued by the Department of State Health Services under Chapter 773 of the Health & Safety Code and operating under a contract with an emergency services district that requires the emergency medical services provider to respond to emergency calls with the vehicle.

TMCEC: The 83rd Legislature made multiple additions to the definition of an "authorized emergency vehicle" under Section 541.201 of the Transportation Code, each resulting in a different renumbering of Subsection (1). See also H.B. 802, S.B. 223, and S.B. 1917.

H.B. 625
Subject: Fixing the Penalty for Operating a Vehicle Without a License Plate
Effective: September 1, 2013

Recent legislation inadvertently removed a section of law that set a fine for operating a vehicle without license plates. License plates are necessary for law enforcement officers to identify vehicles effectively and to maintain public safety. A penalty is necessary to ensure compliance with the law. H.B. 625 holds drivers accountable by restoring the penalty for operating a vehicle without license plates as a misdemeanor offense punishable by a fine not to exceed $200.

TMCEC: In 2011, the Legislature passed H.B. 2357, which mistakenly removed the penalty for operating a vehicle without license plates. H.B. 625 remedies this oversight by amending Section 504.943 of the Transportation Code to provide a fine not to exceed $200, the former penalty. H.B. 625 does not take effect until September 1, and only applies to offenses committed on or after the effective date.

The Legislature also passed H.B. 2741 this session, creating a general penalty of a fine not less than $5 or more then $200 for violations of Chapter 504 of the Transportation Code (Section 504.948). This provision became effective June 14, 2013. So, for those missing license plate offenses committed after September 1, 2013, the fine not to exceed $200 from H.B. 625 will apply. For those offenses committed between June 14, 2013 and August 31, 2013 (inclusive), the general penalty of $5 to $200 from H.B. 2741 will apply. For those offenses committed between January 1, 2012 (the effective date of the legislation removing the penalty) and June 13, 2013 (inclusive),

courts will be left with familiar lingering questions about whether an offense was committed. See, Katie Tefft, "The State of License Plate Laws in Texas" *The Recorder* (December 2011).

H.B. 719
Subject: Operating a Golf Cart or Utility Vehicle on a Public Highway in Certain Counties
Effective: June 14, 2013

Under current law, a municipality's governing body may allow golf carts and utility vehicles to have restricted access to certain public highways within the municipality's corporate boundaries while the commissioners court in certain counties could allow such carts and vehicles similar restricted access to certain public highways in unincorporated areas of those counties. Interested parties note that legislation is needed to extend this provision to allow for the operation and use of golf carts and certain utility vehicles on public highways in the unincorporated areas of certain other counties with similar features.

H.B. 719 amends Section 551.402 of the Transportation Code to require the Department of Motor Vehicles (DMV) to establish by rule procedures to issue license plates for golf carts used for operation in accordance with Sections 551.403 and 551.404 of the Transportation Code. The bill repeals the current provisions in Section 504.510 that require the DMV to issue specialty license plates for golf carts.

H.B. 719 also amends Section 551.404 of the Transportation Code to expand the list of counties for which the commissioners court is authorized to allow a golf cart or utility vehicle to operate, on all or part of a public highway that has a speed limit of not more than 35 miles per hour and is located in the unincorporated area of the county, to include, in addition to a county that borders or contains a portion of the Guadalupe River and contains a part of a barrier island that borders the Gulf of Mexico, (1) a county adjacent to such a county that has a population of less than 30,000 and contains a part of a barrier island that borders the Gulf of Mexico or (2) a county that contains a portion of the Red River.

H.B. 802
Subject: Definition of an Authorized Emergency Vehicle
Effective: June 14, 2013

In Texas, county judges have responsibility for emergency preparedness and response within their local jurisdictions. These officials may appoint an emergency management coordinator to manage day-to-day program activities. Increasingly, urban areas are hiring professional emergency managers who may be highly trained in incident command and response but, not being law enforcement officers, firefighters, or health personnel, had to mix with regular traffic when rushing to a disaster site, as current statutes do not recognize emergency managers among those authorized to use lights and sirens. H.B. 802 amends Section 541.201 of the Transportation Code to expand the definition of "authorized emergency vehicle" to include a county-owned or county-leased emergency management vehicle that has been designated or authorized by the county commissioners court.

TMCEC: The 83rd Legislature made multiple additions to the definition of an "authorized emergency vehicle" under Section 541.201 of the Transportation Code, each resulting in a different renumbering of Subsection (1). See also H.B. 567, S.B. 223, and S.B. 1917.

H.B. 894
Subject: Use of Dealer's License Plates by Independent Dealers
Effective: September 1, 2013

Interested parties contend that car dealers in Texas use dealer plates and temporary tags to make their inventory legal to drive for various reasons, including test-driving and driving vehicles to be serviced. These parties also contend that dealers are issued permanent metal plates to conduct personal business with a car that could potentially be part of their inventory. Under current law, a dealer cannot use a metal dealer's plate on a service or

work vehicle or commercial vehicle carrying a load. Many independent motor vehicle dealers may, however, use a truck from their inventory to haul vehicles to and from points of sale, which is often an auction. Since independent dealers often conduct fewer transactions than franchised dealers, they have little need for contracting with car hauling companies. As a result, independent dealers face limited and costly options for complying with state laws on delivering inventory to and from points of sale.

H.B. 894 amends Section 503.068 of the Transportation Code, adding Subsection (b-1), which authorizes an independent car dealer or employee of such a dealer to use a metal dealer's plate on a service or work vehicle used to transport a vehicle in the dealer's inventory to and from a point of sale. However, dealers and employees may not operate a service or work vehicle as a tow truck without a permit required under the provisions of Chapter 2308 of the Occupations Code, concerning vehicle towing and booting.

H.B. 949
Subject: Insurance Coverage for Vehicles Acquired During Policy Term
Effective: September 1, 2013

Since 2003, insurance coverage for newly acquired and replaced vehicles has not been required as standard coverage for personal automobile insurance policies, although most insurers include such coverage. However, because insurers have different policies, problems have arisen for purchasers who acquire a vehicle, particularly on a weekend or holiday, and who are not able to contact their insurance company or agent to verify they are covered. The purchaser unknowingly drives a vehicle that is not covered, leaving them at risk. H.B. 949 adds Section 1952.059 to the Insurance Code to require insurers to provide the same or similar coverage for vehicles acquired during the term of an insured's policy for up to 20 days. The bill's provisions apply only to insurance policies that are issued or renewed on or after January 1, 2014.

H.B. 1044
Subject: Operating All-Terrain Vehicles and Recreational Off-Highway Vehicles on Beaches
Effective: September 1, 2013

There has been controversy over whether the operation of all-terrain vehicles and recreational off-highway vehicles is permissible on public beaches. A recent Attorney General opinion was interpreted by one county to authorize the use of such vehicles on public beaches, but not on public roads, pedestrian-only beaches, or dunes. H.B. 1044 provides for the operation of such vehicles on a beach, with certain limitations.

H.B. 1044 amends the Natural Resources Code, Parks & Wildlife Code, and the Transportation Code relating to the operation of all-terrain vehicles and recreational off-highway vehicles. The bill amends Section 502.140 of the Transportation Code to authorize the state, county, or municipality to register an all-terrain or recreational vehicle that is owned by the state, county, or municipality and is operated on a public beach or highway in order to maintain public safety and welfare. H.B. 1044 repeals Section 502.140(c), relating to the authorization of a specified recreational off-highway vehicle to be operated on a public or private beach in the same manner a golf cart may be operated on a public or private beach.

H.B. 1044 also amends Chapter 663 of the Transportation Code to make the following statutory provisions relating to the operation of all-terrain vehicles on public property also apply to operation on a beach: prohibiting operation unless the operator holds a safety certificate or meets other related requirements; requiring the operator to carry the certificate and display it at the request of a law enforcement officer and to wear specified safety apparel; requiring the vehicle to be specifically equipped and to display a lighted headlight and taillight during specified times; prohibiting operation if the required equipment has been expressly modified or removed; prohibiting operation in a careless or reckless manner; and prohibiting a person from carrying a passenger unless the vehicle is designed by the manufacturer to transport a passenger. Beach is defined as a beach area, publicly or privately owned, that borders the seaward shore of the Gulf of Mexico.

