

Municipal Court Recorder

Volume 10

AUGUST 2001

No. 5

©2001 Texas Municipal Courts Education Center, Austin. Funded by a grant from the Court of Criminal Appeals.

THE 77th LEGISLATURE: MUNICIPAL COURTS LEGISLATIVE UPDATE

by W. Clay Abbott,
General Counsel, TMCEC

What follows are summaries of one hundred bills passed by the 77th Legislature that have some direct or collateral impact on municipal courts and magistrates. This session had its typical successes, failures, flukes, and puzzling adaptations of the law. The changes are less numerous than in earlier sessions. There are, however, significant changes.

The new acts have been broken into subject divisions. Within each subject division there was an attempt to list bills from most to least important. Court costs charts, a jurisdictional chart, and an updated juvenile chart are included in this edition. The Texas Municipal Courts Education Center has also created and distributed a Legislative Update book. That book contains actual text of the acts summarized here and additional charts referencing the three major codes (Penal Code, Code of Criminal Procedure, and Transportation Code). The one hundred acts summarized in this edition are primarily from the Penal Code, Code of Criminal Procedure, and Transportation Code, but bills amending relevant portions of Family Code, Health and Safety Code, Government Code, Local Government Code, and a number of other Codes are also summarized here.

It is hard to spot trends in the midst of the fray, but it looks like it was a bad session for kids “playing hooky” and cops; a good one for animals and new fine collection initiatives. One conclusion is clear: this session did not make as many changes as we have seen in the recent past. Many of the acts, such as the interpreter’s bill and the indigent defense bill, will develop as they are implemented by state agencies and local governments. Many bad bills and a number of good ones failed to make it through the session. For good or for ill, it is not that long until 2003.

Appreciation is given to Ryan Kellus Turner and Margaret Robbins for their help in developing these summaries, to our intern LeKisha Gentry from St. Edward’s University, and to the faculty who taught at the two Legislative Updates: James Bethke, Robert Barfield, Kevin Madison, James Lehman, Rene Henry, and Robin Ramsay.

Special thanks is due Quentin Porter of the San Antonio court for his efforts on behalf of municipal courts in the recent session as chair of the TMCA legislative committee. Special thanks are

also due Margaret Robbins for her continued efforts to chart the numerous complicated issues made simple by the costs and juvenile charts you find herein.

I hope the materials that follow are helpful.

NEW AND MODIFIED OFFENSES

NEW CLASS C: PENAL CODE

Subject: “Open Container” Law
HB 5

Effective Date: September 1, 2001

Creates the new offense of Possession of Alcoholic Beverage in Motor Vehicle (Penal Code, Sec. 49.031). A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession of one or more open containers constitutes a single offense. It

INSIDE THIS ISSUE

Articles:

Legislative Update	1
TMCA Awards	27

Charts:

Passenger Safety Seat System and Safety Belt	4
Court Costs	14-15
Municipal Juvenile/Minor	19-22
Index of Summaries	34-36

CORRECTION NOTICE

In the Early Edition of the Legislative Update newsletter, there was an error on the Court Costs Chart. The corrected chart can be found on page 14 in this newsletter.

Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302
Austin, Texas 78701
512/320-8274 • Fax: 512/435-6118
or 800/252-3718

Web page: <http://www.tmcec.com>

TMCA Officers

President: Glenn Phillips, Kilgore
President-Elect: Robert Kubena,
Hallettsville

1st V.P.: Joe Pirtle, Seabrook
2nd V.P.: Dan Weathers, Pasadena
Secretary: Vicki Gerhardt, New London
Treasurer: Robert C. Richter, Missouri City
Past Pres.: Edwin L. Presley, Benbrook

Directors

Robert Doty, Lubbock • Steve Williamson,
Fort Worth • Mike O'Neal, Dallas • Patsy
Haynes, Kilgore • Sharon Hatten, Midland
• Dan Francis, Robinson • Quentin Porter,
San Antonio • Timothy Fox, Brazoria •
Hector Hernandez, Houston

Staff

- Hope Lochridge, Executive Director
- W. Clay Abbott, General Counsel
- Ryan Kellus Turner, Program Attorney &
Deputy Counsel
- Margaret Robbins, Program Director
- Jo Dale Pavia, Program Coordinator
- Margaret Danforth, Admin. Assistant
- Patricia Russo, Program Assistant II
- Rey Guzman, Multimedia Specialist
- Beatrice Flores, Registration Coordinator
- Elizabeth Price, Special Projects Coor-
dinator
- Seth Johnson, Program Assistant I

Published by the Texas Municipal Courts
Education Center through a grant from the
Texas Court of Criminal Appeals. Subscrip-
tions are free to all municipal court judges,
clerks, prosecutors, and office personnel
employed by the municipal court.

Articles and items of interest not otherwise
copyrighted may be reprinted with attribu-
tion as follows: "Reprinted from the
Municipal Court Recorder with permission
of the Texas Municipal Courts Education
Center."

The views expressed are solely those of the
authors and are not those of the TMCA
Board of Directors or the staff of TMCEC.

is an exception that at the time of the
offense the defendant was a passenger
in certain designated areas. The offense
is a Class C misdemeanor. Under certain
conditions, the statute specifically
requires peace officers to issue a written
citation and a notice to appear in lieu of
taking the defendant before a magis-
trate.

Subject: Interference with Police Service Animal

HB 280

Effective Date: September 1, 2001

Creates Section 38.151 of the Penal
Code. It provides that a person com-
mits an offense if the person acts to
abuse or harm a police service animal. It
is a Class C misdemeanor to taunt,
torment, or strike a police service
animal. It is a Class B misdemeanor to
throw an object at a police animal.
Interference or obstruction of the
animal is a Class A misdemeanor. Injury
or attempted injury of a police animal is
a state jail felony. Killing or attempting
to kill a police animal is a third degree
felony.

NEW CLASS C: TRANSPORTATION CODE

Subject: Safety Belt and Child Safety Seat Offenses (Penalty)

HB 1739

Effective Date: September 1, 2001

Amends Section 545.412 of the Trans-
portation Code to increase the penalty
for child seat belt and safety seat system
offenses by imposing a minimum
penalty of \$100 and a maximum
penalty of \$200. The former law
provided a minimum penalty of \$25
and a maximum penalty of \$50 for
offenses involving unrestrained child
passengers.

Defendants accused of violating Section
545.412 or Section 545.413(b) (i.e.,
failure to secure a child who is at least
four years of age but younger than 15
years of age) who wish to take a driving
safety course under Article 45.0511 of
the Code of Criminal Procedure must

take a special course approved by TEA
which includes four hours of instruction
encouraging the use of child safety seats
and restraints.

Notwithstanding 542.402(a), a munici-
pality or county shall send the Comp-
troller 50 percent of the fines collected
under Sections 545.412 and 545.413(b)
at the end of the fiscal year. The Comp-
troller shall deposit the fine money into
the Tertiary Care Fund for use by
trauma centers.

Subject: Vehicle Passenger Safety Systems

SB 113

Effective Date: September 1, 2001

Amends Section 545.412 of the Trans-
portation Code to provide that a
person commits an offense if the
person operates a passenger vehicle
while transporting a child that is younger
than four years of age or less than 36
inches in height without keeping the
child secured during the operation of
the vehicle. The child must be secured in
a child passenger safety seat system
according to the instructions of the
manufacturer. The bill deletes a separate
provision that a person commits an
offense if the person transports a child
that is older than two but younger than
four years of age and does not keep the
child secured in a child passenger safety
seat system or by a seat belt during the
operation of the vehicle. Therefore, a
child younger than four years of age or
less than 36 inches in height must be
kept in a car seat, and mere use of the
seat belt no longer complies with the
law. The bill also provides that it is a
defense to prosecution for such an
offense if the person is operating a
commercially registered farm vehicle
that has a gross weight or registered
weight of less than 48,000 pounds.

Section 547.614 of the Transportation
Code is added to address the knowing
installation of an airbag that does not
meet all federal safety regulations. The
offense is a Class A misdemeanor.

Subject: Safety Belt and Child Safety Seat Offenses (Elements)

SB 1367

Effective Date: September 1, 2001

This bill passed before Senate Bill 113. It conflicts with that bill in one regard and otherwise mirrors it. This bill for all practical purposes is a nullity.

Amends Section 545.412 and 545.413 of the Transportation Code to provide that a person commits an offense if the person operates a passenger car or light truck and transports a child who is younger than five years of age and less than 36 inches in height, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system. The bill also provides that a person commits an offense if the person allows a child who is at least five years of age but younger than 15 years of age or who is younger than five years of age but at least 36 inches in height to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

Subject: Child Riding in the Open Bed of a Truck or Trailer

SB 399

Effective Date: September 1, 2001

Amends Section 545.414 of the Transportation Code to provide that a person commits an offense if the person operates an open-bed pickup truck or an open flatbed truck or draws an open flatbed trailer at any speed, rather than at a speed of more than 35 miles per hour, when a child younger than 18 years of age, rather than 12 years of age, is occupying the bed of the truck or trailer. Compliance or noncompliance with these provisions is not admissible evidence in a civil trial.

The bill creates additional defenses to prosecution. Defenses include that the person was: (1) operating or towing the vehicle in a parade; (2) operating the

vehicle to transport farm workers from one field to another field on a farm-to-market road, ranch-to-market road, or county road outside a municipality; (3) operating the vehicle on a beach; (4) operating a vehicle that is the only vehicle owned or operated by the members of a household; or (5) operating the vehicle in a hayride permitted by the governing body or a law enforcement agency of each county or municipality in which the hayride occurs.

Subject: Commercial Vehicle Weight Records

SB 220

Effective Date: Offenses

Committed on or after September 1, 2001.

Act relates to regulation of weight limitations and safety issues on large commercial vehicles and adds a criminal provision in Section 621.509, Transportation Code. It is now a Class C misdemeanor to fail to keep weight records as required by the act.

Subject: Overweight Cement, Garbage, and Recycle Truck Bonds

SB 889

Effective Date: September 1, 2001

Amends portions of the Transportation Code affecting cement, garbage, and recycle trucks. Bonds, required under the previous law, must now be carried and displayed. Violation is punishable by a fine up to \$200 on the first offense. A defense similar to the defense provided for the offense of Failure to Provide Proof of Financial Responsibility is also created. The defendant is entitled to a dismissal if he or she can present the appropriate bond in effect at the time of offense to the court.

Subject: Visible Smoke Violation

HB 2134

Effective Date: Offenses

Committed on or after September 1, 2001

Act concerns vehicle emissions. Section 6 of the act amends Section 547.605,

Transportation Code, creating a new exhaust offense. The portion of the Code the act amends relates to commercial vehicles. Knowingly emitting 10 seconds of visible smoke, or emitting smoke that does not dissipate in 10 seconds is made an offense. An exception is made for downshifting, or using lower gears to maintain momentum. A first offense is punishable by a fine of \$1 to \$350, and subsequent offenses are punishable by fines not less than \$200 or more than \$1,000. The inclusion of the exceptions and culpable mental state make the statute difficult to prosecute.

**NEW CLASS C:
OTHER CODES**

Subject: Minors Purchasing Lottery Tickets

SB 257

Effective Date: September 1, 2001

Amends Section 466.3051, Government Code. While current Texas law prohibits sales agents or their employees from selling lottery tickets to minors, the law does not prohibit minors from purchasing lottery tickets. Senate Bill 257 provides that a person younger than 18 who purchases a lottery ticket commits an offense punishable by a fine not to exceed \$250. It is a defense to the offense that the individual younger than 18 years of age is participating in an inspection or investigation on behalf of the Texas Lottery Commission or other appropriate governmental entity.

Subject: Dangerous Wild Animals

HB 1362

Effective Date: September 1, 2001

Creates Chapter 822, Health and Safety Code, regulating the possession, keeping, sale, and use of a list of "dangerous wild animals." The list includes most wild cats, bears, canines, and primates. The act requires all Texas municipalities to adopt an ordinance to implement the registration program created by the act before December 1, 2001.

**Passenger Safety Seat System and Safety Belt
Effective on offenses committed on or after September 1, 2001**

Age	Person Responsible	Type of Restraint	Location in vehicle	Penalty	Eligible for Special DSC (emphasizes seatbelts & child safety seat systems)	Eligible for DSC	Eligible for Deferred Disposition
child under age 4 or less than 36 inches	driver	child passengers safety seat system	front and back seats	minimum \$100 maximum \$200	yes	no	yes
child at least age 4 and under age 17	driver	safety belt	front and back seats	minimum \$100 maximum \$200	yes	no	yes
at least age 15	person	safety belt	front seat	minimum \$25 maximum \$50	no	yes	yes

Definitions

- Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Passenger vehicle means a passenger car, light truck, sport utility vehicle, truck, or truck tractor. (“Passenger car” means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator. “Light truck” means a truck, including a pickup truck, panel delivery truck, carryall truck, that has a manufacturer’s carrying capacity of 2,000 pounds or less. Since “sport utility vehicle” is not specifically defined, look to the definition of passenger vehicle. “Truck” means a motor vehicle designed, used, or maintained primarily to transport property. “Truck tractor” means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load. “Motor vehicle” means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. Section 541.201, T.C.)
- Safety belt means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.
- Secured in connection with use of a safety belt, means using the lap belt and any shoulder straps according to the manufacturer of the vehicle, if the safety belt is original equipment; or the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

Section 545.412, T.C. does not apply to:

- A person operating a vehicle transporting passengers for hire; or
- A person transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

Defenses to the prosecution under Section 545.413, T.C.

- The person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- The person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- The person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or
- The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163, T.C. that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more. (Section 502.163, T.C. provides for a fee for commercial motor vehicle used primarily for farm purposes.)

Amount of Due the State

- Fifty percent of the fines must be remitted to the State Comptroller at the end of the city’s fiscal year.
- Court costs must be remitted quarterly.

The act makes violations of certain provisions of the registration scheme class C misdemeanors. They include: care or custody of a "dangerous wild animal" without registration, failure to display the registration, and failure to report an animal attack or escape.

In addition, the act creates defenses to Cruelty to Animals (Sect. 42.09, Penal Code) and Disorderly Conduct by Firing a Weapon (Sect. 42.01 (a)(9) &(11), Penal Code) for shooting a "dangerous wild animal" when in reasonable fear of one's own or another's safety. Doubtless, this was previously covered by self-defense and necessity.

Subject: Cigarette Tax Violations
HB 2378

Effective Date: Offenses Committed on or after September 1, 2001

Amends Tax Code, making administrative changes, and creates a new offense by adding Section 48.015, Penal Code. The new statute prohibits acquiring, holding, possessing, or transporting cigarettes for sale without the proper federal and state tax stamps. Offenses must be committed knowingly or "having reason to know" and are Class A misdemeanors.

Subject: Illegal Dumping of Litter and Solid Waste

HB 631

Effective Date: September 1, 2001

By amending Section 365.012 of the Health and Safety Code, this decreases the minimum weights of litter or other solid waste that constitute certain offenses of illegal dumping.

An offense under this section is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less, or has a volume of five gallons or less. Subsection (f) states that if certain conditions exist, the offense under this section is a Class A misdemeanor. An offense under this section is a state jail felony if the

litter or solid waste to which the offense applies meets certain conditions as described in Subsection (g). Previous law placed the cutoff figures at 15 pounds or 13 gallons.

Unless the offense is alleged to be a state jail felony, an offense under this section may be prosecuted without alleging or proving any culpable mental state.

MODIFIED CLASS C

Subject: Parking Violation Presumption

HB 2173

Effective Date: September 1, 2001

Amends Sections 251.156 and 545.308 of the Transportation Code to allow county commissioners and city counsel to adopt orders/ordinances to create the presumption that the registered owner of a vehicle is the person who stopped, stood, or parked the vehicle at the time violation occurred.

Subject: Theft of Service (Hotel and Motel Lodging)

SB 437

Effective Date: September 1, 2001

Amends Section 31.04 of the Penal Code by providing that a person commits the offense of Theft of Service if the person intentionally or knowingly secures the performance of a service by agreeing to provide compensation and, after the service is rendered, fails to make the payment after receiving notice of the payment.

It is a defense to prosecution under this section that the defendant secured the performance of the service by giving a postdated check or similar sight order to the person performing the service, and the person performing the service or any other person presented the check or sight order for payment before the date on the check or sight order.

As amended, an offense under this section is: (1) a Class C misdemeanor if the value of the property or the amount of credit is less than \$50; (2) a

Class B misdemeanor if the value of the property or the amount of credit is \$50 or more but less than \$500; (3) a Class A misdemeanor if the value of the property or the amount of credit is \$500 or more but less than \$1,500; (4) a state jail felony if the value of the property or the amount of credit is \$1,500 or more but less than \$20,000; (5) a felony of the third degree if the value of the property or the amount of credit is \$20,000 or more but less than \$100,000; (6) a felony of the second degree if the value of the property or the amount of credit is \$100,000 or more but less than \$200,000; or (7) a felony of the first degree if the value of the property or the amount of credit is \$200,000 or more.

