The Recorder
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2017 Legislative Update

85th Texas Legislature Adjourns

COURTS, COURT COSTS, AND ADMINISTRATION OF JUSTICE

H.B. 214
Subject: Recording the Texas Supreme Court and the Court of Criminal Appeals
Effective: September 1, 2017

Recording and broadcasting courtroom proceedings can promote transparency and allow the public to evaluate the efficacy of the judicial system. To increase the public's access to the judicial branch, H.B. 214 builds upon previous policies adding Section 22.303 of the Government Code requiring the Supreme Court and the Court of Criminal Appeals to make video and audio recordings of each oral argument and public meeting of the court and post those recordings on the Court's website. This is only required if appropriated funds or donations are made available.

TMCEC: Depending on where you live, it may be a long drive to Austin to watch oral arguments before either the Court of Criminal Appeals or the Texas Supreme Court. Under H.B. 214, technology can save you the trip. Providing the general public access online to the court room proceedings has the potential to increase public understanding of the judicial system and elevate the debate on contentious issues. Such access is also beneficial to all other Texas appellate and trial courts, including municipal courts. Not only does the Court of Criminal Appeals consider important criminal law issues, but it also plays an important role in both judicial education and the administration of courts.

H.B. 322
Subject: Expunction of Criminal Records for Certain Veterans
Effective: September 1, 2017

In 2009, the Texas Legislature authorized the creation of specialty courts for certain veterans. These courts hold former military members who are charged with crimes accountable through a program of court appearances and treatment appointments. Once a person completes a veterans treatment court program, the case will be dismissed. H.B. 322 amends current law and specifically authorizes a court to order expunction on behalf of the defendant following successful

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Fair and Impartial Justice for All

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AROUND THE STATE

TMCA Recognizes Outstanding Judge, Clerk, & Prosecutor

Judge Elaine Marshall of Houston, Court Clerk Milagros Medina of Aransas Pass, and Prosecutor Gary Scott of Conroe were each presented with outstanding awards by the Texas Municipal Courts Association (TMCA) at the Annual Meeting in San Marcos on August 25, 2017. The awards are bestowed annually to a municipal judge, clerk, and prosecutor who demonstrate excellence in the fair administration of justice.

Judge Marshall was awarded with the Outstanding Judge Award and currently serves as the Director and Presiding Judge of the Houston Municipal Courts. Her leadership is taking municipal courts "in a positive direction—one of fairness, accountability, impartiality, and vision," said Judge Esmeralda Garcia of Houston, who presented the Award. She is also credited with renewing the Houston Teen Court program which is now a successful model for other jurisdictions. The City of Houston Municipal Courts is the largest municipal court system in Texas, and the 4th largest in the United States. Judge Marshall believes the Court should be "a beacon of justice for all individuals." Her letter of nomination (http://www.tmcec.com/index.php/download_file/7333/) outlines many of her goals and the innovative approaches of this large court.

Aransas Pass Municipal Court Clerk Milagro Medina was presented with the Outstanding Clerk Award. In making the presentation, Judge Henrie Morales described Ms. Medina's work: "Milagros treats everyone with so much respect and goes the extra mile to assist them. She has made a big difference in our Court. She applies her commitment, dedication, and hard work to her job. She is also very active with community activities, proudly representing our Court and City."

Conroe Assistant City Attorney Gary Scott was selected as the first Prosecutor of the Year by TMCA, a new recognition program. Judge Michael Davis of Conroe, described this outstanding individual: "Gary knows municipal law, chapter and verse. He always treats defendants with respect and dignity." Mr. Scott has 20 years of experience prosecuting in municipal courts. He has also served as a highly rated faculty member for TMCEC.

TMCA was established over 40 years ago and consists of over 1,000 members dedicated to the fair and impartial administration of justice. Through grant funds appropriated by the Legislature and currently provided by the Texas Court of Criminal Appeals, the TMCA formed an Education Center in 1983, now known as the Texas Municipal Courts Education Center (TMCEC) to provide professional education and certification programs for municipal judges and all court personnel. Today, the TMCEC, which sponsors more than 50 events annually and provides professional education to more than 4,000 people, is one of the largest organizations of its kind in the United States. For more information, go to: www.txmca.com or www.tmcec.com.

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completion of the veterans treatment court program. It also waives fees and costs that may be assessed for the expunction.

TMCEC: This bill is significant in that it is one of three during the Session that amends Chapter 55 of the Code of Criminal Procedure and the other general expunction statutes (See also, H.B. 557 and H.B. 3147). The result could be to make an already complicated statute even more cluttered. It should be noted that the veterans courts referenced in H.B. 322 are programs authorized under Chapter 124 of the Government Code. While veterans appearing in municipal court may not be specifically excluded from taking their case to a local veterans court, eligibility is dependent on both the commissioners court of the county establishing a veterans court and also the consent of the prosecutor. Consequently, most municipal courts will not encounter cases referred to a veterans court.

H.B. 337
Subject: Continuation of Certain Public Benefits after Release from County Jail
Effective: September 1, 2017

Concerns have been raised regarding the termination of the Medicaid eligibility of an individual who is confined in a county jail regardless of whether the individual has been convicted of an offense. H.B. 337 addresses this issue by providing a mechanism by which the Medicaid benefits of an individual confined in a county jail may be suspended, rather than terminated, and then reinstated within 48 hours of the individual's release as long as the individual remains eligible while confined in county jail.

H.B. 337 also adds Section 351.046 of the Local Government Code requiring a sheriff of a county who chooses to notify the Health and Human Services Commission (HHSC) of the confinement of an individual who is receiving medical assistance benefits must provide the notice as soon as possible after the 30th day after the date of the individual's confinement. If a sheriff chooses to provide this notice they must also provide notice to the Social Security Administration of the release of a prisoner who, before confinement, was receiving Supplemental Security Income benefits, Social Security Disability Insurance benefits and notice to the HHSC if the prisoner was receiving medical assistance benefits within 48 hours of the prisoner's release. The sheriff must provide the released prisoner with a written copy of the notice and a telephone number at which the prisoner may contact the HHSC for assistance reinstating their benefits. There is no civil liability for the sheriff of a county, a county, or an employee of either for damages resulting from failure to comply with this section.

H.B. 351
Subject: Commission to Study and Review Criminal Offenses
Effective: September 1, 2017

Section 30 creates a commission to study and review all penal laws of this state other than criminal offenses under the Penal Code, under Chapter 481 of the Health and Safety Code (Texas Controlled Substances Act), or related to the operation of a motor vehicle.

The commission is composed of nine members appointed by the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Texas Supreme Court, and the Presiding Judge of the Texas Court of Criminal Appeals.

The commission is authorized to make recommendations to the Legislature regarding the repeal of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law.

The commission shall make recommendations to the Legislature and evaluate the recommendations made by the commission created by H.B. 1396 during the 84th Legislature, Regular Session (2015).

The commission is abolished and Section 30 expires December 31, 2018.

H.B. 431
Subject: Appointment of a Temporary Justice of the Peace
Effective: May 29, 2017

H.B. 431 amends Section 27.055 of the Government Code, specifying that the authority of a county judge to appoint a qualified person to serve as a temporary justice of the peace in the event a justice is temporarily unable to perform official duties because of absence, recusal, illness, injury, or other disability, is triggered on either the judge's own motion or the request of the justice of the peace. H.B. 431 also changes the prescribed period of the temporary justice's service from the "duration of the disability" to the "duration of the justice's absence" from the bench.

H.B. 555
Subject: Additional Fee for Issuing a Marriage License
Effective: June 12, 2017

H.B. 555 authorizes the county clerk, under the amended Chapter 118 of the Local Government Code, to collect an additional fee of $100 for issuing a marriage license if neither applicant for the marriage license provides proof that the applicant is a Texas resident. Some have argued that the marriage licensing and fee process is primarily intended for Texas residents, and processing licenses for out of state applicants creates extra work for county clerks. The bill, although effective immediately, applies only to a marriage license issued on or after January 1, 2019.

TMCEC: This bill will certainly be big news to anyone from outside Texas seeking a marriage license in the state after January 1, 2019. The fee for Texas residents remains $60 and may be waived on completion of a premarital education course. Neither of these will be options for non-residents after that date. The reasoning for the fee, ostensibly, is to offset the additional cost arising from county clerks processing these out of state applications.

H.B. 555 also makes changes to Section 2.009 of the Family Code. Additional language provides that the license *may* include the name of the county clerk and that the marriage license application form "*may not require* the name of the county clerk to appear on the application." This could be viewed as a response to issues surrounding individuals such as Kentucky clerk Kim Davis and others who protested the U.S. Supreme Court's 2015 decision in *Obergefell v. Hodges* (holding: Under the Due Process and Equal Protection Clauses of the 14th Amendment, same-sex couples have a fundamental right to marry, and thus certain state laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples; there also being no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character.) See, Ryan Kellus Turner and Regan Metteauer, "Case Law and Attorney General Opinion Update," *The Recorder* (November 2015) at 22.

H.B. 557
Subject: Courts with Expunction Authority under Chapter 55 of the Code of Criminal Procedure and a Related Fee
Effective: September 1, 2017

Chapter 55 of the Code of Criminal Procedure allows an acquitted person and certain others to petition for an expunction of criminal records. Currently, only district courts have jurisdiction to accept these petitions. The

ability to order expunctions in municipal court is considerably more restrained, generally limited to certain juvenile convictions or dismissals. This means that an individual that was acquitted or that has had charges dropped for a Class C misdemeanor in municipal court must file an expunction petition in district court. Some have suggested that this places an administrative burden on the persons seeking such an order. H.B. 557 creates concurrent jurisdiction for the expunction of Class C misdemeanors between district courts, municipal courts of record, and justice courts. In addition, a new fee is created in order to file an expunction in a municipal court of record.

TMCEC: Expunctions were on the Legislature's collective mind this session. Four separate bills passed this session amending the expunction process for criminal cases, three of which amended Chapter 55 of the Code of the Criminal Procedure.

H.B. 557 greatly expands the expunction process outlined in Article 55.02. Municipal courts of record and justice courts now have concurrent jurisdiction with the district courts to expunge fine-only offenses. Notably absent from courts given expunction authority under Chapter 55: non-record municipal courts. A person who is eligible for an expunction under the process described in Article 55.02 may file in a municipal court of record or justice court in the county where either the petitioner was arrested or the offense was alleged to have occurred. Based on an Office of Court Administration February 2017 survey of the number of municipal courts of record in Texas, adding the municipal courts would increase the number of courts that may potentially hear expunction petitions for fine-only offenses from 467 to 636.

The bill also creates a new $100 fee in Article 102.006 of the Code of Criminal Procedure for filing an expunction petition in a municipal court of record or justice court. This fee, meant to defray the costs associated with the court notifying agencies of the expunction order, is waived if (1) the petitioner files it following an acquittal; and (2) it is filed within 30 days of the acquittal. Oddly, considering the current national focus regarding the ability to pay court fees, there is no provision addressing indigence. A judge may, however, order the fee returned to the petitioner upon granting the expunction.

H.B. 1217
Subject: Electronic Notary Public
Effective: July 1, 2018

H.B. 1217 amends Chapter 406 of the Government Code by adding Subchapter C, authorizing the appointment and commissioning of an online notary public. The bill limits the types of online notarizations that an online notary public may perform to those relating to a document involving real estate located in Texas, a document or agreement relating to a transaction in which at least one of the parties is a Texas resident or authorized to conduct business in Texas, an agreement or instrument securing a debt that is payable at a location in Texas, a document that is intended to be filed in state public records (e.g., court records), an acknowledgement or affirmation made by a person while the person is physically located in Texas, or a document signed by a person who is a Texas resident at the time of signing as evidenced by a valid government-issued identification credential that includes a photograph and current Texas address.

TMCEC: It is a brave new world as the digital era arrives for the office of notary public. The office, which can trace its roots to medieval scriveners and classical Rome before that, has gone online. H.B. 1217 defines "online notarization" to mean a notarial act performed by means of two-way video and audio conference technology. In addition, an online notary has the same laundry list of authority as any other notary public under Section 406.016 of the Government Code. This may signal the beginning of driving safety course providers scrambling to offer online notarization of affidavits to defendants looking to secure a dismissal.

H.B. 1866
Subject: Compensation and Restitution to Crime Victims
Effective: September 1, 2017

Some probation departments report having difficulty locating crime victims for purposes of remitting restitution payments that are owed to those victims. These are later presumed abandoned and turned over to the Comptroller of Public Accounts as unclaimed property. H.B. 1866 resolves this issue by realigning incentives for probation departments to facilitate the successful location of crime victims. Specifically, Chapter 75 of the Government Code is amended to allow a department that is unable to locate a victim for a period of five years to keep a 1.5% collection fee upon delivery of the unclaimed restitution payments to the Comptroller.

TMCEC: While municipal courts collect restitution, H.B. 1866 is inapplicable to entities other than probation departments.

H.B. 2065
Subject: Fines Collected for Enforcement of Commercial Motor Vehicle Safety Standards
Effective: September 1, 2017

Certain municipalities and counties are authorized to apply for certification to conduct commercial vehicle inspections and issue citations. Section 644.102 of the Transportation Code (Municipal and County Enforcement Requirements) provides that the monies collected from the fines associated with the citations can be retained by the city or county to recover their costs of enforcement. In each fiscal year, a county or municipality can retain fines in an amount not to exceed 110 percent of their actual expenses for enforcement. All fines that exceed this limit are reported to the Comptroller and deposited to the credit of the Texas Department of Transportation. H.B. 2065 requires a municipality or county that retains a fine from commercial vehicle inspection enforcement to annually file a report detailing fines retained and any expenses claimed for the enforcement during the previous year.

TMCEC: Not all municipalities are eligible to enforce commercial motor vehicle standards. See, Section 644.101 of the Transportation Code (Certification of Peace Officers). Most municipalities are not. Nevertheless, with more commercial motor vehicles on the road every year, more municipalities are increasing enforcement of commercial motor vehicle safety standards on their roadways to improve public safety. H.B. 2065 requires municipalities to report information that they are likely already collecting. The administrative enforcement of commercial motor vehicle standards potentially entails the imposition of steep fines. This bill aims to provide a check and balance. It is important to note that municipalities that fail to report related fines and expenses will be on the hook to send the Comptroller all fines collected from enforcement.

H.B. 3069
Subject: Administration of and Eligibility for Participation in Veteran's Treatment Courts
Effective: September 1, 2017

Veteran's Treatment Courts (VTC) are designed to assist military veteran defendants who have suffered certain injuries as a result of their military service. The commissioners court of a county may establish a VTC program for a person arrested or charged with any misdemeanor or felony offense. These courts have shown a high level of success in preventing recidivism by providing these veterans with tools to lead a law-abiding and productive lifestyle.

H.B. 3069 amends Section 124.001 and 124.002 of the Government Code to expand the pool of military veteran defendants who are both eligible to have their cases dismissed after successful completion of a VTC program and able to enter into a VTC program rather than be arrested or charged. The bill further establishes that proof of

certain matters may be submitted to the applicable criminal court, not necessarily the court in which the criminal case is pending.

Section 124.003 of the Government Code requires a VTC to ensure that a defendant is provided legal counsel before volunteering to enter the program. H.B. 3069 limits that requirement to criminal cases for which there has not yet been a disposition. Section 124.003 is further amended to allow a participant who is arrested or charged with an offense to withdraw from the program any time before a trial on the merits has been initiated.

H.B. 3069 adds Section 411.0727 of the Government Code allowing veterans who successfully complete a VTC program to petition for non-disclosure of their offense as long as the defendant has never been previously convicted of certain felony offenses, the offense did not involve the operation of a motor vehicle while intoxicated, and the veteran is not convicted of any felony offenses between the program graduation date and the second anniversary of that date.

H.B. 3147
Subject: Expunction for Persons Arrested as a Result of Inaccurate Identifying Information
Effective: September 1, 2017

Many people believe if they are released after being mistakenly arrested and the charges were dropped or dismissed without any court date being set that they no longer have an arrest record; even in cases of a mistaken arrest, the damaging documents are not automatically removed. H.B. 3147 expedites the process of having these records expunged, so that innocent citizens who have been wrongfully arrested can move forward with their lives, free from fear of a tarnished record for a crime they did not commit. H.B. 3147 amends Chapter 55 of the Code of Criminal Procedure relating to the entitlement to an expunction for certain persons who are arrested solely as a result of inaccurate identifying information that was inaccurate due to a clerical error or mistaken identity.

TMCEC: H.B. 3147 is one of three bills amending Chapter 55 of the Code of Criminal Procedure this session (See also, H.B. 557 and H.B. 322). The changes in H.B. 3147 are strictly limited to those charged due to a mistaken identity or similar errors; however, there appears to have been little attempt to reconcile changes among the three bills. The resulting amendments may contribute to an already complicated expunction statute.

H.B. 3167
Subject: Program for Improvement of Collection of Court Costs, Fees, and Fines
Effective: June 1, 2017

H.B. 3167 amends Article 103.003(b) of the Code of Criminal Procedure relating to the Collection Improvement Program (CIP) for counties and municipalities. Counties with a population under 50,000 were previously not required to participate in the program. H.B. 3167 raised that threshold to 100,000.

TMCEC: 2016 was a rough year for the CIP. Following allegations that the program, administered through the Office of Court Administration, did not provide for the indigent or those struggling to pay outstanding fines, fees, and costs, the program's rules were amended by the Texas Judicial Council in January 2017. As amended, the scope of the CIP is significantly narrowed. Counties with populations between 50,000 and 100,000 will no longer be required to participate. Notably, the population threshold for municipalities required to participate in the CIP is 100,000.

H.B. 3492
Subject: Authority of Clerks to Obtain Identifying Information
Effective: June 15, 2017

Sometimes situations arise in which individuals seeking to file documents with or request services from certain

county or district clerks provide fraudulent information to the clerk. H.B. 3492 seeks to combat fraud. Under the new Section 191.011 of the Local Government Code, a county or district clerk in counties with a population of 3.3 million or more to record identifying information regarding individuals who seek to file documents or obtain other public service provided by the clerk. A clerk may not charge a fee for recording the identifying information and may not refuse to file a document or provide other public service if a person does not provide identifying information.

TMCEC: This new authority is only bestowed on clerks in Harris County, as it is the only county with a population of 3.3 million or more. Identifying information that can be recorded may include a driver's license or identification card, a photograph, or a recording of the individual's image or voice.

H.B. 3903
Subject: Political Contribution by Judicial Candidates
Effective: June 15, 2017

The Texas Judicial Campaign Fairness Act was enacted in 1995. This Act placed restrictions on how a judicial candidate or officeholder could use campaign funds with regard to making political contribution to other candidates, officeholders, political parties, or political organizations.

H.B. 3903 amends Section 253.1611 of the Election Code, removing restrictions that prohibited judges and judicial candidates from making political contributions to political committees and also removes the limits on how much judges and judicial candidates can contribute to county and state parties. These changes will bring judicial candidates and judges in line with other candidates and elected officials regarding political contributions.

TMCEC: While this may be a welcomed change, members of the judiciary must remain vigilant of the Canons of Judicial Conduct when participating in political and fundraising activities.

H.R. 798/H.R. 799
Subject: Municipal Court Week
November 6-10, 2017 and November 5-9, 2018

Municipal courts provide citizens with a local forum where questions of law and fact can be resolved in regard to alleged violations of state law and municipal ordinances. Because more citizens come into contact with municipal courts than any other courts, the public impression of the Texas judicial system is largely dependent on their experience there. Municipal judges, clerks, court administrators, prosecutors, juvenile case managers, bailiffs, and warrant officers continually strive to improve the administration of justice through participation in judicial education programs, seminars, workshops, and the annual meetings of their state and local professional organizations. Municipal courts in Texas play a vital role in preserving public safety, protecting the quality of life for area residents, and deterring future criminal behavior, and it is indeed fitting to recognize municipal judges and court support personnel for their exemplary dedication to the communities they serve.