H.B. 1044 adds Section 663.0371, prohibiting a person from operating an all-terrain vehicle on a beach except as provided by the new section, which requires that a person operating an all-terrain vehicle on a beach must hold and have in the person's possession a driver's license or a commercial driver's license. It also specifies that an operator of an all-terrain vehicle may drive the vehicle on a beach that is open to motor vehicle traffic, but a person who is authorized to operate an all-terrain vehicle that is owned by the state, a county, or a municipality may drive the all-terrain vehicle on *any* beach if the vehicle is registered under Section 502.140(b).

The bill allows the Department of Transportation (TxDOT), a county, or municipality to prohibit the operation of an all-terrain vehicle on a beach if TxDOT or the governing body determines that the prohibition is necessary for public safety.

TMCEC: A person who operates an all-terrain vehicle in violation of Section 663.0371 commits a Class C misdemeanor under Section 663.038 of the Transportation Code. (Note: S.B. 487 clarifies the definitions of "all-terrain vehicle" and "recreational off-highway vehicle.")

H.B. 1097
Subject: Speeding Violations in a Construction or Maintenance Work Zone
Effective: September 1, 2013

Interested parties have expressed concern about drivers being unaware of the speed limit in construction or maintenance work zones and therefore committing an offense as the nearest speed limit signs may not be near a construction or maintenance work zone. H.B. 1097 alleviates this problem by placing additional requirements on the signs marking a construction or maintenance work zone.

TMCEC: H.B. 1097 changes the current law regarding speeding violations in construction or maintenance work zones by amending Section 542.404 of the Transportation Code. Under the amended law, fines for speeders in a construction or maintenance work zone may only be doubled when workers are present and if the construction or maintenance work zone is marked by a sign indicating the maximum lawful speed.

H.B. 1106
Subject: Water Safety Act Updates; New Offense for Failure to Have Working Visual Distress Signals on Vessels
Effective: September 1, 2013

Provisions in the Water Safety Act contain sections that are outdated due to technological advances, and these outdated sections are problematic for boaters. Recent changes in the Code of Federal Regulations and a review of current state law necessitate an update of the Water Safety Act to avoid jeopardizing the federal funding provided to the Texas Parks & Wildlife Department for the purpose of recreational boating safety. H.B. 1106 amends provisions of Chapter 31 of the Parks & Wildlife Code to remove inconsistencies that exist between the Water Safety Act and the Code of Federal Regulations.

TMCEC: Among other changes, H.B. 1106 adds Section 31.074 to the Parks & Wildlife Code, requiring the use of a working visual distress signal by vessels operating on Texas coastal waters. Violation of this provision, like other provisions of Chapter 31, constitutes a Class C Parks & Wildlife misdemeanor.

H.B. 1174
Subject: Increasing the Penalties for Illegally Passing a Stopped School Bus
Effective: September 1, 2013

Last year, 8,669 out of 10,855 Texas school bus drivers who participated in a one-day survey of driving behavior said they witnessed a driver passing their bus while children were boarding or exiting their bus, according to the National Association of State Directors of Pupil Transportation Services. Critics asserted that increasing fines for

this potentially dangerous violation would create a stronger deterrent for a driver in committing such a violation.

H.B. 1174 amends Section 545.066 of the Transportation Code to increase the minimum fine for the misdemeanor offense relating to illegally passing a stopped school bus from $200 to $500 and the maximum fine for such an offense from $1,000 to $1,250. The bill enhances the penalty for a second or subsequent conviction of that offense committed within five years of the date on which the most recent preceding offense was committed to a misdemeanor punishable by a minimum fine of $1,000 and a maximum fine of $2,000.

TMCEC: The increased fine amount only applies to offenses that are committed on or after the effective date. Courts should take note that this amendment does not contain the usual enhancement language stating "if it is shown on trial." The plain language of the amendment suggests that a higher fine can be imposed without it having to be shown on trial. Such language, however, should be considered in light of case law and other applicable statutes. It is less than clear, absent a complaint, how higher fines are to be imposed when a case is initiated by citation and the case is uncontested.

H.B. 1294
Subject: Child Passenger Safety Seats; Fine Range and Defense to Prosecution
Effective: September 1, 2013

Current law makes it an offense to operate a passenger vehicle and transport a child younger than eight years of age−unless the child is taller than four feet, nine inches−while not keeping the child secured in a child passenger safety seat. However, current law provides a defense to prosecution for those who own child passenger safety seats but are not using them, which does nothing to ensure children's safety.

H.B. 1294 amends Section 545.4121 of the Transportation Code to remove as a defense to prosecution that the defendant provides satisfactory evidence to the court that that the defendant possesses an appropriate child passenger safety seat system for each child required to be secured in such a system. The bill instead establishes as a defense to prosecution that the defendant provides satisfactory evidence to the court that, at the time of the offense, (1) the defendant was not arrested or issued a citation for violation of any other offense, (2) the vehicle the defendant was driving was not involved in a collision, (3) the defendant did not possess a child passenger safety seat system in the vehicle, and, subsequent to the time of the offense, (4) the defendant obtained an appropriate child passenger safety seat system for each child required to be secured in such a system. Changing the defense to prosecution attempts to ensure that drivers obtain and use their new child safety seat in the future by removing the current defense allowing drivers have a citation dismissed, even on subsequent offenses, for owning, but not using the seat.

TMCEC: While H.B. 1294 makes significant changes to the current child passenger safety seat law, it is hardly clear how it will ensure the safety of children. In addition to the changes to the defense to prosecution in Section 545.4121, it amends Section 545.412(b) of the Transportation Code, changing the fine for a child passenger safety seat offense. H.B. 1294 fixes the penalty at a fine of not less than $25 and not more than $250. There is no more tiered fine depending on the number of convictions. However, the new fine amount and defense only apply to offenses committed on or after the effective date.

H.B. 1607
Subject: Increased Speed Limits on County Roads
Effective: June 14, 2013

Current state law sets the maximum speed limit allowed on certain county roads or highways at 60 miles per hour, but some of these roads are designed and constructed for higher speed limits. H.B. 1607 amends Section 545.355(c) of the Transportation Code to increase from 60 to 70 miles per hour the maximum speed limit a commissioners court of a county is authorized to establish for certain county roads or highways.

H.B. 2204
Subject: Establishing a Variable Speed Limit Pilot Program
Effective: June 14, 2013

Regulating traffic flow through the use of variable speed limits is shown to promote a smoother, safer flow of traffic and can be used to provide protection in maintenance work zones.

The Texas Transportation Commission (TTC) currently lacks the authority to establish variable speed limits, which are used to lower speed limits in response to conditions like adverse weather, congestion, work zones, and traffic incidents.

H.B. 2204 seeks to improve safety and operational efficiency in areas of reduced road capacity and reduces the possibility of primary and secondary traffic crashes by providing the TTC the authority to establish variable speed limits.

H.B. 2304
Subject: Certification of Sheriffs and Deputy Sheriffs to Enforce Commercial Motor Vehicle Safety Standards in Certain Counties
Effective: June 14, 2013

The Texas Department of Public Safety (DPS) is tasked with enforcing federal commercial motor vehicle regulations, which in many cases are more stringent than state regulations. Under the current law, sheriffs or deputy sheriffs can be certified to enforce these regulations if they serve in a border county or in a county with a population of over 2.2 million.

It is not uncommon for a peace officer who is not certified to pull over a vehicle for another violation that turns out to also be in violation of federal commercial motor vehicle regulations. In such cases, the peace officer must call in assistance from a certified officer. This often results in the vehicle and officer spending significant time on the side of the road awaiting a certified officer. This increases safety risks for those on the side of the road, ties up the officer who could be policing elsewhere and costs the driver time. Sometimes, a certified officer is not available and the offending vehicle must be permitted to continue its trip without penalty and despite potential safety risks depending on the nature of the violation.