Subject: Civil Consequences for Theft of Motor Fuel

SB 968

Effective Date: September 1, 2001

Amends Article 42.019 of the Code of Criminal Procedure to require a judge to enter an affirmative finding if it is determined beyond a reasonable doubt, in the guilt or innocence phase of trial, that the defendant has committed theft of gasoline (31.03, Penal Code). If the judge enters an affirmative finding as required by this section and determines that the defendant has previously been convicted of an offense the judgment for which contains an affirmative finding under this section, the judge is required to enter a special affirmative finding in the judgment. Such a finding should be forwarded to DPS.

Section 521.349 is added to the Transportation Code to authorize DPS to automatically suspend the defendant's driver's license for 180 days from the date of final conviction. In the event the defendant's license is revoked or the defendant does not have a driver's license, the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver's license. If the defendant has previously been

denied a license under this section or had a license suspended, the period of suspension is one year from the date of a final conviction. The period of license denial is one year after the date the person applies to the department for reinstatement or issuance of a driver's license.

**Subject: Speed Limit Increase
HB 299**

Effective Date: Immediately

Amends Section 545.353 of the Transportation Code. Current law provides a maximum lawful speed of 70 miles per hour in the daytime for a vehicle on a highway numbered by the state or the United States outside an urban district. Ten western states with landscapes and population densities similar to the western part of Texas, including New Mexico, Oklahoma, and Arizona, allow for a maximum daytime speed limit of 75 miles per hour. This bill allows the Texas Transportation Commission to establish a daytime speed limit of 75 miles per hour on any part of the highway system located in a county with a population density of less than ten persons per square mile.

**Subject: Motorized Mobility
Devices**

HB 1378

Effective Date: Immediately

Adds Section 502.2861 & 542.008, Transportation Code and amends Section 552.006(a), Transportation Code. The new section defines "motorized mobility devices" as wheel chair-type devices with battery operated motors capable of low speeds. Persons operating "motorized mobility devices" are to be considered pedestrians, and registration of "motorized mobility devices" is specifically exempted.

Act also adds language to Section 552.006(a), Transportation Code, which prohibits pedestrians from walking on the roadway. Such conduct was prohibited where a sidewalk was provided; now the sidewalk must be

provided and accessible to the pedestrian.

**Subject: Vehicles on Sand Dunes
SB 1162**

Effective Date: Offenses

Committed on or after September 1, 2001

Creates Section 750.003, Transportation Code, prohibiting self-propelled or motorized vehicles seaward of the dune protection line. Section 63.012, Natural Resources Code, defines the dune protection line.

**Subject: ATV Highway Exception
HB 651**

Effective Date: September 1, 2001

Amends Section 663.037, Transportation Code, which prohibits the use of ATVs (all-terrain vehicles) on public streets, roads, and highways. The act creates a new exception for agricultural use of an ATV within 25 miles of its point of origin. The ATV must have warning flags, headlights, taillights, a licensed driver, and be used on non-interstate highways during daylight hours.

**Subject: Overweight Tow Trucks
HB 1679**

Effective Date: Immediately

Adds Section 622.954, Transportation Code, which exempts tow trucks that are towing another vehicle directly to the shop from overweight vehicle permitting.

**Subject: Municipal Police
Commercial Carrier Inspections
HB 2058**

Effective Date: Immediately

Amends Section 644.104, Transportation Code, to allow municipal police certified under the Transportation Code to inspect motor carriers in the manner previously allowed only to certified members of the Texas Department of Public Safety.

**NEW MISDEMEANORS
AND FELONIES**

**Subject: Felons in Body Armor
HB 84**

Effective Date: Offenses

Committed on or after September 1, 2001

Adds Section 46.041 to the Penal Code, immediately following the offense of Felon in Possession of a Firearm, creating a new offense prohibiting convicted felons from possessing any body armor designed to protect a person against gunfire. An offense under this section is a felony of the third degree.

**Subject: Improper Photos and
Videos**

HB 73

Effective Date: Offenses

Committed on or after September 1, 2001

Adds Section 21.15 to the Penal Code, creating an offense of making covert sexual photographs or videos. The photograph or recording must be made without the target's knowledge and with intent to arouse or gratify the sexual desire of any person. The offense is a state jail felony.

**Subject: Possession of Criminal
Instruments to Commit Theft
SB 966**

Effective Date: Offenses

Committed on or after September 1, 2001

Adds Section 31.15, Penal Code, creating a Class A misdemeanor for possessing, making, or distributing devices designed to thwart anti-theft technology. The device must be possessed with the intent to commit theft or made and distributed with the knowledge that it will be used to commit theft.

Section 2 of the act makes non-substantive changes to Art.18.16, Code of Criminal Procedure, concerning arrest and seizure of persons committing theft and stolen property.

Subject: Impersonating a Security Officer

HB 940

Effective Date: Offenses

Committed on or after September 1, 2001

Act creates a new offense in Section 1702.3875 of the Occupations Code. With elements similar to impersonating a public servant, a new Class A misdemeanor is set forth. The actor must impersonate a security officer with intent to make a person rely on that authority, or exercise a function limited to persons registered under the Occupation Code as security officers.

Subject: Possession of Firearm by Person Convicted of Family Violence

SB 199

Effective Date: September 1, 2001

Amends Section 46.04, Penal Code, making possession of a firearm by a person convicted of Class A assault against a family member an offense until the fifth anniversary of the defendant's release from confinement or release from probation. Persons under a protective order, emergency protective order, or similar out of state order are prohibited from possessing a firearm, provided they received notice of the order and are not peace officers.

Act also amends Article 17.292, Code of Criminal Procedure, allowing the magistrate to prohibit the possession of firearms in a magistrate's emergency protective order.

Section 85.022, Family Code is also amended to allow family court judges to impose an identical condition in protective orders issuing from their courts.

Section 25.07, Penal Code is amended to include violation of the firearm possession conditions as one that can be prosecuted as Violation of a Protective Order under that section.

Subject: Interfering with an Emergency Telephone Call

SB 18

Effective Date: September 1, 2001

Adds Section 42.062, Penal Code, creating a Class A misdemeanor offense for a person who interferes with or prevents an emergency phone call made by another person who reasonably believes that they or their property is in imminent danger. This act targets instances of escalating domestic violence not presently covered by the law.

Subject: Improper Contact with Child Victims

HB 2890

Effective Date: Offenses

Committed on or after September 1, 2001

Creates a new offense at Section 38.111, Penal Code. A person confined in a correction facility charged with or convicted of an offense for which he or she would be required to register as a sex offender is prohibited from any contact with a former child victim or the child's family. Exceptions are made for wardens with written consent to make contact and for attorneys, who may make contact solely for purposes of representing the defendant.

Correctional facility personnel are given immunity from damages resulting from violations of this law by the creation of Chapter 97, Civil Practice and Remedies Code.

Act also creates a Class C misdemeanor by amending Article 57.03, Code of Criminal Procedure which prohibits a public servant from releasing information for a non-law enforcement purpose about a child victim electing to use a pseudonym under that section.

NEWLY ENHANCEABLE OFFENSES

Subject: DWI Enhancement by Intoxicated Manslaughter

HB 2250

Effective Date: Offenses

Committed on or after September 1, 2001

Amends Section 49.09, Penal Code, adding provisions that allow enhancement of DWI offenses by prior Intoxicated Manslaughter under Section 49.08, Penal Code, former Texas statutes, or similar statutes of other states. A DWI with a prior Intoxicated Manslaughter conviction is a 3rd degree felony. No time limit is placed on the use of an Intoxicated Manslaughter conviction.

Perhaps more significantly, the act also modifies the time requirements on prior DWI convictions. Previously, the period from conviction to offense could not exceed 10 years. The time period remains 10 years, but the period begins to run from the discharge from custody, probation, or parole, rather than the date of conviction.

Subject: Enhancement of Offense of Prostitution

HB 460

Effective Date: Offenses

Committed on or after September 1, 2001

Amends Section 43.02 (c) of the Penal Code by providing enhancement for the offense of prostitution. Without enhancement, prostitution is a Class B misdemeanor. With one or two prior convictions for prostitution the new offense is punishable as a Class A misdemeanor. Three or more convictions under Section 43.02, Penal Code will enhance a new prostitution offense to a state jail felony. No date or other restrictions were added to the statute.

**Subject: Evading Arrest
Enhancements for Priors and
Injuries**

HB 2798

Effective Date: Offenses

**Committed on or after September 1,
2001**

Amends Section 38.04, Penal Code, adding several new enhancements to the offense of Evading Arrest. Evading in a vehicle is raised from a Class A misdemeanor to a state jail felony. A subsequent conviction of evading in a vehicle is raised from a state jail felony to a 3rd degree felony. Also increased to a 3rd degree felony is evading in a vehicle resulting in serious bodily injury to another. If death results from evading in a vehicle the offense is punishable as a 2nd degree felony.

Act also amends Code of Criminal Procedure sections making victims of vehicular evading eligible for crime victim compensation.

It should be noted that SB 215 was signed on the day after this bill. SB 215 made exactly the same substantive changes in slightly different ways.

**Subject: Unlawful Restraint of
Public Servant**

HB 2098

Effective Date: Offenses

**Committed on or after September 1,
2001**

Amends Section 20.02 (c), Penal Code, raising unlawful restraint of a public servant during the discharge of their official duties from a Class A misdemeanor to a 3rd degree felony. If the defendant is in custody during commission of the unlawful restraint the penalty is also raised. This bill was in response to jail and prison hostage situations.

**Subject: Taking a Weapon from an
Officer**

HB 1600

**Effective Date: Offenses Committed
on or after September 1, 2001**

Amends Section 38.14, Penal Code. Under previous law, taking or attempt-

ing to take a peace officer's weapon was a state jail felony. A defendant who successfully takes a weapon is punished for a third degree felony, while the defendant who only makes an attempt continues to face punishment for a state jail felony.

**Subject: Changes in Cruelty to
Animal Statute**

HB 653

Effective Date: Offenses

**Committed on or after September 1,
2001**

Act defines new terms, changes punishment, and creates defenses in Section 42.09 of the Penal Code involving the offense of cruelty to animals.

Statutory definitions are made of the terms: "abandon," "cruel manner," "custody," and "necessary food care or shelter." The more serious or culpable provisions are raised from Class A misdemeanors to state jail felonies. An exception is also made for conduct "generally accepted and otherwise accepted," relating to hunting, fishing, trapping, regulated wildlife control, or agricultural animal husbandry.

Juveniles convicted of this offense must be ordered by the juvenile court to receive counseling.

**MODIFIED MISDEMEANORS
AND FELONIES**

**Subject: Enhanced Disorderly
Conduct and Public Intoxication**

HB 3613

Effective Date: Offenses

**Committed on or after September 1,
2001**

Amends Section 15A, Article 42.12, Code of Criminal Procedure, granting discretion to trial judges in sentencing defendants with enhanced Class C misdemeanors to county courts on the offenses of Disorderly Conduct and Public Intoxication. Under the previous law, trial court was required to grant probation to enhanced offenders of these Class C violations. The exception

was an individual who had a previous enhanced conviction. The law was changed to leave the issue of probation in the court's discretion, as in all other cases.

**Subject: E-Mail Added to
Harassment and Increase in
Stalking**

SB 139

Effective Date: Offenses

**Committed on or after September 1,
2001**

Amends Section 42.07, Penal Code, adding e-mail as a means to commit the offense of Harassment. Obvious worries are raised about "annoying, tormenting, or embarrassing" commercial "spam" e-mail.

Further, act increases Stalking in Section 42.072, Penal Code, from a Class A misdemeanor to a 3rd degree felony.

**Subject: Obstruction or Retaliation
of Jurors**

HB 1181

Effective Date: Offenses

**Committed on or after September 1,
2001**

Amends Section 36.06, Penal Code. Obstruction and retaliation are third degree felonies. Now, if the victim is a juror, the penalty is punishable as a second degree felony.

**Subject: Use of a Child in
Commission of an Offense**

HB 156

Effective Date: Offenses

Committed on or after May 21, 2001

Creates Section 481.140 of the Health and Safety Code. The section provides for enhancement at the punishment stage of offenses involving delivery of controlled substances when the defendant used or attempted to use a child under 18 to commit or assist in the offense.

The section applies only to felony charges. The offense is increased one degree if the child's participation was voluntary. The offense is punishable as a

felony of the first degree if force or threat was used to gain the assistance of the child.

The bill also adds offenses under this new section to Art. 42.12, Section 3g(a) of the Code of Criminal Procedure, which makes the offense "aggravated" for parole purposes. Inclusion in Art. 42.12, Section 3g(a) would also prevent defendants punished under this new section from being granted community supervision by the trial court. The new section automatically "stacks" the sentence consecutively with any other sentence without application of the permissive "stacking" provisions of Art. 42.08 of the Code of Criminal Procedure.

Subject: Corroboration of Undercover Drug Agents
HB 2351

Effective Date: September 1, 2001

Adds Art. 38.141, Code of Criminal Procedure, creating a rule of sufficiency of evidence akin to the accomplice witness rule. A defendant may not be convicted of a drug offense on the testimony of a non-peace officer undercover agent of law enforcement without corroborating evidence. The evidence must show more than the mere existence of a drug offense. This bill was passed in response to the well-publicized drug cases in Tulia.

Subject: Misapplication of Fiduciary Property

HB 1813

Effective Date: Offenses Committed on or after September 1, 2001

Act amends Section 32.45, Penal Code. Attorneys in fact and agent appointed by a Power of Attorney under the Probate Code are expressly defined as fiduciaries. The act has little practical effect.

Subject: Use and Sale of Nitrous Oxide and Ketamine

HB 139

Effective Date: Offenses Committed on or after September 1, 2001

Act adds ketamine (known on the street as Special K) to Penalty Group One of the Controlled Substances Act found in Section 481.102, Health and Safety Code. It also adds Ketamine to the list of "date rape drugs" in Section 22.021(a) of the Penal Code.

Further, the act adds nitrous oxide to the list of volatile chemicals in Section 484.002 of the Health and Safety Code. Possession or use of nitrous oxide is exempted in Section 484.003, H.S.C., prohibiting inhalant abuse and possession with intent to abuse. Section 484.005(a) was amended to prohibit the sale of nitrous oxide to persons under 18.

Subject: Criminal Mischief and Public Water Supply

SB 1174

Effective Date: Offenses Committed on or after September 1, 2001, Unless the Defendant Elects to be Punished under this Section

Act amends Section 28.03, Penal Code, potentially decreasing the punishment for interrupting public water by criminal mischief. The offense of Criminal Mischief is punishable based on amount of loss except for interruptions of public services that started at Class A misdemeanor punishment and went up from there to first degree felony range. Now interruption or tampering with public water supply is a Class A misdemeanor regardless of the amount of loss.

Subject: Weapon Free Zone Extended to Place of Execution
HB 1925

Effective Date: Offenses Committed on or after September 1, 2001

Adds a new location to the places where weapons are prohibited under Section 46.03, Penal Code. A person commits an offense if he or she is in possession of or carries a weapon within 1,000 feet of a place of execution on the day of an execution. An element of the offense is notice of the prohibition, and exceptions are made for military personnel, guards, and private residences. An offense is a third degree felony.

TEXAS LEGISLATURE ONLINE

www.capitol.state.tx.us

Find out everything you want to know about the Legislature. Search bills by bill number, subject, author, committee, or key words.



NEW AND MODIFIED PROCEDURES

JUNKED VEHICLES AND NUISANCE ENFORCEMENT

Subject: Jurisdiction to Enforce Nuisance and Junk Vehicle Ordinances

HB 2270

Effective Date: September 1, 2001

Amends Section 30.00005, Government Code, granting municipal courts of record additional jurisdiction to affect the authority granted the courts by Chapter 214, Local Government Code and Chapter 683, Transportation Code. Those provisions relate to building nuisance enforcement and junk vehicles respectively.

The bill is explained in historical context in the official legislative analysis, as follows:

In August 1999, the Fifth Circuit Court of Appeals, in *Freeman v. City of Dallas* affirmed a federal trial court's decision that a judicial seizure warrant based on probable cause is required by the Fourth Amendment to the United States Constitution before an order of demolition issued by the Urban Rehabilitation Standards Board of the City of Dallas may be executed. The plaintiff was awarded damages because of the unlawful seizure. Based on this ruling, the City of Houston curtailed its demolition of dangerous structures and removal of junked vehicles without a seizure warrant. Litigation has delayed the process of demolishing dangerous buildings and has created a backlog of such buildings that constitute a public safety hazard. In February 2001, the Fifth Circuit Court of Appeals revisited the case and reversed its decision and held in favor

of the City of Dallas. The City of Houston may be subject to damage claims if the case is appealed to the United States Supreme Court and reversed in favor of the plaintiff. HB 2270 authorizes the governing body of a municipality by ordinance to provide that the municipal court of record has civil jurisdiction for the purpose of enforcing dangerous structure and junked vehicle ordinances and has concurrent jurisdiction with a court or a county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. This bill also authorizes the court to issue search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation and seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

Subject: Nuisance Abatement Procedures

HB 1833

Effective Date: Procedures and Notices Made on or after September 1, 2001. Offenses Occurring on or after September 1, 2001

Amends portions of the Government Code, Local Government Code, Health and Safety Code, and Transportation Code related to nuisance abatement and junked vehicle abatement in municipalities. The changes to those provisions are extensive.