The House of Representatives of the 85th Texas Legislature recognizes each of the weeks of November 6-10, 2017 and November 5-9, 2018 as Municipal Courts Week and take special note of the important work performed by all those associated with the state's municipal courts.

S.B. 42
Subject: Security of Courts and Judges; Judge Kocurek Judicial and Courthouse Security Act
Effective: September 1, 2017

The assassination attempt against Travis County District Judge Julie Kocurek in the fall of 2015 underscored the urgent need to evaluate the state's court security policies. Shortly after this incident, the Office of Court

Administration sent a court security survey to judges in the state. This survey revealed that nearly two-thirds of judges do not know of, or do not have, a court security plan; more than 30 percent of judges were aware of a security incident in the year prior to completing the survey; nearly two-thirds of judges reported that no court security training has been provided in their courthouse; and nearly two-thirds of judges are unaware of existing statutory security incident reporting requirements. Accordingly, the Texas Judicial Council established a Court Security Committee. This committee found serious deficiencies in the state's security posture, including a lack of court security best practices, training, and funding.

S.B. 42, named the Judge Julie Kocurek Judicial and Courthouse Security Act of 2017, implements recommendations from the Court Security Committee, including creating the position of Director of Security and Emergency Preparedness at the Office of Court Administration, establishing local court security committees, requiring court security training of judges and court personnel, adding a $5 filing fee in civil cases (and directing the comptroller to credit such fees received to the Judicial and Court Personnel Training Fund), and facilitating removal of judges' personal information from public documents. These changes would improve court safety for judges, employees, and citizens of Texas.

TMCEC: The 2015 shooting of Judge Julie Kocurek was not only shocking in its audacity but also made world-wide news. Judge Kocurek, a former prosecutor and sitting district court judge, was ambushed in her driveway while returning home with family from a high school football game. Three men were ultimately indicted in the conspiracy, one of which had been set to appear before Judge Kocurek on criminal charges. Most surprising, however, was that Judge Kocurek had not been informed of a death threat against her that was previously known by law enforcement. S.B. 42 attempts to address these and other issues affecting judges across the state.

Section by Section Analysis

Section 2: Required Reporting of Security Incidents

The Office of Court Administration has collected data related to court security incidents since 2007. At that time it was found that there were more than 4,200 security incidents in a one-year period, and nearly 40% of the state's courtrooms had no security resources other than a security officer. The security incident report, to be sent to the Office of Court Administration within three days of the incident, is not new. The amended Article 102.017 of the Code of Criminal Procedure, however, places the obligation squarely on the agency or entity that provides security for a court to report a security incident not only to the Office of Court Administration, but also to the presiding judge of the court in which the incident occurred. This directly addresses the fact that previously, in Travis County as elsewhere, judges were not being made aware of potential threats to the court.

Sections 3-4, 9: Court Security Committee

S.B. 42 adds Section 29.014 to the Government Code chapter outlining general provisions for municipal courts and Section 30.00007 to the Government Code chapter for municipal courts of record. This section creates a new requirement that the presiding municipal judge establish a court security committee within the city. The committee, chaired by the presiding judge, is meant to establish policies and procedures necessary to provide adequate court security. Importantly, the bill takes the guesswork out of the committee's composition. In addition to the presiding judge, the committee is required to include a representative of the agency or entity that provides primary security for the court, a representative of the city, and any other person that the committee determines will be of assistance. S.B. 42 also requires that the county create a similar committee for county courts.

TMCEC spoke to clerks around the state at the regional seminars during the last academic year about the importance of establishing policies and procedures. Many clerks questioned how to begin the process. S.B. 42 provides a framework to help courts kick things off where court security is involved. There is no requirement that the committee meet more than once, but it would be beneficial for courts to embrace the opportunity to bring court

stakeholders together to periodically and consistently reevaluate the security of the court and its users.

Sections 5-7: New Civil Filing Fee

Section 5 amends Chapter 51 of the Government Code by adding Subchapter N, creating a new filing fee. The Judicial and Court Personnel Training Fee is a new $5 fee collected on the filing of any civil action requiring a fee. Municipal courts are *not authorized* to collect this fee. The fee, however, will be deposited into the Judicial and Court Personnel Training Fund. This is an account provides funds for continuing judicial education for judges and court personnel. This account partially funds many of the state's judicial education entities, including TMCEC.

Section 6 amends Section 56.003 of the Government Code by adding Subsection (h). This directs the Court of Criminal Appeals to grant legal funds to statewide professional associations and other entities that provide court security training.

Section 7 amends Section 56.004(b) of the Government Code, requiring the Legislature to appropriate funds from the Judicial and Court Personnel Training Fund to the Court of Criminal Appeals specifically for training individuals responsible for providing court security.

Section 8: Creation of the Office of Court Administration Judicial Security Division

This is a fairly large change to the organization of statewide court security continuing education, and potentially could have ripple effects within the greater court education arena that may not be fully appreciated in the short term. S.B. 42 creates an entirely new division, as specified in Chapter 72 of the Government Code, within the Office of Court Administration. This division is required to provide a central depository of resources, expert opinions, and training on court security. This Judicial Security Division will be overseen by a director who is also responsible for implementing the process to withhold personal information of judges and their spouses in the public records. Courts across the state are no doubt interested in the resources that it will provide.

Sections 15, 24: Required Court Security Officer Training

Court security officers are essential to the safety of both court personnel and court users. One survey conducted by the Texas Attorney General found that most respondents were concerned simply by the perceived risk of potential violence due to overcrowded courtrooms and the absence of police officers.

Section 15 amends the Government Code to add Chapter 158 (Court Security Officers). In a nutshell, this chapter requires that a person may not serve as a court security officer unless that person holds a court security certification. Court security officer is broadly defined to mean a municipal peace officer or any other person assigned to provide court security. Beginning September 1, court security officers have one year to complete the certification from the time they first begin to provide court security (Officers already serving in that capacity on September 1, 2017 have until before September 1, 2019 to complete the certification).

This requirement will likely be a challenge for courts, whether large or small. For large courts, the sheer number of individuals performing court security could make meeting this requirement expensive and time consuming. For smaller courts that may borrow from the pool of available officers with the local police department on a court day, the pool may become much smaller. Some courts use private security companies. Also, both large and small courts may have difficulty cycling officers through certification is such a short time frame.

How much of a challenge this will be for courts remains to be seen. The bill does not specify what the certification entails. The current version of the court security specialist certification approved by TCOLE consists of seven courses totaling 40 hours of in-person training. Although TMCEC has provided this training there are few other

providers at this time. S.B. 42 provides that TCOLE will consult with the Office of Court Administration to develop a model court security curriculum. It is possible that the curriculum will be all or part of the existing courses for the court security specialist certification, but it is also possible that it will be something else. It is unclear when that curriculum will be developed or released.

Sections 17-22, 25-26: Removal of Personal Information for Judges and Spouses

One of the most significant aspects of S.B. 42 is the protection it places on the personal information of judges and their spouses. Conspicuously, it was not just anywhere that Judge Kocurek was shot; rather, it was in the driveway of her own home. For years, privacy and court security advocates have pointed out that public records may provide a security loophole through which disgruntled defendants may seek to take out their anger on the judiciary. S.B. 42 closes loopholes in Chapters 552 and 572 of the Government Code, Chapters 13 and 15 of the Election Code, Chapter 11 of the Property Code, and Chapter 25 of the Tax Code for a variety of public records. The bill protects personal information of judges and their spouses on the voter registration form, property records, tax appraisal records, and driver's license records. Combined with similar procedures protecting the home address for court personnel in S.B. 510, it appears that the state has taken important steps to improve court security.

S.B. 43
Subject: Judicial Branch Certification Commission
Effective: September 1, 2017

S.B. 43 amends the Government Code to make a person ineligible for appointment or service as a member of an advisory board or committee that serves the Judicial Branch Certification Commission (JBCC) on the same basis that a person is made ineligible for appointment or service as a commission member. The bill authorizes the JBCC to adopt a policy allowing employees of the Office of Court Administration to dismiss a complaint that alleges misconduct that took place more than five years before the date the complaint was filed. The bill requires the request submitted to the JBCC by a person who files a complaint that is dismissed seeking reconsideration of the complaint to be made in writing not later than the 30th day after the date of notice of the dismissal.

TMCEC: The JBCC oversees a number of court licenses and certifications, including the licensing of court reporters and licensed court interpreters. The JBCC is fairly new, having been established by the 83rd Legislature and beginning operations on September 1, 2014. At the same time, Chapter 157 of the Government Code was created, outlining requirements for licensed court interpreters. Of direct interest to municipal courts, S.B. 43 removes a reference to old law in Section 57.002(b-1) of the Government Code and updates the reference to reflect its new location in Chapter 157.

S.B. 47
Subject: Availability of Information Regarding Convictions and Deferred Dispositions for Certain Misdemeanors Punishable by Fine Only
Effective: September 1, 2017

Concern has grown in recent years among privacy advocates as court records have become more accessible via digital format or to large data mining operations. In addition, some have argued that certain records, including convictions for misdemeanors punishable by fine only, should not be accessible due to the negative effect on housing, careers, or college. As a first step toward gathering information and addressing the issue, S.B. 47 requires the Office of Court Administration to conduct a study of records retention practices for misdemeanors punishable by fine only in different Texas counties, including local agencies. The findings will be submitted in a report to the Legislature.

TMCEC: S.B. 47 presents a bit of a potpourri of privacy issues. The bill generated interest among advocacy groups, some of which have now realized that so-called "low-level" Class C and fine-only misdemeanors may

have considerable legal consequences on conviction for future job prospects, housing opportunities, or college for those convicted. Additionally, an on-going theme in recent years has been large data miners harvesting open records from courts in order to procure records such as deferred disposition dismissals. The law provides that dismissals following deferred disposition are not to be used for any reason; however, these data miners have the ability to harvest and sell these records to insurance companies or any other interested party. See, Ned Minevitz, "Insurance Support Organizations: Are Deferred Traffic Cases Coming Back to Haunt Defendants?" *The Recorder* (April 2016). Still other groups have been concerned about the public accessing personal data contained in court case files.

This bill has been called a first step, but it is unclear what we are stepping toward. Rhetoric surrounding the bill repeatedly labeled Class C and fine-only misdemeanors as "minor" and the "lowest" criminal offenses, yet there has also been clear acknowledgement that these offenses may have significant legal consequences. Interestingly, traffic records are specifically excluded from the study. The report from the Office of Court Administration is due just in time for the next legislative session in 2019. Stay tuned.

S.B. 259
Subject: Granting County Authority to Use Electronic Jury Questionnaires
Effective: September 1, 2017

Current law mandates that counties send jurors a paper copy of the uniform jury questionnaire in the mail along with a jury summons, regardless of whether they can facilitate the questionnaire online. It has been suggested by some counties that supplying the questionnaires online would increase efficiency, conserve staff resources, and save taxpayer money. One county has estimated that they could save as much as $2 million annually by offering the questionnaires online.

Moreover, some counties report juries often do not fill out the mailed questionnaires as instructed, rendering the resources spent printing and mailing the documents a waste. It is suggested that this waste could be prevented simply by posting the questionnaires online.

S.B. 259 addresses this issue by amending Section 62.0132 of the Government Code to give counties the authority to choose whether to maintain current practice or adopt an electronic method for jury summons questionnaire submission. The electronic submission must be on the courts' website and be easily printed. If the district and criminal district judges of the county adopt a plan under Section 62.011 of the Government Code, a county may allow a person to complete and submit a jury summons questionnaire entirely on the court's website.

TMCEC: Chapter 62 of the Government Code pertains to petit juries. This is an amendment to Subchapter A (General Provisions). Chapter 62 also contains Subchapter F (Municipal Court Juries). Municipal courts have long been left with little explicit guidance as to which provisions outside Subchapter F apply to municipal courts. Most of the provisions in Chapter 62 only contemplate counties. Potentially complicating matters, some municipalities partner with counties for obtaining jurors. Accordingly, it is difficult to generalize about the application of Section 62.0132.

S.B. 302
Subject: Continuation of the State Bar of Texas
Effective: September 1, 2017

S.B. 302 is the Sunset bill for the State Bar of Texas. The State Bar is a judicial agency of the state, with statutory authority to discipline attorneys, provide continuing legal education, and aid the courts in the administration of justice. Every person who is licensed to practice law in Texas must join the State Bar. S.B. 302 continues the State Bar for the standard 12-year period, moving the agency's Sunset date, under Section 81.003 of the Government Code, from September 1, 2017 to September 1, 2029.

In addition, S.B. 302 includes a number of other changes in Chapter 81 of the Government Code to make the State Bar more efficient and transparent. For example, S.B. 302 improves the rulemaking process for disciplinary rules because the most recent attempt to revise them took about six years, alienated many attorneys, and resulted in no changes. The improved rulemaking process in S.B. 302 provides specific deadlines, public input requirements, and transparency provisions that are designed to prevent past problems from reoccurring. This new process maintains attorneys' right to vote on proposed disciplinary rules because this safeguard has served the state's legal profession well for decades. S.B. 302 also strengthens the attorney discipline system by requiring fingerprint-based criminal background checks, reinstating the chief disciplinary counsel's investigatory subpoena power, streamlining the voluntary mediation and dispute resolution procedure, and requiring improved tracking and reporting of disciplinary case outcomes. Finally, S.B. 302 also creates a new independent ombudsman's office to monitor and help the public access the attorney discipline system.

TMCEC: To nobody's surprise, the State Bar was continued and internal politics alienated some attorneys. Attorneys should take note, however, that municipal judges and clerks are not the only ones increasingly under the microscope. Interestingly, S.B. 302 authorized the chief disciplinary counsel to create a grievance tracking system that would permit the evaluation of disciplinary trends over time. The report will be posted on the State Bar's website. Is this a response to recent high profile attorney misconduct cases?

S.B. 413
Subject: Classification of Certain Court Costs as Uncollectible in Collin County
Effective: September 1, 2017

Counties routinely attempt to collect unpaid fines, fees, or court costs as permitted by law. In many cases, court-ordered fees are collected expediently. Issues arise, however, for collection efforts of defendants who are deceased or serving long prison sentences. A recent report by Collin County revealed a substantial amount of uncollectible fees over the past five years, to which the cost of collecting these fees outweighs the fees' value to the county. Counties contend that they should have the authority to remove these uncollectible fees from their record books.

S.B. 413 addresses this issue by amending Chapter 103 of the Code of Criminal Procedure and adding Article 103.0081, which allows officers to make a request to the court that a fee or cost imposed by the court be dropped because the officer believes the defendant is deceased, serving life imprisonment, or has been unpaid for at least 15 years.

Upon the court finding any of these conditions true, the court may order the officer to designate the fee or cost as uncollectible in the fee record. The article applies only to a county with a population of more than 780,000 but less than 790,000.

TMCEC: Uncollectable judgments are a problem across the state. The cases are technically still open until the judgment is satisfied, either taking up physical space in the courtroom or digital space on the court's servers. There is currently no legal authority to "purge" all old cases; and, unlike pre-judgment cases, these cannot be dismissed and disposed of according to the retention schedules. S.B. 413 authorizes one solution in a bill narrowly tailored to essentially apply only to Collin County, and if the population shifts more than a few thousand people in Collin County, it will not apply there either, as it only applies to counties with a population of more than 780,000 but less than 790,000. Stay steady, Collin County!

S.B. 510
Subject: Confidentiality of Home Address of Judicial Employees in Tax Records
Effective: May 27, 2017

The employees of state judges are front-line persons who routinely interact with litigants experiencing crises, including persons with extensive criminal histories and numerous mentally unstable and potentially dangerous

persons. Ill-intentioned, disgruntled litigants easily may access the home address information of those employees who own property in Texas through public property appraisal records. S.B. 510 adds the employees of state judges to the list of persons allowed to remove their residence address from tax appraisal rolls, under Chapter 25 of the Tax Code. This change allows them to protect their safety and reduces the possibility of disgruntled litigants easily finding out where they and their families live.

TMCEC: S.B. 510 is one of several bills passed this session that seeks to restrict the availability of personal information for judges and court personnel (See also, S.B. 42 and H.B. 1278). This follows the attempted assassination of Travis County District Court Judge Julie Kocurek in her home's driveway. Separately, H.B. 42 extensively restricts the personal information for judges and their spouses in several facets of daily life. S.B. 510 goes further and adds restrictions to the availability of home address information contained in tax appraisal records for the employees or former employees of federal or state judges. Interestingly, the term "state judge" in the Tax Code includes municipal judges. This means that municipal court clerks may seek to have their home address information restricted, providing an important modicum of security for front-line court personnel.

S.B. 1329
Subject: Fee for Attorneys License or Certificate
Effective: September 1, 2017

S.B. 1329 consolidates a number of changes into a single omnibus bill. Of importance to new attorneys, S.B. 1329 amends Section 51.006 of the Government Code, to increase from $10 to $25 the amount of the fee that the clerk of the Texas Supreme Court is required to collect for the issuance of an attorney's license or certificate affixed with a seal.

S.B. 1705
Subject: Issuance of a Marriage License and the Marriage of a Minor
Effective: September 1, 2017

In the State of Texas, minors under the age of 16 can marry with a judge's approval. Minors aged 16 and 17 can be married with parental consent and do not even have to be present to be married away by their parents. Most of these minors, who have not been emancipated, lack the same legal rights as an adult. This is known as having the disabilities of minority. These minors without the full legal rights of an adult are often marrying adults with full legal rights. This creates a situation ripe for abuse. Interested parties contend that minors attempting to marry face legal obstacles, such as lacking the right to contract, which is needed to contract with an attorney, and can be unable to legally protect themselves in a marriage proceeding before they reach the age of maturity, 18. Inexplicably, minors are removed of the disabilities of minority and are considered adults with full rights under law immediately after marriage, but not before when the ability to contract an attorney and make their own decisions could be impactful. S.B. 1705 requires a minor to petition a court for the removal of the disabilities of a minor before applying for a marriage license in Texas. In order to have the disabilities of minority removed, a minor must prove that they are a resident of Texas, 17 years of age, or at least 16 years of age and living separate and apart from their parents, managing conservator, or guardian, and self-supporting and managing their own financial affairs. The court is required to appoint an amicus attorney or attorney ad litem to represent the interest of the minor at the hearing. The court is required to issue the order removing the disabilities of the minor if it is found to be in the best interest of the minor.

S.B. 1705 ends the practice of marriage under the age of 16 in Texas and ensures that minors petitioning to marry have access to an attorney and the same legal protections as those they are marrying.

TMCEC: Child marriage has become both a national and state issue in recent years. In some instances the practice is sometimes part of human trafficking. Studies have shown that women who married as children experienced higher rates of psychiatric disorders, were more likely to drop out of high school, and are more likely

to have family instability. A 2016 Pew Research Center report found that Texas had the second highest rate of child marriage, behind only West Virginia. S.B. 1705 essentially ends this practice, providing that a person under 18 years of age may not marry, and the marriage would be void, unless the person has been granted a court order removing the disabilities of minority of the person.

S.B. 1911
Subject: Self-help Resources on the Internet Website of a State Court and in the Office of the Court Clerk
Effective: September 1, 2017

There is concern that many Texans fall into what has been called a "justice gap" in which they are neither poor enough to qualify for free legal services nor affluent enough to afford legal services on their own, thus putting these pro se litigants at a disadvantage during the legal process. S.B. 1911 addresses this gap by requiring the courts of Texas to make information relating to legal self-help resources publicly available on each court's website, if the court has a website, and in the office of the court clerk.