H.B. 2304 amends Section 644.101(c) of the Transportation Code to lower the population bracket for counties where sheriffs or deputy sheriffs can be certified by DPS to enforce federal commercial motor vehicle regulations from 2.2 million to one million. This will open the opportunity to Bexar, Tarrant, and Travis Counties.

H.B. 2305
Subject: Creating a Combined Vehicle Inspection and Registration System
Effective: September 1, 2013; March 1, 2015

TMCEC: H.B. 2305 makes sweeping changes to motor vehicle inspections currently under Chapter 548 of the Transportation Code to establish a *combined* vehicle inspection and vehicle registration sticker. The bill requires the Department of Public Safety (DPS) and the Department of Motor Vehicles (DMV) to replace the current dual inspection/registration sticker system with a single registration sticker. Under this new system, a vehicle may not be registered without first providing proof of a safety and/or emission vehicle inspection report, either electronically or via a printed report. The new system will require vehicle owners to complete vehicle safety inspections prior to their registration renewal, not earlier than 90 days before the expiration of the vehicle's registration. Vehicle inspection reports will be valid until the end of the 12th month following the month it was issued. The bill requires the DMV and DPS to begin adopting rules necessary to implement these changes and create a database for the submission of the new reports on the effective date of September 1, 2013, but not later than March 1, 2014.

Of most significance to municipal courts is the repeal of Section 548.605 of the Transportation Code, which currently provides the compliance dismissal for driving with an expired inspection sticker. As inspection stickers will no longer exist once the new single sticker system is implemented, there will be no separate offense for driving with an expired inspection sticker. Thus, Section 548.602, which currently contains the offense for failure to display an inspection certificate, is also repealed. However, these changes do not take effect until *March 1, 2015* and will only apply to an offense committed on or after that date. Offenses committed until then will be governed by current law.

H.B. 2305 modifies the criminal offenses relating to false, fraudulent, and counterfeit motor vehicle inspection stickers to account for the new inspection reports. Likewise, the bill makes conforming changes to the Transportation Code, Code of Criminal Procedure, Education Code, Health & Safety Code, and Occupations Code to refer to the inspection certificate as a vehicle inspection report.

H.B. 2690
Subject: Towing a Vehicle that is for Sale by an Unlicensed Seller
Effective: September 1, 2013

Many municipalities currently prohibit by ordinance the illegal sale of vehicles by unlicensed persons, known as "curbstoning." Interested parties assert that many such ordinances are individually crafted with the assistance of state agencies and that there are currently no effective provisions that may be uniformly enforced across the state. H.B. 2690 provides a consistent regulatory environment across the state regarding the sale of motor vehicles by certain sellers.

H.B. 2690 amends Chapter 503 of the Transportation Code by adding Section 503.096 to authorize a peace officer to have a vehicle that is for sale by a dealer that does not have a "Dealer General Distinguishing Number" towed from the location and stored at a vehicle storage facility if certain conditions are met. A peace officer, an appropriate local government employee, or an investigator will be required to comply with specified notice requirements. A peace officer will be allowed to prevent a person from removing a vehicle unless that individual provides evidence of ownership.

H.B. 2741
Subject: New Offenses and Amendments to the Transportation Code
Effective: September 1, 2013 (except Section 504.948 which is effective June 14, 2013)

H.B. 2741 provides general clean-up language for the Department of Motor Vehicles (DMV). The bill replaces references and definitions in certain sections of the Finance, Occupations, and Transportation Codes, and renumbers the statutes as necessary.

TMCEC: This 91-page bill makes several substantive changes, with the amendments most noteworthy for municipal courts laid out in the section-by-section analysis below.

<u>Section by Section Analysis</u> (all statutory references refer to the Transportation Code, unless otherwise noted):

Sections 42, 52-53: Application for Certificate of Title for Motor Vehicles

H.B. 2741 amends Section 501.022, to provide that the owner of a motor vehicle registered in Texas may operate the vehicle on a public highway once the owner *applies for* title and registration for the vehicle. Currently, an owner could not operate the vehicle on a public highway until he or she had *obtained* title and registration for the vehicle.

Sections 52 and 53 of the bill impact the procedure for an applicant denied a motor vehicle title to appeal to a court. The bill amends Section 501.052, providing that an applicant denied title may appeal to the district court in addition to the county court, and Section 501.0521, which clarifies that a justice of the peace or municipal judge may *not* issue an order related to a title except as provided by Chapter 47 of the Code of Criminal Procedure or Section 27.031(a)(3) of the Government Code.

Sections 62, 73-74, 89: Registration of Vehicles and Motor Carriers; New Offense; Amended Compliance Dismissal

Section 62 of the bill amends Section 502.001 to define a "commercial motor vehicle" as a motor vehicle, other than a motorcycle, designed or used primarily to transport property. The term includes a passenger car reconstructed and used primarily for delivery purposes. The term does not include a passenger car used to deliver the U.S. mail. This definition was already codified in one of the two existing versions to the statute.

Section 73 of the bill amends Section 502.473(d), relating to the compliance dismissal for operating a vehicle without a registration *insignia*, providing that a court may dismiss the charge if the defendant pays an administrative fee not to exceed $10 and either (1) *remedies the defect before the defendant's first court appearance*, or (2) shows that the motor vehicle was issued a registration insignia by the department that was attached to the motor vehicle, establishing that the vehicle was registered for the period during which the offense was committed.

Section 74 of the bill creates a new Class C misdemeanor by adding Section 502.4755, relating to a "deceptively similar insignia." A person commits an offense if the person manufactures, sells, or possesses a registration insignia deceptively similar to the registration insignia of the DMV, or makes a copy or likeness of an insignia deceptively similar to the registration insignia of the DMV with intent to sell the copy or likeness. An insignia is deceptively similar if it is not prescribed by the DMV, but a reasonable person would presume that it was. An offense under this section is: (1) a felony of the third degree if the person manufactures or sells a deceptively similar registration insignia; (2) a Class C misdemeanor if the person possesses a deceptively similar registration insignia; or (3) a Class B misdemeanor if the person possesses a deceptively similar registration insignia and has previously been convicted of the same offense.

Section 89 of the bill, though not directly affecting municipal courts, may have some impact on the Scofflaw program. The bills adds Section 520.0061 to allow a county tax assessor-collector, with approval of the commissioners court, to enter into an agreement with one or more counties to perform mail-in or online registration or titling duties. What effect will this have on cities that already have inter-local agreements with their county to deny vehicle registration under the Scofflaw program? Will cities have to enter into inter-local agreements with all counties that may be a party to these new agreements?

Section 123 of the bill authorizes the DMV to deny the registration of a motor carrier under Section 643.054 if the applicant's business is operated, managed, or otherwise controlled by or affiliated with a person, including the applicant, a relative, a family member, a corporate officer, or a shareholder, whom the Department of Public Safety (DPS) has determined has an unsatisfactory rating under the Code of Federal Regulations or has multiple violations of Chapter 644, department rules, or Subtitle C (Rules of the Road).

Sections 83-84: License Plates; New Offense and Penalty; Amended Compliance Dismissal

H.B. 2741 amends Section 504.945(d), relating to the compliance dismissal for having a license plate that is obscured or assigned for the wrong period, providing that a court may dismiss the charge if the defendant: (1) remedies the defect before the defendant's first court appearance; (2) pays an administrative fee not to exceed $10; and (3) shows that the vehicle was issued a plate by the department that was attached to the vehicle, establishing that the vehicle was registered for the period during which the offense was committed.

Section 84 of the bill makes three statutory changes. First, the bill adds Section 504.946, creating a new offense

relating to a "deceptively similar license plate." A person commits an offense if the person manufactures, sells, or possesses a license plate deceptively similar to a license plate issued by the DMV, or makes a copy or likeness of a license plate deceptively similar to a license plate issued by the DMV with intent to sell the copy or likeness. A license plate is deceptively similar if it is not prescribed by the DMV, but a reasonable person would presume that it was. An offense under this section is: (1) a felony of the third degree if the person manufactures or sells a deceptively similar license plate; (2) a Class C misdemeanor if the person possesses a deceptively similar license plate; or (3) a Class B misdemeanor if the person possesses a deceptively similar license plate and has previously been convicted of the same offense. Note that this is one of two versions of Section 504.946 added by the Legislature.