Notably, Section 54.006, Local Government Code is added, exempting municipal ordinance violations under the nuisance provisions of the Local Government Code from the application of Section 3.04(a), Penal Code. That Penal Code provision gives the defendant the right to sever joined offenses.

Amendments also include personal delivery as a proper means of notifying property owners. Act grants limited access to non-public vital statistic records to help ascertain property ownership.

Finally, the act creates a substantial new administrative procedure available for municipalities to affect the authority granted by the Local Government Code for nuisance property enforcement.

Subject: Definition of Junked Vehicle

HB 489

Effective Date: September 1, 2001

Act changes the definition of a junked vehicle under Section 683.071, Transportation Code by changing an "or" to an "and." Under the former law, a vehicle was a junked vehicle if it fit one of four definitions: 1) wrecked, 2) inoperable, 3) lacking a valid vehicle inspection sticker, or 4) lacking current registration. The act now defines a junked vehicle as one that is first wrecked or inoperable. Secondly, the vehicle must also be lacking a valid vehicle inspection sticker or current registration. The new definition is more restrictive, requiring a two-part showing.

Subject: Antique Vehicle Exception to Junked Vehicle Statute

HB 495

Effective Date: September 1, 2001

Act changes the definition of an antique vehicle under Section 683.077 (b)(1), Transportation Code. Under the previous definition, a vehicle had to be 35 years old to qualify as an antique. That period has been shortened to 25 years. Antique vehicles are exempt from the provisions of the junked vehicle laws.

PRETRIAL PROCEDURES

Subject: Mail-in Pleas and Written Jury Waivers

SB 1681

Effective Date: September 1, 2001

Act amends Article 27.14(c), Code of Criminal Procedure, to allow the payment of a fine to constitute not only the plea of guilty, but also a waiver of a jury trial in writing. This greatly simplifies pleas by mail and at the window.

Subject: Out of State Confessions
HB 553

Effective Date: Statements Made on or after September 1, 2001

Amends Article 38.22, Code of Criminal Procedure, adding a new exception to the evidentiary ban on oral confessions made during custodial interrogation. Texas has the most restrictive laws in the nation concerning the taking of the accused's statement by the police. This causes problems with statements taken by federal law enforcement and statements taken by officers from other states in their own jurisdiction. The act exempts statements taken by federal law enforcement and statements made out of state to the police of other states from the restrictions of Article 38.22. The statement must still meet the standards required of the federal law enforcement by federal law or the laws of the state where the statement was taken.

Subject: Waiver of Arraignment
HB 840

Effective Date: Immediately

Creates Article 26.011, Code of Criminal Procedure, prohibiting the clerk, and thereby presumptively the court, from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant. Practices in this regard obviously vary jurisdiction to jurisdiction. The act requires simplification of the process for defendants with retained counsel.

Subject: Notification of Court of Family Violence
HB 596

Effective Date: September 1, 2001

Act makes a number of changes to Family Code provisions related to modification of custody and visitation orders and creates Article 42.23, Code of Criminal Procedure. This new provision of the Code requires the prosecutor of a family violence case who learns the defendant is subject to the continuing jurisdiction of a family

court notify the trial court of that fact. Once notified, the trial court must notify the family court of any conviction or deferred order in the family violence case.

This notification should be made in writing and served on the defendant or defendant's counsel in order to avoid impermissible ex parte contact. No duty to search for or find the pending family court matter is imposed on the prosecutor or court.

The act makes conviction or adjudication of family violence grounds for modification of custody and visitation orders.

TRIAL PROCEDURES

Subject: Certification and Licensing of Court Interpreters

HB 2735

Effective Date: September 1, 2001 (But See Below for Other Important Dates)

Adds Chapter 57, Government Code, creating a state-operated licensing and certification program for court interpreters for the deaf and hard of hearing and foreign language court interpreters. Authority is spread between the Texas Commission for the Deaf and Hard of Hearing and the Texas Department of Licensing and Regulation. Each must develop applications, exams, certification, and monitoring procedures.

Newly created Section 57.002, Government Code, which requires appointment of only licensed or certified interpreters, impacts courts. An exception is made for counties with a population of less than 50,000. Under the exception, the interpreter must still be qualified under the rules of evidence, over 18 years of age, and not a party to the cause.

Although the bill goes into effect September 1, 2001, interpreters are not required to be licensed or certified before January 1, 2002. Interpreters who practiced before courts prior to September 1, 2001 may be certified or

licensed without taking examinations.

Subject: Victim's Rights and "The Rule"

HB 1572

Effective Date: September 1, 2001

Act creates Article 36.06, Code of Criminal Procedure, which exempts victims, family members of murder victims, and guardians of victims from "The Rule" found in Rule 614, Texas Rules of Evidence. Rule 614 provides for the exclusion of witnesses from the courtroom during the testimony of other witnesses. The new Article allows exclusion of victims only if the victim will testify and the court finds that the victim's presence would materially affect his or her testimony. The burden of proving this fact is on the party asking to exclude victims, family members of murder victims, and guardians of victims.

Later sections of the act amend Articles 42.037, 56.02, 56.03, 56.12, 56.13, 56.14, Code of Criminal Procedure, Section 57.002, Family Code, and 76.016, Government Code. The amendments increase a victim's rights and impact prisons, probation departments, and the use of victim impact statements.

JUDGMENTS

Subject: Discharge of Fines in Jail and Determination of a Day

HB 1955

Effective Date: Offenses Committed on or after September 1, 2001

Article 45.048, Code of Criminal Procedure is amended to define a period of time that a defendant must remain in jail to satisfy a fine and costs. The act provides that the court may specify in the judgment the period of time of not less than eight hours nor more than 24 hours that a defendant must remain in jail to satisfy \$100 of a fine and costs. The current law requires the court to give not less than \$100 credit for each day or part of a day spent in jail.

**Subject: Special Needs Offenders
SB 661**

Effective Date: Immediately

Act adds judges with criminal jurisdiction to the list in Section 614.017 of the Health and Safety Code, detailing who may receive and share information about special needs offenders. Special needs offenders are persons convicted or with charges pending who have documented mental illness or mental retardation. This is a tool unlikely to be used often by municipal judges, but when necessary they will now qualify as judges with criminal jurisdiction.

The act also adds municipal and county health departments, hospital districts, and appointed or retained criminal defense attorneys to the list of eligible persons or entities.

TRAFFIC PROCEDURES

**Subject: Municipal Authority to Use
Parking Boots and Tow Vehicles
HB 996**

Effective Date: Immediately

Amends Section 684.054 of the Transportation Code. That section previously allowed a peace officer to direct the towing of a vehicle. The section is amended to allow a municipality under an ordinance regulating the parking of vehicles to immobilize parked vehicles and to remove such vehicles. Immobilization and towing must be to aid the enforcement of the parking ordinance.

**Subject: Traffic Enforcement in
Private Subdivisions
SB 217**

Effective Date: September 1, 2001

In response to recent case law, the Legislature created Section 542.008, Transportation Code, which makes privately owned roads public highways for the purpose of municipal enforcement of traffic rules, if certain conditions are met. Property owners must bring the municipality a petition of 25 percent of the property owners specifying what rules existing in the municipality the owners want enforced. The

municipality must then approve all or part of the petition by ordinance. The ordinance may make repayment of the cost of enforcement a condition of approval. Traffic control devices may be installed to affect the rules if an easement is granted by the property owners.

In a last minute amendment, Section 2 was added to the bill allowing counties with a population under 100,000 powers identical to those described above. That section previously applied only to counties with a population under 10,000.

**Subject: Motorcycle Safety Course
and Helmets
HB 2585**

Effective Date: September 1, 2001

Act amends Section 661.003, Transportation Code, prohibiting peace officers from arresting or giving citations to individuals operating motorcycles without helmets when the individual can prove exemption from the requirement of wearing a helmet. Exemptions remain for persons taking an approved motorcycle operator's safety course or having \$10,000 worth of health insurance.

Later sections create reporting requirements for the Comptroller and the agency overseeing regulation of motorcycle operator's safety courses. TCLEOSE is also required to provide training concerning helmet laws and profiling.

**Subject: Bicycle Safety and
"Electric Bicycles"
HB 2204**

Effective Date: September 1, 2001

Sets forth provisions in the Transportation Code for the enforcement of safety regulations regarding bicyclists and pedestrians. It amends Section 411.0175 to make a reference

to "motor vehicle" as "vehicle." It requires the Department of Public Safety to annually or more frequently

publish statistical information derived from accident reports as to the number, cause, and location of highway accidents, including information regarding the number of accidents involving injury, death, or property damage to a bicyclist or pedestrian.

It amends Section 201.614 to require DPS to establish and administer a Safe Routes to School Program to distribute money received under the Hazard Elimination Program (23 U.S.C., Section 152), as amended, to political subdivisions for projects to improve safety in and around school areas. Projects eligible to receive money under this program include installation of new crosswalks and bike lanes, construction of multi-use trails, construction and replacement of sidewalks, implementation of traffic-calming programs in neighborhoods around schools, and construction of wide outside lanes to be used as bike routes.

Section 502.0075 is amended to define "electric bicycle." An owner of an electric bicycle is not required to register the electric bicycle. Section 541.201 is amended to provide that the term "electric bicycle" is not included in the definition of "motor-driven cycle." Section 551.106 is created to address the regulation of electric bicycles. It prohibits DPS or a local authority from prohibiting the use of an electric bicycle on a highway that is used primarily by motor vehicles. It authorizes either DPS or a local authority to prohibit the use of an electric bicycle on a highway used primarily by pedestrians. DPS is authorized to establish rules for the administration of this section.

**POST JUDGMENT
COLLECTIONS PROCEDURES**

**Subject: Waiver of Payment of
Fines and Court Costs
HB 2410**

**Effective Date: Immediately (See
Summary for Application)**

Article 43.03, Code of Criminal Proce-

ture is amended and Article 43.091, Code of Criminal Procedure is added. These amendments provide the court with the authority to waive payment of a fine and court costs if the defendant defaults in payment. After a default and before waiving the fine and costs, the court must determine that the defendant is indigent and that performing community service would impose an undue hardship on the defendant. The act applies to a fine or costs imposed by a justice or municipal court on conviction of an offense, regardless of whether the offense was committed before, on, or after the effective date.

Subject: Denial of Driver's License Renewal for Persons Who Fail to Appear or Pay Fines

SB 1371

Effective Date: Offenses Committed on or after September 1, 2001

Act amends Section 706.002-706.006, Traffic Code, also known as "the FTA program." Denial of renewal of a driver's license is now available for persons who fail to appear on their citations and persons who fail to pay or satisfy judgments as ordered by the court. The act requires that details of the judgment be reported.

The act also adds more detail to other provisions of the program. It makes clear that the \$30 administrative fee must be paid after clearance by posting bond, appeal, dismissal, payment, or discharge of fine. Entry of judgment is eliminated as grounds for clearance. A provision adding "other suitable arrangement to pay the fine and costs within the court's discretion" is added. No fee is paid if the defendant is acquitted, as in the former law. Two new grounds of discharge without payment of the fee were added. They include a report that the original submission was made in error and that the file was destroyed in accordance with a records retention policy.

Subject: Collection Improvement Plan

HB 3498

Effective Date: September 1, 2001

Creates Article 1003.0032, Code of Criminal Procedure. The act authorizes the Office of Court Administration, before January 1 of each even year, to award grants to municipalities and counties to prepare a collection plan. The grants cover the cost of preparing said plans. The plans shall provide methods to improve collections of criminal cost and fines.

OCA may require reimbursement of the grant from additional collections. Collection plans must be filed by January 1, 2002.

Subject: Court Costs on Civil Collection

SB 1632

Effective Date: September 1, 2001

Amends Section 6.002, Civil Practice and Remedies Code, making all municipalities, not just home-rule municipalities, immune from costs and bonds in civil proceedings, including civil suits to collect fines and costs.

Subject: Collection Contracts

SB 1778

Effective Date: Immediately

Articles 103.003 and 103.0031, Code of Criminal Procedure are amended and Article 6701d-28, V.T.C.S., providing for a fee for a delinquent traffic fine, is repealed. The amendments to the Code of Criminal Procedure provide that a governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for collection services for debts, fines, fees, restitution, or costs other than forfeited bonds. The governing body may authorize an additional collection fee in the amount of 30 percent on each debt or account that is more than 60 days past due and

has been referred to the attorney or vendor for collection. If the private attorney or vendor collects an amount that is less than the total costs owed, the amount of costs required to be sent to the Comptroller and the amount owed the municipality are reduced by an equal percentage in order to fully compensate the attorney or vendor for specified allowable collection costs in the contract.

NEW COURT COSTS

Subject: Child Safety Fund Court Costs

HB 374

Effective Date: Convictions on or after September 1, 2001

Article 102.014, Code of Criminal Procedure is amended by removing the 400,000 or more population restriction from the collection of the \$25 court cost for the Child Safety Fund for the offense of Passing a School Bus Loading or Unloading Children and for Subtitle C, Transportation Code offenses that occur in a school crossing zone.

Subject: JCD Fund Change and a New Cost Added

SB 1421

Effective Date: Offenses

Committed on or after September 1, 2001

The amendment to Article 102.075, Code of Criminal Procedure increases the Juvenile Crime and Delinquency Fund from 25 cents to 50 cents for each conviction. Also, an additional 50-cent court cost for Correctional Management Institute of Texas and Criminal Justice Center Fund is to be collected for each conviction.

COURT COSTS

For Conviction of Offenses Committed on or after September 1, 2001

OFFENSE/DESCRIPTION	State JCPT	State FA	State CVC	State CCC	State JCD	State CMI	Local TFC	Local CS	Total* ²
MUNICIPAL ORDINANCES									
■ Parking (authorized by Sections 542.202-5542.203, Transportation Code)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	* ¹	* ¹
■ Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
■ Other Municipal Ordinances									
• Punishable by a fine of \$200 or less	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>40.00</u>
• Punishable by a fine of \$201-\$500	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>60.00</u>
• Punishable by a fine of more than \$500	2.00	5.00	35.00	40.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>83.00</u>
STATE LAW									
■ Transportation Code, Subtitle C, Rules of the Road									
• Parking & Pedestrian (in school crossing zone)	N/A	N/A	N/A	N/A	N/A	N/A	3.00	<u>25.00</u>	<u>28.00</u>
• Parking & Pedestrian (outside school crossing zone)	N/A	N/A	N/A	N/A	N/A	N/A	3.00	N/A	3.00
• Overtaking & passing a school bus, Section 545.066	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	3.00	<u>25.00</u>	<u>88.00</u>
• Other (outside school crossing zone)	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	3.00	N/A	<u>43.00</u>
• Other (in school crossing zone)	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	3.00	<u>25.00</u>	<u>68.00</u>
■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility									
• First conviction	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>40.00</u>
• Subsequent convictions	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>60.00</u>
■ Education Code									
• Parent Contributing to Truancy, Section 25.093	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	20.00	<u>60.00</u>
• Failure to Attend School, Section 25.094	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	20.00	<u>60.00</u>
■ All other misdemeanors									
• Punishable by a fine of \$500 or less	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>40.00</u>
• Punishable by a fine of more than \$500	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>60.00</u>

* Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.

Legislative Changes Underlined

- *1 ■ \$2-\$5 court costs for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).
- Up to \$5 court costs for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).

*2 **FEES (Add the following fees whenever they apply.):**

- Applicable fees for services of peace officers under Art. 102.011, Code of Criminal Procedure (C.C.P.).
 - **Arrest Fee:** \$5.00 for issuing a written notice to appear in court following the defendant’s violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20% (\$1.00) is sent to the state.
 - **Warrant Fee:** \$50.00 for executing or processing an issued arrest warrant or *capias*. When service is performed by a peace officer employed by the state, 20% (\$10.00) is sent to the state.
 - **Summoning a Witness:** \$5.00 for serving a subpoena.
 - **Summoning a Jury:** \$5.00 for summoning a jury.
 - **Service of a Summons** (for a defendant or a child’s parents): \$35.
 - **Other costs:** Costs for peace officer’s time testifying while off duty.
- **Time Payment Fee:** The court shall collect a fee of \$25 from a person who has been convicted and ordered to pay a fine, court costs, or restitution and seeks to pay the fine, court costs or restitution over a period of time. Fee due on or after the 31st day after the date on which the judgment is entered. One-half (\$12.50) is sent to the state. One-tenth (\$2.50) is retained locally for judicial efficiency. Four-tenths (\$10.00) are retained locally with no restrictions. (Section 51.921, Government Code)
- **Municipal Court Building Security Fee:** \$3.00 on every conviction if governing body has passed required ordinance establishing building security fund. (Art. 102.017, C.C.P.)
- **Municipal Court Technology Fund:** Up to \$4.00 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund. **Fund expires September 1, 2005** (Art. 102.0712, C.C.P.)
- **Traffic Law Failure to Appear (FTA):** \$30.00 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense **if city has contracted with the Department of Public Safety** to provide information necessary for the department to deny renewal of driver’s licenses. Two-thirds (\$20.00) are sent to the state. One-third (\$10.00) is retained locally. Applies on any violation that municipal court has jurisdiction of under Art. 4.14, C.C.P. (Chapter 706, Transportation Code [T.C.])
- **Special Expense:** Not to exceed \$25.00; collected when warrant for *failure to appear* or *violate promise to appear* served. City ordinance required to authorize collection. (Art. 45.203, C.C.P.)
- **Jury Fee:** \$3.00 fee collected upon conviction when case tried before a jury. \$3.00 fee collected upon conviction if defendant had requested a jury trial and then withdrew the request not earlier than 24 hours before the time of trial; fee to be paid even if case is deferred. (Art. 102.004, C.C.P.)