TMCEC: S.B. 1911 requires the "clerk of each court of this state" to provide a link to self-help legal resources available through the Office of Court Administration, link to the State Law Library's website, and post signage concerning the resources. These could be helpful to pro se litigants attempting to navigate the legal process; and indeed, TMCEC spent much of the last academic year discussing the importance of providing pro se defendants access to accurate information.

S.B. 1911 amends Section 51.808 of the Government Code. This is not only in a section of the Government Code dealing with Electronic Filing, but also part of a larger chapter outlining procedure for county civil courts. Thus, the pro se litigant resources referenced in S.B. 1911 appear to contemplate civil cases. Although under the Code Construction Act, section titles and location are not determinative, there is a question as to whether S.B. 1911 was intended to apply to criminal courts in general and municipal courts in particular.

Putting such questions aside, there is nothing preventing courts from posting such information, but courts should be aware of the potential for confusion for defendants unfamiliar with the difference between a civil and criminal case. S.B. 1911 presents an opportunity for municipal courts throughout the state to reevaluate websites and public resources. Procedural fairness remains an important consideration in the fair administration of justice, regardless of jurisdiction.

S.B. 2053
Subject: Distribution of the Consolidated Court Cost
Effective: June 15, 2017

Section 133.102 of the Local Government Code, apportions revenue from the consolidated court cost fee to several state accounts. A recent Court of Criminal Appeals decision, *Salinas v. State*, 2017 Tex. Crim. App. LEXIS 284 (Tex. Crim. App. Mar. 8, 2017), found the allocation to two of those accounts (abused children's counseling and comprehensive rehabilitation) to be unconstitutional, while leaving the rest of the statute and its apportionment to various programs intact. In footnote 54 of the *Salinas* opinion, the Court provides that "[i]f the Legislature redirects the funds to a legitimate criminal justice purpose, the entire consolidated court cost may be collected." S.B. 2053 amends the statute setting out the apportionment of this fee revenue to delete the two funds that have been found unconstitutional, and to add the percentage of the revenue that was attributed to the unconstitutional funds to the fair defense account (which helps fund the costs of appointment of counsel for indigent defendants in Texas).

TMCEC: In recent years there have been a number of cases challenging either the collection of court costs or the costs themselves as an unconstitutional tax. Essentially, the argument is that such costs have no relation to a

criminal case and turn courts into tax collectors—a role that should be performed by the executive branch rather than the judiciary. See, *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015).

The Court's finding in *Salinas*, however, that parts of the consolidated court cost fee were unconstitutional and should be collected in accordance with this decision, sent alarm bells ringing in court administration offices across the state. This could have reduced court costs by $3.93, potentially creating clerical logjams among the millions of cases being processed.

S.B. 2053, filed the day after the *Salinas* decision was handed down, provided an easy fix for the state. Its passage into law, effective June 15, 2017, averts the possibility of a clerical logjam. The Court of Criminal Appeals denied motions for rehearing on June 28, 2017.

By removing the accounts found to be unconstitutional by the Court of Criminal Appeals, and reallocating those funds to the fair defense account, Texas can maintain the consolidated court cost fee dollar amount. The practical result, from the perspective of courts adjudicating Class C misdemeanors, is that courts will continue to collect the same $40. The task of apportioning the funds per S.B. 2053 belongs to the State Comptroller.

S.J.R. 6
Subject: Constitutional Amendment Requiring Attorney General Notice
Effective: January 1, 2018, subject to voter approval on November 7, 2017

In the same way a court may not enter judgment against a private party who has not received notice of the litigation, federal law requires that, in a case challenging the constitutionality of a federal statute, the U.S. Attorney General must be given an opportunity to defend and challenge the law.

In 2011, the Texas Legislature passed its own version of the notice provision. Similar to the established federal law, it provided that, in an action in which a party challenges the constitutionality of a Texas statute, the Texas Attorney General is required to be notified and given 45 days to intervene. In 2014 however, the Criminal Court of Appeals held that both provisions were unconstitutional. The decision has left Texas legislative enactments open to being ruled unconstitutional without the state's ability to defend them.

S.J.R. 6 addresses this issue by proposing a constitutional amendment to the 2011 provision found unconstitutional, amending Article V of the Texas Constitution by adding Section 32 to allow the Legislature to require a court to provide notice to the Attorney General of any petition, motion, or other pleading challenging the constitutionality of a state statute; to prescribe a reasonable period of 45 days before judgment to allow the attorney general to respond before judgment holding the statute constitutional.

Upon the pending election, the bill adds a temporary provision allowing the proposed statute to apply during the current 85th Legislature Regular Session. Section 402.010 of the Government Code is validated by this temporary provision, and applies only to a petition, motion or other pleading filed on or after January 1, 2018 to expire January 2, 2018.

TMCEC: The Court of Criminal Appeals decision that this resolution attempts to get around is *Ex Parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2014). In that case, the Court found that Section 402.010 of the Government Code was an unconstitutional violation of the separation of powers as it allows for the suspension of a court's power to enter final judgment. See Ryan Kellus Turner & Regan Metteauer, "Case Law and Attorney General Update TMCEC Academic Year 2015," *The Recorder* (November 2014) at 21.

H.B. 29
Subject: Prostitution and the Trafficking of Persons
Effective: September 1, 2017, except Section 102.102, Business & Commerce Code, takes effect March 1, 2019

The Texas Human Trafficking Task Force was established in 2009 and is coordinated through the Office of the Attorney General. The task force is a collaborative effort between state agencies, local law enforcement entities, district attorneys, and non-governmental organizations to address human trafficking from multiple perspectives.

H.B. 29 codifies the 11 recommendations of the task force. These include recommendations to improve Texas' response to human trafficking, including enhanced penalties for traffickers, providing prosecutors with additional tools for prosecution, improving victim protections, and addressing training needs. These recommendations are the product of the collaborative efforts and unanimous approval of task force members.

H.B. 29 amends current law relating to prostitution and the trafficking of persons, civil racketeering related to trafficking, the prevention, investigation, and prosecution of and punishment for certain sexual offenses and offenses involving or related to trafficking, reimbursement of certain costs for criminal victims who are children, and the release and reporting of certain information relating to a child; increases criminal penalties; and creates criminal offenses.

TMCEC: H.B. 29 is an extensive bill codifying the many recommendations of a task force that worked over a period of several years; the task force itself is changed by H.B. 29 adding representatives from the Texas Department of Licensing and Regulation, the Office of Court Administration, the Office of the Secretary of State, and the Texas Commission on Law Enforcement. Not all of the changes pertain to persons working in municipal courts or as magistrates. What follows is a summary of the relevant portions of the bill.

Criminal Offenses and Penalties

Section 1 of H.B. 29 creates a new Class C misdemeanor under Section 102.102 of the Business & Commerce Code for an owner or operator of a sexually oriented business who fails to post a sign in each restroom on the premises directing a victim of human trafficking to contact the National Human Trafficking Resource Center, as required by Section 102.101 of the Business & Commerce Code. The bill further requires that the Attorney General may prescribe specific requirements for the sign, including its physical dimensions.

H.B. 29 makes changes to the sex offender registration program under Chapter 62 of the Code of Criminal Procedure, with relation to the offense of continuous trafficking of persons.

H.B. 29 amends multiple chapters of the Penal Code including Chapters 20A, 21, 22, and 43. Notably, Sections 21.02 (Continuous Sexual Abuse of Young Child or Children), Section 21.11 (Indecency with a Child, Section 22.011 (Sexual Assault), Section 22.021 (Aggravated Sexual Assault), Section 43.25 (Sexual Performance by a Child), and Section 43.251 (Employment Harmful to Children) are all amended to specify that a person commits an offense against a child, regardless of whether the actor knows the age of the victim at the time of the offense. Chapter 43 is amended with regard to prostitution, clarifying that a "fee" in exchange for sexual conduct, can be in the form of money, goods, services, or other benefit. Also in Chapter 43, the offense of Aggravated Promotion of Prostitution is changed to a felony of the second degree, rather than third degree, except that it is a felony of the first degree if the actor uses a prostitute younger than 18 years of age, regardless of whether the actor knew the age of the person at the time of the offense.

Online Service Provider

Multiple sections of H.B. 29 update the Code of Criminal Procedure to use the term "online service provider" as opposed to "Internet service provider." Article 24A.0015 defines "online service provider" to include Internet service provider, as well as a search engine, web hosting company, web browsing company, manufacturer of devices providing online application platforms, or a company providing online social media platforms. Conforming changes are made in Articles 24A.001, 24A.002, 24A.003, and 24A.051of the Code of Criminal Procedure.

Conduct Indicating a Need for Supervision

The 84th Regular Legislature left us with three different versions of Section 51.03(b) of the Family Code. H.B. 29 reenacts and consolidates the separate versions into one. H.B. 29 amends the general expunction provision in Article 45.0216 of the Code of Criminal Procedure to reflect the change in the Family Code.

H.B. 1808
Subject: Creation of the Offense of Sexual Coercion and Elimination of Knowledge of Age as a Defense for Certain Crimes Involving a Minor
Effective: September 1, 2017

Concerns have been raised that some individuals who have solicited a prostitute who is a minor have been able to use the defense that they were not aware of the prostitute's age at the time of the solicitation. H.B. 1808 addresses this defense of lack of knowledge concerning a victim's age by amending Section 21.02 (Continuous Sexual Abuse of Child), Section 21.11 (Indecency with a Child), Section 22.011 (Sexual Assault), Section 22.021 (Aggravated Sexual Assault), Section 43.25 (Sexual Performance by a Child), and Section 43.251 (Employment Harmful to Children) of the Penal Code to state that an offense committed under these sections constitutes a crime, regardless of whether the person knows the age of the victim at the time of the offense.

H.B. 1808 also amends Chapter 21 of the Penal Code by creating the offense of sexual coercion in Section 21.18. A violation occurs when a person intentionally coerces a victim to engage in sexual conduct or to produce intimate visual material, or provide a valuable benefit, by means of threatening to commit an act of violence or a sexual offense such as human trafficking, sexual abuse of a child, or other sexually related offenses if the victim does not comply. Violators of this law would be subject to a state jail felony. If a person has been previously convicted of a sexual offense, then they are subject to a third degree felony.

Section 21.18 applies to threats regardless of how they are communicated, including threats transmitted through email, websites, social media, chat rooms, and threats made by other electronic or technological means. An offense committed under this section is a state jail felony and may be enhanced for prior offenses under this section.

H.B. 1808 amends Section 22.011 of the Penal Code (Sexual Assault) to include assaults accomplished by coercion or threat of harm to the victim. Current law reflects antiquated stereotypes of a "stranger in the bushes" by requiring proof that a sexual assault defendant used or threatened to use physical force or violence. Sexual assault is always a violent act, whether accomplished by physical force or threats of other serious harm.

Lastly, H.B. 1808 amends Section 22.021(a) of the Penal Code (Aggravated Sexual Assault) to clarify that an offense is committed under this section if a person administers or provides any substance capable of impairing a victim's ability to appraise the nature of the act or to resist the act with the intent of facilitating a sexual assault.

TMCEC: Currently, there are two versions of Section 21.16 of the Penal Code, due to separate bills passed in the 84th Legislature. Due to these two different provisions, H.B. 1808 had to create two versions of the new offense of sexual coercion so that it would be become law regardless of whether the 85th Legislature corrects the differing Sections of 21.16.

The age defense for many of the crimes against children is also eliminated in H.B. 29.

H.B. 2529
Subject: Definition of "Coercion" as Related to Trafficking of Persons
Effective: September 1, 2017

H.B. 2529 amends Trafficking of Persons (Section 20A.02 of the Penal Code) to specify that the definition of "coercion" into prostitution includes destroying, concealing, confiscating, or withholding (or threatening to destroy, conceal, etc.) a trafficked person's government records or identifying information or documents.

H.B. 2552
Subject: Deterrence of Sexual Offenses and Human Trafficking
Effective: September 1, 2017

Human trafficking is prevalent throughout Texas and the United States but often goes unreported. Due to the clandestine nature of the crime, identifying victims is notoriously difficult. A recent report by the University of Texas at Austin's Institute on Domestic Violence & Sexual Assault estimates that there are over 300,000 victims of human trafficking in Texas. Texas is second only to California in human trafficking incidents reported to the National Human Trafficking Hotline; 670 cases were reported in 2016.

Additionally, all across Texas, thousands of businesses claiming to offer massage services are actually fronts for human trafficking and compelling prostitution. These illicit massage parlors attract crime to those locations and many times are unlicensed.

H.B. 2552 strengthens Texas' response to the ongoing problems of human and sex trafficking by building upon current nuisance and abatement law under Chapter 125 of the Civil Practice and Remedies Code. This helps local governments shut down illicit massage parlors. The bill also provides a means for collecting data on prostitution arrests and outcomes, closes a loophole in the promotion of prostitution statute, and provides a means for property owners to evict businesses that are engaging in human trafficking.

H.B. 2552 amends Section 21.16 of the Penal Code (Voyeurism) raising the punishment from a Class A misdemeanor to a state jail felony. Section 21.18 (Sexual Coercion) is added making a state jail felony of the use of intentional threats including coercion or extortion to commit certain sex crimes. This offense can be enhanced to a felony in the third degree if it is shown at trial that the defendant has previously been convicted of an offense under this section.

H.B. 2552 amends Section 22.01 of the Penal Code (Assault) to specify that an assault committed against a pregnant individual to force the individual to have an abortion is a felony of the third degree if it causes bodily injury or a Class A misdemeanor if it results in offensive or provocative contact.

TMCEC: H.B. 2552 is one of two bills creating the offense of Sexual Coercion in the 85th Legislature; the other is H.B. 1808. In addition, there are two versions of Voyeurism, due to separate bills passed in the 84th Legislature. H.B. 2552 raises the punishment for one version to a state jail felony, but does not amend the other version, which may be punished as a Class C misdemeanor.

H.B. 3649
Subject: Confidential Communications of Family Violence Victims
Effective: September 1, 2017

Thirty-nine states have some form of enhanced state-level victim information privacy protections for victims of

domestic violence. However, Texas lacks strong legal protections for private conversations between domestic violence victims and their family violence advocates.

Currently, batterers or others who seek this information can obtain these private conversations with a court subpoena. As a result, advocates document little information in victim files, significantly reducing their usefulness.

H.B. 3649 shields information that family violence survivors share with victim advocates from disclosure, ensuring they can seek assistance without fear that their story will be used against them. H.B. 3649 adds Chapter 93 (Confidential and Privileged Communications) to the Family Code creating confidential communication and records for victims of domestic violence to protect them from their abuser.

S.B. 256
Subject: Increased Access to the Address Confidentiality Program
Effective: May 19, 2017

S.B. 256 makes changes to Chapter 56 of the Code of Criminal Procedure to protect the confidentiality of home addresses for victims of family violence, sexual assault, human trafficking, or stalking. The bill also clarifies that a person participating in the Address Confidentiality Program (ACP) administered by the Texas Attorney General is eligible to have their address kept confidential within these records.

While victims may obtain protective orders, those writs do not require the redaction of their home addresses from public records. Specifically, both the property tax appraisal records maintained by county appraisal districts and the voter registration rolls maintained by county voter registrars are not required to have victims' addresses classified as confidential. This creates a loophole where, even though an offender may be barred from interacting with a victim pursuant to a protective order, that person may still search public records for the victim's home address once the order has expired. Furthermore, even if victims do not seek a protective order, their address may be discovered by the offender within public tax appraisal and voter registration records. S.B. 256 fixes these loopholes in Chapter 13 of the Election Code and Chapter 25 of the Tax Code by specifying that the home address of any person eligible for a protective order for family violence, sexual assault, trafficking, or stalking be classified as confidential within tax appraisal and voter registration records.

S.B. 256 modifies the ACP to broaden eligibility for victims' participation in the program. Currently, a person must meet several eligibility requirements, including meeting with a counselor and filing an application, in order to participate in the ACP. Once enrolled, the ACP provides a confidential mailing address for victims, allowing them to avoid unwanted detection. S.B. 256 broadens the classes of individuals eligible to participate in the ACP to include persons with a protective order for family violence, sexual assault, human trafficking, or stalking.

TMCEC: Recent years have seen an increase in data miners and others seeking to cull public records for personal information on individuals. This is relatively easy to do as public records are generally presumed to be open for inspection. This may present security issues, however, when those public records reveal personal information on individuals such as judges, court personnel, or victims of crimes. While information such as home address may be redacted from court documents or through court records requests, the records held by other public entities remain open. Essentially, it is a loophole to those willing to exploit it. S.B. 256 continues a trend this session to limit public access to these types of records for security reasons.

S.B. 257
Subject: Judicial Review of Protective Orders
Effective: September 1, 2017

Victims of sexual assault or abuse, stalking, or human trafficking have eligibility to receive court-issued protective

orders (Section 85.001, Family Code). Such orders are distinct from the Magistrate's Orders of Emergency Protection (Article 17.292, Code of Criminal Procedure).

While the duration of protective orders may last as long as the life of the victim or perpetrator, a loophole in state law currently enables perpetrators to challenge these terms. Specifically, perpetrators can re-litigate protective orders by calling both parties back into court to demonstrate a "continuing need," or potential threat of future violence, even though applicants for sexual assault, stalking, and human trafficking protective orders need not prove a threat of future violence to obtain the order in the first place. This effectively adds an additional evidentiary burden on victims of sexual assault, stalking, and human trafficking for the duration of the order that they were not required to satisfy at the time the order was issued. If the additional benchmark of threat of future violence is not met, a protective order may terminate prematurely, even if originally issued for life. This makes sexual assault protective orders harder to maintain than they were to originally acquire. Further, a perpetrator may challenge a protective order annually without limit.

S.B. 257 reforms the protective order re-litigation process by closing this loophole. The amended Section 85.025 of the Family Code limits a perpetrator's ability to challenge a protective order issued to family violence victims for longer than two years to two instances. The first of two motions may not be filed earlier than one year after the original order was rendered. If the duration of the protective order exceeds two years, then a second motion may not be filed earlier than one year after the conclusion of the first motion. Further, the bill exempts protective orders issued to child abuse and sexual assault victims from further challenge by their assailant.

S.B. 920
Subject: Access to Residence to Retrieve Property when Danger of Family Violence Exists
Effective: September 1, 2017

Last session, H.B. 2486 created a procedural process by which individuals can seek help in entering the home for the limited purpose of retrieving certain property. The law was meant to help people who have reported being unable to access prescription medications and/or necessities that they need to care for themselves or their children upon being suddenly dispossessed of access to their residence.

This difficult situation is only exacerbated in cases of domestic violence, when a person is in fear of returning to their residence to retrieve necessary personal belongings due to circumstances creating a severe risk to their health and safety. In these situations, it may be necessary, for the protection of a person or their dependents, for a court to take the extraordinary step of undertaking an ex parte court proceeding in order to allow a person to enter a property to retrieve important personal property.

S.B. 920 allows a justice court to issue a temporary ex parte writ under the new Section 24A.0021 of the Property Code authorizing entry and property retrieval to a residence if the current occupant poses a clear and present danger of family violence to an applicant or to an applicant's dependent. In issuing this writ, a justice of the peace may waive the bond requirements and the requirement that the current occupant be given notice and opportunity to be heard. A person granted this writ may only enter their residence if accompanied by a peace officer, and may only retrieve the items specifically authorized to be retrieved.

S.B. 1203
Subject: Subpoenas and Court Orders for Online Service Providers in the Investigation or Prosecution of Criminal Offenses
Effective: September 1, 2017

Current state law provides that an Internet service provider must respond within 10 days (or petition the court to excuse from compliance) to a subpoena, search warrant, or other court order in connection with an investigation or prosecution of certain crimes involving children.