H.B. 2741 also adds Section 504.947, relating to a "license plate flipper," which is defined as a manual, electric, or mechanical device designed or adapted to be installed on a motor vehicle and switch between two or more license plates for the purpose of allowing a motor vehicle operator to change the license plate displayed on the operator's vehicle or hide a plate from view by flipping the plate so that the plate number is not visible. A person commits an offense if the person with criminal negligence uses, purchases, possesses, manufactures, sells, offers to sell, or otherwise distributes a license plate flipper. The offense is a Class C misdemeanor, except that it is a Class B misdemeanor if the person has previously been convicted of the same offense. Note that S.B. 1757, also passed by this Legislature, creates an identical offense but with a different penalty.

Under H.B. 2741, the offense is a Class C misdemeanor and takes effect September 1. Under S.B. 1757, the offense of purchasing or possessing a flipper is a Class B misdemeanor, while manufacturing, selling, or distributing a flipper is a Class A misdemeanor. S.B. 1757 is already in effect (as of June 14). Come September 1, however, H.B. 2741 and S.B. 1757 will ostensibly be in irreconcilable conflict. Under the Code Construction Act, the bill latest in date of enactment will prevail. S.B. 1757 received the last record vote on May 17, while H.B. 2741 received the last record vote on May 26, making it the latest in date of enactment. Therefore, from June 14 to August 31, the license plate flipper offense should be filed as a Class B or Class A misdemeanor in the appropriate court, but beginning September 1, presumably, the offense could be filed in a municipal or justice court as a Class C misdemeanor.

Finally, H.B. 2741 adds Section 504.948, creating a general offense and penalty for violations of Chapter 504 (License Plates) of the Transportation Code. It provides that if no other penalty is prescribed for the violation, the offense is a misdemeanor punishable by a fine of not less than $5 or more than $200. It is interesting to note that following the discovery of the 82nd Legislature's oversight in removing the penalty for operating a vehicle without a license plate, many assumed that Chapter 504 already included a general penalty. It did not. Despite the effective date of this bill being September 1, this provision took effect June 14, 2013. It applies to offenses committed on or after the effective date. Thus, as of June 14, there is a general penalty to cover the license plate offense that, until passage of this bill, had no penalty. However, H.B. 625, also passed this session, creates a specific penalty for the license plate offense in Section 504.943, with a maximum fine of $200 but no minimum fine. Thus, this new general penalty with a minimum fine of $5 will only apply until H.B. 625 takes effect on September 1.

Sections 94, 96: Neighborhood Electric Vehicles; Operation, Registration, and Financial Responsibility

H.B. 2741 creates provisions for neighborhood electric vehicles similar to those regulating golf carts. The bill adds Section 551.304, providing that an operator may operate a neighborhood electric vehicle: (1) in certain master planned communities; (2) on a public or private beach; or (3) on a public highway for which the posted speed limit is not more than 35 miles per hour, as long as the neighborhood electric vehicle is operated during the daytime and not more than two miles from the location where it is usually parked for transportation to or from a golf course. A person is *not* required to register a neighborhood electric vehicle operated in compliance with this section. The bill also amends Section 601.052 to provide that the requirement to maintain financial responsibility does *not* apply to the operation of a neighborhood electric vehicle operated in compliance with the above section.

Sections 100, 110: Limitations on Municipality's Regulation of Oversize/Overweight Vehicles

Section 100 of the bill adds Section 621.304, providing that a county or municipality may not require a permit, bond, fee, or license for the movement of a vehicle or combination of vehicle, or any load carried by the vehicle or vehicles on the state highway system in the county or municipality that exceeds the weight or size limits on the state highway system.

Section 110 of the bill adds Section 623.0171, providing, among other things, that a county or municipality may not require a permit, fee, or license for the operation of a ready-mixed concrete truck in addition to a permit, fee, or license required by state law.

Sections 102, 111: Fine Schedules for Overweight Vehicle Violations

Section 102 of the bill amends Section 621.506, adding to the offenses to which the statute applies and changing the fine amounts for operating or loading an overweight vehicle. Subsection (b) is amended to provide that an offense under this section is a misdemeanor punishable by a fine of not less than $100 and not more than *$250* (up from $150), with the following exceptions. If the offense involves a vehicle having a single axle weight or tandem axle weight that is heavier than the vehicle's allowable weight, the fine varies according to the following schedule:

Pounds Overweight	Fine Range
less than 2,500	$100 to $500
2,500 – 5,000	$500 to $1,000
more than 5,000	$1,000 to $2,500

If the offense involves a vehicle having a gross weight that is heavier than the vehicle's allowable weight, the fine varies according to the following schedule:

Pounds Overweight	Fine Range
less than 2,500	$100 to $500
2,500 – 5,000	$500 to $1,000
5,001 – 10,000	$1,000 to $2,500
10,001 – 20,000	$2,500 to $5,000
20,001 – 40,000	$5,000 to $7,000
more than 40,000	$7,000 to $10,000

If the person is convicted of a third offense under the fine schedules outlined above, before the first anniversary of the date of one of the previous convictions, the defendant shall be punished by a fine not to exceed twice the maximum amount specified in the above schedules.

A defendant operating a vehicle or combination of vehicles at a weight for which a permit would authorize the operation, but who does not hold the permit, or operating a vehicle or combination of vehicles at a weight in excess of 84,000 pounds with a load that can reasonably be dismantled shall be punished by a fine *in addition* to the fine authorized in the above schedules of not less than $500 or more than $1,000, except that a second or subsequent conviction results in the fine authorized in the above schedules *plus* a fine of not less than $2,500 or more than $5,000. The bill specifies that a fine may not be imposed under this section that exceeds the *minimum* dollar amount that may be imposed unless the vehicle's weight was determined by a portable or stationary scale furnished or approved by DPS.

Like Section 102, Section 111 of the bill amends Section 623.019, changing the fine amounts for operating or directing the operation of a permitted oversize/overweight vehicle at a weight heavier than that authorized by

permit or in a county that is not designated in the permit application. The bill sets out fine schedules similar to those discussed above, with an increased general fine to $250, fine schedules increasing the more overweight the vehicle is, and a doubled maximum fine for certain third convictions. The bill, likewise, specifies that a fine may not be imposed under this section that exceeds the minimum dollar amount that may be imposed unless the vehicle's weight was determined by a portable or stationary scale furnished or approved by DPS. Section 111 of the bill does not, however, contain analogous provisions resulting in an additional fine if certain criteria are met. Also note that, unlike Section 621.506 discussed above, Section 623.019 has a limiting provision for municipal courts: while a justice court has jurisdiction over any offense under Section 623.019, a municipal court only has jurisdiction of an offense in which the fine does not exceed $500.

Sections 129-130: Disabled Parking Placards for Out of State Residents

H.B. 2741 amends Sections 681.0031 and 681.004 to provide that a person with a military ID or non-resident of Texas can apply for a disabled parking placard, and that such a placard issued to a person with a permanent disability is valid for four years if the person is a Texas resident or six months if not.

H.B. 3031
Subject: Fare Enforcement Officers for Metropolitan Rapid Transit Authorities
Effective: September 1, 2013

Under current law, a rapid transit authority, confirmed before July 1, 1985, in which the principal municipality has a population of less than 850,000, may employ persons to serve as fare enforcement officers to conduct fare inspections and issue citations to individuals who do not show proof of payment to use bus or rail services. Interested parties contend that cities with populations that exceed this amount should also have this authority. H.B. 3031 amends Section 451.0612(a) of the Transportation Code to remove the date and population bracket to allow more rapid transit authorities to employ fare enforcement officers.

H.B. 3483
Subject: Restrictions for Drivers Under 18 Years of Age; Driver Education Requirements
Effective: September 1, 2013

The National Safety Council recommends a minimum of 30 hours of supervised driving for young adults to obtain their driver's licenses. Requiring just 20 hours, Texas is one of only a few states requiring less than the recommended 30 hours. H.B. 3483 amends Section 1001.101(b)(3) of the Education Code to increase the number of required hours of behind-the-wheel instruction required for driver's license training from 20 to 30 hours.