Seat Belt & Child Safety Systems: City must remit 50 percent of the fines collected for violations of the seat belt and child safety systems statutes (Secs. 545.412 & 545.413, T.C.). Remittance must be done at the end of the city’s fiscal year.

Excess Fines: Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 54.051, Code of Criminal Procedure for Title 7, Transportation Code offenses when the fines and special expenses for such offenses reach 30 percent of the city’s budget less any federal money. (Section 542.402(b), T. C.)

Ten Dollar Fees: A \$10 fee may be collected in the following instances upon dismissing a case: 1) Expired driver’s license or expired registration when a defendant remedies within 10 working days and presents proof to the court of a valid driver’s license or registration (Secs. 521.026 & 502.407, T.C.); 2) When an inspection certificate is expired less than 60 days and the defendant remedies it within 10 working days and presents evidence to the court (Sec. 548.605, T.C.). A court may also assess a \$10 fee when it grants a driving safety course (Art. 45.0511(f), C.C.P.). When a court grants teen court, the court may collect two \$10 fees – one is kept by the city for administering teen court, the other is disbursed to the teen court program (Art. 45.052(e) & (g), C.C.P.).

Name of Cost/Fee	Legal Reference	Abbreviation
Judicial and Court Personnel Training Fund	Government Code, Section 56.001	JCPT
Fugitive Apprehension Fund	Code of Criminal Procedure, Article 102.019	FA
Compensation to Victims of Crime Fund	Code of Criminal Procedure, Article 56.55	CVC
Consolidate Court Costs Fund	Code of Criminal Procedure, Article 102.075	CCC
Juvenile Crime and Delinquency Fund	Code of Criminal Procedure, Article 102.075(m)	JCD
Correctional Management Institute & Criminal Justice Center Fund	Code of Criminal Procedure, Article 102.075	CMI
Traffic Fund	Transportation Code, Section 542.403	TFC
Child Safety Fund	Code of Criminal Procedure, Article 102.014	CS

Subject: Review of Court Costs Funds

SB 1377

Effective Date: September 1, 2001

Chapter 321, Government Code is amended by adding Section 321.017. The new section provides that the state auditor may review each court costs fund to determine that money collected is being used for the purpose it was intended and that the amount collected is appropriate for its intended purpose. Findings are public and may include recommendations for legislative or policy changes.

Subject: Uniformity in Remitting Fees

SJR 49

To be Submitted to Voters: November 6, 2001

This resolution is for a proposed Constitutional Amendment to Article III by adding a Section 46. If passed by voters it will provide that legislative changes to fees, both criminal and civil, may take effect on January 1 after the regular legislative session in which it is adopted, if the bill is passed by a record vote of two-thirds of all members in each house. Currently, changes to court costs are generally effective September 1 after a legislative session.

JURISDICTION AND ADMINISTRATION ISSUES

Subject: Payment of Fees or Costs by Credit Card

HB 3162

Effective Date: Immediately

Section 132.002, Local Government Code is amended to provide the governing body of a municipality the authority to accept payment by credit card without requiring collection of a fee.

Subject: Information and Payment through the Internet

SB 201

Effective Date: Immediately

Chapter 132, Local Government Code is amended by adding Section 132.007. A county or municipality may provide, through the Internet, access to information or collection of payments for taxes, fines, fees, court costs, or other charges. A fee to recover costs for providing access may be charged only if providing the access through the Internet would not be feasible without the imposition of the charge. The amendment also provides authority to contract with a vendor to provide the service. Any fee charged by a vendor must be approved by the city or county. Payments collected by the vendor are to be promptly submitted to the city or county.

Subject: Exceptions to Public Information Law for Credit Card Numbers and E-mail Addresses

SB 694

Effective Date: Immediately

Act creates Sections 552.136 and 552.137 as exceptions in Chapter 552 of the Government Code. That chapter deals with public information. The act makes credit, debit, and charge card numbers and related information confidential. The second part of the act makes confidential the e-mail addresses of members of the public. E-mail addresses may be released with the addressee's permission.

Subject: Technical Corrections and Minor Changes to Laws Affecting Municipalities and Counties

HB 1265

Effective Date: September 1, 2001

Section 22.077(b), Local Government Code is amended to provide that a governing body can remove an appointed officer at any time that the body lacks confidence in the officer. The act also amends other sections in the Local Government Code, which are noted below.

Sections 21.002, 21.024, 21.031(a), 24.026(b), 43.906(a), 52.002(a), 62.002(a), 102.0065, 141.031(d), 142.005(c), 211.014(e), 212.0065(a), 271.045(a), 271.049(d), 271.056, and 341.902, Local Government Code are amended and Sections 105.031(c), 105.032, and 105.052, Local Government Code are repealed.

These amendments define who is included when a municipal governing body or members of the governing body are referenced in the Local Government Code and other codes. They also provide that an elected officer cannot be removed for an act committed before election to office if the act was a matter of public record or otherwise known to voters. Another amendment provides specific wording for the style of an ordinance. If a municipality with a population of less than 400 qualified voters wants to abolish the municipality's corporate existence, it can be done under certain conditions. Other amendments address salary for fire and police departments in a city of more than 175,000, limits on the amount of liability insurance purchased by a city, and other issues specific to city government.

Section 30.000085, Government Code, regarding courts of record, is amended, but only technical corrections were made to the statute.

Article 18.17, Code of Criminal Procedure is amended to provide that Chapters 72, 74, 75, and 76 in the Property Code do not apply to unclaimed or abandoned property to which Article 18.17 applies.

Subject: Application of a Seal to an Electronic Document

SB 276

Effective Date: Immediately

Section 121.004, Civil Practice and Remedies Code and Section 406.013, Government Code are amended. The application of an embossed seal is not required on an electronically transmitted

certificate of acknowledgment. However, an electronically transmitted authenticated document must legibly reproduce the required elements of a seal.

Subject: Administration of Oaths in Texas

HB 1766

Effective Date: September 1, 2001

Section 602.002, Government Code is amended to provide authority for retired and senior judges of courts of record, legislators and retired legislators, and the Attorney General to administer oaths in Texas.

Subject: Regulation of Bail Bond Sureties

SB 1119

Effective Date: September 1, 2001

(See Summary for Exceptions)

Section 1704.212, Occupations Code is amended to provide that a surety is not

considered in default until the 11th day after the final judgment is entered. Section 1704.001, Occupations Code is amended to include in the definition of "bail bond surety" a person who, for compensation, deposits cash to ensure the appearance in court of a defendant. Other sections of Chapter 1704 that were amended are Sections 1704.152, .154, .155, .160, .211, .302, .303, and .304. Sections 1704.109 and .213 were added. These amendments provide a bail bond board with authority to regulate solicitations or advertisements of licensed bail bond sureties. The amendments also change the eligibility requirements for a bail bond license, an application for bail bond license, and the requirements of a bail bond surety after conditional acceptance of an application. Also, if an attorney violates Chapter 1704, the bail bond board, instead of the sheriff, makes the determination that a violation has occurred.

Changes in the laws applying to an original application for a bail bond license are effective on or after September 1, 2001. Changes in the laws applying to a renewal of a bail bond license are effective September 1, 2002. Amendments to Section 1703.302 only apply to a person employed by a bonding business after the effective date of the act. Amendments to Section 1704.303, regarding advertisement by a bail bonding company, apply only to an offense committed on or after the effective date of the Act. All other amendments effective September 1, 2001.

Subject: Jurisdiction of Municipal Court

HB 2559

Effective Date: September 1, 2001

Section 29.003(b) Government Code is amended by making technical corrections to the statute.

INDEX OF HOUSE AND SENATE BILLS

HB 5.....	1	HB 1766.....	17	SB 164.....	31
HB 73.....	6	HB 1790.....	18	SB 199.....	7
HB 84.....	6	HB 1813.....	9	SB 201.....	16
HB 139.....	9	HB 1833.....	10	SB 217.....	12
HB 156.....	8	HB 1901.....	18	SB 219.....	30
HB 280.....	2	HB 1925.....	9	SB 220.....	3
HB 299.....	6	HB 1955.....	11	SB 257.....	3
HB 374.....	13	HB 1999.....	30	SB 276.....	16
HB 460.....	7	HB 2058.....	6	SB 399.....	3
HB 489.....	10	HB 2098.....	8	SB 437.....	5
HB 495.....	10	HB 2134.....	3	SB 577.....	18
HB 553.....	11	HB 2173.....	5	SB 661.....	12
HB 596.....	11	HB 2184.....	31	SB 694.....	16
HB 631.....	5	HB 2204.....	12	SB 889.....	3
HB 651.....	6	HB 2250.....	10	SB 917.....	32
HB 653.....	8	HB 2270.....	10	SB 966.....	6
HB 822.....	18	HB 2351.....	9	SB 968.....	5
HB 840.....	11	HB 2378.....	5	SB 1047.....	32
HB 940.....	7	HB 2410.....	12	SB 1074.....	32
HB 996.....	12	HB 2559.....	17	SB 1119.....	17
HB 1071.....	31	HB 2585.....	12	SB 1162.....	6
HB 1118.....	25	HB 2735.....	11	SB 1174.....	9
HB 1181.....	8	HB 2798.....	8	SB 1262.....	31
HB 1265.....	16	HB 2890.....	7	SB 1367.....	3
HB 1323.....	32	HB 3162.....	16	SB 1371.....	13
HB 1362.....	3	HB 3498.....	13	SB 1377.....	16
HB 1378.....	6	HB 3613.....	8	SB 1421.....	13
HB 1572.....	11	SB 7.....	28	SB 1432.....	18
HB 1600.....	8	SB 18.....	7	SB 1632.....	13
HB 1679.....	6	SB 68.....	31	SB 1681.....	10
HB 1712.....	32	SB 113.....	2	SB 1778.....	13
HB 1739.....	2	SB 139.....	8	SB 1807.....	30
HB 1762.....	32	SB 148.....	33	SJR 49.....	16

JUVENILES

NOTABLE BILLS

Subject: Teen Court

HB 822

Effective Date: September 1, 2001

Amends Articles 45.052(a) and (c), Code of Criminal Procedure to authorize a justice or municipal court to defer proceedings against a defendant who is under the age of 18 or enrolled full-time in an accredited secondary school in a program leading toward a high school diploma for not more than 180 days, rather than for 90 days.

Amends Article 45.052(c) as follows: "A defendant for whom proceedings are deferred under subsection (a) shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever date is earlier. The justice or municipal court shall dismiss the charge at the time [conclusion of the deferral period if] the defendant presents satisfactory evidence that the defendant has successfully completed the teen court program." Presumptively, this would be at the conclusion of the deferral period.

Subject: Graduated Driver's License (Drivers Under Age 18)

SB 577

Effective Date: January 1, 2002

Modifies current law to incorporate components of the graduated driver licensing system into the current provisions for driver's licenses. Amends Section 521.204 of the Transportation Code to prohibit the Department of Public Safety from issuing a Class A, B, or C driver's license other than a hardship license to an applicant under 18 years of age unless the applicant has held an instruction permit or hardship license for at least six months preceding the date of the application.

A licensed driver who is at least 21 years old (increased from 18) must accom-

pany a driver with an instruction permit operating a motor vehicle on a highway.

Creates Section 545.424 of the Transportation Code, prohibiting a person less than 18 years of age during the six-month period following issuance of an original driver's license from operating a motor vehicle after midnight and before 5 a.m. unless operation of the vehicle is necessary for the operator to attend or participate in employment (including work on a family-owned farm), school, or because of a medical emergency. Nor may the person operate a motor vehicle with more than one passenger in the vehicle under 21 years of age who is not a family member.

A person under 17 years of age who holds a restricted motorcycle license or moped license, during the six-month period following the issuance of an original motorcycle license or moped license to the person, may not operate a motorcycle or moped after midnight and before 5 a.m. unless the person is in sight of the person's parent or guardian, or 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.

These new restrictions do not apply to the holder of a hardship license or to a motorist with a qualified adult companion.

A peace officer may not stop a vehicle or detain the operator of a vehicle for the sole purpose of determining whether the operator of the vehicle has violated this section.

Subject: Referral to Juvenile Court: Parental Notice

HB 1790

Effective Date: September 1, 2001

Requires that the office or official designated by the juvenile court notify the child's parent or guardian that the child has been referred to the court. It amends Section 52.04, Family Code by adding "Notice to Parents" to the title of the section. Subsection (d) requires

that on referral of the case of a child who has not been taken into custody to the office or official designated by the juvenile court, the office or official designated by the juvenile court promptly give notice of the referral and a statement of the reason for the referral to the child's parent, guardian, or custodian.

Subject: Study and Comprehensive Plan for Juvenile with "At-Risk" Factors

HB 1901

Effective Date: Immediately

Creates Sections 614.018 and 614.019 in the Health and Safety Code, requiring the Texas Council on Offenders with Mental Impairments to perform a comprehensive study to develop a plan for juveniles with mental health and substance abuse disorders who are involved or who are at risk of becoming involved in the juvenile justice system. Pilot projects are authorized to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders. The bill also requires the Council to include certain representatives, including local and state juvenile justice entities that it considers necessary in the preparation of the study and plan. The Council must submit the study and plan, including recommendations and projected funding to implement the plan, to certain state officials on or before December 1, 2002. Section 614.018 expires December 1, 2002.

TRUANCY

MAJOR BILLS

Subject: School Attendance Laws *SB: 1432*

Effective Date: September 1, 2001
(Except as Noted)

SECTION 1.

Amends Education Code, Section 25.002. Since its inception, this section has designated which individuals may enroll a child in public school. In an attempt to ascertain the actual identity of such

MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chpt. 729
Jurisdiction	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 51.03, F.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 51.03, F.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 51.03, F.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 161.256, H.S.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03, F.C.) All fine-only offenses, except the offense of public intoxication.	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 51.03, F.C., and Sec. 729.003, T.C.)
Age Art. 45.058(h), C.C.P.; Sec. 51.02, F.C. Sec. 8.07, P.C.	Sec. 106.01. Definition of a minor - Under age 21. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. – child defined as at least 10 years of age & younger than 17.	Sec. 106.01. Definition of a minor - Under age 21. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. – child defined as at least 10 years of age & younger than 17.	Sec. 25.085. Compulsory School Attendance ¹ • Child under age 6, if previously enrolled in 1st grade, or • At least age 6 and who has not reached his or her 18th birthday (See Sec. 25.086 for Exemptions).	Sec. 161.252, H.S.C. Definition of a minor - Under age 18. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. – child defined as at least 10 years of age & younger than 17.	Sec. 8.07. Age Affecting Criminal Responsibility under age 17. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. – child defined as at least 10 years of age & younger than 17.	Sec. 729.001. Operation of Motor Vehicle by Minor- Under age 17. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. – child defined as at least 10 years of age & younger than 17.
Appearance	Secs. 106.10, 106.11, A.B.C. •Must be in open court; •Under age 18, parent or guardian required to appear with minor; •Under age 18, court must summons parent or guardian, if they reside in jurisdiction; if they reside outside jurisdiction, court must give written notice; •Court may waive presence, if unable to locate or compel parent's presence.	Secs. 106.10, 106.11, A.B.C. •Must be in open court; •Under age 18, parent or guardian required to appear with minor; •Under age 18, court must summons parent or guardian, if they reside in jurisdiction; if they reside outside jurisdiction, court must give written notice; •Court may waive presence, if unable to locate or compel parent's presence.	Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summons parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence. Age 17- parent's presence not required.	Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summons parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence. Age 17 – parent's presence not required.	Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summons parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence.	Sec. 729.003, T.C. Under age 17: •Must be in open court •Parent or guardian required to appear with minor •Court must summons parent or guardian •Court may waive presence, if unable to locate or compel parent's presence.
Waiver of Jurisdiction - Transfer to Juvenile Court² Sec. 51.08, F.C.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. At least age 17, after two previous convictions, charge may be enhanced and filed in county court.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. At least age 17, after two previous convictions, charge may be enhanced and filed in county court.	Sec. 51.08, F.C. Under age 17 • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. Age 17 – court retains jurisdiction.	Sec. 161.257, H.S.C May not waive jurisdiction. Title 3, Family Code (including transfer to juvenile court) does not apply to Subchapter N, Ch. 161, H.S.C.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses.	Sec. 51.08, F.C. Municipal court may not waive its jurisdiction over traffic violations.
Violation of a Court Order Art. 45.050, C.C.P.; Secs. 51.03(a)(3) and 54.023 F.C.	Art. 45.050, C.C.P. – Under age 17: •May refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order; •May hold child in contempt of court (max fine \$500); •May order suspension or denial of DL until child fully complies with orders. Defendants 17 and older: •Treated as adults-contempt of court under Sec. 21.002, G.C. may be filed. All defendants: •Failure to complete alcohol awareness course, court required to suspend DL for up to 6 months.	Art. 45.050, C.C.P. – Under age 17: •May refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order; •May hold child in contempt of court (max fine \$500); •May order suspension or denial of DL until child fully complies with orders. Defendants 17 and older: •Treated as adults-contempt of court under Sec. 21.002, G.C. may be filed. All defendants: •Failure to complete alcohol awareness course, court required to suspend DL for up to 6 months.	Art. 45.050, C.C.P. – Under age 17: •May refer child to the juvenile court for delinquent conduct for contempt of the municipal court order; •May hold child in contempt (max fine \$500); •May order suspension or denial of DL until child fully complies with orders. Sec. 25.094(d), Failure to Attend School refers to Sec. 54.023, F.C. which includes all the above provisions and adds that child may be detained in a place of nonsecured custody for a single period up to six hours (also applies if child turns age 17). Defendants 17 and older: Treated as adults-contempt of court under Sec. 21.002, G.C. may be filed.	Art. 45.050, C.C.P. – Under age 17: •May refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order; •May hold child in contempt of court (max fine \$500); •May order suspension or denial of DL until child fully complies with orders. Defendants 17 and older: •Treated as adults- contempt of court under Sec. 21.002, G.C. may be filed. All defendants: •Failure to complete tobacco awareness course, court must order DPS to suspend DL for up to 180 days.	Art. 45.050, C.C.P. – Under age 17: •May refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order; •May hold child in contempt of court (max fine \$500); •May order suspension or denial of DL until child fully complies with orders.	Art. 45.050, C.C.P. – Under age 17: •May refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order; •May hold child in contempt of court (max fine \$500); •May order suspension or denial of DL until child fully complies with orders.