Internet service providers must also comply within two business days if the subpoena, search warrant, or other court order pertains to a life-threatening situation, as well as preserve all records or potential evidence for a period of 90 days after the issuance of a subpoena, search warrant, or other court order.

S.B. 1203 amends Subchapter 24A of the Code of Criminal Procedure (Responding to Subpoenas and Certain Other Court Order; Preserving Certain Information), to expand the 10-day expedited response requirement to apply to human trafficking and other sex offenses. The bill also replaces "Internet service provider" with "online service provider" to ensure applicability to online entities that may have critical information that is relevant to a case involving trafficking of children and other offenses.

S.B. 1242
Subject: Applicant of a Protective Order's Use of an Alternative Mailing Address
Effective: September 1, 2017

In keeping with best practices for victims of family violence, applicants seeking a protective order in Texas must only provide their name and county of residence to initiate the order, not an address. However, the "Contents of Notice of Application" does require a mailing address. Individuals who are represented by an attorney are instructed to use the attorney's address, but those without an attorney must provide their own address. This same statute notes that the respondent is entitled, but not required, to file a written answer.

This puts undue burden on those without an attorney, who are more likely to be low-income, and it creates a risk to their safety by not safeguarding their address. S.B. 1242 would address these issues by adding Section 82.011 of the Family Code that allows an applicant to designate another person to receive written correspondence on their behalf. The court retains the applicant's address but makes it accessible only to the court and to law enforcement to enter into a confidential database.

S.B. 1242 also amends Section 411.042 of the Government Code, changing the statute that the bureau of identification and records follows regarding the collection of information on protective orders and magistrate's orders of emergency protection from Section 85.007 of the Family Code to Article 17.292 of the Code of Criminal Procedure.

S.B. 1250
Subject: Admissibility of Certain Evidence in the Prosecution of Family Violence Offenses
Effective: September 1, 2017

Currently, Article 38.371 of the Code of Criminal Procedure (Evidence in Prosecutions of Certain Offenses Involving Family Violence) permits the introduction of testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed assault or aggravated assault, or violated various types of restraining orders, when the alleged victim was in a dating relationship with the accused, or a member of the same family or household. This includes testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.

Due to the vulnerable nature of the potential victims and the underreported nature of crimes against such persons, S.B. 1250 expands this evidentiary provision to apply to the offense of Injury to a Child, Elderly Individual, or Disabled Individual (Section 22.04 of the Penal Code).

H.B. 351/S.B. 1913
Subject: Community Service for Juveniles
Effective: September 1, 2017

See, Summary of H.B. 351/S.B. 1913, Sections 18-20/Sections 17-19.

H.B. 2059
Subject: Expunction of Conviction or Arrest Records of a Minor
Effective: September 1, 2017

Section 106.12 of the Alcoholic Beverage Code, as amended, expands the statutory authority for a minor subject to either a custodial or noncustodial arrest for an offense under the Alcoholic Beverage Code. Under current law, Section 106.12 only applies to convictions.

Subsection (c) is amended to include prosecutorial and law enforcement records among the items to be expunged from the applicant's record if a court finds that the applicant was not convicted of any other offense under the Alcoholic Beverage Code while a minor.

Subsection (d) authorizes any person placed under a custodial or noncustodial arrest for not more than one violation of this code while a minor and who was not convicted of the violation to apply to the court in which the person was charged to have the records of the arrest expunged. The application must contain the applicant's sworn statement that the applicant was not arrested for a violation of this code other than the arrest the applicant seeks to expunge. If the court finds the applicant was not arrested for any other violation of the Alcoholic Beverage Code while a minor, to order all complaints, verdicts, prosecutorial and law enforcement records, and other documents relating to the violation to be expunged from the applicant's record.

Subsection (f) provides that the procedures for expunction are separate and distinct from the expunction procedures under Chapter 55 of the Code of Criminal Procedure.

These amendments apply to the expunction of arrest records made before, on, or after the effective date of H.B. 2059.

S.B. 30
Subject: Police and Citizen Interaction Education; Community Safety Education Act
Effective: September 1, 2017

S.B. 30 adds Section 28.012 of the Education Code (Instruction on Interaction with Law Enforcement) and Section 1701.268 of the Occupations Code (Civilian Interaction Training Program) requiring the Texas Commission on Law Enforcement (TCOLE) and the State Board of Education (SBOE) to coordinate with each other to create curriculum relating to peace officer and civilian's rights and responsibilities during traffic stops and other in-person encounters including the presentation of proof of identification. The bill makes an amendment to Section 28.025 and adds Section 1001.109 of the Education Code (Information Relating to Traffic Stops), making SBOE responsible for adopting rules to incorporate this training into required high-school education (grades 9-12) and TCOLE responsible for adopting similar curriculum into driver education and driving safety courses.

S.B. 30 amends Section 1701.253 of the Occupations Code adding civilian interaction as part of the minimum curriculum requirements for officers to complete in basic training or by the second anniversary of the date the officer is licensed.

S.B. 179
Subject: Cyber Bullying; David's Law
Effective: September 1, 2017

S.B. 179 amends Section 37.0832 of the Education Code redefining "bullying" to include "cyberbullying" (bullying that is done through the use of any electronic communication device). Section 37.0832 also requires the board of trustees for each school district to adopt a policy to prohibit, prevent, and mediate bullying incidents that occur in certain locations and have certain effects. New Section 37.0052 of the Education Code authorizes a student to be removed from class and placed in a disciplinary alternative education program or expelled under certain circumstances including bullying that encourages suicide.

Added Section 37.0151 of the Education Code authorizes a principal or designee of the principal to make a report to law enforcement if it is reasonably believed that a student has committed Assault (Section 22.01, Penal Code) or Harassment (Section 42.07, Penal Code). Under certain circumstances, harassment can be enhanced to a Class A misdemeanor if it entails an electronic communication, if the intent was to cause a minor to commit suicide or otherwise harm themselves, or if the harassment is in violation of a restraining order or injunction issued under Chapter 129A of the Civil Practice and Remedies Code. The bill adds Section 129A.001 of the Civil Practice and Remedies Code to allow a court to grant a temporary restraining order or temporary or permanent injunctive relief for minors against an individual who engages in cyberbullying.

S.B. 966
Subject: Defenses to MIP and MIC and Reporting Sexual Assault
Effective: September 1, 2017

As amended, Section 106.04 of the Alcoholic Beverage Code (Consumption of Alcohol by a Minor) and Section 106.05 of the Alcoholic Beverage Code (Possession of Alcohol by a Minor) establish new defenses in certain circumstances involving the reporting of sexual assault.

The defense can be raised by a minor who is sexually assaulted or who reports a sexual assault if the report is made to: (1) a health care provider treating the victim; (2) a law enforcement employee, including an employee of a campus police department at a higher education institution; or (3) a Title IX coordinator or other employee responsible for responding to sexual assault at a higher education institution.

A minor is entitled to raise the defense only if consuming or in possession of alcohol at the time the reported sexual assault took place. The defense is not available to a minor who committed the reported sexual assault.

S.B. 1152
Subject: Excused Absences for Students Seeking to Enlist in the Armed Services of the United States or the Texas National Guard
Effective: September 1, 2017

While high school students are allowed two days junior year and two days senior year to visit an institution of higher education, Texas law provides no similar allowance for students planning to join a United States military branch or the Texas National Guard.

According to the different recruiters of the U.S. military, the maximum number of days needed to complete tests, medical readiness, legal appointments, and career counseling in order to enlist in the military for a high school student is four days. The student is penalized for any absence(s) for required appointments and visits. The absences do not count towards a day of compulsory attendance and school districts are unable to count absences

related to this process towards their calculation of the average daily attendance.

As amended, Section 25.087 of the Education Code allows a school district to excuse a student who is 17 years of age or older for up to four days for the entirety of their high school career from attending school to pursue enlistment in a branch of the armed services of the U.S. or Texas National Guard. These excused days can be used to complete tests, medical readiness, legal appointments, or career counseling. The district is also expected to verify the student's absence.

S.B. 1571
Subject: Release of a Child Taken into Possession by a Law Enforcement Officer
Effective: September 1, 2017

Law enforcement officers periodically need to take possession of a child without a court order, most often in cases involving suspected human trafficking or other abuse. S.B. 1571 amends the Code of Criminal Procedure by adding Article 2.273 (Release of Child by Law Enforcement Officer) to state that an officer who takes possession of a child in an emergency situation without a court order may release the child to a residential child-care or other authorized facility licensed by the Department of Family and Protective Services (DFPS) or to DFPS, a juvenile probation department, or to any person authorized by law to take possession of the child.

Before an officer may release a child to a person or governmental entity authorized by law, the officer must verify and obtain certain information related to the child and the person to whom the child is being released, and maintain a record of the child's placement and specified identifying information.

LAW ENFORCEMENT

H.B. 34
Subject: Procedures to Prevent Wrongful Convictions
Effective: September 1, 2017

H.B. 34 implements recommendations from a study examining certain criminal cases in Texas in which an innocent defendant was convicted and subsequently exonerated.

Section 1 adds Articles 2.023 and 2.32 of the Code of Criminal Procedure requiring attorneys representing the State to track use of certain testimony and requiring law enforcement agencies to make electronic recordings of custodial interrogations of persons in a place of detention charged with the commission of certain offenses (unless good cause as described by Article 2.32(d) exists). The bill adds Section 9 to Article 38.22 of the Code of Criminal Procedure requiring the procedures in Article 2.32 to be followed in order for statements to be admissible against the accused.

Section 2 adds Article 2.1386 of the Code of Criminal Procedure requiring the Texas Commission on Law Enforcement to establish a comprehensive education and training program on eyewitness identification. Each law enforcement agency shall require peace officers that perform eyewitness identification procedures to complete the education and training.

Section 4 amends Article 38.20 of the Code of Criminal Procedure (Photograph and Live Lineup Identification Procedures) requiring law enforcement agency policies to include certain information regarding evidence-based practices. Notably, a witness who makes an identification based on a photograph or live lineup identification procedure shall be asked immediately after the procedure to state, in the witness' own words, how confident the witness is in making the identification. The law enforcement agency shall document the statement.

New Subsection (c) of Section 5 of Article 38.20 of the Code of Criminal Procedure provides that eyewitness identification is admissible into evidence against the accused only if the evidence is accompanied by the details of each prior photograph or live lineup identification made of the accused by the witness, including the manner in which the identification procedure was conducted. This change applies to a witness who has previously made an out-of-court photograph or live lineup identification of the accused that makes an in-court identification.

H.B. 34 amends Article 39.14 of the Code of Criminal Procedure (Discovery) by adding Subsection (h-1) regarding statements made against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, requiring certain disclosures to the defendant. Section 3 amends Article 38.075 of the Code of Criminal Procedure authorizing evidence of a prior offense for purposes of impeachment if the person received a benefit described by Article 39.14(h-1)(2).

The bill also requires the Texas Forensic Science Commission to conduct a study regarding the use of drug field test kits and a crime scene investigation study.

H.B. 263
Subject: Issuing "Back the Blue" Specialty License Plates
Effective: September 1, 2017

In light of recent attacks against law enforcement, H.B. 263 adds Section 504.668 of the Transportation Code requiring the Department of Motor Vehicles to issue specialty license plates that include a thin blue line and the words, "Back the Blue." After deduction of administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to a certain account for the use of the Employees Retirement System of Texas to provide financial assistance to survivors of peace officers under Chapter 615 of the Government Code.

H.B. 297
Subject: Designation of January 9 as Law Enforcement Appreciation Day
Effective: September 1, 2017

Inspired by the tragic events that took place in downtown Dallas in 2016, H.B. 297 adds Section 662.065 of the Government Code, designating January 9 as Law Enforcement Appreciation Day. Texas joins the growing list of entities observing the national event. The bill allows the day to be regularly observed in public schools and other places and requires the Texas Education Agency to develop recommendations for observation through appropriate activities in public schools.

TMCEC: See also, H.B. 3042, which designates July 7 as Fallen Law Enforcement Officer Day.

H.B. 457
Subject: Confidentiality of Home Address of a Spouse, Surviving, Spouse, and Adult Child of a Peace Officer in Tax Records
Effective: June 15, 2017

Inclusion of certain home address information concerning certain family members of a peace officer in local property tax appraisal records defeats the purpose of allowing peace officers to restrict public access to such information about themselves in the records because family members often have the same last name as the peace officer. H.B. 457 enhances the privacy and safety of certain family members of a peace officer by providing for the confidentiality of certain home address information in property tax appraisal records.

The bill amends Section 25.05 of the Tax Code, adding the spouse or surviving spouse of a current or former peace officer and the adult child of a current peace officer to the list of individuals who can choose to restrict public access to information in appraisal records, including name and address.

H.B. 873
Subject: Peace Officers or Special Investigators Carrying Weapons on the Premises of Establishments Serving the Public
Effective: September 1, 2017

A number of public venues prevent individuals from entering the venue with weapons, including off-duty peace officers. Such policies pose a safety risk as an off-duty peace officer may be called on to take action in self-defense or in defense of the safety and well-being of the public. H.B. 873 adds Article 2.1305 of the Code of Criminal Procedure, which prohibits an establishment serving the public from prohibiting or otherwise restricting a peace officer or special investigator from carrying on its premises a weapon that the peace officer or special investigator is otherwise authorized to carry. This is regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon.

An "establishment serving the public" means a hotel, motel, or other place of lodging; a restaurant or other place where food is offered for sale to the public; a retail business or other commercial establishment or an office building to which the general public is invited; a sports venue; and any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

H.B. 3042
Subject: Designation of July 7 as Fallen Law Enforcement Officer Day
Effective: June 15, 2017

H.B. 3042 adds Section 662.066 of the Government Code designating July 7 as Fallen Law Enforcement Officer Day. This bill creates the opportunity for all Texans to stand together in recognizing and honoring the bravery shown by those who make the ultimate sacrifice in order to protect us.

TMCEC: Five officers lost their lives in the shooting in downtown Dallas on July 7, 2016. The shooting was the deadliest incident for U.S. law enforcement since the September 11 attacks.

S.B. 1138
Subject: Creation of the Blue Alert System to Aid in Apprehending Individuals Suspected of Killing or Causing Serious Bodily Injury to a Law Enforcement Officer
Effective: September 1, 2017

S.B. 1138 adds Subchapter P to Chapter 411 of the Government Code (Blue Alert System). The bill requires the Department of Public Safety, with the cooperation of the Texas Department of Transportation, the Office of the Governor, and other appropriate law enforcement agencies in Texas, to develop and implement a statewide blue alert system to be activated to aid in the apprehension of an individual suspected of killing or causing serious bodily injury to a law enforcement officer, defined by the bill as a person who is a peace officer under the Code of Criminal Procedure or a person who is an applicable federal law enforcement officer.

S.B. 1253
Subject: Electronic Recording and Admissibility of Certain Custodial Interrogations
Effective: September 1, 2017

S.B. 1253 adds to the Code of Criminal Procedure, Article 2.32 (Electronic Recording of Custodial Interrogations) which requires law enforcement agencies to make electronic recordings of custodial interrogations of persons in a place of detention charged with the commission of certain offenses (unless good cause as described by Article 2.32(d) exists).

The bill also adds Section 9 to Article 38.22 of the Code of Criminal Procedure requiring the procedures in Article 2.32 to be followed in order for statements to be admissible against the accused.

TMCEC: Identical amendments are found in sections of H.B. 34, which makes more comprehensive changes, including eyewitness identification admissibility, law enforcement policies on photograph and live lineup identification procedures, and discovery.

LOCAL GOVERNMENT

H.B. 1111
Subject: Authority of General-Law Municipalities to Regulate Sex Offenders in Child Safety Zones
Effective: September 1, 2017

H.B. 1111 adds Section 341.906 of the Local Government Code (Limitations on Registered Sex Offenders in General-Law Municipalities).

Subsection (a) defines "child safety zone," "playground," "premises," "school," "video arcade facility," "youth center," and "registered sex offender."

Subsection (b) authorizes the governing body of a general-law municipality to restrict by ordinance a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality. Subsection (d) authorizes the ordinance to establish a distance at any distance of not more than 1,000 feet.

Subsection (c) provides an affirmative defense to prosecution of an offense under the ordinance that the registered sex offender was in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

Subsection (e) requires that the ordinance establish procedures for a registered sex offender to apply for an exemption from the ordinance.

Subsection (f) requires that the ordinance exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted. Such an exemption must apply only to areas necessary for the registered sex offender to have access to and to live in the residence and only to the period the registered sex offender maintains residency in the residence.

H.B. 1278
Subject: Personal Information of Certain Current and Former Prosecutors and Employees
Effective: June 15, 2017

H.B. 1278 amends provisions in Chapter 552 of the Government Code and Section 25.025 of the Tax Code relating to the public availability of personal information of current or former district attorneys, criminal district attorneys, and county or municipal attorneys whose jurisdiction includes any criminal law or child protective services matters.

It similarly prohibits the disclosure of such personal information for current or former employees of a district attorney, criminal district attorney, county attorney, or municipal attorney whose jurisdiction includes any criminal law or child protective services matters.

TMCEC: H.B. 1278 provides increased protection from reprisal for former or current public attorneys or court employees working in jurisdictions that include criminal law or child protective services by limiting public access to their home address, home telephone number, emergency contact information, social security number or whether the individual has family members. This information is protected, regardless of current or previous compliance with sections electing to disclose home address and telephone number.

H.B. 1449
Subject: Prohibition of Fees on New Construction
Effective: May 29, 2017

Fees and exactions imposed by political subdivisions to fund subsidized housing materially increase the cost of housing construction in Texas. Limiting regulatory burdens on home construction can increase home affordability for all Texans.

H.B. 1449 adds Section 250.008 of the Local Government Code prohibiting political subdivisions from adopting or enforcing a charter provision, ordinance, order, or other regulation that imposes, directly or indirectly, a fee on new construction for the purpose of offsetting the cost or rent of any unit of residential housing. The bill stipulates that this rule does not apply to certain tax and fee abatement programs.

H.B. 1468
Subject: Regulation of Artificial Swimming Lagoons
Effective: June 15, 2017

H.B. 1468 amends Section 341.064 of the Health and Safety Code (Swimming Pools and Bathhouses) to include artificial swimming lagoons. As amended, artificial swimming lagoons, like public swimming pools, may be required by a municipality to obtain a permit for operation. Local governments may also enforce compliance with Section 341.064.

TMCEC: Somewhere between a swimming pool and a lake, an artificial swimming lagoon is a man-made body of water meant to simulate a beach environment. These lagoons can be rather large, have sandy sloping entrances, and advanced water treatment (non-chlorine) systems. The two being built in Texas are part of master-planned communities meant to attract home buyers like a golf course or hike-and-bike trail. One set for construction near Rowlett on Lake Ray Hubbard is projected to have an 8.5-acre surface area.

H.B. 1619
Subject: Prosecution and Punishment of Certain Outdoor Burning Violations
Effective: September 1, 2017

Persons burning certain items may not be aware they are prohibited or that such items are in violation of Chapter 382 of the Health and Safety Code (The Texas Clean Air Act). Because the current punishment is severe and requires a formal arrest, H.B. 1619 makes the first violation a Class C misdemeanor.

H.B. 1619 amends Section 382.018 of the Health and Safety Code (Outdoor Burning of Waste and Combustible Material) providing that conduct that violates a rule adopted by the Texas Commission on Environmental Quality (TCEQ) and also violates a municipal ordinance may only be prosecuted as a city ordinance violation as long as the violation is not a second or subsequent violation of either the state rule or local ordinance and the violation does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes. In spite of a contrary provision in the Water Code, provisions and rules adopted under Section 382.018 may be enforced by a peace officer.