H.B. 3483 also amends Section 545.424(a-1) of the Transportation Code to prohibit a person under 18 years of age from operating a motor vehicle with more than one passenger in the vehicle under 21 years of age who is not a family member or after midnight and before 5 a.m. unless the operation of the vehicle is necessary for the operator to attend or participate in employment or a school-related activity or because of a medical emergency, rather than prohibiting such a person from operating a vehicle under those conditions only during the 12-month period following issuance of an original Class A, B, or C driver's license to the person.

TMCEC: Prior to 2009, the restrictions in Section 545.424 only applied to young drivers for the first six months of licensure. In 2009, the restrictions on number of young passengers and hours of driving were extended to the first 12 months of licensure, and the prohibition on cell phone use was extended until the driver turns 18 years of age. The amendment in H.B. 3483 is another step in the same direction. It requires more hours of behind-the-wheel instruction to obtain a license and extends the restricted driving conditions until the driver turns 18 years of age.

H.B. 3668
Subject: Changes to Stop and Render Aid Law
Effective: September 1, 2013

As bicycle and pedestrian traffic increases in the urban and rural areas of Texas, a proportionate increase in the number of auto-pedestrian collisions has been reported, many of which result in the death of or serious injury to hundreds of Texans. Interested parties assert that many of these fatalities and life-altering injuries could have been prevented had proper assistance been provided within a reasonable time after the injuries were sustained.

Texas law currently requires an operator of a motor vehicle involved in a collision that results in the injury or death of a person to immediately stop at the scene of the collision, or immediately return to the scene if the driver did not stop, and to remain at the scene to render reasonable aid and assistance to a person who is injured, or possibly killed. If an individual fails to follow the prescribed steps, he or she is presumably guilty of failure to stop and render aid, which is a third degree felony if the victim is killed or suffers a serious bodily injury.

Under current law, however, there is a loophole in Texas' stop and render aid law that requires the prosecution to prove that a driver who left the scene of a collision did so knowing that another person was involved, and made the conscious choice to leave the scene without rendering aid. Interested parties contend that current law actually provides an incentive to a vehicle operator involved in such a collision to leave the scene without confirming that a pedestrian, bicyclist, or motorist was involved or injured and that, as a result, the law does not adequately consider the needs of the victim whose life or future welfare could be in the balance. Additionally, there are excuses that are growing common among alleged drunk drivers that if they flee a collision and sober up, they face a lesser charge by claiming that they thought they had merely struck and animal or an inanimate object, not another person.

H.B. 3668 makes those issues irrelevant and amends Section 550.021(a) of the Transportation Code to require a driver involved in a collision to stop or immediately return to the scene of the collision when it results or is reasonably likely to result in the injury or death of a person. The bill also requires the driver to immediately determine whether a person is involved in the collision and requires aid.

TMCEC: In the wake of the controversial case in Austin involving Gabrielle Nestande−who killed Courtney Griffin in a 2011 hit-and-run but was found guilty of only criminally negligent homicide, and not of failure to stop and render aid or of the more serious charge of intoxication manslaughter, because she left the scene and no breathalyzer or blood test was conducted−both H.B. 3668 and S.B. 275, also passed this session, aim to curb the issue of alleged drunk drivers fleeing a crash with the belief that they too might be convicted of a lesser charge by not being present at the scene for a breathalyzer or blood test, sobering up, and claiming that they thought they had merely struck and animal or an inanimate object, not another person. While H.B. 3668 changes the requirements for a person involved in a collision, S.B. 275 increases the penalty for failure to stop and render aid.

H.B. 3676
Subject: Restrictions on Drivers with Hardship Licenses Under 18 Years of Age
Effective: September 1, 2013

Current law prohibits a driver under the age of 18 from using a cell phone while driving and prohibits a newly licensed driver under the age of 18, during the 12-month period after licensure, from driving between midnight and 5 a.m. and from carrying more than one passenger in the vehicle who is under 21 years old and not a family member. However, a driver under the age of 18 who has received a hardship license is exempted from these prohibitions. H.B. 3676 amends Section 545.424(c) of the Transportation Code to remove the holder of a hardship license from the list of persons to whom that section (Operation of Vehicle by Person Under 18 Years Of Age) does not apply.

TMCEC: Under the new law, hardship license holders under the age of 18 will be required to adhere to the same driving restrictions as those currently applied to other drivers under 18 years of age.

H.B. 3838
Subject: Requirements for Motorcycle Endorsement, Equipment, and Training
Effective: September 1, 2013 (except for Section 547.617 which is effective January 1, 2015)

Motorcycles have become an increasingly popular mode of transportation for Texans, but the inherent risks associated with riding on a motorcycle have prompted observers to note the importance of properly equipping motorcycles to support passengers and properly educating motorcycle operators on how to safely carry passengers. H.B. 3838 establishes Malorie's Law, in remembrance of Malorie Bullock, to increase motorcycle safety for passengers. This bill says that a sport bike, if designed for more than one person, shall be equipped with foot pegs and handholds for the passenger. It also states that a motorcycle training course shall contain material regarding operating a bike while carrying a passenger.

H.B. 3838 amends Section 521.148(a) of the Transportation Code to require the Department of Public Safety to issue a Class M license that is restricted to the operation of a three-wheeled motorcycle if the motorcycle operator training course completed by the applicant is specific to the operation of a three-wheeled motorcycle.

The bill, by amending Section 545.416(b) of the Transportation Code, prohibits a motorcycle operator from carrying another person on a motorcycle designed to carry more than one person unless the motorcycle is equipped with footrests and handholds for use by the passenger. The bill requires information on carrying passengers on motorcycles to be included in the state's motorcycle training curriculum by amending Section 662.002(b) of the Transportation Code.

Effective January 1, 2015, the bill requires motorcycles designed to carry more than one person to be equipped with footrests and handholds for use by the passenger by adding Section 547.617 to the Transportation Code.

H.B. 3838 also amends Section 662.006 of the Transportation Code to prohibit a person from conducting, in addition to offering, a training in motorcycle operation for consideration unless the person is appropriately licensed or contracted. A person who violates this provision commits an offense that is a Class B misdemeanor, except that it is a Class A misdemeanor if it is shown on trial of the offense that the defendant has been previously convicted of the offense.

TMCEC: Much of what H.B. 3838 does is also accomplished by S.B. 763.

S.B. 181
Subject: Verification of Motor Vehicle Financial Responsibility Information on a Wireless Communication Device
Effective: May 24, 2013

Current law requires the operator of a motor vehicle, on request, to provide evidence of financial responsibility to a peace officer or to a person involved in a collision with the operator. Evidence of financial responsibility may be exhibited through a liability insurance policy or a photocopy of such a policy, a standard proof of motor vehicle liability insurance provided by the Texas Department of Insurance, an insurance binder that confirms the operator is in compliance, a surety bond certificate, a certificate of deposit with the Comptroller of Public Accounts covering the vehicle, a copy of the certificate of deposit, or a certificate of self-insurance covering the vehicle issued. S.B. 181 increases the options for displaying evidence of financial responsibility by allowing a driver to show proof of insurance on a wireless communication device.

S.B. 181 amends Section 601.053 of the Transportation Code to include an image displayed on a wireless communication device that includes the information required for a standard proof of motor vehicle liability insurance

form as provided by a liability insurer as acceptable evidence of financial responsibility under circumstances in which a motor vehicle operator is required to provide such evidence on request to a peace officer or a person involved in a collision with the operator. The bill specifies that the display of an image that includes such financial responsibility information on a wireless communication device does not constitute effective consent for a law enforcement officer, or any other person, to access the contents of the device except to view the information.

The bill prohibits a peace officer who has access to a financial responsibility verification program from issuing a citation for a violation relating to establishing financial responsibility for a motor vehicle unless the officer attempts to verify through the program that financial responsibility has been established for the vehicle and is unable to make that verification.