MUNICIPAL JUVENILE/MINOR CHART¹

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code, Chpt. 729
Common Offenses	<ul style="list-style-type: none"> •Sec. 106.02. Purchase of Alcohol by Minor; •Sec. 106.025. Attempt to Purchase Alcohol by a Minor; •Sec. 106.04. Consumption of Alcohol by a Minor; •Sec. 106.05. Possession of Alcohol by a Minor; •Sec. 106.07. Misrepresentation of Age by a Minor. 	<ul style="list-style-type: none"> •Sec. 106.041. Driving Under the Influence of Alcohol by a Minor. 	<ul style="list-style-type: none"> •Sec. 25.094. Failure to Attend School; •Sec. 37.102. Rules (Enacted by School Board); •Sec. 37.107. Trespass on School Grounds; •Sec. 37.122. Possession of Intoxicants on School Grounds; •Sec. 37.124. Disruption of Classes; •Sec. 37.126. Disruption of Transportation. 	<ul style="list-style-type: none"> Sec. 161.252, H.S.C. •Possession of cigarettes or tobacco; •Purchase of cigarettes or tobacco; •Consumption of cigarettes or tobacco; •Acceptance of cigarettes or tobacco; •Display false proof of age. 	<p>All fine-only offenses, except a person under 17 years of age may not be charged in municipal court for the offense of public intoxication (See Sec. 51.03(f), F.C.).</p>	<ul style="list-style-type: none"> •Chpt. 502. Registration of Vehicles, except Secs. 502.282 or 502.412; •Chpt. 521. Driver's Licenses; •Subtitle C. Rules of the Road, except Secs. 550.021, 550.022 and 550.024; •Chpt. 601. Safety Responsibility •Chpt. 621. Vehicle Size & Weight; •Chpt. 661. Motorcycles & All Terrain Vehicles; •Chpt. 681. Parking, Towing & Storage of Vehicles.
Penalties³	<p>Secs. 106.02. 106.025. 106.04. 106.05. 106.07</p> <p>1st conviction</p> <ul style="list-style-type: none"> •Class C misdemeanor (max \$500); •Mandatory alcohol awareness program, Sec. 106.115*; •Mandatory 8-12 hours alcohol-related community service; •DL suspension or denial – 30 days; eff. 11th day after conviction; <p>2nd conviction</p> <ul style="list-style-type: none"> •Class C misdemeanor (max \$500); •Optional alcohol awareness program*; •Mandatory 20-40 hours alcohol-related community service; •DL suspension or denial – 60 days; eff. 11th day after conviction; <p>3rd conviction</p> <p>Under age 17:</p> <ul style="list-style-type: none"> •Court must waive jurisdiction and transfer to juvenile court. <p>Age 17 & under 21</p> <ul style="list-style-type: none"> •Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced. <p>*If alcohol awareness program completed timely, the court may reduce the fine to half the amount assessed. Sec. 106.115(c), A.B.C.</p>	<p>Sec. 106.041.</p> <p>1st conviction</p> <ul style="list-style-type: none"> •Class C misdemeanor (max \$500); •Mandatory alcohol awareness program*; •Mandatory 20 to 40 hours alcohol-related community service; •Administrative DL suspension (separate proceeding— Chapters 524 and 724, T.C.). <p>2nd conviction</p> <ul style="list-style-type: none"> •Class C misdemeanor (max \$500); •Optional alcohol awareness program*; •Mandatory 40 to 60 hours of alcohol-related community service; •Administrative DL suspension (separate proceeding— Chapters 524 and 724, T.C.). <p>3rd conviction</p> <p>Under age 17:</p> <ul style="list-style-type: none"> •Court must waive jurisdiction and transfer to juvenile court. <p>Age 17 & under 21</p> <ul style="list-style-type: none"> •Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced. <p>*If alcohol awareness program completed timely, the court may reduce the fine to half the amount assessed. Sec. 106.115(c), A.B.C.</p>	<p>Secs. 25.094. 37.102. 37.107. 37.122. 37.124. 37.126.</p> <p>Class C misdemeanors (max \$500)</p> <p>Sec. 25.094(c)⁴ – In addition to a fine, a court may order a sanction listed in Art. 45.054, C.C.P.:</p> <ul style="list-style-type: none"> •Attend school without unexcused absences; •Attend preparatory class for GED (older child that will not do well in classroom environment) or, if child is 16 or older, take GED exam; •Attend a special program: <ul style="list-style-type: none"> –alcohol & drug abuse program, –rehabilitation program, –counseling program, –training in self-esteem & leadership, –work and job skills training, –training in parenting, –manners training, –violence avoidance training, –sensitivity training, –advocacy and mentoring training; •Attend class for student at risk of dropping out of school (may require parent to attend with child); •Community service; •Participate in tutorial program; •Order DPS to suspend or deny issuance of a DL for a period of time not to exceed 365 days. 	<p>Sec. 161.252 and 161.253, H.S.C.</p> <p>1st conviction</p> <ul style="list-style-type: none"> •A fine not to exceed \$250, but court shall suspend execution of sentence (court costs must still be assessed and imposed) and order tobacco awareness program. Court dismisses charge on completion of course. •If no course available, court shall require 8-12 hours tobacco-related community service. <p>Subsequent offenses</p> <ul style="list-style-type: none"> •A fine not to exceed \$250; •Court shall suspend execution of sentence and order tobacco awareness course; •Upon completion of course, court may reduce fine to not less than half. 	<p>Sec. 12.23 – Class C misdemeanor (max fine \$500)</p> <p>Persons under age 21 charged with public intoxication, the penalty is:</p> <p>1st conviction</p> <ul style="list-style-type: none"> •Class C misdemeanor (max fine \$500); •Mandatory alcohol awareness program*; •Mandatory 8-12 hours alcohol-related community service; •DL suspension or denial – 30 days; eff. 11th day after conviction. <p>2nd conviction</p> <ul style="list-style-type: none"> •Class C misdemeanor (max fine \$500); •Optional alcohol awareness program*; •Mandatory 20-40 hours alcohol-related community service; •DL suspension or denial – 60 days; eff. 11th day after conviction. <p>3rd conviction</p> <p>Higher offense/charge; (if between ages 17-20) jailable misdemeanor; if child is under 17, municipal court must waive jurisdiction and transfer to juvenile court</p> <p>*If alcohol awareness program completed timely, the court may reduce the fine to half the amount assessed. Sec. 106.115(c).</p> <ul style="list-style-type: none"> •Failure to complete alcohol awareness course, court required to suspend DL for up to 6 months 	<p>Sec. 729.001 and 729.002</p> <p>Penalty same as adult defendant. See general and specific penalty clauses throughout Transportation Code.</p>

MUNICIPAL JUVENILE/MINOR CHART¹

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code, Chpt. 729
Expungement⁵	Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.	Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.	Sec. 25.094(g) •Court must notify child of right; •Court must give copy of Art. 45.055, C.C.P. Art. 45.055, C.C.P. •May apply to at age 18 if only one conviction for offense of Failure to Attend School; •Must submit written request made under oath; •Form of submission determined by applicant; •No fee can be charged.	Sec. 161.255, H.S.C. •May apply to the court to have conviction expunged; •Applicant must have completed tobacco awareness course; •May have multiple charges expunged as long as applicant completed tobacco awareness course.	Art. 45.0216, C.C.P. •Not more than one conviction; •Child may apply on or after age 17; •Apply to trial court; •Child makes request under oath; •Court cannot charge fee.	Chpt. 55, C.C.P. Expunction order must be filed in district court.
Custody⁶ Art. 45.058, C.C.P.	•A child at least age 10 and under age 17 may be taken into custody. •Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody—held for not more than 6 hours. •If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. •A minor age 17 may be handled as an adult.	•A child at least age 10 and under age 17 may be taken into custody. •Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. •If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. •A minor age 17 may be handled as an adult.	•A child at least age 10 and under age 17 may be taken into custody. •Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody—held for not more than 6 hours. Sec. 25.094(d), E.C. •Order based on probable cause that individual failed to attend school: -A child may be taken into custody. •Individual may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court that has venue.	•A child at least age 10 and under age 17 may be taken into custody. •Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody—held for not more than 6 hours. •If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. •A minor age 17 may be handled as an adult.	•A child at least age 10 and under age 17 may be taken into custody. •Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody—held for not more than 6 hours. •If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. •A minor age 17 may be handled as an adult.	Sec. 729.003(c) •Minor shall be detained in a facility that complies with Sec. 51.12, F.C. •Sec. 51.12, F.C. – Detention may be in: -a juvenile processing office; -a place of nonsecure custody; -a certified juvenile detention facility; -a secure detention facility.
Reports	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed. Secs. 521.201 and 521.294, T.C. •DPS, if minor fails to appear or fails to pay the fine and costs; •DPS, when case adjudicated. Sec. 106.116, A.B.C. •Tex. Alcoholic Bev. Commission, if requested. Sec. 106.117, A.B.C. •DPS, upon conviction or order of deferred.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed. Secs. 521.201 and 521.294, T.C. •DPS, if minor fails to appear or fails to pay the fine and costs; •DPS, when case adjudicated. Sec. 106.116, A.B.C. •Tex. Alcoholic Bev. Commission, if requested. Sec. 106.117, A.B.C. •DPS, upon conviction, order of deferred, and acquittal under 106.041.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed of. Secs. 521.201 and 521.294, T.C. •DPS, if minor fails to appear or fails to pay the fine and costs; •DPS when case adjudicated.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed of. Sec. 161.254, H.S.C. •DPS, if defendant fails to present evidence of completion of tobacco-related program or community service. Secs. 521.201 and 521.294, T.C. •DPS, if minor fails to appear or fails to pay the fine and costs; •DPS when case adjudicated.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed of. Secs. 521.201 and 521.294, T.C. •DPS, if minor fails to appear or fails to pay the fine and costs; •DPS when case adjudicated.	Sec. 543.203, T.C. •Convictions reported to DPS. Secs. 521.201 and 521.294, T.C. •DPS, if minor fails to appear or fails to pay the fine and costs; •DPS when case adjudicated.

MUNICIPAL JUVENILE/MINOR CHART¹

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code, Chpt. 729
Parents or Guardians ⁷	<p>Sec. 106.011, A.B.C. •Required to appear in open court with any minor under age 18.</p> <p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. After summons, failure to appear with child in court is a Class C misdemeanor. Art. 45.057(g), C.C.P.</p> <p>Sec. 106.115(d), A.B.C. •Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program.</p> <p>Art. 45.057(b)(3), C.C.P. •Court may order parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p>	<p>Sec. 106.011, A.B.C. •Required to appear in open court with any minor under age 18.</p> <p>Art. 45.0215, C.C.P. •Court required to issue summons for parents.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Sec. 106.115(d), A.B.C. •Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program.</p> <p>Art. 45.057(b)(3), C.C.P. •Court may order parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p>	<p>Sec. 25.093, E.C. •May be charged with the offense of Parent Contributing to Truancy, a Class C misdemeanor.</p> <p>Art. 45.0215, C.C.P. •Court required to issue summons for parents.</p> <p>Art. 45.054(d), C.C.P. •Failure to comply with summons to appear with child charged with failure to attend school is a Class C misdemeanor.</p> <p>Art. 45.057(b)(3), C.C.P. •Court may order parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(b)(3), C.C.P. •Court may order parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(b)(3), C.C.P. •Court may order parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents.</p>

¹Sec. 54.021(b), F.C. – When a juvenile court waives its jurisdiction over truancy, a complaint is filed in either municipal or justice court charging the offense of Failure to Attend School under Sec. 25.094, E.C. by complaint. The proceeding is governed by Chapter 45, C.C.P. (Municipal court will no longer conduct civil “truancy” hearings under Family Code rules.)

In counties with a population of less than 100,000, the juvenile court in that county has concurrent jurisdiction with the justice and municipal courts over offenses under Sec. 25.094, E.C. (Failure to Attend School).

²Art. 45.054, C.C.P. provides authority for municipal court to employ case managers for juvenile cases. Sec.51.08, F.C. provides that a court that has implemented a juvenile case manager program under Art. 45.054, C.C.P. may, but is not required to, waive its original jurisdiction under subsection (b)(1) of Section 51.08, F.C.

³Art. 45.057, C.C.P. – When a child who is at least 10 years old and younger than 17 is charged with a non-traffic offense, the court may, in addition to a fine, order the following sanctions: 1) Refer the child or child’s parent for services under Sec. 264.302, F.C.; 2) Require child to attend a special program that is in best interest of child, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring program; 3) Require parents to do an act or refrain from an act that will increase the likelihood that the child will comply with court orders, including attending a parenting class or parental responsibility program and attending the child’s school classes or functions; 4) Order the parents of a child required to attend a special program to pay an amount not greater than \$100 for the costs of the program; 5) Require both the child and parent to submit proof of attendance. (If program involves the expenditure of county funds, county must approve child’s attendance.)

Deferred Disposition

- If the court grants deferred for all Alcoholic Beverage Code offenses except DUI, the court must require the defendant to perform the community service requirements and attend an alcohol awareness course; for DUI, the court must require an alcohol awareness course.
- If defendant charged with the offense of public intoxication is at least age 17 and under age 21, and the court grants deferred, the court must order the community service requirements under Sec. 106.071, A.B.C. and attendance at an alcohol awareness course.

⁴ A dispositional order under Art. 45.054, C.C.P. is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

⁵ Art. 45.0216, C.C.P. provides that proceedings under Art. 45.051, C.C.P. (Deferred Disposition) and proceedings under Art. 45.052, C.C.P. (Teen Court) may be expunged under Art. 45.0216, C.C.P.

⁶Art. 45.059, C.C.P. Children Taken into Custody for Violation of Juvenile Curfew or Order: 1) Release person to parent, guardian, or custodian; 2) Take person before a justice or municipal court; or 3) Take person to juvenile curfew processing office (similar to nonsecure custody and not held for more than six hours).

⁷Under Sec. 25.093(f), E.C., when a court grants deferred disposition to a parent charged with parent contributing to truancy, the court may require the defendant to attend a program that provides instruction designed to assist the parent in identifying problems that contribute to his or her child’s absence from school and strategies for resolving those problems.

individuals, this addition now requires schools to record unique identifying information. In the past, the lack of such information has posed an obstacle to enforcing school attendance laws.

SECTION 2.

Amends Education Code, Section 25.091. This section is rewritten to delineate the authority of peace officers serving as school attendance officers from school attendance officers who are not peace officers. The revision makes clear that only peace officers acting as attendance officers may serve court-ordered legal process.

SECTION 3.