Amended Section 7.187 of the Water Code makes a conviction for an offense under Section 382.018 punishable as

a Class C misdemeanor as long as the violation is not a second or subsequent violation of that provision and does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes. A second violation is a Class B misdemeanor. A subsequent violation is a Class A misdemeanor.

H.B. 2486
Subject: Reemployment of Employees of Political Subdivisions after Military Deployment
Effective: June 15, 2017

H.B. 2486 amends Section 437.202 of the Government Code, adding employees of a county, a municipality, and other political subdivisions with more than five employees who serve in either the federal or state military, a reserve component of the armed forces, or are members of a state or federally authorized urban search and rescue team to the list of individuals entitled to be restored to the same position held prior to being ordered to duty. Under current law, Section 437.202 only applies to employees of state government.

H.B. 3223
Subject: Civil Liability for Damages Resulting from Sale of Retired Patrol Cars
Effective: September 1, 2017

The sale of retired patrol vehicles to the general public can create a risk of criminals using such vehicles with the intent of impersonating a law enforcement officer. Removing equipment or insignia that could lead a reasonable person to believe that the vehicle is a law enforcement vehicle prior to sale reduces this risk.

H.B. 3223 amends Section 272.006 of the Local Government Code creating civil liability for a municipality that sells a law enforcement motor vehicle which has not had all the indicia of law enforcement removed.

The bill likewise creates civil liability in Section 728.022 of the Transportation Code for a person selling law enforcement vehicles that still have indicia of law enforcement mirroring the prohibitions outlined in Section 272.006 of the Local Government Code.

H.B. 3257
Subject: Inspection and Regulation of Portable Boilers
Effective: May 29, 2017

Prior to the passage of H.B. 3527, a portable power boiler was required to be inspected externally each time the boiler was moved to a new location and had to receive an internal inspection at least annually. H.B. 3257 amends Section 755.001 and Section 755.022 of the Health and Safety Code to require the Texas Commission of Licensing and Regulation to establish the subsequent intervals and manner of inspection for a portable boiler.

Notably, the amendment of Section 755.022 of the Health and Safety Code also exempts espresso machines from state law relating to boilers. Added Section 755.071 prohibits a state agency or local government from restricting the use or installation of a specific fuel gas pipe product that is approved for use and installation by the International Fuel Gas Code.

H.B. 3433
Subject: Consideration of Rural Communities in State Agencies' Adoption of Rules
Effective: September 1, 2017

Under current law, Chapter 2006 of the Government Code (Agency Actions Affecting Small Businesses) only pertains to the affect state rules may have on small businesses. Chapter 2006 contains measures aimed at preventing unintended adverse economic effects caused by such rules created by state agencies. State agencies do not give similar consideration to the impact that the adoption of an agency rule will have on rural communities.

H.B. 3433 amends Chapter 2006 to include rural communities. A rural community is defined in Section 2006.001 of the Government Code as a municipality that has a population of less than 25,000.

S.B. 1004
Subject: Deployment of Network Nodes in Public Right-of-Way
Effective: September 1, 2017

Rapid innovation of wireless devices and applications along with sharp increases in use has put pressure on telecommunications companies to replace existing equipment to provide more capacity. The construction of "network nodes" in the public right-of-way (managed by municipalities) is an efficient method to provide increased network capacity. Current provisions in the Local Government Code which cover right-of-way access for telecommunications providers are 15 years old and do not account for this new technology. This has resulted in uncertainty, confusion, disputes, and disparate treatment among cities and telecommunications providers.

To address these problems, S.B. 1004 adds Chapter 284 of the Local Government Code, which regulates the deployment and maintenance of network nodes (affixed equipment that enables wireless communications) in a public right-of-way.

S.B. 1172
Subject: Regulation of Seed by Local Governments
Effective: September 1, 2017

As the population of Texas grows so does its food and fiber needs. Inconsistent and burdensome laws can restrict farmers' ability to produce. S.B. 1172 creates uniformity in the application of seed regulation across the state to address this issue.

The bill adds Section 61.019 of the Agriculture Code prohibiting a local government from regulating any seed in any manner; any order or ordinance to the contrary is void. A local government may, however, take action prohibited by Section 61.019 in order to comply with federal or state laws or to implement a water conservation or drought contingency plan.

Section 61.019 does not preempt local governments from adopting or enforcing zoning regulations, fire codes, building codes, storm water regulations, nuisance regulations as authorized by Section 342.004 of the Health and Safety Code (Municipal Power Concerning Weeds or Certain Public Nuisances), or waste disposal restrictions.

S.B. 1248
Subject: Regulation of Manufactured Homes
Effective: September 1, 2017

Manufactured home communities sometimes exist within a municipality in violation of zoning rules, for example, when a municipality annexes the territory of the manufactured home community. Typically, these nonconforming communities are granted a zoning variance but sometimes municipalities interpret their local nonconforming use and abandonment ordinances in a manner that upon removal of an existing manufactured home, replacement manufactured homes would not be allowed. This creates a disincentive to update the homes in a community with newer homes. Community owners must keep older homes they would otherwise replace out of fear of losing revenue if the municipality does not allow a replacement home.

S.B. 1248 adds Section 211.018 of the Local Government Code regulating the continuation of land use regarding manufactured home communities. These regulations restrict the conditions under which a municipality may require a change in nonconforming use of a manufactured home lot, allows manufactured home owners to install

replacement manufactured homes in compliance with certain conditions, and allows municipalities to prohibit installation of manufactured homes on a site in a designated floodplain.

The bill also adds Section 214.906 of the Local Government Code prohibiting municipalities from regulating a tract or parcel of land as a manufactured home community, park, or subdivision unless the tract or parcel contains at least four spaces offered for lease for installing and occupying manufactured homes.

MAGISTRATE DUTIES AND MENTAL HEALTH

H.B. 13
Subject: Matching Grant Program Supporting Community Mental Health Services
Effective: September 1, 2017

Interested parties have expressed a significant need for community-based mental health services across Texas. H.B. 13 encourages local stakeholders to create locally driven solutions to mental health challenges within their communities, adding Section 531.0999 to the Government Code to create a matching grant program to support community mental health programs that provide services and treatment to individuals experiencing mental illness.

H.B. 13 provides for an executive commissioner to be appointed to determine grant recipients based on their submission of applications or proposals. Grant recipients must secure contributions to match awarded grants in certain, specified amounts of money or other consideration, based on county population. Communities in a county with a population of less than 250,000 must leverage funds equal to 50 percent of the grant amount. Communities in a county with a population of at least 250,000 must leverage funds equal to 100 percent of the grant amount. A community mental health program located in more than one county shall secure funds equal to the required percentage for the largest county in which it is located.

TMCEC: There were a number of bills this session focusing on mental health issues within the criminal justice system and the community as a whole. S.B. 1849, The Sandra Bland Act, creates a similar matching program in Chapter 539 of the Government Code for providing services related to homelessness, substance abuse, or mental illness. It remains to be seen if there will be challenges in reconciling each bill's similar but varying provisions.

H.B. 1727
Subject: Issuance of Certain Search Warrants in Chambers County
Effective: September 1, 2017

H.B. 1727 amends Article 18.01(i) of the Code of Criminal Procedure to change one of the circumstances under which any magistrate in a county may issue a search warrant for contraband subject to forfeiture or a search warrant for certain property or items constituting evidence (such as a blood draw warrant). Currently, any magistrate from a county not having a judge of a municipal court of record who is an attorney licensed by the state may issue such a warrant. H.B. 1727 allows any magistrate from a county not having a municipal court of record with a courtroom located in that county and a judge who is an attorney licensed by the state.

TMCEC: The following cities are in Chambers County: Anahuac, Baytown (mostly in Harris County), Beach City, Cove, Mont Belvieu (small part in Liberty County), and Old River Winfree (small part in Liberty County). This bill may have application in other counties.

H.B. 3165
Subject: Videoconferencing and Pretrial Procedures in Criminal Cases
Effective: September 1, 2017

H.B. 3165 amends Article 15.17 of the Code of Criminal Procedure by changing references to "electronic

broadcast system" to "videoconference" and changing references to "recording" to record, which may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Subsection (a) of Article 26.04 of the Code of Criminal Procedure (Procedures for Appointing Counsel). Counsel for the defendant may obtain a copy of an electronic recording, if an electronic recording was created, on payment of a reasonable amount to cover costs of reproduction. Conforming changes are made to Article 27.18 (Plea or Waiver of Rights by Videoconference) of the Code of Criminal Procedure, replacing "Closed Circuit Video Teleconference" with "Videoconference" and combining two versions of Subsections (c) and (c-1) and allowing a record of a communication under Article 27.18 to be made by electronic recording as well as a court reporter.

H.B. 3165 amends Article 15.21 of the Code of Criminal Procedure (Prisoner Discharged if Not Timely Demanded). The amendment requires a magistrate in the county of arrest to release an arrested person on personal bond, if the county of the alleged offense does not demand the arrested person before the 11th day after the date the person is committed to jail. The releasing magistrate shall forward the personal bond to the sheriff of the county of the alleged offense or to the court that issued the warrant.

TMCEC: Put on your magistrate hat and read this bill. From the administration of pretrial personal bond office to what happens when counties do not come pick up their prisoners this bill is significant.

H.B. 3165 continues a trend over the last several legislative sessions to make the law more accurately reflect the technology and terminology used in today's world. Perhaps the most significant clarification offered to municipal judges as magistrates in this bill, however, is the clarification that there must be a "record" of a magistration (as opposed to a "recording") which can consist of a written record or an electronic recording. Part of this H.B. 3165 is reminiscent of S.B. 1517 passed in the 84th Legislature which similarly addressed persons arrested in a county other than the one where an alleged offense occurred. S.B. 1517, however, focused on the appointment of counsel. H.B. 3165 would appear to have broader application, as it applies to all defendants arrested on out of county charges that are not timely picked up; not just those who are eligible to receive appointed counsel.

It has been nearly a decade since the U.S. Supreme Court decision in *Rothgery v. Gillespie County* (holding: that Article 15.17 marks the initiation of adversary judicial proceedings that trigger attachment of the 6th Amendment right to counsel). Ryan Kellus Turner and Jessica Marsh, "Case Law and Attorney General Opinion Update" *The Recorder* (November 2008). This bill and the current environment and fervor for criminal justice reform give reason to once again consider the possible broader implication of *Rothgery*. See, Ryan Kellus Turner, "Making Sense of *Rothgery*: What the Most Recent Decision of the U.S. Supreme Court Regarding the Sixth Amendment Means to Magistrates in Texas" *The Recorder* (August 2008) at 5.

H.B. 3237
Subject: Return of Executed Search Warrants and Public Availability
Effective: May 26, 2017

Current law could allow the owner of property subject to an unexecuted search warrant to become aware of the impending search due to the public availability of the sworn affidavit, establishing probable cause for the warrant that is filed before the warrant is authorized and executed.

H.B. 3237 addresses this issue by changing the time at which such a sworn affidavit becomes public information. Amended Subsection (b) of Article 18.01 of the Code of Criminal Procedure (Search Warrants) changes the time at which a sworn affidavit setting forth substantial facts establishing probable cause for a search warrant becomes public information from the time at which the affidavit is executed to the time at which the search warrant for which the affidavit was presented is executed.

Additionally, H.B. 3237 amends Article 18.10 of the Code of Criminal Procedure (How Return Made). The

amendment requires the officer, not later than three whole days after executing a search warrant, to return the search warrant. The failure of an officer to make a timely return of an executed search warrant or to submit an inventory of the property taken into the officer's possession under the warrant does not, however, bar the admission of evidence.

TMCEC: A common theme in the 85th Legislature was the availability of public information. Other bills were passed during the session that sought to close "loopholes" that allowed the public to gain personal information on state judges (S.B. 42), find the home address of court personnel (S.B. 510), and uncover information on older convictions and dismissals following deferred disposition (S.B. 47). H.B. 3237 similarly seeks to limit access to a search warrant before it is executed by tweaking language referencing the affidavit and search warrant in the law.

S.B. 4
Subject: Enforcement of Immigration; Prohibition of "Sanctuary Cities"
Effective: September 1, 2017

TMCEC: S.B. 4 prohibits "sanctuary city" policies, which prohibit local law enforcement from inquiring about a person's immigration status and complying with detainer requests. These policies also often prohibit the sharing of information regarding a person's immigration status with the federal government.

S.B. 4 amends current law relating to the enforcement by campus police departments and certain local governmental entities of state and federal laws governing immigration and to related duties and liability of certain persons in the criminal justice system; provides a civil penalty; and creates a criminal offense.

Section by Section Analysis

Article 1: Policies of and Grant Programs for Local Entities and Campus Police Departments

S.B. 4 amends Chapter 752 of the Government Code by adding Subchapter C, titled Enforcement of State and Federal Immigration Laws by Local Entities and Campus Police Departments. Section 752.053 prohibits local entities (defined as the governing body, officers, or employees of a municipality, county, or special district or authority including peace officers and city attorneys) and campus police departments from adopting, enforcing, or endorsing a policy that prohibits or materially limits the enforcement of immigrations laws; prohibiting or materially limiting the enforcement of immigration laws, as demonstrated by pattern or practice; or intentionally violating Article 2.251 of the Code of Criminal Procedure, which is added by this Act.

Additionally, Section 752.053 of the Government Code prohibits local entities and campus police departments from prohibiting or materially limiting a commissioned peace officer, booking clerk, magistrate, district attorney, criminal district attorney, or other prosecutor employed by the entity from inquiring into the immigration status under a lawful detention or arrest; sending, maintaining, or exchanging information related to immigration status; assisting or cooperating with a federal immigration officer; or permitting a federal immigration officer to enter and conduct immigration enforcement activities at a jail.

S.B. 4 adds Section 752.054 to the Government Code prohibiting discrimination by local entities, campus police departments, or persons employed or under the control of the entity or department while enforcing immigration laws except to the extent permitted by the U. S. Constitution or Texas Constitution.

Under the new Section 752.055 of the Government Code, any citizen residing in a local entity's jurisdiction or enrolled at an institute of higher education may file a complaint with the Texas Attorney General if the person alleges a violation of Section 752.053. If the Attorney General determines that the complaint is valid, the Attorney General may file a petition for a writ of mandamus to compel compliance with the new law. Appeals of a suit

brought by the Attorney General are governed by the procedures for accelerated appeals under the Texas Rules of Appellate Procedure and the appellate court must render an order or judgment with the least possible delay.

S.B. 4 establishes a civil penalty under Section 752.056 of the Government Code for a local entity or campus police department found by a court of law to have intentionally violated Section 752.053. The civil penalty is not less than $1,000 or more than $1,500 for a first violation, and not less than $25,000 or more than $25,500 for each subsequent violation. Each day of a continuing violation constitutes a separate violation for the civil penalty. Sovereign immunity and governmental immunity is waived and abolished regarding liability for this new civil penalty.

S.B. 4 also adds Section 752.0565 of the Government Code calling for an elected or appointed officer of a political subdivision to be removed from office if the person violates Section 752.053.

In addition, new Section 752.057 of the Government Code authorizes law enforcement agencies to adopt written policies requiring the agency to perform community outreach activities concerning the scope of the law. This outreach is meant to educate the public that, with two exceptions, a peace officer is prohibited from inquiring into the immigration status of a victim or witness to an alleged criminal offense. The peace officer may inquire into immigration status if the officer determines that the inquiry is necessary to investigate the offense or to provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.

Finally, S.B. 4 adds Section 772.0073 establishing a grant program to provide financial assistance to local entities to offset costs related to enforcing immigration laws or complying with, honoring, or fulfilling immigration detainer requests.

Article 2: Duties of Law Enforcement Agencies and Judges

S.B. 4 adds Article 2.251 of the Code of Criminal Procedure requiring law enforcement agencies with custody of a person subject to a U. S. Immigration and Customs Enforcement (ICE) detainer request to comply with the request and inform the person that they are being held under the ICE detainer request, unless the person has provided proof of U. S. citizenship or lawful immigration status.

Note: While there are new duties for judges under added Article 42.039 of the Code of Criminal Procedure requiring the judge to order at judgment a defendant subject to an ICE detainer request to finish the final portion of the defendant's sentence in federal custody, it is important to note that municipal judges will not be subject to the requirements as municipal judges do not have jurisdiction of cases with judgments that require a defendant to be confined in a secure correctional facility.

Article 3: Defense of Local Entities by Attorney General

S.B. 4 adds Section 402.0241 to the Government Code requiring the Attorney General to defend a local entity if the local entity requests the Attorney General's assistance in the defense and the Attorney General determines that the cause of action arises out of a claim involving the local entity's good-faith compliance with a detainer request required by Article 2.251 of the Code of Criminal Procedure. If the Attorney General defends a local entity, the state is liable for the expenses, costs, judgment, or settlement of the claims arising out of the representation. The Attorney General may settle or compromise any and all claims, and the state is not liable for any expenses, costs, judgments, or settlements of any claims against a local entity not being represented by the Attorney General.

Note: Municipalities will be interested to know that, although the Attorney General will take on the litigation costs and defend a local entity, the Attorney General may also settle or compromise these claims. This may present a different relationship than cities are typically used to when dealing with outside counsel.

Article 4: Surety Bond

S.B. 4 amends Article 17.16 of the Code of Criminal Procedure prohibiting a surety from being relieved of the surety's undertaking if the accused is in federal custody to determine whether the accused is lawfully present in the United States.

Note: A surety may be relieved of the undertaking by delivering an affidavit stating that the accused is incarcerated by any state, any county of this state, or is in federal custody for any reason other than to determine whether the person is lawfully present in the United States. It seems the intent here is to cause sureties to think twice before providing a surety bond for defendants that they may know or suspect to be present in the United States unlawfully.

Article 5: Prohibited Conduct by Sheriff or Constable

S.B. 4 amends the Penal Code by adding Section 39.07, providing that a person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail, commits Class A misdemeanor if the person has custody of a person subject to a detainer request issued by ICE and knowingly fails to comply with the detainer request. It is an exception if the person who was subject to a detainer request provided proof that the person is a citizen or has lawful immigration status in the United States.

Article 6: Inquiry by Peace Officer Regarding Immigration or Nationality of Crime Victim or Witness

S.B. 4 amends Article 2.13 of the Code of Criminal Procedure by adding Subsections (d) and (e). Article 2.13(d) authorizes a peace officer, to inquire as to the nationality or immigration status of a victim of or witness to the offense only if the officer determines that the inquiry is necessary to investigate the offense or provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement. Article 2.13(e) provides that Subsection (d) does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense or from inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.

Note: Generally, a person may only be questioned if they are under lawful detention. By definition, this excludes if the sole reason for detention is that a person is a victim or a witness. Article 2.13 narrows and clarifies the scope of this exclusion.

Article 7: Severability

If any application of any provision in S.B. 4 is found by a court to be invalid, all remaining applications of the provision are severed and not affected.

S.B. 292
Subject: Creation of a Grant Program to Reduce Recidivism, Arrest, and Incarceration of Individuals with Mental Illness
Effective: September 1, 2017

The 83rd Legislature passed S.B. 1155, which created the Harris County Mental Health Jail Diversion Pilot Program. Because of the successes of this program and similar diversion projects across the state, many entities have recommended that these types of programs be implemented statewide.

S.B. 292 amends Chapter 531 of the Government Code by adding Section 531.0993 to create a grant program for local community collaborative use in reducing recidivism, frequency of arrest, and incarceration of persons with

mental illness, and reducing the total wait time for forensic commitment of persons with mental illness to a state hospital. To petition for the commission of a grant under the program, a community collaborative must include a county, a local mental health authority operating within the county, and each hospital district (if any) located in the county. Section 531.09935 is also added to the Government Code creates a similar grant program for the further the same goals in the most populous county in the state, Harris County.