S.B. 181 also specifies that the authorization of the use of a wireless communication device to display such financial responsibility information does not prevent a court of competent jurisdiction from requiring a person to provide a paper copy of the person's evidence of financial responsibility in a hearing or trial or in connection with discovery proceedings or the commissioner of insurance from requiring a person to provide a paper copy of the person's evidence of financial responsibility in connection with any inquiry or transaction conducted by or on behalf of the commissioner. The bill exempts a telecommunications provider from liability to the operator of the motor vehicle for the failure of a wireless communication device to display such financial responsibility information.

TMCEC: It is interesting to see how much technology has become integrated into statutory law since TMCEC first highlighted the state's foray into electronic insurance verification (i.e., Texas Sure) in 2009. This new law became effective on May 24, and courts may already be seeing cases where drivers displayed proof of financial responsibility on a cell phone or a tablet. It is important to remember that courts may still require defendants to to produce a paper copy of their evidence of financial responsibility.

S.B. 223
Subject: Definition of an Authorized Emergency Vehicle
Effective: May 10, 2013

During the intense wildfire season of 2011, the Texas Division of Emergency Management (TDEM) played a critical role in coordinating the response of state agencies. Vehicles operated by TDEM are not currently authorized to be used as "emergency vehicles" during a local or state disaster; therefore these emergency responders are prohibited from using lights or sirens on their vehicles and are not granted immediate access to priority areas. The Texas Emergency Management Council, in conjunction with TDEM and the Department of Public Safety (DPS), can authorize certain organizations like the Red Cross or Salvation Army to operate certain vehicles as designated emergency vehicles in the case of a disaster. S.B. 223 amends Section 541.201 of the Transportation Code to redefine "authorized emergency vehicle" to include a vehicle that has been designated by DPS under added Section 546.0065.

TMCEC: The 83rd Legislature made multiple additions to the definition of an "authorized emergency vehicle" under Section 541.201 of the Transportation Code, each resulting in a different numbering of Subsection (1). See also H.B. 567, H.B. 802, and S.B. 1917.

S.B. 229
Subject: Exception to the Domicile Requirement for Issuance of a CDL for Certain Military Personnel
Effective: September 1, 2013

According to recent data from the Truckload Carriers Association, there are over 200,000 unfilled trucking jobs in the United States. The Bureau of Labor Statistics lists commercial trucking as a high-demand job, with more than 300,000 additional positions expected by 2020. In response to this demand, the Military Commercial Driver's

License Act was passed by Congress and signed into law last fall. That legislation allows states to waive residency requirements for commercial driver's licenses issued to service members who are active duty or reservists. The intent of the law is to make it easier for service members to find employment after leaving the military.

S.B. 229 amends Section 522.022 of the Transportation Code to allow commercial driver's licenses to be issued to active or reserve service members, whose temporary or permanent duty station is located in Texas, by waiving the current residency requirement.

S.B. 275
Subject: Increasing the Penalty for Leaving the Scene of a Collision that Involves Personal Injury or Death
Effective: September 1, 2013

The penalty for failure to stop and render aid, a third degree felony, is lower than the penalty for intoxication manslaughter, a second degree felony, despite the fact that a failure to stop and render aid can lead to the victim's death. Often, alcohol is a factor, and people choose to leave the scene of the collision to avoid intoxication-related charges.

S.B. 275 enhances the penalty under Section 550.021 of the Transportation Code, regarding a collision involving personal injury or death, from a third degree felony to a second degree felony, thus making the punishment for hit and run fatalities the same as for intoxication-related manslaughter.

TMCEC: Also see H.B. 3668, which adds to the requirements for a driver involved in a collision to stop and render aid.

S.B. 487
Subject: Definitions of All-Terrain Vehicles and Recreational Off-Highway Vehicles
Effective: September 1, 2013

It has been estimated that Texas consumers spend billions of dollars annually on outdoor recreation, including the purchase of new and used off-road motorcycles, all-terrain vehicles, and recreational off-highway vehicles and related accessories and services. Interested parties assert that the outdoor recreation industry generates billions of dollars in wage and salary income and state and local tax revenue and supports more than 250,000 direct jobs in Texas.

Under current law, the definitions of "all-terrain vehicle" and "recreational off-highway vehicle" do not encompass the industry's current and future product offerings. S.B. 487 updates this language to accommodate newer, more popular models of these vehicles.

S.B. 487 amends Sections 502.001 and 663.001 of the Transportation Code, for purposes of statutory provisions relating to the registration of vehicles and to certain off-highway vehicles, to redefine "all-terrain vehicle" to mean a motor vehicle that, in addition to meeting other specified criteria, is not more than 50 inches wide and that is equipped with a seat or seats, rather than a saddle, for specified uses. The bill, for purposes of statutory provisions relating to the registration of vehicles, amends Section 502.001 and redefines "recreational off-highway vehicle" to mean a motor vehicle that, in addition to meeting other specified criteria, is equipped with a seat or seats, rather than a non-straddle seat, for the rider and, if the vehicle is designed for passenger transport, for one or more passengers.

TMCEC: Only a person who has never studied the legal definition of the various kinds of motor vehicles in Texas would think that this is a simple area of the law. Texas law governing the definitions of motor vehicles and where such vehicles can be operated continues to evolve. Note, another bill this session, H.B. 1044, also deals with all-

terrain vehicles and recreational off-highway vehicles, changing the law regarding their use on beaches.

S.B. 510
Subject: Expanding the Vehicles to Which the "Move Over/Slow Down Law" Applies
Effective: September 1, 2013

Unfortunately, highway workers are losing their lives as a result of being struck by traveling motorists while on the job. It has been reported that, since the 1930s, over 100 Texas Department of Transportation (TxDOT) employees working within a work zone or near the shoulder of a roadway have died as a result of being struck by motorists, with several of these fatalities occurring within the last decade. Interested parties note that working and traveling on highways in Texas would be safer if Texas would require motorists to vacate the lane closest to the highway maintenance or construction vehicle or to slow down when nearing a stopped highway maintenance or construction vehicle if the vehicle has overhead lights activated. Recent legislation, sometimes referred to as the "move over/slow down law," requires a driver approaching a stationary authorized emergency vehicle or a stationary tow truck with lights activated to either vacate the lane closest to the vehicle or slow to a specified speed. S.B. 510 seeks to improve highway worker safety by expanding the vehicles to which the "move over/slow down law" applies.

S.B. 510 amends Section 545.157 of the Transportation Code to specifically include a TxDOT vehicle not separated from the roadway by a traffic control channelizing device and using visual signals that comply with the standards and specifications adopted under Section 547.105 as a vehicle to which the "move over/slow down law" applies.

S.B. 763
Subject: Requirements for Motorcycle Endorsement and Training
Effective: September 1, 2013

Motorcycle training and safety programs are crucial to making Texas roadways safer for both motorcyclists and other drivers. The operation of three-wheeled motorcycles, which is significantly different from the operation of a typical motorcycle, has recently increased. Although there are some training courses for the operation of three-wheeled motorcycles that are distinct from the available training courses for the operation of the more common two-wheeled motorcycles, these three-wheeled motorcycle training courses are more costly and less readily available than comparable courses for two-wheeled motorcycles. Consequently, there is a growing need for alternative state-approved training courses and licensing requirements specific to these three-wheeled motorcycles. S.B. 763 addresses this concern and further enhances motorcycle operator training by requiring the Department of Public Safety to issue a restricted license for eligible applicants who have completed a training course that is specific to a three-wheeled motorcycle and by creating an offense regarding unauthorized motorcycle operation training.

TMCEC: Much of what S.B. 763 does is also done by H.B. 3838 with identical amendments to Section 521.148 of the Transportation Code (requiring the issuance of a Class M license that is restricted to the operation of a three-wheeled motorcycle if the motorcycle operator training course completed by the applicant is specific to the operation of a three-wheeled motorcycle) and to Section 662.006 of the Transportation Code (making a violation of the prohibition against unauthorized training a Class B misdemeanor offense with possible enhancement). S.B. 763 also requires that a motorcycle operator training course must include curricula approved by DPS, not the Motorcycle Safety Foundation.