Amends Education Code, Section 25.093. The new title of this section, "Parent Contributing to Truancy," is somewhat of a misnomer. Do not be misled by the name change. The essence of the offense formerly known as Thwarting Compulsory Attendance remains intact. The following amendment reflects an effort to modernize the former law in the following ways: First, it allows school officials other than the school attendance officer to file a complaint against a parent accused of contributing to a child's nonattendance in either municipal court or justice court. Second, if the complaint is filed in a justice court, it may now be filed in the precinct that either the school is located or the parent resides. Third, it potentially increases the scope and duration of parental rehabilitation by changing "class" to "program." Fourth, it allows courts to order parents to attend available programs offered by entities other than the school district. Fifth, courts are expressly authorized to hold parents in contempt who disobey court orders. Finally, it makes the question of whether an absence is excused an affirmative defense in which the parent has the burden of showing that the absence was either excused by the school or should be excused by the court. A court decision to excuse an absence has no bearing on whether a

school, for administrative purposes, excuses the absence.

SECTION 4.

Amends Education Code, Section 25.094. This section of the Education Code is rewritten to make the criminal offense of Failure to Attend School independent of the civil statutes defining truancy in the Family Code.

Throughout the revision of this section, the term "child" is replaced with "individual." Accordingly, students who do not meet the Family Code's definition of a "child" (e.g., students who are 17 years or older) and who cannot be ordered to attend school under the Family Code's truancy provisions may be prosecuted under this statute.

As revised, individuals commit this offense if they fail to attend school on ten or more days or parts of the day within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

Juvenile courts in counties with populations of less than 100,000 are included among the courts authorized to adjudicate school attendance cases. All courts with jurisdiction to adjudicate school attendance violations are authorized to enter orders mandating school attendance and participation by defendants and parents in special programs listed in Article 45.054, Code of Criminal Procedure. Previously, these provisions were exclusively listed in the Family Code.

Former provisions in Subsection (d) mandating that a municipal or justice court transfer a school attendance case (including the complaint against the child, all pleadings and orders) upon discovering that the defendant has violated a court order have been removed. New language for Subsection (d) is contained in Section 55 of HB 1118.

Under the former law, an individual could be taken into custody for failure to attend school pursuant to a court order based on reasonable suspicion that the offense had been committed. Subsection (e) now requires that such an order be based on an affidavit showing probable cause.

Under Subsection (f), showing an absence is excused is now an affirmative defense in which the defendant has the burden of showing that the absence was either excused by the school or should be excused by the court. The same is true under Subsection (g) if the absence was involuntary. A court decision to excuse an absence has no bearing on whether a school, for administrative purposes, excuses the absence.

Note: An absence that occurs during the 2001-2002 school year is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date.

SECTION 5.

Amends Education Code, Section 25.095. The school district is now required to notify a student's parent in writing at the beginning of the school year that if a student is absent on ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period, the student is subject to prosecution in either municipal court, justice court, or a juvenile court in a county with a population of less than 100,000. The school district is also now required to notify a student's parent if the student has been absent from school on three days or parts of days within a four-week period. The notice must inform the parent that it is the parent's duty to monitor the student's school attendance and require the student to attend school, and state that the parent is subject to prosecution. The notice must also

request a conference between school officials and the parent to discuss the absences.

SECTION 6.

Education Code, Section 25.0951. School District Complaint or Referral for Failure to Attend School.

This section regulates when a complaint by a school district is permissible and when it is mandatory. If a student fails to attend school without an excuse on ten or more days or parts of days within a six-month period in the same school year, it is mandatory that the school district file a complaint against the student, the student's parents, or both in a municipal or justice court. Alternatively, a school district in a county with a population of less than 100,000 may refer the student to a juvenile court for conduct indicating a need for supervision. If a student fails to attend school without an excuse on three or more days or parts of days within a four-week period, the school district may, but is not required to, file a complaint against the student or the student's parent or both in a municipal or justice court. Alternatively, a school district in a county with a population of less than 100,000 may refer the student to a juvenile court for conduct indicating a need for supervision.

Note: An absence that occurs during the 2001-2002 school year is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date.

Education Code, Section 25.0952. Procedures Applicable to Truancy-Related Offenses.

This provision specifically mandates that criminal complaints alleging either Parent Contributing to Truancy or Failure to Attend School be adjudicated under Chapter 45 of the Code of Criminal Procedure.

SECTION 7.

Creates Education Code, Section 29.087, authorizing the Texas Education Agency to develop a process for school districts and open-enrollment charter schools to seek permission to operate programs that prepare students to take the high school equivalency exam. To receive authorization, a school must have a similar program operating by May 1, 2001 that is approved by TEA. Schools authorized to operate preparatory programs will be restricted in the number of new students who may participate. A student is eligible to participate in such a program if ordered by a court under Article 45.054, Code of Criminal Procedure to either participate in a special program or take the high school equivalency examination. Schools are required to inform eligible students of the time and place of the examination. To be eligible to take the examination, students are required to take specified assessment instruments. Students enrolled in the program may not participate in UIL activities. Other restrictions on the student, the school, TEA, the school's board of directors, the commissioner, and funding are specified.

Note: The effective date for this provision is January 1, 2002. It shall apply to each student enrolled in a high school equivalency examination program operated by a school district or an open-enrollment charter school on or after the effective date.

SECTION 8.

Amends Code of Criminal Procedure, Article 45.050. This amendment makes reference to the newly added definition of "child" now contained in the Code of Criminal Procedure and removes reference to the definition contained in the Family Code. If a child fails to obey an order of either a municipal court or justice court, the court is authorized to either refer the child to juvenile court for delinquent conduct for contempt of a

justice or municipal court order or retain the case and do one or both of the following: (1) fine the child up to \$500 and/or (2) order the suspension or denial of the child's driver's license or permit until the child has fully complied with the orders of the court. A court that orders suspension or denial of a driver's license or permit is required to notify DPS on receiving proof that the child has fully complied with the orders of the court.

SECTION 9.

Creates Articles 45.054 through 45.059, Code of Criminal Procedure:

Code of Criminal Procedure, Article 45.054. Failure to Attend School Proceedings.

This addition essentially mirrors provisions that were previously contained only in the Family Code (Section 54.021). It lists classes, programs, and other requirements that the court may impose on individuals convicted of Failure to Attend School and their parents (including those standing in parental relation).

Code of Criminal Procedure, Article 45.055. Expunction of Conviction and Records in Failure to Attend School Cases.

This section exclusively applies to the expunction of records of individuals convicted of Failure to Attend School. The request may be made on or after the individual's 18th birthday. While the form may be determined by the applicant, the request must be in writing, under oath, and state that the applicant had no more than one conviction. The court may expunge the conviction without a hearing or order a hearing if facts are in doubt. Subsection (c) specifies what documents are to be expunged. Courts are prohibited from ordering that the applicant pay any fee or court cost for seeking an expunction.

Code of Criminal Procedure, Article 45.056. Authority to Employ Truancy Case Managers; Reimbursement.

Adds provisions to authorize a justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity to employ and seek reimbursement for truancy case managers from the Governor's Office. To be eligible for reimbursement, the applicant must present a comprehensive plan to reduce truancy that involves a case manager. (Note, HB 1118 amends Chapter 45 of the Code of Criminal Procedure by adding Article 45.054, Authority to Employ Case Managers for Juvenile Cases).

*To apply for funds from the Criminal Justice Division of the Governor's Office, contact your local council of governments (COG) or call 512/463-1919 for deadlines, guidelines and names of COG contacts (www.governor.state.tx.us/the_office/cjd/cjdmain.htm).

SECTION 10.

Amends Code of Criminal Procedure, Article 102.014 with minor conforming changes.

SECTIONS 11 & 12.

Sections 51.03 and 51.04, Family Code are amended. Provisions setting forth rebuttable reasons for the absence of a child are removed. The bill provides that in a county with a population of less than 100,000, conduct that violates provisions relating to the failure to attend school indicates a need for supervision. The bill also provides that the juvenile court has concurrent jurisdiction with the justice and municipal courts over such violations.

SECTION 14.

Amends Family Code, Section 54.021 (b) and (c) to assist municipal and justice courts by ridding them of having to delineate between civil school attendance provisions contained in the Family Code and criminal school attendance provisions contained in the Education Code. As written, Subsec-

tion 54.021(a) of the Family Code allows juvenile courts to waive their exclusive original jurisdiction of truancy as defined in Section 51.03(b)(2). Such a waiver is effective only if the municipal or justice court permits such a waiver. Under the former law, municipal and justice courts allowing the waiver were required to comply with all pertinent Family Code provisions and to handle the case as a civil matter. As amended, Section 54.021 now specifies that when a juvenile court sends such a case to either a justice or municipal court the case must be filed as a complaint alleging a criminal matter (specifically, Failure to Attend School, Section 25.094, Education Code).

Presumably because of Section 21, the amendments contained in this section are all that remain of Section 54.021, Family Code.

SECTION 15.

Amends Family Code, Section 54.041. This amendment makes conforming changes and potentially increases the scope and duration of parental rehabilitation by changing "class" to "program." Furthermore, it allows courts to order parents to attend available programs offered by entities other than the school district.

SECTION 17.

Amends Education Code, Section 7.111. This amendment reflects the renaming and recodification of the former Job Training Partnership Act. It also adds reference to the authority in which a municipal or justice court can order a person to take the high school equivalency examination.

SECTION 19.

Section 25.096, Education Code, is repealed. Sections 52.027 and 52.028, Subsections (c) through (h), Section 54.021, and Section 54.022, Family Code, are repealed.

Subject: Modifications Pertaining to Administration of Juvenile Justice (Family Code)

HB 1118

Effective Date: September 1, 2001

SECTION 6.

Under existing law a municipal or justice court must waive its original jurisdiction and refer a child to juvenile court if the child has been convicted of two or more fine-only offenses other than traffic offenses and public intoxication. Section 51.08, Family Code is modified to allow municipal and justice courts who have implemented a juvenile case manager program under Article 45.054, Code of Criminal Procedure to choose whether to retain original jurisdiction of such cases even if the child has previously been convicted twice. The amendment has no impact on Family Code provisions mandating that juvenile public intoxication cases be filed in juvenile court. Nor does the amendment allow municipal or justice courts to waive their exclusive original jurisdiction of all traffic offenses.

SECTION 14.

Amends Section 52.027, Children Taken into Custody for Traffic Offenses, Other Fineable Only Offenses, or as a Status Offender, so that the juvenile "board" rather than the juvenile "court" determines the place designated as a detention facility. The amendment also limits the definition of "child" by removing (i)(2).

SECTION 21.

Amends Chapter 54, Family Code, by adding Section 54.023, Justice or Municipal Court: Enforcement. Subsection (a) authorizes the justice or municipal court, if a child intentionally or knowingly fails to obey a lawful order of disposition after an adjudication of guilt of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14 (Jurisdiction

of Justice Courts or Jurisdiction of Municipal Courts), Code of Criminal Procedure, to take action under either (a)(1) or (a)(2).

Subsection (a)(1) allows the court to refer the child to juvenile court for delinquent conduct (specifically, contempt of a justice or municipal court order). Subsection (a)(2) allows the court to retain the case and do one or a combination of the following: (1) fine the child up to \$500, (2) have the child detained in a place of nonsecured custody for a single period up to six hours, or (3) order suspension or denial of a child's driver's license or permit until the child has fully complied with the orders of the court. Subsection (b) provides that the court that orders suspension or denial of a driver's license or permit is required to notify DPS upon receiving proof that the child has fully complied with the orders of the court. Subsection (c) authorizes a justice or municipal court to hold a person in contempt and impose a remedy authorized by Subsection (a)(2) if the person was 17 years of age at the time of the court's order. Subsection (d) authorizes a justice or municipal court to hold a person in contempt and impose a remedy authorized by Subsection (a)(2) if the person, while younger than 17 years of age, engaged in conduct in contempt of an order of the justice or municipal court but contempt proceedings could not be held before the child's 17th birthday.

Subsection (e) prohibits a justice or municipal court from ordering a child to a term of confinement or imprisonment for contempt of a justice or municipal court order under this section. Subsection (f) prohibits a justice or municipal court from referring a child who violates a court order while 17 years of age or older to a juvenile court for delinquency proceedings for contempt of court.

SECTION 41.

Creates and regulates the administration

of the Local Juvenile Justice Information System (LJJIS). The section provides essential operating definitions (Section 58.301). It sets forth the purposes of a local juvenile justice information system (Sec. 58.302). It sets forth provisions regarding the establishment, content, and membership of an LJJIS (Sec. 58.303). It sets forth certain information an LJJIS is required to contain (Sec. 58.304). It defines partner agencies required to be included in a LJJIS in both a single county and multi-county system (Sec. 58.305). It contains provisions regarding the varying access privileges of certain partner agencies to a LJJIS, including municipal and justice courts that process juvenile cases (Sec. 58.306). It sets forth provisions regarding the confidentiality of information contained in an LJJIS (Sec. 58.307).

SECTION 50.

Amends Chapter 45B, Code of Criminal Procedure by adding Article 45.0216, Expunction of Certain Conviction Records of Children, as follows:

- (a) Defines "child" in this article;
- (b) Authorizes a person convicted of not more than one offense described by Section 8.07(a)(4) or (5) (relating to age affecting criminal responsibility), Penal Code, while the person was a child to apply, on or after the person's 17th birthday, to the court in which the child was convicted to have the conviction expunged as provided by this article;
- (c) Requires the person to make a written request to have the records expunged. Requires the request to be under oath.
- (d) Requires the request to contain the person's statement that the person was not convicted, while the person was a child, of any offense described by Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged;
- (e) Requires the judge to inform the person and any parent in open court of the person's expunction rights and provide them with a copy of this article;
- (f) Requires the court, if the court finds that

the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, to order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. Provides that after entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose;

(g) Provides that this article does not apply to any offense otherwise covered by certain specific provisions;

(h) Authorizes records of a person under 17 years of age relating to a complaint dismissed as provided by Article 45.051 or 45.052 to be expunged under this article;

(i) Prohibits the justice or municipal court from requiring a person who requests expungement under this article to pay any fee or court costs;

(j) Provides that the procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.

SECTION 51.

Amends Article 45.050(b), Code of Criminal Procedure to provide that if a person who is a child under Section 51.02, Family Code fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court has jurisdiction to hold the child in contempt of the justice or municipal court order as provided by Section 54.023, rather than Section 52.027(h), Family Code, or refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order.

Because it directly conflicts with SB 1432, Section 8, which also amends Article 45.050(b), this amendment is problematic. The provisions directly conflict and are not able to be harmonized. Because the provisions cannot be harmonized, SB 1432, which was signed

after HB 1118, prevails (Code Construction Act, Section 311.025, Government Code).

SECTION 52.

Amends Chapter 45B, Code of Criminal Procedure by adding Article 45.054, Authority to Employ Case Manager for Juvenile Cases. Subsection (a) authorizes a justice or municipal court, with the written consent of the city council or the commissioners court, as appropriate, to employ a case manager to provide services in cases before the court dealing with juvenile offenders consistent with the court's statutory powers. Subsection (b) authorizes one or more justice or municipal courts,

with the written consent of the city council or the commissioners court, as appropriate, to agree under Chapter 791 (Interlocal Cooperation Contracts), Government Code, to jointly employ a case manager.

SECTION 55.

Amends Section 25.094(d), Education Code to provide that if a municipal or justice court believes, rather than finds, that a child has violated an order issued under Subsection (c), the court may proceed to enforce its order pursuant to Section 54.023 of the Family Code. Under Section 54.023, a municipal or justice court may refer the child to juvenile court for delinquent conduct

(specifically, contempt of a justice or municipal court order) or retain the case and do one or more of the following: (1) fine the child up to \$500, (2) have the child detained in a place of nonsecured custody for a single period up to six hours, or (3) order suspension or denial of a child's driver's license or permit until the child has fully complied with the orders of the court.

With the exception of the provision allowing for up to six hours of nonsecured custody, Section 54.023 essentially mirrors the general juvenile contempt provisions contained in the amended Article 45.050 of the Code of Criminal Procedure.

ASSOCIATION RECOGNIZES OUTSTANDING COURT PERSONNEL

OUTSTANDING JUDGE

Austin — Presiding Municipal Court Judge Evelyn P. McKee of Austin has been selected by the Texas Municipal Courts Association (TMCA) to receive the Association's Outstanding Judge Award for 2000-2001. Judge McKee was presented with the special judicial recognition award by Governor Rick Perry and TMCA President Glenn Phillips of Kilgore on July 27, 2001 before an audience of 450 judges and clerks attending the TMCA Legislative Update in Austin. The Award recognizes Judge Evelyn McKee for her outstanding contributions to the fair and impartial administration of justice in both the Austin community and throughout Texas. Judge McKee has served as a municipal court judge since 1989. Serving first as a part-time judge, she was appointed the Presiding Judge of the Austin Municipal Court in 1999.

Judge McKee has served on the faculty of the Texas Municipal Courts Education Center (TMCEC) since 1998, as a board member of the Texas Municipal Courts Association from 1998-2000, and as an active volunteer on TMCEC/TMCA Legislative, Education and Personnel Committees since 1998. Judge McKee is a graduate of Southern Methodist University where she received a Bachelor of Arts in Sociology. She received her Doctor of Jurisprudence from the University of Texas School of Law in 1981. She spent her childhood in East Texas.