Grant amounts under Section 531.0993 depend on the community collaborative providing funds from non-state sources at specified amounts based on population. Counties with a population of 250,000 or more must provide funds equal to or exceeding the amount of the grant awarded, while counties with less than 250,000 must provide funds equaling at least 50 percent of the awarded grant amount. A community collaborative must submit a petition each fiscal year to be reviewed before the grant is reissued, and the collaborative may seek the required non-state sourced funds through gifts, grants, or donations from any person. Under Section 531.09935, the grant amount to Harris County will be equal to the lesser of the amount appropriated for the continuation of the mental health jail diversion pilot program or the Harris County collaborative available matching funds.

Acceptable uses for the grant money and matching funds include: the continuation of a mental health jail diversion program; the establishment or expansion of a mental health jail diversion program; the establishment of alternatives to competency restoration in a state hospital; the provision of assertive community treatment or forensic assertive community treatment with an outreach component; the provision of intensive mental health services and substance abuse treatment; the provision of continuity of care services for an individual being released from a state hospital; the establishment of interdisciplinary rapid response teams to reduce law enforcement's involvement with mental health emergencies; and the provision of local community hospital, crisis, respite, or residential beds.

TMCEC: Grant programs like the one created by S.B. 292 were popular in the 85th Legislature. This may partly be due to increased awareness of potential mental health issues in the criminal justice system in recent years. There are also two other grant programs created or amended in Sections 531.0999 and 539.002 of the Government Code by H.B. 13 and S.B. 1849.

S.B. 344
Subject: Transportation of Person with Mental Illness Apprehended for Dangerous Behavior
Effective: June 9, 2017

Chapter 573 of the Health and Safety Code governs emergency detentions. Currently, when a peace officer takes a person into custody without a warrant under Section 573.001 of the Health and Safety Code because the officer believes the person has a mental illness and presents a danger to themselves or others, that officer must transport the person to a mental health facility. Permitting emergency services personal to transport that person to such a facility could better serve public health by providing a more appropriate means of transport and could also enhance public safety by permitting law enforcement personnel to resume their duties.

S.B. 344 adds Section 573.005 of the Health and Safety Code, allowing the execution of a memorandum of understanding between a law enforcement agency and an emergency medical services provider regarding the transfer of a person detained under Section 573.001 to a mental health facility. The memorandum of understanding must address responsibility for the cost of transport. The amended Section 573.001 allows a peace officer who apprehends a person who has a mental illness and presents a danger to themselves or others to transfer the apprehended person to an emergency medical services provider (who is party to the memorandum) for transportation to an appropriate medical facility. As required under the amended Section 573.002, emergency medical services personnel making the transport shall immediately file with the facility the notification of detention completed by the peace officer who made the request. A facility must accept a person transported by either a peace officer or emergency medical services personnel, under the amended Section 573.021 of the Health and Safety Code.

S.B. 631
Subject: Venue for Disposition of Stolen Property Hearings
Effective: September 1, 2017

Chapter 47 of the Code of Criminal Procedure provides for how a person recovers stolen property. If there is no pending criminal case, a judge may hold a hearing to determine who has lawful right of possession. However, the hearing must be held in the county in which the property is being held. If a person in one county has property stolen from them, they might have to travel across the state to attend the hearing to recover their property, incurring a large personal cost to the victim.

S.B. 631 modifies Articles 47.01(a) and (d) and Article 47.02(b) of the Code of Criminal Procedure to allow the hearing to take place in: (1) the county where the property is being held; (2) the county where the property was believed to be stolen; (3) the municipality where the property is being held; and (4) the municipality where the property was believed to be stolen.

TMCEC: It is a longstanding criticism that Chapter 47 of the Code of Criminal Procedure suffers from a lack of specificity. Perhaps this will prove to be a good first step in providing much needed clarification. While all magistrates typically have coequal county-wide jurisdiction, under S.B. 631, municipal judges may only preside over stolen property hearings if the property is being held in the city or was alleged to have been stolen in the city. Notably, while the true owners may now be shielded from the costs of travelling to attend the hearing in another part of the state, ultimately they are responsible for any transportation necessary for the property to be delivered as ordered in the hearing.

S.B. 1326
Subject: Duties of Magistrate and Law Enforcement Related to Persons with Mental Illness
Effective: September 1, 2017

During the interim, the Texas Judicial Council identified issues affecting criminal defendants who are or may be persons with mental illnesses or intellectual disabilities. Specifically, current law requires sheriffs to notify magistrates if there is cause to believe a defendant in custody is mentally ill. Many times, however, there is no timely transmission of this information from a sheriff to a magistrate. Current law also authorizes magistrates to release a nonviolent defendant with a mental illness on a personal bond and require treatment as a condition of release. Local practices, however, reduce the availability of personal bonds and their use is not widespread.

S.B. 1326 implements Texas Judicial Council recommendations to address those issues. Specifically, it would require sheriffs to provide notice to the relevant magistrate regarding a defendant suspected of having mental illness no later than 12 hours upon receipt of credible information that the person has a mental illness or intellectual disability; increase flexibility regarding bond availability for mentally ill, non-violent defendants; provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting, including outpatient residential, community inpatient, and jail settings that meet appropriate standards; and broaden judicial discretion to choose the best use of local competency restoration options.

These changes should ensure that criminal defendants with a mental illness are referred timely to adequate treatment options, but also help reduce backlogs in county and municipal jails and free up capacity in state hospitals for other persons who need treatment at a state mental health facility.

S.B. 1326 amends Early Identification of Defendant Suspected of Having Mental Illness or Mental Retardation (Article 16.22, Code of Criminal Procedure) to provide that no later than 12 hours after a sheriff or municipal jailer has custody of a defendant for an offense punishable as a Class B misdemeanor or higher category offense and receives credible information the defendant has a mental illness or an intellectual disability, the sheriff or

municipal jailer must provide written or electronic notice to the magistrate, including the information on the defendants behavior and any other applicable assessment on the defendant. Upon receipt of the information and a determination that probable cause exists to believe the defendant has a mental illness, the magistrate can order a qualified mental health or intellectual disability authority to collect information regarding the defendant's illness or disability. Current law does not contemplate municipal jails and the collected information must be returned no later than the 30th day after the order. S.B. 1326 changes this, by including municipal jails and jailers and specifying that information collected regarding a defendant held in custody must be returned within 96 hours, while 30 days are still permitted with regard to a defendant released from custody. Notably, the magistrate is required to submit to the Office of Court Administration (OCA) on a monthly basis the number of written assessments provided to the court under Subsection (a)(1)(B).

S.B. 1326 amends Duties of Arresting Officer and Magistrate (Article 15.17, Code of Criminal Procedure) by adding Subsection (a-1) which provides that a magistrate provided written or electronic notice of credible information that may establish reasonable cause to believe a person brought before them has a mental illness or is a person with an intellectual disability shall conduct proceedings described by Article 16.22 or 17.032 (see below).

S.B. 1326 amends Release on Personal Bond of Certain Mentally Ill Defendants (Article 17.032, Code of Criminal Procedure). Currently, a magistrate shall release a defendant (unless good cause is shown otherwise) if: the defendant is not charged with (or previously convicted of) a violent offense; the defendant is examined by an appropriate mental health or intellectual disability authority; the authority finds the defendant competent and recommends services or treatment; and the magistrate determines that services or treatment. S.B. 1326 adds a fifth requirement: the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense. Additionally, Article 17.032 is updated to specify that it is not trumped by a bond schedule or Article 17.03(b), related to authorizing only the court before whom the case is pending to release certain defendants on personal bond.

Section 72.032 is added to the Government Code, requiring the Administrative Director of OCA to make available to courts information concerning best practices for addressing the needs of persons with mental illness in the court system. Chapter 121 of the Government Code also requires OCA to collect information from specialty courts regarding the outcomes of persons with mental illness in those courts.

TMCEC: It is going to take a while to sort this one out. The great bulk of 35 different sections of S.B. 1326 deals with changes to Chapter 46B of the Code of Criminal Procedure, relating to competency and competency restoration. Article 46B.002 of the Code of Criminal Procedure specifies that Chapter 46B only applies to defendants charged with felonies or misdemeanors punishable by confinement, not squarely applicable to municipal courts. S.B. 1326 does, however make several important changes that municipal judges should be aware of in their role as magistrates. Along with the Sandra Bland Act (S.B. 1849), S.B. 1326 reflects a focus on improvement in the handling of defendants experiencing mental illness or intellectual disability. The Sandra Bland Act also makes similar changes to Chapters 16 and 17 of the Code of Criminal Procedure, with some important differences. It will be interesting to see if the bills can be harmonized, or if some aspects of S.B. 1326 will be trumped by S.B. 1849, which passed last in time.

S.B. 1576
Subject: Enhanced Penalties on Civilly Committed Sexually Violent Predators
Effective: September 1, 2017

Informed observers report that recently enacted legislation made changes to the Texas Civil Commitment Office (TCCO), formerly known as the Office of Violent Sex Offender Management, but that additional measures are needed to strengthen the laws regarding the civil commitment of sexually violent predators. S.B. 1576 seeks to

provide these additional measures, which include, among other things, enhanced criminal penalties procedural support.

S.B. 1576 amends Article 17.03 of the Code of Criminal Procedure to state that a magistrate may not release on personal bond a person who, at the time of the commission of the charged offense, is civilly committed as a sexually violent predator.

Section 22.01 of the Penal Code (Assault) amends Subsection (b-1) and (f) and adds Subsection (b-2) to state that it is a third-degree felony if an actor committed to a civil commitment facility assaults an officer or employee of the TCCO while they are lawfully discharging an official duty at a civil commitment facility or in retaliation for or because of an exercise of official power or performance of an official duty by an officer, employee, or individual contracted to work within the facility. Section 22.11 (Harassment by Persons in Certain Facilities; Harassment of Public Servant) is amended to add that it is an offense for a person committed to a civil commitment facility to cause any officer, employee, or individual contracted to work within the facility to come in contact with blood, semen, or any other bodily fluid within the scope of the individual's employment or duties.

TMCEC: S.B. 1576 is a voluminous bill comprised of 48 sections, much of which is not related to municipal courts, including many changes to Chapter 841 of the Health and Safety Code related to the civil commitment of sexually violent predators. S.B. 1576 also reflects a common theme this session regarding the protection and restriction of personal information from those seeking to abuse public records or court processes for personal gain or criminal purposes. The bill amends Sections 30.010(a) and (b) of the Civil Practice and Remedies Code to restrict the personal information of Texas Civil Commitment Office employees from discovery by a person civilly committed as a sexually violent predator under Chapter 841 of the Health and Safety Code.

S.B. 1849
Subject: Interactions Between Law Enforcement and the Arrested or Confined; Sandra Bland Act
Effective: September 1, 2017, except Section 4.03 takes effect January 1, 2018

TMCEC: On Thursday July 10, 2015, Sandra Bland had just accepted a job offer from Prairie View A&M University when she was pulled over for a traffic offense and subsequently arrested after an altercation with the officer. At the jail, Sandy told a guard that she felt "very depressed," had also felt depressed during the past year, and had tried to commit suicide in 2014 after losing her pregnancy. She was not hospitalized, seen by a mental health professional, or put on suicide watch. On Saturday, Sandy's bond was set, yet she was unable to find assistance for posting the $515. She spent Sunday sobbing and saying repeatedly that she could not deal with being locked up. On Monday, she refused breakfast at 6:30 a.m. Later that day she used an emergency intercom twice to beg for permission to use the phone from the front desk, but it was refused. At 9:00 a.m. on Monday July 13, 2015, Sandra Bland was found hanging in her jail cell in Waller County, Texas.

Section by Section Analysis

The events leading up to Sandra Bland's jailing and tragic death sparked a statewide and national discussion regarding criminal justice reform. S.B. 1849 aims to improve Texas' criminal justice system to make it better for both law enforcement and the public and prevent future tragedies like Sandra Bland's.

S.B. 1849, known as the Sandra Bland Act, addresses a variety of criminal justice topics including bail reform, jail diversion, jail safety, officer training, racial profiling, data collection, officer discipline, and behavioral health. Additionally, in an effort to update the law to reflect modern understanding of mental health issues, the Act replaces the antiquated term "mental retardation" with "intellectual disability" where referenced.

Article 1: Short Title

S.B. 1849 shall be known as The Sandra Bland Act, in memory of Sandra Bland

Article 2: Identification, Diversion, and Services for Those with Mental Illness, Intellectual Disability, or Substance Abuse Issues

Under an amended Article 16.22 of the Code of Criminal Procedure, the sheriff, not later than 12 hours, rather than 72 hours, after receiving credible information that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability must provide written or electronic notice of the information to the magistrate.

S.B. 1849 adds Article 16.23 to the Code of Criminal Procedure requiring each law enforcement agency to make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction, under appropriate circumstances. Specifically, efforts to divert should be made if there is an available and appropriate treatment center in the jurisdiction, diversion is reasonable, the person is accused of a nonviolent misdemeanor, and the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense. Notably, Article 16.23 does not apply to a person accused of an intoxication offense under Chapter 49 of the Code of Criminal Procedure. This would exclude Driving While Intoxicated, perhaps one of the more common offenses resulting in actual arrest encountered by law enforcement.

S.B. 1849 amends Section 539.002 of the Government Code related to grant programs available from the Department of State Health Services for the development of community collaboratives to provide services related to homelessness, substance abuse, and mental illness. Language is removed that limited the grants to a maximum of five, which were required to be made in the most populous municipalities in this state that are located in counties with a population of more than one million. Each entity awarded a grant must leverage additional funding in an amount that is at least equal to the amount of the grant awarded; provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons. Section 539.0051 is added to the Government Code requiring counties to develop and make public a plan related to establishing community collaboratives and raising private funds as envisioned under Section 539.002.

Note: There is a similar matching grant program in Chapter 531 of the Government Code as amended by H.B. 13 to support community mental health programs providing services and treatment to individuals experiencing mental illness.

Article 3: Bail, Pretrial Release, and County Jail Standards

S.B. 1849 amends Article 17.032 of the Code of Criminal Procedure, replacing references to "mental retardation" with references to "intellectual disability" or "intellectual and developmental disability."

Subsection 511.009(a)(23) is added to the Government Code requiring the Texas Commission on Jail Standards (TCJS) to adopt reasonable rules and procedures to ensure the safety of prisoners, including requiring county jails to give prisoners access to a mental health professional 24 hours a day (either through a health professional at the jail, a telemental health service, or transporting the prisoner to a health professional) and to install automated electronic sensors or cameras (if funding is available) to check cells confining at-risk individuals.

S.B. 1849 also adds Subsection 511.009(d) to the Government Code requiring TCJS to adopt rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment

of prisoners. Requires that the rules and procedures require a qualified medical professional to review, as soon as possible, any prescription medication a prisoner is taking when the prisoner is taken into custody.

S.B. 1849 adds Sections 5111.019, 511.020, and 511.021 to the Government Code establishing a prisoner safety fund to provide grants to be used for prisoner safety, requiring sheriffs to report serious incidents (including suicide, attempted suicide, death, etc.) to TCJS on or before the fifth day of each month, and requiring TCJS to appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to conduct an independent investigation of a death occurring in a county jail.

Note: TCJS must adopt rules and procedures and created forms required under S.B. 1849 no later than January 1, 2018. County jails must comply with new rules adopted by TCJS by September 1, 2020.

Article 4: Peace Officer and County Jailer Training

S.B. 1849 adds Section 511.00905 to the Government Code requiring the Texas Commission on Law Enforcement (TCOLE) to develop (by March 1, 2018) and TCJS to approve an examination for a person assigned to the jail administrator position overseeing a county jail. A jail administrator, other than a sheriff, must pass the examination not later than the 180th day after the date the person is assigned to that position. A person who fails the examination is to be immediately removed from the position and is prohibited from being reinstated until the person passes the examination, and a sheriff is required to perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

To make both officers and the public safer, S.B. 1849 increases officer training in general de-escalation and mental health de-escalation tactics. The use of de-escalation tactics helps ensure that both law enforcement and the public are able to go home safe.

S.B. 1849 makes changes to Chapter 1701 of the Occupations Code. The amended Section 1701.253 requires TCOLE to require officers (beginning April 1, 2018), as a part of the minimum training requirements, to complete a 40-hour statewide education program (developed by March 1, 2018) on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. Officers must also complete training on de-escalation techniques for interacting with the public, including techniques for limiting the use of force resulting in bodily injury as a part of the minimum requirements for law enforcement schools; at least once every 48 months, as required under Section 1701.352(b); and as a requirement for intermediate or advanced proficiency certificates under Section 1701.402. The amended Section 1701.310(a) requires training for county jailers to include at least eight hours of mental health training.

Article 5: Motor Vehicle Stops, Racial Profiling, and Issuance of Citations

S.B. 1849 amends Article 2.132 of the Code of Criminal Procedure and requires each law enforcement agency's written policy on racial profiling to provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer, rather than provide public education relating to the agency's complaint process. Although, S.B. 1849 specifically adds the language "ticket, citation, or warning" to Article 2.132, it is unclear what the legal difference would be between a ticket and citation. Generally, the Code refers to "citation" elsewhere when referencing what the public thinks of as a ticket. Additionally, the bill adds "compliment" to what current law describes only as the "complaint process." To be clear, the complaint is not to be confused with the complaint used as a charging instrument. Confusion over such terminology, specifically the word "complaint" has a long history in Texas. See, Ryan Kellus Turner, "Complaints, Complaints, Complaints: Don't Let the Language of the Law Confuse You" *The Recorder* (July 2004) at 5.

The agency's written policy must also the require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including whether the officer used physical force that resulted in bodily injury, the location of the stop, and the reason for the stop. This data must be reviewed by the agency to identify any improvements that the agency could make regarding motor vehicle stops. All agencies must also examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras, their written policy must include standards for reviewing video and audio documentation.

Article 2.133 of the Code of Criminal Procedure, as amended, requires peace officers who stop a motor vehicle for an alleged violation of a law or ordinance to report to their law enforcement agency information relating to the stop, including whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop, and whether the officer used physical force that resulted in bodily injury. Article 2.133 also provides that the chief administrator of a law enforcement agency is responsible for auditing reports the reports submitted by the officers to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

S.B. 1849 amends Article 2.134(c) of the Code of Criminal Procedure to require that a report be submitted by the chief administrator of the law enforcement agency to TCOLE include certain information, including a comparative analysis of the information compiled under Article 2.133 to evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether evidence was discovered in the course of those searches.

DPS is required under the amended Article 2.137 of the Code of Criminal Procedure to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras. DPS must collaborate with an institution of higher learning to identify which law enforcement agencies need funds or equipment. The governing body of a county or municipality must certify to DPS that the law enforcement needs funds or equipment, and upon receipt of the funds or equipment, must certify that the video and audio equipment and body worn cameras are being used.

S.B. 1849 increases the civil penalty law enforcement agencies are liable for if the chief administrator of the agency intentionally fails to submit incident-based data from $1,000 to an amount not to exceed $5,000 for each violation.

Articles 2.132 and 2.134 of the Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018. TCOLE, not later than September 1, 2018, must evaluate and change the guidelines for compiling and reporting information required under amended Article 2.134 of the Code of Criminal Procedure.

PROCEDURAL LAW

H.B. 351/S.B. 1913
Subject: The Administrative, Civil, and Criminal Consequences of Fines, Fees, and Costs
Effective: September 1, 2017

TMCEC: H.B. 351 and S.B. 1913 are, for the most part, similar pieces of legislation containing some subtle, yet notable differences requiring courts to attempt to harmonize their provisions.