S.B. 1061
Subject: Parking Privileges for Disabled Veterans at Higher Education Institutions
Effective: June 14, 2013

Interested parties assert that it is our duty as a nation to properly care for those who volunteer to protect us, and providing such care includes making amenities for veterans with limited mobility. Disabled veterans who

meet specified requirements may obtain specialized license plates that allow them to park in spaces designated for persons with physical disabilities. S.B. 1061 clarifies that Texas institutions of higher education must allow access to those designated parking spaces for eligible veterans, regardless of the institution's parking permit requirements.

S.B. 1061 amends Section 681.008 of the Transportation Code to establish that a vehicle operated by or for the transportation of certain veterans that is authorized to park for an unlimited period in a parking space or area designated specifically for persons with disabilities is also authorized to park for an unlimited period in a such a parking space or area on the property of a higher education institution, regardless of whether a permit is generally required for use of the space or area. An institution may require such a vehicle to display a permit for this purpose, but may not charge a fee for the permit.

The bill does not entitle a person to park such a vehicle in a space or area not designated specifically for persons with disabilities if the vehicle lacks a parking permit required by the institution. The bill's provisions do not apply to parking spaces located in controlled access parking facilities if at least 50 percent of the spaces designated for persons with physical disabilities are located outside controlled access parking facilities. Nor does the bill apply to spaces or areas temporarily designated for special event parking or spaces or areas temporarily prohibiting parking for health or safety concerns.

S.B. 1567
Subject: Required Disclosures on Named-Driver Insurance Policies
Effective: September 1, 2013

"Named driver policies" are automobile insurance policies that do not provide coverage for individuals residing in a named insured's household, unless the individual is specifically named on the policy. An issue can arise when a member of the policyholder's household who is not named on the policy drives the insured vehicle. When this situation occurs, the driver is not covered by the policy, regardless of whether the driver has permission from the policyholder to drive the vehicle. There is a concern, however, that many policyholders and drivers do not understand these coverage restrictions, which can lead to situations of unknowingly uninsured drivers on Texas roads.

S.B. 1567 adds Section 1952.0515 to the Insurance Code to prohibit an agent/insurer from issuing in Texas a personal automobile insurance policy unless the policy provides at least the minimum coverage specified by provisions of the Motor Vehicle Safety Responsibility Act. The bill also adds Section 1952.0545, requiring an agent/insurer, before accepting any premium or fee for a named driver policy, to disclose to the applicant/insured, orally and in writing, that a named driver policy does not provide coverage for individuals residing in the insured's household that are not named on the policy. The bill requires the agent/insurer to receive a copy of the disclosure that is signed by the applicant/insured and to require the applicant/insured to confirm contemporaneously in writing the provision of the required oral disclosure. The required disclosure must be conspicuously identified on the front of any proof of insurance document issued to the insured.

S.B. 1567 also amends Section 601.081 of the Transportation Code to add the required disclosure for a named driver policy to the contents of a standard proof of motor vehicle liability insurance form.

TMCEC: What impact will this bill have on Failure to Maintain Financial Responsibility (FMFR) dismissals under Section 601.193 of the Transportation Code? There is disagreement as to whether the law requires that a defendant be named on an insurance policy or simply show that the vehicle is insured. There was a similar conflict among legislation this session. H.B. 1773, which died in the Senate conflicted with S.B. 1567. It is not altogether clear how named driver policies will impact the disagreement among what legally required to obtain a dismissal under Section 601.193. One form of evidence of financial responsibility under Section 601.053(a) is the standard proof of motor vehicle liability form that will now include the disclosure added by S.B. 1567.

Though S.B. 1567 takes effect September 1, the bill's provisions apply only to insurance policies that are issued or renewed on or after January 1, 2014.

S.B. 1705
Subject: Administration of Driving Tests
Effective: September 1, 2013

Prior to 2009, Texas driver's license applicants under 18 years of age who had successfully completed an approved driver education course were permitted to waive the required driving examination prior to obtaining a license. In 2009, the 81st Legislature required all applicants to take the driving test. Texas averages more than 225,000 new drivers each year.

Currently, the Department of Public Safety (DPS) is the only entity authorized to administer driving tests for driver's license applicants. S.B. 1705 clarifies existing law to ensure that the DPS director has the authority to permit other qualified organizations or businesses, such as the military, educational institutions, or driver education and training service providers, to administer driving tests. DPS will, by rule, establish testing standards to ensure tests are administered according to DPS specifications. The bill adds Section 521.165(e) to the Transportation Code to provide DPS explicit authority to delegate all driving tests, even for those under age 18, without removing the requirement to test new drivers.

S.B. 1729
Subject: Agreements Between DPS and Certain Counties for Driver's License Services
Effective: June 14, 2013

Under current law, the Department of Public Safety (DPS) has the authority to issue renewal and duplicate driver's licenses, election identification certificates, and personal identification certificates. As Texas' population has increased, the demand for these services has also increased. Interested parties report that DPS has been unable to meet this growing demand and that Texans in many areas of the state experience an inconvenience in obtaining these services due to overcrowding at the local DPS office or the lack of a DPS office within the vicinity of the person's residence.

S.B. 1729 adds Section 521.008 to the Transportation Code to authorize DPS to establish a pilot program for the provision of renewal and duplicate driver's license, election identification certificate, and personal identification certificate services in not more than three counties with a population of 50,000 or less, not more than three counties with a population of more than 50,000 but less than 1,000,001, and not more than two counties with a population of more than 1 million, or in a county in which DPS operates a driver's license office as a scheduled or mobile office. The bill authorizes DPS to enter into an agreement with a county commissioners court to permit county employees to provide certain administrative and ministerial services at a county office relating to the issuance of those documents.

TMCEC: How will this pilot program work with regards to the denial of driver's license renewals under the OmniBase Failure to Appear/Failure to Pay program? Will counties in this agreement with DPS comply with the OmniBase terms and deny driver's license renewal? Some counties have vocalized concerns about participation in the Scofflaw program (denying vehicle registration renewals for defendants who have failed to appear or pay on traffic cases) based on the possibility of unhappy customers, longer wait times at county offices, or the county's unnecessary role in assisting municipal courts in fine collection. Whereas the Scofflaw program is not a mandatory program and counties need not participate, DPS is prohibited from renewing a driver's license to a person who has been turned over to the OmniBase program.

S.B. 1757
Subject: New Offense Relating to License Plate Flippers
Effective: June 14, 2013

License plate flippers, whether home-made or manufactured and purchased online, are designed to allow an individual to rotate or flip between two license plates within a matter of seconds through the push of a button or the pull of a cord. Under Texas law, it is illegal to have false or obscured license plates showing on a vehicle, but it is not currently illegal to possess a license plate flipper and operate a vehicle with false license plates that are not showing. There is concern that a license plate flipper would allow a criminal to evade law enforcement by hindering the ability of law enforcement to identify a vehicle. S.B. 1757 adds Section 504.946 to the Transportation Code, making it a Class B misdemeanor to purchase or possess, with criminal negligence, a license plate flipper, and a Class A misdemeanor to manufacture, sell, offer to sell, or otherwise distribute, with criminal negligence, a license plate flipper. The bill defines a license plate flipper as a manual, electronic, or mechanical device designed or adapted to be installed on a motor vehicle and switch between two or more license plates for the purpose of allowing a motor vehicle operator to change the plate displayed on the operator's vehicle or hide a plate from view by flipping the plate so that the plate number is not visible.

TMCEC: License plate flippers came to the attention of the Legislature this session, and are the subject of two conflicting bills. S.B. 1757 the offense is either a Class B or Class A misdemeanor, while H.B. 2741 (Section 84), effective September 1, makes it a Class C misdemeanor. Because S.B. 1757 is already in effect, at least until August 31, 2013, the offense should not be filed in municipal courts, as it is either a Class B or Class A misdemeanor. Assuming that the two versions of Section 504.946 are irreconcilable, ostensibly, H.B. 2741, which has the latest date of enactment prevails. (See, Section 311.025(b) of the Government Code).