The 1200-member TMCA is comprised of municipal court judges and court support personnel in Texas. It was organized in 1974 as a support agency dedicated to serving the municipal courts of Texas. The Court of Criminal Appeals annually selects the Association to administer \$1.8 million

in grant funds derived from court costs to providing continuing judicial education to municipal court judges and court support personnel each year. Over 30 programs are sponsored annually with over 2400 participants by the Texas Municipal Courts Education Center, a project of TMCA.

OUTSTANDING COURT ADMINISTRATOR

Austin — San Angelo Municipal Court Administrator Linda Gossett has been selected by the Texas Municipal Courts Association (TMCA) to receive the Association's Outstanding Judicial Award for Court Support Personnel for 2000-2001. Linda Gossett was presented with the special judicial recognition award by Governor Rick Perry and TMCA President Glenn Phillips of Kilgore in Austin on July 27, 2001. The Award recognizes Linda Gossett for her outstanding contributions to the fair and impartial administration of justice. Linda Gossett has served as the Court Administrator for the San Angelo Municipal Court since 1985.

Linda manages one of the most progressive municipal courts in the state. The San Angelo Municipal Court is an outstanding example to other courts with their development of a community garden, use of bailiffs/warrant officers, and use of the court technology fund. She has shared her court procedures handbook and forms with the TMCEC staff as a model for other courts.

Linda Gossett has served on the faculty of the Texas Municipal Courts Education Center since 1998 and is an active volunteer in the Texas Court Clerks Association.

MAGISTRATES

INITIAL APPEARANCE

Subject: Indigent Defense

SB 7

Effective Date: January 1, 2002 (For relevant portions; other dates apply to portions of the bill not discussed below)

Section 4 of the act amends Article 15.17, Code of Criminal Procedure, requiring new admonitions by the magistrate and new duties for the magistrate regarding a request for appointment of counsel. The new admonition reads as follows:

The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.

Although amendments to Article 26.04, Code of Criminal Procedure allow the local county and district judges to designate the power to make appointment, only county and district judges are given such power solely by statute.

If the 15.17 magistrate does not have the power to make appointments – a presumptive jumping off place for municipal magistrates – the magistrate's responsibility to the accused is fulfilled by immediately forwarding a request for appointment of counsel to the authority designated in the county.

The only other major change made by Section 4 of the act is that initial appearance of the arrested person under 15.17 must occur within 48 hours of arrest.

The rest of this very complicated act

has little application to municipal courts. For those impacted by the bill in other aspects of their employment, the official bill analysis is reproduced below:

C.S.SB 7 amends the Code of Criminal Procedure, Government, and Family Codes to set forth provisions relating to the provision of legal services for indigent defendants. The bill amends the Code of Criminal Procedure to require the court or the court's designee to appoint counsel to an indigent defendant in the county not later than the end of the third working day after the date on which the court or the court's designee receives the defendant's request for appointment of counsel and if adversarial judicial proceedings have been initiated against the defendant. In a county with a population of 250,000 or more, the court or the court's designee is required to appoint counsel as soon as possible, but not later than the end of the first working day after the date on which the court or the court's designee receives the defendant's request for appointment of counsel and if adversarial proceedings have been initiated against the defendant. The bill requires the court or the court's designee to appoint counsel immediately following the expiration of three working days after the date on which the court or the court's designee receives the defendant's request for appointment of counsel and if adversarial judicial proceedings have not yet been initiated against the defendant. The bill requires the court or the court's designee to appoint counsel immediately following the expiration of one working day after the date on which the court or the court's designee receives the defendant's request for appointment of counsel in a county with a population of 250,000 or more and if adversarial judicial proceedings have not been initiated against the defendant. The bill authorizes a court or the court's designee

without unnecessary delay to appoint new counsel to represent an indigent defendant for whom counsel is appointed if the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged and good cause to appoint new counsel is stated on the record (Art. 1.051). The bill also requires the person making the arrest or the person having custody of the person arrested to take the person arrested before the magistrate not later than 48 hours after the person is arrested (Arts. 14.06 and 15.17). The bill sets forth provisions relating to the duties of the magistrate. The bill requires a record to be made of the magistrate informing the person of the person's right to request appointment of counsel; the magistrate asking the person whether the person wants to request appointment of counsel; and whether the person requested appointment of counsel (Art. 15.17). The bill requires only the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. Unless the court appoints or the designee authorized to appoint counsel for an indigent defendant in the county appoints a public defender to represent the defendant in accordance with established guidelines or in accordance with an alternative system, the bill requires the court to appoint an attorney from a public appointment list, and establishes the method of appointment using a system of rotation. The bill requires that the procedures adopted and published are to specify procedures that ensure that an indigent defendant charged with a misdemeanor punishable by confinement or with a felony and who appears in

court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings. The bill requires that procedures adopted specify that appointments for defendants in capital cases in which the death penalty is sought comply with requirements under provisions relating to the appointment and payment of counsel in death penalty cases. The bill requires that procedures adopted ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, applicable provisions, and applicable rules of ethics. The bill sets forth a county-wide alternative program for appointing counsel for indigent defendants in criminal cases established by a formal action in which two-thirds of the judges of the courts designated under these provisions vote to establish the alternative program. The bill specifies alternative program guidelines for procedural requirements that are required to be adopted. These procedures are required to specify the procedures used in the county to determine whether a defendant is indigent so as to warrant the appointment of counsel. The bill sets forth procedures for the appointment of attorneys in misdemeanor, felony, and death penalty cases. The bill requires the standards and procedures established to determine whether a defendant is indigent to apply equally to all defendants, whether or not the defendant is in custody or has been released on bail. In determining whether a defendant is indigent, the court or the court's designee is authorized to consider the assets and the defendant's ability to obtain a loan, among other considerations. The bill prohibits the judges of the courts establishing an alternative program, without the consent of the commissioner's court, from obligating

the county by contractor by the creation of new positions to cause an increase in expenditure of county funds. The bill authorizes a court or the court's designee required to appoint an attorney to represent a defendant accused of a felony to appoint an attorney from any county located in the court's administrative judicial region. The bill requires an appointed attorney to make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and interview the defendant as soon as practicable after the attorney is appointed. The bill authorizes the court to replace an attorney who violates these provisions. The bill authorizes a majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county to remove from consideration for appointment an attorney who intentionally or repeatedly violates these provisions. An attorney who fails to comply is subject to being replaced by other counsel and will result in removal from consideration for appointment to represent indigent defendants in the future. The bill provides that a defendant who is determined by the court to be indigent is presumed indigent for the remainder of the proceedings in the case unless there occurs a material change in financial circumstances of the defendant (Art. 26.04). The bill sets forth requirements relating to the appointment of a public defender by the commissioner's court. An appointed public defender is authorized to employ and supervise attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender office. The bill sets forth the terms for the removal of a public defender, and sets forth provisions under which a public defender is authorized to refuse an appointment (Art. 26.044).

The bill removes provisions providing for the reimbursement of reasonable expenses for purposes of investigation and expert testimony for counsel, other than an attorney with a public defender, appointed to represent a defendant in a criminal hearing or habeas corpus hearing. The bill requires counsel to be paid a reasonable attorney's fee for the preparation and presentation of an oral argument and for the preparation of a motion for rehearing and petition for discretionary review. The bill requires all payments to counsel to be made in accordance with a schedule of fees. The bill requires that each fee schedule adopted state reasonable fixed rates, taking into consideration reasonable and necessary overhead costs and customary rates charged for similar legal services in the community. The bill sets forth the method of payment of counsel and prohibits payments from being made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. The bill sets forth procedures for the submittal of the request for payment, approval or disapproval by the judge, the appeal by a requesting attorney, and a review of the appeal by the presiding judge of the administrative judicial region. The bill requires the commissioner's court to pay to the appointed counsel the amount approved by the presiding judge of the administrative judicial region, not later than the 45th day after the date an application for payment of a fee is submitted. The bill requires that counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts, incurred with prior court approval in the manner provided for in capital cases. Counsel is authorized to be reimbursed for expenses

incurred without prior court approval in the manner provided for in capital cases. The bill authorizes a majority of the judges of the county courts and statutory county courts or the district courts trying criminal cases in the county to remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney (Art. 26.05). The bill amends the Code of Criminal Procedure to set forth provisions relating to indigent defense information, including procedures used to provide indigent defendants with counsel and the schedule of fees, to be prepared and sent to the Office of Court Administration of the Texas Judicial System (Sec. 71.0351). The bill requires the local selection committee to adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital felony cases in which the state is seeking the death penalty. The bill sets forth the standards for the qualification of attorneys to be appointed in such cases (Art. 26.052). The bill requires the Comptroller of public accounts to deposit 13.98 percent of money received under provisions relating to court costs for special services into the fair defense account (Art. 102.075). The bill amends the Family Code to require the judges trying juvenile cases in each county to adopt a counsel appointment plan that outlines attorney qualifications, procedures for appointment, and procedures for the determination of an indigent child (Sec. 51.101). The bill amends the Government Code to establish the Task Force on Indigent Defense (task force) and sets forth provisions relating to the composition, member appointments, vacancies, meetings, compensation, budget, fair defense account, acceptance of gifts, grants, and other funds, policies and standards, task force reports, and technical support to the

counties by the task force. The bill requires the task force to develop a plan that establishes statewide requirements for counties to follow when reporting indigent defense information. The bill authorizes the task force to revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures. The bill requires the task force to distribute funds, including grants, to counties providing indigent defense services, and requires the task force to develop policies to ensure that those funds are distributed in a fair manner (Secs. 71.051-71.062). The bill requires the county auditor or the person designated by the commissioners court to prepare and send a report to the Office of Court Administration, not later than September 1 of each year. The bill sets forth provisions governing the form and content of the report (Sec. 71.0351). The bill repeals provisions governing public defenders in specific counties (Sec. 14).

Subject: Magistrate's Ability to Take Pleas on Out of County Fine Only Offenses

SB 219

Effective Date: September 1, 2001

Act amends Article 15.18, Code of Criminal Procedure, increasing the magistrate's authority over defendants arrested under a warrant issued from another county. Under the former law the magistrate could only take bond of the defendant. The magistrate may now take a written plea of guilty. The magistrate accepting a plea must then proceed to assess a fine, determine cost, give jail credit, accept payment, or determine indigence, and discharge the defendant where appropriate.

The magistrate accepting a plea under this section must forward, the plea, orders of the court, and any fine and cost collected to the original court within 10 business days.

The act also amends Article 4.12, Code

of Criminal Procedure, to give magistrate jurisdiction of offenses under Article 15.18 (a)(2), Code of Criminal Procedure.

Subject: Duties of Magistrate and Bail

SB 1807

Effective Date: September 1, 2001 (See Summary for Application)

Article 15.17, Code of Criminal Procedure is amended. A magistrate shall, after determining whether a person is currently on bail for a separate criminal offense other than the one currently before the magistrate, admit the person to bail if allowed by law. Act applies only to a person arrested for an offense committed on or after the effective date. An offense is committed before the effective date of this act if any element of the offense occurs before that date.

Ed. Note: The Texas Constitution provides for denial of bond in only very limited circumstances. Provisions exist to deny bond for persons on bond for felony cases when charged with a felony committed on bond. Rapid time lines go into play with arrest. These new provisions would not allow the magistrate to deny bond, but inquiry into previous bonds will help give effect to the bond denial provision and provide the magistrate with better information in setting bond.

SEARCH WARRANTS AND PROPERTY DISPOSITION

Subject: Evidentiary Search Warrants in Rural Counties

HB 1999

Effective Date: Immediately

Act amends Article 18.01(i), Code of Criminal Procedure to include language clarifying who may sign evidentiary warrants under Article 18.02(10) for mere evidence. As a general rule, only municipal judges sitting in a court of record may sign evidentiary search warrants (ordering seizure of non-contraband items). A previous excep-

tion was made in jurisdictions where the only attorney judge was a district judge with more than one county in their district. A very few counties had multiple district judges, each with multi-county jurisdiction. This act incorporates them into the exception. The impact of this bill is limited and local in nature.

Subject: Officer's Authority to Return Stolen Property
SB 1262

Effective Date: September 1, 2001

Act amends Article 47.01, Code of Criminal Procedure by removing cumbersome time limits and conditions imposed on an officer's ability to return stolen property to its owner. Under the amended statute, an officer can return property unless ownership is contested or disputed. The exception is any property removed from pawn shops, pursuant to the Finance Code.

Subject: Magistrate's Disposition of Seized Weapons
HB 2184

Effective Date: September 1, 2001

Act modifies the authority and procedures of the magistrate under Article 18.19, Code of Criminal Procedure. That article has long been difficult to navigate on issues of jurisdiction. The amendments make clear that if no prosecution or conviction will occur then the magistrate to whom the seizure was reported has the duty to move forward. If a conviction (including deferred adjudication) occurs, then the court entering judgment has the responsibility and jurisdiction to resolve the issue of disposition of the weapon.

The magistrate must send written notification to the person found in possession of the weapon of the right of that person to repossess the weapon on written request to the magistrate. The notice must be sent within 60 days of the magistrate's determination that no prosecution will occur. If no request for return is made to the magistrate within 60 days of the notice, the magistrate shall order the weapon destroyed or

forfeited to the state within 120 days of the notice. If a request for return is made, the magistrate shall order the return of the weapon within 60 days.

In trial court, the defendant must make a request for return of the weapon within 60 days of judgment. The court must then make findings and return, forfeit, or destroy the weapon. If no request is made in 60 days, the trial court should enter an order forfeiting or destroying the weapon.

If the trial court fails to dispose of the weapon within the newly imposed 60 day time limit, jurisdiction falls to any magistrate. If the possessor is convicted, no notice need be sent by the magistrate.

OTHER MAGISTRATE DUTIES

Subject: Dating Violence Included in Family Violence
SB 68

Effective Date: September 1, 2001

Creates Section 71.0021, Family Code, which defines "dating violence" and "dating relationship." The definition of "dating relationship" is a continuing relationship of a romantic or intimate nature. Casual acquaintanceship and ordinary fraternization are excluded.

Section 71.004, Family Code is amended to include "dating violence" into the definition of "family violence." Inclusion of victims of dating violence in the umbrella of family violence opens all the magistrate's tools available in family violence cases to them.

Subject: Jurisdiction to Initiate Inquest
SB 164

Effective Date: Immediately

Act alters the provisions of Art. 49.07(c), Code of Criminal Procedure related to who orders an inquest in the absence of the justice of the peace. The justice of the peace in the precinct in which a body is found must be notified and is responsible for an inquest if ordered. Art. 49.07(c), C.C.P. deals with

the procedures when that justice of the peace is not available.

The checklist of other magistrates, including municipal judges, has been removed from the article. Included is language making other justices of the peace in the county and the county court judge the designated backup.

This enactment follows two Attorney General's opinions (Letter Opinion No. 97-101 and Opinion JC-0083) and thus should not affect many counties' operating procedures.

Subject: Magistrate's Duties to the Mentally Ill or Mentally Retarded
HB 1071

Effective Date: September 1, 2001

This act should be read carefully by magistrates making orders concerning the mentally ill and mentally retarded.

Act amends Article 16.22 of the Code of Criminal Procedure. It changes the process of taking a defendant into custody who refuses to be examined pursuant to a magistrate's order. It allows examination by local mental health mental retardation authorities. It also allows the magistrate to order the defendant submit to examination in the mental health facility determined by the local authority on that authority's request. The examination must now include a determination of competency.

Act also amends Article 17.032(b), granting the local mental health mental retardation authorities greater input in ordering continued community-based treatment as a condition of personal bond.

Act amends Article 46.02, Code of Criminal Procedure to mirror the changes applied to magistrate orders (described above) to trial courts ordering competency examination.

Finally, act amends Article 46.02, Code of Criminal Procedure, related to the issues and findings made at a competency hearing in the trial court.

MISCELLANEOUS BILLS OF INTEREST

Subject: Racial Profiling

SB 1074

**Effective Date: September 1, 2001
(Except as Set Forth Below)**

Creates Article 2.131, Code of Criminal Procedure, prohibiting racial profiling.

Creates Article 2.132, Code of Criminal Procedure, requiring each law enforcement agency in the state to adopt a detailed written policy on racial profiling before January 1, 2002. The policy must address policies prohibiting profiling, public complaints, public education on complaint procedures, remedial action on officers who profile, and the collection of profiling data. This profiling data must give information on all traffic stops and all citizen contact, including the race of persons coming into contact with police.

Creates Article 2.133, Code of Criminal Procedure, which requires extensive reports on every traffic or pedestrian encounter. The reports must include, time, place, date, race and gender of the citizen, descriptions of searches, contraband found, arrest, warnings made, citations issued. Then, under Art. 2.134, Code of Criminal Procedure, the agency must be compile, analyze, and report the data. The first report is due January 1, 2003.