During the course of the 85th Legislature, both bills evolved. H.B. 351, as introduced, was a one-page bill with a singular objective. By the time it was signed by the Governor, it was immensely broader in scope than its counterpart, S.B. 1913, which was nearly entirely rewritten during the course of the Session. Despite their

similarities, H.B. 351 enjoyed broad support and progressed throughout the legislative process without opposition, while S.B. 1913, at times, struggled.

In the final days of Session, after H.B. 351 had passed the House and Senate and was on its way to the Governor, substantial efforts were made by interested parties to make S.B. 1913 a "mirror version" of H.B. 351. With a few exceptions, noted below, this effort was successful. By the time it arrived on the Governor's desk, it, too, enjoyed broad support (including support from earlier opponents).

Although one bill took more of circuitous path to becoming law, both bills strike a balance between increasing procedural protections for low income and indigent criminal defendants and giving judges more leeway in delineating between fines and state mandated court costs and in the manner in which each is respectively discharged. For the most part, this balance is achieved without compromising the ability of criminal courts, after affording due process, to enforce their lawful judgments against all defendants.

These are remarkable pieces of legislation. Each is an implicit acknowledgment that the legislative and executive branches of government in Texas have created a system of laws that arguably trap some defendants in what advocates call a cycle of debt, license suspensions, arrest warrants, and jail time when they cannot pay. From the perspective of the judiciary, what is equally remarkable is that these bills provide judges an unprecedented amount of leeway to deal with state proscribed mandatory court costs, which can quickly aggregate and are potentially higher than the fines imposed by judges as punishment.

Although media coverage of these bills seemed to exclusively focus on Class C misdemeanors and municipal and justice courts, both bills make similar changes to fines and costs assessed in county and district court proceedings involving Class A and B misdemeanors and felonies.

Section by Section Analysis:

Note: References to section numbers below first refer to H.B. 351; the section number after the "/" refers to S.B. 1913 (i.e., Section # H.B. 351/Section # S.B. 1913). Unless stated otherwise, all references below are to the Code of Criminal Procedure.

Section 23 and Section 25 of H.B. 351 amending Article 102.0071 (Justice Court Dishonored Check or Similar Sight Order) and Section 32.21 of the Penal Code (Forgery) are not part of this summary (See the summary for H.B. 351 under Substantive Criminal Law). Neither is Section 30 creating a commission to study certain criminal offenses. (See the summary for H.B. 351 under Courts, Court Costs, and Administration of Justice.)

Sections 1 and 24/Sections 1 and 22: Notice of Alternatives to Full Payment

Article 14.06(b) is amended to require citations to contain information regarding the alternatives to full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount.

A similar amendment, regarding notice of alternatives to full payment is made to Article 27.14(b) (Plea of Guilty or Nolo Contendere in Misdemeanor) in instances where the defendant in person or by mail enters a plea of guilty or no contest. Under Article 27.14(b), a court is required to notify the defendant of the fine and costs assessed, and if requested by the defendant, the amount of an appeal bond the court will approve. Notably, under current law a court is required to notify the defendant in person or by certified mail, return receipt requested. As amended, the notice may be made in person by "regular mail." The requirement of certified mail, return receipt requested is repealed. (See, Section 3 of both bills.)

Both bills similarly require such information to be provided to a defendant by third party vendors as part of its

services under a collections contract pursuant to Article 103.0031(j) (See, Section 22/Section 24).

At first glance, notice of alternatives to "full payment" may seem amorphous or unimportant. Take a closer look. As you carefully read the bills, and the sections noted below, consider collectively their important implications, not just for low-income and indigent defendants, but also for municipal and justice courts that have been saddled with escalating state-mandated courts costs and few legislatively proscribed options. (See, "Distinguishing 'Fines' from 'Court Costs,'" *The Recorder* (October 2016) at 13.) Both bills contain multiple amendments stating that under the amended law a criminal trial court can provide alternative means or waiver to *either* a fine *or* state proscribed court costs and fees. See the discussions below: Ability to Pay Inquiry in Open Court; Commitment; Waiver in Full or Part (fines *or* costs may be waived in full *or* part), and Community Service Expanded. These changes are very important and likely, for the most part, to be welcomed in certain situations by criminal trial court judges.

Section 2/Section 2: Personal Bond Fees

Article 17.42, Section 4(a) is amended to prohibit a court that requires a defendant to give a personal bond under Article 45.016 (Bail) from assessing a personal bond fee.

Section 9/Section 8: Warrant of Arrest for Failure to Appear/"Safe Harbor" from Arrest

Article 45.014(e) (Warrant of Arrest) is amended to prohibit the issuance of an arrest warrant for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b) unless additional notice is provided by telephone or regular mail: (1) a date and time when the defendant must appear (S.B. 1913 states it must be within a 30-day period of the notice); (2) the name and address of the court; (3) information regarding alternatives to full payment (See discussion above.); and (4) the consequences of the defendant's failure to appear.

The amendment to Article 45.014(e) is ostensibly broad enough to include other nonappearance offenses under state law involving a citation (e.g., Violate Promise to Appear). However, the amendment does not address the issuance of a warrant for the underlying offense for which the defendant is failing to appear. The practice of providing notice prior to the issuance of an arrest warrant has long been considered a "best practice" which is widely utilized by many, if not most, courts in the state. This amendment codifies the practice.

Notice of Alternatives to Full Payment of Fines or Costs:

Exemplars of Notice for Citations/ Written Promise to Appear

EXEMPLAR 1:
The judgment and sentence for the offense you are charged with is the payment of a fine and costs. If ordered to pay a fine and costs, and you cannot pay, notify the court immediately. If you are determined by the court to have insufficient resources or income to pay, the court is required to provide you other ways to discharge the fine and costs.

EXEMPLAR 2:
If you are assessed a fine and court costs as a result of this citation and you are unable to pay, bring this to the attention of the judge. For more information, contact the court or an attorney. Additional information can be found online: (*insert your court's website regarding fines, fees, and costs*).

EXEMPLAR 3:
If you are convicted of an offense and are unable to pay the fine and court costs, you may have the court assess your ability to pay and the court may provide alternatives to full payment in satisfying the judgment.

As amended Article 45.014(f) authorizes a defendant who receives notice under Subsection (e) to *request* an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice. The amendment does not, however, infringe on a court's discretion to grant or deny such a request. Reminder: Since 2015, in regard to the notice required by Subsection (e), Texas law has allowed courts to utilize e-mail in lieu of regular mail. (See, Sections 80.001-.005, Government Code.)

Article 45.014(g) is amended in H.B. 351 to require a justice or judge to recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve

the arrest warrant and the arrest warrant is resolved in any manner authorized by that code. S.B. 1913 requires that the warrant be recalled if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

Section 10/Section 9: Personal Bond; Bail Bond

Article 45.016, as amended, authorizes the justice or judge to require the defendant to give a personal bond, rather than bail, to secure the defendant's appearance in accordance with other provisions governing personal bond and bail bonds elsewhere in the Code of Criminal Procedure.

Under the newly created Article 45.016(b), a justice or judge is prohibited from requiring a defendant to give a bail bond unless the defendant fails to appear and "the justice or judge determines that the defendant has sufficient resources or income to give a bail bond and that a bail bond is necessary to secure the defendant's appearance in accordance with that code.

Under Article 45.016(c), if a defendant is required to give a bail bond under Subsection (b) and remains in custody, without giving the bond, for more than 48 hours after the issuance of the applicable order, the judge shall reconsider the requirement for the defendant to give the bond. (S.B. 1913 states that the court should presume that the defendant does not have sufficient resources or income to give the bond.)

Article 45.016(d) authorizes the defendant, if the defendant refuses to give a personal bond, or except as provided by Subsection (c), refuses or otherwise fails to give a bail bond, to be held in custody.

Note: In the wake of a hard fought battle to reform bail, an effort which failed this Session, it is hard to know exactly what to make of these amendments. Municipal and justice courts, courts governed by Chapter 45 of the Code of Criminal Procedure, like their county and district court counterparts, have to have the ability to compel recalcitrant defendants who refuse to appear in court. At the same time, however, it deserves emphasis, the current debate surrounding the alleged abuse and misuse of bail has to do with pretrial detention in county and district courts, most prominently in Harris County, *not* municipal and justice courts. In the absence of any research about post-charging use of bail in municipal and justice courts in Texas, courts are left with only anecdotal information and the opportunity to reflect on their own local bail practices.

The amendments to Article 45.016 are no model of clarity and may prove to be a source of more questions than a solution to a possible problem. Bail is comparatively rare in municipal and justice courts. It is even rarer that a person is detained in jail solely because of inability to make bail on a Class C misdemeanor. Prior to this amendment, most municipal judges and justices of the peace, likely gave little thought to Article 45.016.

Despite the amendments to Article 45.016, important distinctions are clear. First, Article 45.016 is a regulation on *post-charging* use of bail by *judges* (not *pre-charging* use of bail by *magistrates*). Second, Article 45.016 is not the only law governing the use of bail in municipal and justice courts. The amendments, by their own terms, have to be read in accordance with other provisions in the Code of Criminal Procedure including the rules for setting bail and the use of personal bonds (Chapter 17) and, by extension, pertinent case law.

Section 11/Section 10: Ability to Pay Inquiries in Open Court

Article 45.041 (Judgment) is amended by adding Subsection (a-1) and amending Subsection (b). Subsection (a-1) requires judges, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the judge is to specify if the fine and costs shall be paid (1) at a later point in time or in intervals, (2) discharged by community service, (3) waived in full or part, or (4) satisfied

Comparison of Current Law to H.B. 351 and S.B. 1913 (85th Regular Legislative Session)

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
NOTICE OF ALTERNATIVES TO FULL PAYMENT: A citation must contain (1) written notice of the time and place the person must appear before a magistrate; (2) the name and address of the person charged; (3) the offense charged; and (4) a domestic violence admonishment.	**SECTION 1 / 1**	A citation must also contain information regarding the alternatives to full payment of any fine or costs assessed, if the person is convicted of the offense and is unable to pay that amount.	Art. 14.06(b), CCP
Upon receiving a plea and a waiver of jury trial by mail, the court is required to notify the defendant either in person or by *certified mail, return receipt requested*, of the fine and costs assessed, and if requested by the defendant, the amount of an appeal bond the court will approve.	**SECTION 3 / 3**	Upon receiving a plea and a waiver of jury trial by mail, the court shall notify the defendant either in person or by *regular mail* of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond the court will approve.	Art. 27.14(b), CCP
A communication to the accused person from a third-party vendor as part of its services under a collections contract regarding the amount of payment that is acceptable to the court must include a notice of the person's right to enter a plea or go to trial on any offense charged.	**SECTION 24 / 22**	A communication to the accused person from a third-party vendor as part of its services under a collections contract regarding the amount of payment that is acceptable to the court must include: (1) a notice of the person's right to enter a plea or go to trial on any offense charged; and (2) a statement that, if the person is unable to pay the full amount of payment that is acceptable to the court, the person should contact the court regarding the alternatives to full payment that are available to resolve the case.	Art. 103.0031(j), CCP
PERSONAL BOND FEES: Article 17.42, Section 4(a) authorizes a court that requires a defendant to give a personal bond to assess a personal bond fee.	**SECTION 2 / 2**	A court that requires a defendant to give a personal bond under Article 45.016 may not assess a personal bond fee under this subsection.	Art. 17.42, Sec. 4(a), CCP
BAIL: A judge may require the defendant to give bail to secure the defendant's appearance in accordance with the Code of Criminal Procedure. If the defendant fails to give bail, the defendant may be held in custody.	**SECTION 10 / 9**	A judge is authorized to require a defendant to give a personal bond to secure appearance. The judge may not require a defendant to give a bail bond unless: (1) the defendant fails to appear with respect to the applicable offense; and (2) the judge determines that the defendant has sufficient resources/income to give a bail bond and a bail bond is necessary to secure appearance. If the defendant refuses to give a personal bond or, refuses or otherwise fails to give a bail bond, the defendant may be held in custody (subject to a reconsideration requirement after 48 hours, discussed below).	Art. 45.016, CCP
		H.B. 351: If a defendant required to give a bail bond remains in custody, without giving the bond, for more than 48 hours, the judge shall reconsider the requirement for the defendant to give the bond. S.B. 1913: If a defendant required to give a bail bond remains in custody, without giving the bond, for more than 48 hours, the judge shall reconsider the requirement for the defendant to give the bond and presume that the defendant does not have sufficient resources/income to give the bond (may require a personal bond).	
Warrant of Arrest: When a sworn complaint or affidavit based on probable cause has been filed before the municipal court, the judge may issue a warrant for the arrest of the accused. No special rules exist for defendants who fail to appear at an initial court setting.	**SECTION 9 / 8**	H.B. 351: A justice or judge may not issue an arrest warrant for the defendant's failure to appear at the initial court setting, unless: (1) the judge provides by telephone or regular mail notice that includes: (A) a date and time when the defendant must appear before the judge (defendant may request an alternative date); (B) the name and address of the court with jurisdiction in the case; (C) information regarding alternatives to the full payment of any fine or costs, if the defendant is unable to pay that amount; and (D) an explanation of the consequences if the defendant fails to appear; and (2) the defendant fails to appear. S.B. 1913: Identical to H.B. 351 except that the date and time when the defendant must appear before the judge must be set within the 30-day period following the date notice is provided.	Art. 45.014(e)-(f), CCP

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
"SAFE HARBOR": Currently, there is no requirement to recall an arrest warrant for failure to appear if the defendant voluntarily appears to resolve the warrant and resolves it.	**SECTION 9 / 8**	H.B. 351: The judge shall recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed: (1) the defendant voluntarily appears to resolve the arrest warrant; and (2) the arrest warrant is resolved in any manner authorized by this code. S.B. 1913: The judge shall recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.	Art. 45.014(g), CCP
ABILITY TO PAY INQUIRIES IN OPEN COURT: When imposing a fine and costs, a judge may, but is not required to, determine whether a defendant is unable to immediately pay the fine and costs.	**SECTION 11 / 10**	During or immediately after imposing a sentence in a case in which the defendant entered a plea in open court, the judge shall inquire whether the defendant has sufficient resources/income to immediately pay all or part of the fine and costs. If the judge determines that the defendant does not, the judge shall determine whether the fine and costs should be: (1) required to be paid at some later date or in installments; (2) discharged by performing community service; (3) waived in full or in part; or (4) satisfied through any combination of those methods.	Art. 45.041, CCP
CAPIAS PRO FINE SHOW CAUSE HEARINGS: If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a capias pro fine, issued for the defendant's arrest. The Code of Criminal Procedure does not require that a defendant be given an opportunity to show cause for failure to satisfy the judgment according to its terms prior to the issuance of a capias pro fine.	**SECTION 13 / 12**	H.B. 351: Before a court may issue a capias pro fine for the defendant's failure to satisfy the judgment, (1) the court must provide notice by regular mail that includes a statement that the defendant has failed to satisfy the judgment and the date and time of the show cause hearing; and (2) either the defendant fails to appear at the hearing or based on evidence presented at the hearing, the court determines that the capias pro fine should be issued. S.B. 1913: The court may not issue a capias pro fine for the defendant's failure to satisfy the judgment unless (1) the court holds a hearing on the defendant's ability to satisfy the judgment and (2) the defendant fails to appear at the hearing or based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.	Art. 45.045 (a-2), CCP
CAPIAS PRO FINE "SAFE HARBOR:" A court is not required to recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by Chapter 45.	**SECTION 13 / 12**	The court shall recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by Chapter 45.	Art. 45.045 (a-3), CCP
COMMITMENT HEARING: As part of the commitment hearing, the judge must make a written determination that (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or (2) the defendant is indigent and has failed to make a good faith effort to discharge the fines *and* costs under Article 45.049; and could have done so without experiencing any undue hardship.	**SECTION 14 / 13**	As part of the commitment hearing, the judge must make a written determination that (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs; or (2) the defendant is indigent and has failed to make a good faith effort to discharge the fine *or* costs under Article 45.049; and could have done so without experiencing any undue hardship.	Art. 45.046(a), CCP
CAPIAS PRO FINE JAIL CREDIT: The jail credit rate for defendants placed in jail on a capias pro fine is not less than $50 for each period of time served, as specified by the convicting court in the judgment.	**SECTION 15 / 14**	The jail credit rate for defendants placed in jail on a capias pro fine is not less than $100 for each period served, as specified by the convicting court in the judgment.	Art. 45.048, CCP.

Comparison of Current Law to H.B. 351 and S.B. 1913 (85th Regular Legislative Session)

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
COMMUNITY SERVICE: A court's community service order must specify the number of hours the defendant is required to *work*.	**SECTION 16 / 15**	A court's community service order must specify the required number of hours of community service the defendant is required to *perform* and the due date for submitting to the court documentation verifying completion of the community service.	Art. 45.049(b), CCP
The judge may order community service to be performed only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community.		H.B. 351: The judge may order community service to be performed (1) by attending a work and job skills training program, a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, an alcohol or drug abuse program, a rehabilitation program, a counseling program, including a self-improvement program, a mentoring program, or any similar activity; or (2) for a governmental entity, a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the judge, or an educational institution. SB 1913: The judge may order community service to be performed (1) by attending a work and job skills training program, a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, or similar activity; or (2) for a governmental entity, a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the judge, or an educational institution.	Art. 45.049(c), CCP
A governmental entity or nonprofit organization that accepts a defendant to perform community service must agree to supervise and report on the defendant's work to the judge who ordered it.		An entity that accepts a defendant to perform community service must agree to supervise, *either on-site or remotely*, the defendant's community service and report on it to the judge who ordered it.	Art. 45.049(c-1), CCP
A defendant is considered to have discharged not less than $50 of fines or costs for each eight hours of community service performed under Article 45.049, Code of Criminal Procedure.		A defendant is considered to have discharged not less than $100 of fines or costs for each eight hours of community service performed under Article 45.049, Code of Criminal Procedure.	Art. 45.049(e), CCP
A judge may require a defendant younger than 17 assessed a fine or costs for a Class C misdemeanor occurring on school grounds to discharge all or part of the costs by performing community service or attending a tutoring program.	**SECTIONS 18-20 / 17-19**	See, Section 16/15.	Art 45.0492, CCP
WAIVER: A municipal court may waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that: (1) the defendant is indigent or was, at the time the offense was committed, a child as defined by Article 45.058(h); and (2) discharging the fine *and* costs under Article 45.049 or as otherwise authorized by Chapter 45 would impose an undue hardship on the defendant.	**SECTION 17 / 16**	H.B. 351: A municipal court may waive payment of all or part of a fine or costs imposed on a defendant if the court determines that: (1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine *or* costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and (2) discharging the fine *or* costs under Article 45.049 or as otherwise authorized by Chapter 45 would impose an undue hardship on the defendant. S.B. 1913: Same as H.B. 351, but also adds that a defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine *or* costs if the defendant: (1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or (2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.	Art. 45.0491, CCP

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
DPS OMNBASE FTA PROGRAM: The Department of Public Safety may not continue to deny renewal of a person's driver's license under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) after receiving notice of perfection of an appeal, dismissal of the charge, posting of bond or other security, other suitable arrangement to pay the fine and costs, acquittal, error, or destruction in accordance with the record retention policy.	**SECTIONS 28-29 / 25-26**	DPS may not continue to deny renewal of a person's driver's license under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) after receiving notice that the charge on which the person failed to appear was dismissed with prejudice for lack of evidence (in addition to the existing reasons under current law).	Sec. 706.005, Trans. Code
The $30 administrative fee for each complaint or citation reported to DPS under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) is not required if the person is acquitted of the charges for which the person failed to appear.		The $30 administrative fee for each complaint or citation reported to DPS under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) is not required if the charges on which the person failed to appear were dismissed with prejudice by motion of the appropriate prosecuting attorney for (1) lack of evidence, (2) if the failure to appear report was sent in error, or (3) if the respective case is closed or failure to appear report has been destroyed in accordance with the applicable records retention policy.	Sec. 706.006(a), Trans. Code
Section 706.006 of the Transportation Code (Payment of Administrative Fee) does not contemplate that a person may be indigent or presumptions regarding indigence.		For purposes of Section 706.006 of the Transportation Code, if the court makes a finding that the person is indigent, the person may not be required to pay the $30 administrative fee. For purposes of Subsection 706.006(d), a person is presumed to be indigent if the person: (1) is required to attend school full time under Section 25.085, Education Code; (2) is a member of a household with a total annual income that is below 125 percent of the applicable income level established by the federal poverty guidelines; or (3) receives assistance from the financial assistance program established under Chapter 31 of the Human Resources Code, the medical assistance program under Chapter 32 of the Human Resources Code, the supplemental nutrition assistance program established under Chapter 33 of the Human Resources Code, the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786, or the child health plan program under Chapter 62, Health and Safety Code.	Sec. 706.006(d), Trans. Code

TMCEC Resources from the 85th Legislative Session:

http://www.tmcec.com/course-m/legislative-update/fy17-course-materials/

Summary Book (124 Pages)
Bill Book (360 Pages)
Video Recording of Austin Legislative Update (8.18.2017) (available via TMCEC Online Learning Center)
Fall Webinars (available via TMCEC Online Learning Center)
Charts
In Memoriam
Bills Vetoed
H.B. 351 and S.B. 1913 Comparison of Selected Provisions
Check Your Practice: Implementing H.B. 351/S.B. 1913
Exemplars: Notice of Alternatives to Full Payment of Fines or Costs (Citation Language)
OCA Self-Help Resources Page
Living Wage and Community Service Calculators

More resources will be added as developed. Watch *The Recorder* and the News Section of the website, please.

in a combination of methods (1)-(3). Subsection (b) states that judgments otherwise entered per Article 45.041 for a fine or costs may be waived either partially or entirely per Article 45.0491. (See, below Section 17/Section 16.) (See also, the above analysis of Sections 1 and 24/Sections 1 and 22: Notice of Alternatives to Full Payment).