S.B. 1792
Subject: Nonpayment of Tolls
Effective: June 14, 2013

A number of drivers on Texas toll roads refuse to pay the toll associated with these roads. In North Texas alone, it is estimated there are tens of thousands of drivers who have more than 100 unpaid tolls, costing the applicable toll project entities tens of millions of dollars in recent years. It is also estimated that the vast majority of these individuals drive on these toll roads daily. The toll project entities' authority to pursue money owed by these habitual violators varies between entities, and these entities have little or no authority to prohibit the continued use of the toll roads by these violators. S.B. 1792 addresses these issues by providing toll authorities remedies with respect to drivers who habitually drive on toll roads without paying the associated tolls.

TMCEC: S.B. 1792 adds Subchapter C to Chapter 372 of the Transportation Code. Toll project entities may publish a list of owners or lessees of nonpaying vehicles that contains only the persons' names, their city and state of residence, the total number of events of nonpayment, and the total amount due for tolls and administrative fees. A toll project entity may also enter into a payment plan agreement with drivers who cannot provide a single payment for tolls due, and, in the case of defaults, refer the matter to an attorney who may represent the entity in a suit filed in a district court to recover amounts due.

A toll project entity may serve a written notice of nonpayment on an owner of a vehicle registered in another state or registered in Mexico. S.B. 1792 creates a new offense in Section 372.105. An owner who receives a written notice of nonpayment and fails to pay the amount due by the specified date commits a misdemeanor offense for each failure to pay, punishable by a fine not to exceed $250. The court in which an offender is convicted may collect the toll and administrative fees due and forward them to the toll project entity. The bill creates defenses to prosecution if the owner establishes the vehicle was leased to another or was stolen at the time of nonpayment.

S.B. 1792 also establishes procedures to determine a driver to be a habitual violator, which is defined as the registered owner of a vehicle who has failed to pay the total amount of tolls and fees due after receiving at least two written notices of nonpayment containing 100 or more events of nonpayment within a one year period, not including certain exceptional events. A person who is determined to be a habitual violator is entitled to request a hearing regarding that determination in a justice court, with appeal to the county court at law.

Final determination that a registered owner is a habitual violator carries additional repercussions. New Section 372.110 allows a toll project entity to issue an order prohibiting a habitual violator from operating a vehicle on a toll road of the toll project entity. A violation of such a prohibition order is a Class C misdemeanor offense (punishable by a fine of up to $500). Under certain conditions, a peace officer may impound a vehicle operated in violation of Section 372.110. A county assessor-collector or the Department of Motor Vehicles may refuse to register or renew the registration of a vehicle if it has received notice from a toll project entity that the owner of the vehicle has been finally determined to be a habitual violator.

S.B. 1917
Subject: Definition of an Authorized Emergency Vehicle
Effective: June 14, 2013

In Texas, county judges are authorized to appoint an emergency management coordinator to manage certain aspects of a county's daily activities. Texas counties may use paid or volunteer emergency managers who are sometimes highly trained in incident command and response, but these individuals are not currently authorized to use lights and sirens on a vehicle in performing duties.

It has been reported that not all Texas counties have the financial resources to own or lease authorized emergency vehicles. In these cases, an official of the county's office of emergency management may use the official's privately-owned or privately-leased vehicle for performing job duties. Interested parties assert that under these circumstances, such a vehicle should be considered an authorized emergency vehicle under state law if authorization for that consideration has been granted by the county commissioners court. This authorization will give the official authority to perform applicable actions when responding to a county emergency.

S.B. 1917 amends Section 541.201 of the Transportation Code to expand the definition of "authorized emergency vehicle," for purposes of statutory provisions relating to rules of the road, to include a private vehicle of an employee or volunteer of a county emergency management division in a county with a population of more than 46,500 and less than 48,000 that is designated as an authorized emergency vehicle by the county commissioners court.

TMCEC: The 83rd Legislature made multiple additions to the definition of an "authorized emergency vehicle" under Section 541.201 of the Transportation Code, each resulting in a different renumbering of Subsection (1). See also H.B. 567, H.B. 802, and S.B. 223.

Index of Bills

H.B. 8 55
H.B. 38 92
H.B. 62 19
H.B. 115 92
H.B. 120; H.B. 1514; H.B. 2485 92
H.B. 124 80
H.B. 195 66
H.B. 232 35
H.B. 333 80
H.B. 338 93
H.B. 347 93
H.B. 434 94
H.B. 438 94
H.B. 455 35
H.B. 489 80
H.B. 528 36
H.B. 555 81
H.B. 567 95
H.B. 570 57
H.B. 625 95
H.B. 694 37
H.B. 705 82
H.B. 719 96
H.B. 798 57
H.B. 802 96
H.B. 894 96
H.B. 912 82
H.B. 949 97
H.B. 970 66
H.B. 978 58
H.B. 1009 37
H.B. 1020 38
H.B. 1043 83
H.B. 1044 97
H.B. 1097 98
H.B. 1106 98
H.B. 1125 73
H.B. 1174 98
H.B. 1206 39
H.B. 1222 19
H.B. 1284 83
H.B. 1294 99
H.B. 1305 83
H.B. 1421 58
H.B. 1448 20
H.B. 1479 39
H.B. 1494 84
H.B. 1523 84
H.B. 1554 66

H.B. 1562 20
H.B. 1606 84
H.B. 1607 99
H.B. 1690 59
H.B. 1724 67
H.B. 1738 59
H.B. 1807; S.B. 1095 85
H.B. 1813 67
H.B. 1847 68
H.B. 1862 85
H.B. 1931 68
H.B. 1951 85
H.B. 1952 40
H.B. 2021 21
H.B. 2025 21
H.B. 2058 40
H.B. 2090 21
H.B. 2204 100
H.B. 2268 60
H.B. 2302 22
H.B. 2304 100
H.B. 2305 100
H.B. 2311 86
H.B. 2377 86
H.B. 2539 86
H.B. 2620 61
H.B. 2649; S.B. 1432 86
H.B. 2679 73
H.B. 2690 101
H.B. 2741 101
H.B. 2781 87
H.B. 3015 68
H.B. 3031 105
H.B. 3068 23
H.B. 3279 87
H.B. 3483 105
H.B. 3561 23
H.B. 3668 106
H.B. 3674 68
H.B. 3676 106
H.B. 3739 69
H.B. 3838 107
H.J.R. 87; H.B. 1372 69
S.B. 92 40
S.B. 107 23
S.B. 124 88
S.B. 181 107
S.B. 186 69
S.B. 209 24
S.B. 223 108

S.B. 229 108
S.B. 260 41
S.B. 275 109
S.B. 299 88
S.B. 344 74
S.B. 367 61
S.B. 389 25
S.B. 390 26
S.B. 391 26
S.B. 392; H.B. 1435 27
S.B. 393 41
S.B. 394 48
S.B. 395 49
S.B. 458 70
S.B. 462 27
S.B. 484 74
S.B. 487 109
S.B. 510 110
S.B. 529 88
S.B. 553 49
S.B. 654 70
S.B. 670 50
S.B. 686 28
S.B. 701 88
S.B. 743 62
S.B. 763 110
S.B. 821 89
S.B. 825 75
S.B. 837 71
S.B. 893 63
S.B. 900 89
S.B. 946 64
S.B. 966 28
S.B. 972 89
S.B. 987 71
S.B. 1061 110
S.B. 1114 50
S.B. 1189 75
S.B. 1192 64
S.B. 1237 76
S.B. 1289 29
S.B. 1317 30
S.B. 1360 65
S.B. 1400 71
S.B. 1419 30
S.B. 1427 90
S.B. 1437 72
S.B. 1512 72
S.B. 1536 91
S.B. 1541 54

S.B. 1567 111
S.B. 1611 77
S.B. 1620 32
S.B. 1630 32
S.B. 1705 112
S.B. 1729 112
S.B. 1757 113
S.B. 1792 113
S.B. 1896 33
S.B. 1908 33
S.B. 1917 114
S.C.R. 21 72
S.J.R. 42 34

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