Creates Article 2.135, Code of Criminal Procedure, which exempts an agency from Articles 2.133 and 2.134 if the agency has video recording devices in all cars, records all stops, and keeps the tapes at least 90 days.

Creates Article 2.137, Code of Criminal Procedure that provides for assistance in securing video equipment. Later provisions also require TCLEOSE training on profiling.

Subject: Expunction of Arrest Records

HB 1323

**Effective Date: Immediately
(Applies to Records Created before,
on, or after April 25, 2001)**

Article 55.01(a)(2), Code of Criminal Procedure is amended to provide an additional appropriate circumstance for expunction. Now, if an indictment or information charging a felony has been quashed, an indictment is available. The old law simply provided for expunction if an indictment or information had been dismissed. Also added is the condition that the limitations period expired before the date on which a petition for expunction was filed under Article 55.02, or that the court finds that the indictment or information was dismissed or quashed for certain reasons.

Article 55.02, Section 3(c) is amended to allow a clerk to deliver by hand or by certified mail, return receipt requested, an order of expunction to each official or agency designated in the order, except that the copy going to the Crime Records Service of DPS must be sent certified mail. If the clerk delivers the order by hand, the clerk must receive a receipt for the delivery.

Subject: Expunction for Victims of Identity Theft

SB 1047

Effective Date: Immediately

Act amends Chapter 55, Code of Criminal Procedure, creating a right to and procedure for expunction of criminal records relating to the victim of identity theft. This bill gives no new authority or obligations to municipal courts.

Subject: Multiple Victims in Theft, Fraud, and Criminal Mischief

SB 917

**Effective Date: Offenses
Committed after September 1, 2001**

Act amends both the Penal Code and Code of Criminal Procedure, simplify-

ing prosecution of theft, fraud, and property damage cases involving many victims.

Subject: Issuance of Certain Driver's Licenses and Identification Certificates

HB 1762

Effective Date: September 1, 2001

Section 521.0485, Transportation Code is added to allow persons with a driver's license to submit by telephone, over the Internet, or by other electronic means a request for information about driver's license application records, accident and conviction reports, suspension of a driver's license for nonpayment of child support, and certain information regarding an individual operator. Section 521.146, Transportation Code is amended to provide that the Department of Public Safety by rule may allow persons to apply for issuance of a duplicate license or certificate by mail, by telephone, over the Internet, or by other electronic means. Section 411.0135, Government Code is amended to allow fees and charges to be paid by telephone, over the Internet, by electronic funds transfer, or valid credit card. Section 521.427, Transportation Code, the old law prescribing the method of payment for fees, is repealed.

Subject: State Bar Attorney's Internet Profiles

HB 1712

Effective Date: See Below

Adds Section 81.115, Government Code, requiring the State Bar of Texas to prepare and publish an on-line attorney profile on each Texas lawyer. It must contain biographical information as well as a grievance record. Attorneys voluntarily supply some portions of the profiles.

The State Bar may collect an annual fee of \$10 from each attorney, and it must update each profile yearly. The Bar must adopt implementing rules by April 1, 2002 and have the program on-line by September 1, 2003.

Subject: Traffic Offenses and Diplomats

SB 148

Effective Date: September 1, 2001

Creates Section 543.011, Transportation Code, which requires an officer making a traffic or drunk driving stop or issuing a traffic citation to a person issued a driver's license by the U.S. State Department to report that stop, arrest, or citation to the State Department within five working days and as soon as practicable verify the status of the license with the State Department.

ing a witness in a criminal case who is incarcerated in TDC. Additionally, significant changes were made in the hate crimes provisions. Finally, proceeds from the sale of crime memorabilia and notorious criminal collectables were made forfeitable to the State of Texas.

- SB 1001 District Court in Prison
- HB 176 Closed Circuit Testimony
- HB 587 Hate Crimes
- SB 795 Crime Memorabilia

DNA LEGISLATION

Several new provisions were made concerning DNA testing and preservation, as well as databasing DNA profiles. A procedure for postconviction DNA testing was created in the Code of Criminal Procedure. Requirements were set forth for taking samples and creating databases.

- SB 3 Postconviction Procedures for Testing
- SB 638 Taking Samples from Certain Defendants
- SB 1304 Databases
- SB 1380 Databases

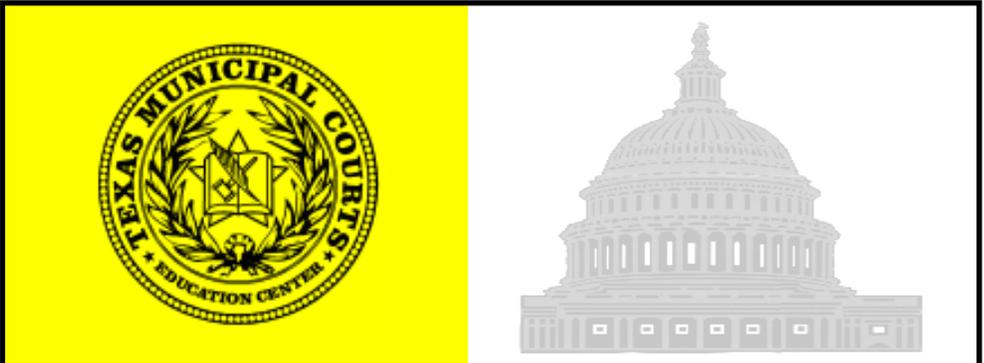
COURTS OF RECORD

Three cities were named in bills amending Chapter 30, Government Code. Westlake and Trophy Club were each designated as Courts of Record in slightly different fashions. The City of Bullard created a Court of Record, but deviated from the rest of the state in that the judge of that court does not need to be a licensed attorney to qualify under the new amendments.

- SB 847 Westlake
- HB 3671 Trophy Club
- HB 1394 Bullard

MODERN CHANGES IN CRIMINAL LAW

There were four notable changes in criminal law, significant because they broke new ground, not because they impacted municipal courts. First, a bill was passed allowing hearings of non-jury matters in civil and criminal cases held in District Court to be done in the correctional facility where the defendant is held. Similarly, new law provides for remote-feed testimony by some witnesses during trial, includ-



Texas Municipal Courts Education Center 77th Legislative Update

- NOW ONLINE -

<http://www.tmcec.com>

**Texas Municipal Courts
Education Center
1609 Shoal Creek Blvd., #302
Austin, Texas 78701
Phone: 512/320-8274
Toll Free: 800/252-3718
Fax: 512/435-6118**

Visit www.tmcec.com to access Legislative Update video, audio, PowerPoint presentations, and course materials.

In order to view video or to hear audio, Windows Media Player is needed. The link can be found on the Legislative Update Webpage. We recommend that those with 56K connections and slower listen to the audio only rather than view the video. The PowerPoint presentations are also available from the webpage and can be viewed by computers with PowerPoint or by downloading the PowerPoint Viewer; the link can be found on the Legislative Update Webpage.

Only available August - September, 2001.

INDEX OF SUMMARIES

Page	Subject	Bill	Effective Date
------	---------	------	----------------

NEW AND MODIFIED OFFENSES

NEW CLASS C: PENAL CODE

1	“Open Container” Law	HB 5	9/1/01
2	Interference with Police Service Animal	HB 280	9/1/01

NEW CLASS C: TRANSPORTATION CODE

2	Safety Belt and Child Safety Seat Offenses (Penalty)	HB 1739	9/1/01
2	Vehicle Passenger Safety Systems	SB 113	9/1/01
3	Safety Belt and Child Safety Seat Offenses (Elements)	SB 1367	9/1/01
3	Child Riding in the Open Bed of a Truck or Trailer	SB 399	9/1/01
3	Commercial Vehicle Weight Records	SB 220	Offenses Committed on or after 9/1/01
3	Overweight Cement, Garbage, and Recycle Truck Bonds	SB 889	9/1/01
3	Visible Smoke Violation	HB 2134	Offenses Committed on or after 9/1/01

NEW CLASS C: OTHER CODES

3	Minors Purchasing Lottery Tickets	SB 257	9/1/01
3	Dangerous Wild Animals	HB 1362	9/1/01
5	Cigarette Tax Violations	HB 2378	Offenses Committed on or after 9/1/01
5	Illegal Dumping of Litter and Solid Waste	HB 631	9/1/01

MODIFIED CLASS C

5	Parking Violation Presumption	HB 2173	9/1/01
5	Theft of Service (Hotel and Motel Lodging)	SB 437	9/1/01
5	Civil Consequences for Theft of Motor Fuel	SB 968	9/1/01
6	Speed Limit Increase	HB 299	Immediately
6	Motorized Mobility Devices	HB 1378	Immediately
6	Vehicles on Sand Dunes	SB 1162	Offenses Committed on or after 9/1/01
6	ATV Highway Exception	HB 651	9/1/01
6	Overweight Tow Trucks	HB 1679	Immediately
6	Municipal Police Commercial Carrier Inspections	HB 2058	Immediately

NEW MISDEMEANORS AND FELONIES

6	Felons in Body Armor	HB 84	Offenses Committed on or after 9/1/01
6	Improper Photos and Videos	HB 73	Offenses Committed on or after 9/1/01
6	Possession of Criminal Instruments to Commit Theft	SB 966	Offenses Committed on or after 9/1/01
7	Impersonating a Security Officer	HB 940	Offenses Committed on or after 9/1/01
7	Possession of Firearm by Person Convicted of Family Violence	SB 199	9/1/01
7	Interfering with an Emergency Telephone Call	SB 18	9/1/01
7	Improper Contact with Child Victims	HB 2890	Offenses Committed on or after 9/1/01

NEWLY ENHANCEABLE OFFENSES

7	DWI Enhancement by Intoxicated Manslaughter	HB 2250	Offenses Committed on or after 9/1/01
7	Enhancement of Offense of Prostitution	HB 460	Offenses Committed on or after 9/1/01
8	Evading Arrest Enhancements for Priors and Injuries	HB 2798	Offenses Committed on or after 9/1/01
8	Unlawful Restraint of Public Servant	HB 2098	Offenses Committed on or after 9/1/01
8	Taking a Weapon from an Officer	HB 1600	Offenses Committed on or after 9/1/01
8	Changes in Cruelty to Animal Statute	HB 653	Offenses Committed on or after 9/1/01

MODIFIED MISDEMEANORS AND FELONIES

8	Enhanced Disorderly Conduct and Public Intoxication	HB 3613	Offenses Committed on or after 9/1/01
8	E-Mail Added to Harassment and Increase in Stalking	SB 139	Offenses Committed on or after 9/1/01
8	Obstruction or Retaliation of Jurors	HB 1181	Offenses Committed on or after 9/1/01
8	Use of a Child in Commission of an Offense	HB 156	Offenses Committed on or after 5/21/01
9	Corroboration of Undercover Drug Agents	HB 2351	9/1/01
9	Misapplication of Fiduciary Property	HB 1813	Offenses Committed on or after 9/1/01
9	Use and Sale of Nitrous Oxide and Ketamine	HB 139	Offenses Committed on or after 9/1/01
9	Criminal Mischief and Public Water Supply	SB 1174	Offenses Committed on or after 9/1/01, unless the Defendant Elects to be Punished under this Section
9	Weapon Free Zone Extended to Place of Execution	HB 1925	Offenses Committed on or after 9/1/01

NEW AND MODIFIED PROCEDURES

JUNKED VEHICLES AND NUISANCE ENFORCEMENT

10	Jurisdiction to Enforce Nuisance and Junk	HB 2270	9/1/01
10	Vehicle Ordinances		

continued

INDEX OF SUMMARIES continued

Page	Subject	Bill	Effective Date
10	Nuisance Abatement Procedures	HB 1833	Procedures and Notices Made on or after 9/1/01; Offenses Occurring on or after 9/1/01
10	Definition of Junked Vehicle	HB 489	9/1/01
10	Antique Vehicle Exception to Junked Vehicle Statute	HB 495	9/1/01
PRETRIAL PROCEDURES			
10	Mail-in Pleas and Written Jury Waivers	SB 1681	9/1/01
11	Out of State Confessions	HB 553	Statements Made on or after 9/1/01
11	Waiver of Arraignment	HB 840	Immediately
11	Notification of Court of Family Violence	HB 596	9/1/01
TRIAL PROCEDURES			
11	Certification and Licensing of Court Interpreters	HB 2735	9/1/01 (But See Summary for Other Important Dates)
11	Victim's Rights and "The Rule"	HB 1572	9/1/01
JUDGMENTS			
11	Discharge of Fines in Jail and Determination of a Day	HB 1955	Offenses Committed on or after 9/1/01
12	Special Needs Offenders	SB 661	Immediately
TRAFFIC PROCEDURES			
12	Municipal Authority to Use Parking Boots and Tow Vehicles	HB 996	Immediately
12	Traffic Enforcement in Private Subdivisions	SB 217	9/1/01
12	Motorcycle Safety Course and Helmets	HB 2585	9/1/01
12	Bicycle Safety and "Electric Bicycles"	HB 2204	9/1/01
POST JUDGMENT COLLECTIONS PROCEDURES			
12	Waiver of Payment of Fines and Court Costs	HB 2410	Immediately (See Summary for Application)
13	Denial of Driver's License Renewal for Persons Who Fail to Appear or Pay Fines	SB 1371	Offenses Committed on or after 9/1/01
13	Collection Improvement Plan	HB 3498	9/1/01
13	Court Costs on Civil Collection	SB 1632	9/1/01
13	Collection Contracts	SB 1778	Immediately
NEW COURT COSTS			
13	Child Safety Fund Court Costs	HB 374	Convictions on or after 9/1/01
13	JCD Fund Change and a New Cost Added	SB 1421	Offenses Committed on or after 9/1/01
16	Review of Court Costs Funds	SB 1377	9/1/01
16	Uniformity in Remitting Fees	SJR 49	To be Submitted to Voters: November 6, 2001
JURISDICTION AND ADMINISTRATION ISSUES			
16	Payment of Fees or Costs by Credit Card	HB 3162	
16	Information and Payment through the Internet	SB 201	Immediately
16	Exceptions to Public Information Law for Credit Card Numbers and E-mail Addresses	SB 694	Immediately
16	Technical Corrections and Minor Changes to Laws Affecting Municipalities and Counties	HB 1265	9/1/01
16	Application of a Seal to an Electronic Document	SB 276	Immediately
17	Administration of Oaths in Texas	HB 1766	9/1/01
17	Regulation of Bail Bond Sureties	SB 1119	9/1/01 (See Summary for Exceptions)
17	Jurisdiction of Municipal Court	HB 2559	9/1/01
JUVENILES			
NOTABLE BILLS			
18	Teen Court	HB 822	9/1/01
18	Graduated Driver's License (Drivers Under Age 18)	SB 577	January 1, 2002
18	Referral to Juvenile Court: Parental Notice	HB 1790	9/1/01
18	Study and Comprehensive Plan for Juvenile with "At-Risk" Factors	HB 1901	Immediately
TRUANCY			
18	School Attendance Laws	SB: 1432	9/1/01 (Except as Noted)
JUVENILE JUSTICE			
25	Modifications Pertaining to Administration of Juvenile Justice (Family Code)	HB 1118	9/1/01

continued

INDEX OF SUMMARIES continued

Page	Subject	Bill	Effective Date
------	---------	------	----------------

MAGISTRATES

INITIAL APPEARANCE

28	Indigent Defense	SB 7	January 1, 2002 (For relevant portions; other dates apply to portions of the bill not discussed in Summary)
30	Magistrate's Ability to Take Pleas on Out of County Fine Only Offenses	SB 219	9/1/01
30	Duties of Magistrate and Bail	SB 1807	9/1/01 (See Summary for Application)

SEARCH WARRANTS AND PROPERTY DISPOSITION

30	Evidentiary Search Warrants in Rural Counties	HB 1999	Immediately
31	Officer's Authority to Return Stolen Property	SB 1262	9/1/01
31	Magistrate's Disposition of Seized Weapons	HB 2184	9/1/01

OTHER MAGISTRATE DUTIES

31	Dating Violence Included in Family Violence	SB 68	9/1/01
31	Jurisdiction to Initiate Inquest	SB 164	Immediately
31	Magistrate's Duties to the Mentally Ill or Mentally Retarded	HB 1071	9/1/01

MISCELLANEOUS BILLS OF INTEREST

32	Racial Profiling	SB 1074	9/1/01 (Except as Set Forth in Summary)
32	Expunction of Arrest Records	HB 1323	Immediately (Applies to Records Created before, on, or after April 25, 2001)
32	Expunction for Victims of Identity Theft	SB 1047	Immediately
32	Multiple Victims in Theft, Fraud, and Criminal Mischief	SB 917	Offenses Committed after 9/1/01
32	Issuance of Certain Driver's Licenses and Identification Certificates	HB 1762	9/1/01
32	State Bar Attorney's Internet Profiles	HB 1712	See Summary
33	Traffic Offenses and Diplomats	SB 148	9/1/01

TEXAS MUNICIPAL COURTS
EDUCATION CENTER
1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
www.tmcec.com

Bulk Rate
U.S. Postage
Paid
Taylor, TX
Permit No. 8

TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Change Service Requested