Note: Similar amendments are made in both bills to Article 42.15, which governs county and district courts. (See, Section 4 in both bills). Throughout Academic Year 2017, at regional conferences TMCEC discussed how current law leaves a gap in terms of a court's consideration of a defendant's ability to pay fines and costs. This amendment, in conjunction with the amendment to Article 45.045 (Capias Pro Fine) requiring a show cause hearing prior to the issuance of a capias pro fine by amendments (See, Section 13/ Section 12) and the commitment hearing by the issuing court, which is required under Article 45.045, should "bridge the gap" discussed in AY 17.

It is worth emphasizing that this amendment does not apply to pleas entered by mail, over the internet, or pleas conveyed to judges by clerks. It neither prohibits nor requires the court to consider the defendant's ability to pay a fine before setting the fine. A judge's discretion to set the fine is undiminished. Lastly, it does not require or authorize a court to compel a defendant to make financial disclosures. Defendants are not presumed indigent. The preceding were concerns with earlier versions of proposed amendments in S.B. 1913 to Article 45.041. None became law.

Consistent with longstanding law, the burden of establishing the inability to pay fines or costs post-judgment remains on the defendant. Requiring an inquiry regarding a defendant's ability to pay all or part of the fines and costs during or immediately after the imposition of sentence is similarly consistent with longstanding law and already a common practice in many courts.

Arguably, this is a missing link in Texas criminal procedure. Making an inquiry into a defendant's ability to pay has the potential to encourage judges to make full use of fine ranges, consider the full range of ways judgments can be discharged, increase the number of judgments satisfied, and decrease the time and resources spent on enforcing judgments.

Section 12/Section 11: Appeal Bonds

Non-substantive changes are made to Article 45.0425(a) (Appeal Bond), including references to a bail bond being replaced with references to an appeal bond.

Section 13/Section 12: Show Cause Hearings

Article 45.045 (Capias Pro Fine) is amended by adding Subsections (a-2) and (a-3). Subsection (a-2) provides that before a court may issue a capias pro fine for the defendant's failure to satisfy the judgment, (1) the court is required to provide by regular mail to the defendant certain notice and hold a hearing on the defendant's failure to satisfy the judgment according to its terms; and (2) either the defendant fails to appear at the hearing, or based on evidence presented at the hearing, the court determines that the capias pro fine should be issued. Subsection (a-3) states that a capias pro fine shall be recalled if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by Chapter 45 (Justice and Municipal Courts).

Note: A show cause hearing is a chance to justify, explain, or prove something to a court. Conducting such a hearing before issuance of a capias pro fine is an additional safeguard that TMCEC has long touted because of its potential to prevent indigent defendants from being arrested over matters of money—matters that are beyond their control. Show cause hearings also have the potential to help courts, law enforcement, and jails save time and money. This amendment to Article 45.045 is another example of codifying a readily accepted "best practice." Show cause hearings are also arguably an essential part of complying with *Bearden v. Georgia*. See, "In the

Shadow of *Bearden*, Guidance from Case Law, and the Texas Code of Criminal Procedure, the Case for 'Show Cause' Hearings Prior to Issuing a Capias Pro Fine," *The Recorder* (October 2016) at 21. Such hearings potentially allow consideration of a defendant's ability to pay and allow judges an opportunity to consider the circumstances surrounding failure to discharge the judgment through alternative means. This, of course, assumes the defendant appears (which is why the amendment contains a safe harbor provision). To be clear, however, when defendants do not appear, this amendment does not alleviate a court from conducting a commitment hearing per Article 45.046. In Texas, the commitment hearing required by the Code of Criminal Procedure is the *primary Bearden* safeguard. Show cause hearings before the issuance of a capias pro fine are a preliminary safeguard (not a substitute).

Section 14/Section 13: Commitment

The Senate Research Center and the House Research Organization have stated that the amendment of Article 45.046(a) is a non-substantive change. Admittedly, the only thing the amendment does is replace the word "and" with the word "or." However, construed with the other amendments (see, above, Sections 1 and 24/Sections 1 and 22) TMCEC characterizes the change as conforming and substantive.

Section 15/Section 14: Capias Pro Fine Jail Credit Increase

Subsection (a) of Article 45.048 (Discharged from Jail) changes references to not less than $50 for each period of time served to not less than $100 for each period served. Similar changes are made in Article 43.09, which governs the fines and court costs in county and district courts. (See, Section 7 in both bills).

Note: Contrary to media reports, commitment to jail for nonpayment of fines and costs was not prohibited by the 85th Regular Legislature. Jail credits for nonpayment of fines and costs were, however, increased in all Texas criminal trial courts.

Section 16/Section 15: Expansion of Community Service

Article 45.049 (Community Service in Satisfaction of Fine or Costs) is amended as follows:

Subsection (b) requires a defendant to "perform," rather than "participate," in community service. A court's order must now specify: (1) the number of hours of community service the defendant is required to perform; and (2) the date by which the defendant is required to submit to the court documentation verifying the defendant's completion of the community service (rather than the number of hours the defendant is required to work).

Subsection (c) expands the way a defendant may be ordered to perform community service. As amended, community service includes attending (1) a work and job skills training program; (2) a preparatory class for the high school equivalency examination administered under Section 7.111 of the Education Code; (3) an alcohol or drug abuse program; (4) a rehabilitation program; (5) a counseling program, including a self-improvement program; (6) a mentoring program; or (7) any similar activity.

Under current law, community service can only be performed for a governmental or nonprofit organization. As amended community service may also be performed for "another organization" or an "educational institution" that provides services to the general public that enhances social welfare and the general well-being of the community. Practically, this amendment means the only limitation on whether an entity is qualified to be a community service provider is the discretion of a judge and whether the judge believes the entity provides services to the general public that enhances social welfare and the general well-being of the community.

Note: Does expanding the list of community service providers beyond governmental or nonprofit entities pose potential ethical concerns for judges? Yes. Canon 2B prohibits judges from using the judicial office to advance the private interests of third parties. Once again, it appears that a law has been passed that may put judges at odds with

the State Commission on Judicial Conduct. (See, Benjamin Gibbs, "Judicial Donation Trust Funds: A Statutory Violation of the Canons of Judicial Conduct?," *The Recorder* (January 2016). Judges be advised, "the Texas Legislature is under no obligation to pass laws that comply with the Code of Judicial Conduct. By the same token, the State Commission on Judicial Conduct (SCJC), in a public statement, has made it clear that just because the act of a judge is legal does not necessarily mean that it is ethical or compliant with the Code of Judicial Conduct." *Id.* at 14. Is the potential for commercialization of community service intimated in Subsection (c-1)?

Subsection (c-1) expands the way a community service provider may supervise the performance of community service. It allows a governmental entity, nonprofit organization, or another entity that accepts a defendant to perform community service to agree to supervise, "either on-site or remotely," the defendant in the performance of the defendant's community service, and report on the defendant's community service. A similar reference is made in the amendment to Subsection (g), which allows defendants charged with a traffic offense or Minor in Possession of Alcohol (Section 106.05, Alcoholic Beverage Code) who are ordered to perform community service as part of a deferred disposition per Article 45.051(b)(10) to elect to do community service either in the county where the court is located or where the defendant resides.

Subsection (d) prohibits a defendant from being ordered to perform more than 16 hours per week of community service unless the judge determines that ordering additional hours does not impose an "undue hardship" on the defendant or the defendant's dependents.

Subsection (e), similar to the previously described increase in jail credit, increases the rate per eight hours of community service from "not less than $50" to "not less than $100."

Subsection (f) adds an entity that accepts a defendant to perform community service to the laundry list of governmental entities, its employees, and public officials who are not liable for damages arising from an act or failure to act in connection with community service. Read in conjunction with the amendment of Subsection (c), this is a substantial expansion of the statutory immunity beyond its traditional scope of governmental actors and entities.

Section 17/Section 16: Expanded Wavier of Fines or Costs

As amended, Article 45.0491 has a new heading: Waiver of Payment of Fines and Costs for Certain Defendants and for Children. The word "Indigent" is repealed from the heading, although, notably, the term remains in the statute and remains undefined. (See, "Defining Indigence," *The Recorder* (October 2016) at 17.)

Subsection (a), as amended, states a court may waive payment of "all or part" of a fine or costs imposed on a defendant. The current requirement that a defendant "defaults in payment" is repealed. All or part of either a fine or costs may be waived if a court determines that (1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs, or was, at the time the offense was committed, a child as defined by Article 45.058(h); *and* (2) discharging the fine or costs, rather than the fine and costs, under Article 45.049 (Community Service) or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

Subsection (b), as amended by S.B. 1913, provides that a defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine or costs if the defendant: (1) is in the conservatorship of the Department of Family and Protective Services (DFPS), or was in the conservatorship of DFPS at the time of the offense; or (2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

Sections 18-20/Sections 17-19: Community Service for Juveniles

These amendments make conforming changes to Article 45.0492, as added by H.B. 350 (2011) and Article

45.0492 as added by H.B. 1964 (2011). Regrettably, despite these amendments, there are still two versions of Article 45.0292. The changes to both versions of Article 45.0492, which are now inconveniently both titled, *Community Service in Satisfaction of Fine or Costs For Certain Juvenile Defendants*, mirror that described in Section 16/Section 15: The Expansion of Community Service.

Sections 21-22/Sections 20-21: Termination of Bond - Deferred Disposition/DSC and MOC

Subsection (a) of Article 45.051 (Suspension of Sentence and Deferral of Final Disposition) is amended, stating that an order of deferral terminates any liability under a bond (rather than a "bail bond or an appearance bond.") The same changes in terminology are made in Subsection (t) of Article 45.0511 (Driving Safety Course or Motorcycle Operator Course Dismissal Procedures).

Sections 26-27/Sections 23-24: County Scofflaw Program

Under current law, a county assessor-collector or the Department of Motor Vehicles (DMV) may refuse to register a motor vehicle if either receives notice that the owner of the vehicle either (1) owes a fine, fee, or tax that is overdue or (2) fails to appear in connection with a citation or formal charging instrument (e.g., a complaint) in a court with criminal jurisdiction. This type of "passive enforcement," commonly referred to as the Scofflaw Program, was created in 1997 as a means of collecting monies owed to state and local governments that does not entail arrest or jail. It requires an interlocal agreement between a local government and the DMV. Municipal and county governments may, but are not required to, contract with the DMV and use the Scofflaw Program. The use of the Scofflaw Program by counties, and related contracts and fees, is governed by Section 502.010 of the Transportation Code (County Scofflaw). The use of the Scofflaw Program by municipalities, and related contracts and fees, is governed by Section 702.003 of the Transportation Code.

There are no changes to the law governing the use of the Scofflaw Program by municipalities. Section 502.010 of the Transportation Code, which governs the use by counties, is amended as follows:

Subsection (b-1) provides that after the second anniversary of the date the information is placed into the Scofflaw Program, neither a county assessor-collector nor the DMV may deny the owner of a motor vehicle who owes a county a fine, a fee, or a tax the ability to register the motor vehicle. It similarly prohibits subsequent information about other fines or fees that are imposed for a criminal offense and that become past due before the second anniversary of the date the initial information was provided from being used either before or after the second anniversary of that date.

Subsection (c) includes waiver of fines and costs to the circumstances where a county is obligated to notify the DMV to lift the hold on the ability of the owner to register the motor vehicle.

Subsection (i) authorizes a municipal judge or justice of the peace who has jurisdiction over the underlying offense to waive an additional fee authorized under Subsection (f) if the judge or justice makes a finding that the defendant is economically unable to pay the fee or that good cause exists for the waiver. (Note: This amendment is perplexing because municipal judges will not have jurisdiction over an underlying offense under a county scofflaw contract and because county and district judges are excluded from the list of judges who can waive related fees.)

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

Sections 28-29/Sections 25-26: DPS OmniBase FTA Program

Under current law, the Department of Public Safety (DPS) may refuse to renew a person's driver's license if (1)

the person fails to appear in court as required by law for the prosecution of an offense or (2) fails to pay or satisfy a judgment ordering the payment of a fine and court costs in the manner ordered by the court. Like the Scofflaw Program, the Failure to Appear (FTA) Program is a type of "passive enforcement." It was created in 1995 as a collection and enforcement tool. It requires an interlocal agreement between a local government and DPS. Municipal and county governments may, but are not required to, contract with DPS (which, in turn, contracts with OmniBase Services of Texas for vendor services and automation of the FTA Program). The FTA Program is governed by Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear).

Section 706.005 of Transportation Code (Clearance Notice to Department) is amended to provide that clearance notice is only required in cases involving dismissal when the dismissal is with prejudice by motion of the appropriate prosecuting attorney for lack of evidence. A corresponding amendment pertaining to administrative fees is made to Section 706.006 of the Transportation Code (See, below).

Subsection (a) of Section 706.006 of the Transportation Code is amended as follows: A person who fails to appear for a complaint or citation, except where a court having jurisdiction over the underlying offense makes a finding that the person is indigent, is required to pay an administrative fee of $30 for each complaint or citation reported to DPS unless: (1) the person is acquitted of the charges for which the person failed to appear; (2) the charges on which the person failed to appear were dismissed with prejudice by motion of the appropriate prosecuting attorney for lack of evidence; (3) the failure to appear report was sent to DPS in error; or (4) the case regarding the complaint or citation is closed and the failure to appear report has been destroyed in accordance with the applicable political subdivision's records retention policy.

Subsection (d) of Section 706.006 of the Transportation Code (Payment of Administrative Fee) is amended to prohibit a person, if found indigent by a criminal trial court having jurisdiction, from being required to pay an administrative fee before being allowed to renew their driver's license under the FTA Program. For purposes of the subsection, a person is presumed to be indigent if the person: (1) is required to attend school full time (Section 25.085, Education Code); (2) is a member of a household with a total annual income that is below 125 percent of the applicable income level established by the federal poverty guidelines; or (3) receives assistance from: the financial assistance program (Chapter 31, Human Resources Code), the medical assistance program (Chapter 32, Human Resources Code), the supplemental nutrition assistance program (Chapter 33, Human Resources Code), the federal special supplemental nutrition program for women, infants, and children (42 U.S.C. Section 1786), or the child health plan program (Chapter 62, Health and Safety Code).

Note: Injecting the distinction of "dismissal with prejudice by motion of the appropriate prosecuting attorney for lack of evidence" convolutes matters pertaining to clearance notices and the circumstances which a person does not have to pay an administrative fee. It may also increase the number of defendants, other than those who are found to be indigent, who are required to pay an administrative fee for either failing to appear or failing to pay fines and costs and who have had their case submitted to the DPS OmniBase FTA Program.

Article 32.02 (Dismissal by State's Attorney) does not require a prosecutor to specify whether a case is dismissed with prejudice. Ostensibly, this is because under Texas law, whether a case is dismissed with prejudice is determined by a trial or appellate court, not by a prosecuting attorney. Article 32.02 does, however, require a prosecutor to set out reasons for a dismissal. The State's Motion to Dismiss in the *TMCEC Forms Book* has checkboxes for 10 different grounds for dismissal. In terms of sufficiency of the evidence, many of these grounds overlap. Under the amended law, the absence of a denotation regarding dismissal with prejudice may result in an administrative fee being assessed in instances where under current law no fee is assessed.

Sections 31-38/Sections 27-33: Repealers, Applicability, and Effective Date

These sections contain repealers and provisions pertaining to applicability.

Legislative Update
continued on pg.60

Check Your Practice: Implementing HB 351/SB 1913

Administrative Changes:

- ☐ Update citations (or suggest language to local law enforcement) to contain information on alternatives to full payment (see p.46 of this issue of *The Recorder*).
- ☐ Notify the court's collections vendor, if any, and update policies to ensure that the vendor is providing information on alternatives to full payment to defendants as part of its collection service.
- ☐ Update the court's procedures for processing personal bond paperwork. Municipal and justice courts cannot assess personal bond fees.
    - This does not apply to other courts not bound by Article 45 of the Code of Criminal Procedure.
- ☐ Update court procedures to require notice of the initial court setting for each defendant (in addition to the notice provided in the citation).
    - Initial notices must include a date and time to appear before the court within 30 days following the date that notice is provided, the name and address of the court, information regarding alternatives to full payment, and the consequences of failure to appear.
    - If the notice is not sent, a warrant cannot issue for that defendant's arrest for failing to appear at the initial court setting.
    - In order to document the notice, a judge may require proof of such notice be attached to the affidavits for warrants.
- ☐ Update any notices to defendants which include amounts due. Any notice conveying an amount due must now include a statement that, if the person is unable to pay the full amount of payment that is acceptable to the court, the person should contact the court regarding the alternatives to full payment that are available to resolve the case.
- ☐ Update your policy with regards to a defendant's failure to comply with court orders to satisfy a judgment.
    - Defendant must be scheduled for a show cause hearing before a capias pro fine can issue for failure to satisfy a judgment.
    - Notice must include a statement that the defendant has failed to satisfy the judgment according to its terms and specify a date and time for a hearing to show cause why the defendant did not satisfy the judgment according to its terms.
    - No capias pro fine may issue prior to the hearing and may only issue after the hearing if the defendant fails to appear at the hearing or, based on evidence at the hearing, the judge determines the capias pro fine should be issued.
- ☐ Update the court's "safe harbor" policy.
    - Court shall recall an arrest warrant for a defendant's failure to appear if, before the warrant is executed, the defendant voluntarily appears, makes a good faith effort to resolve the warrant, and the arrest warrant is resolved in any manner authorized by the Code of Criminal Procedure.
    - Court shall recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is

resolved in any manner authorized by Chapter 45 of the Code of Criminal Procedure.

- ☐ Update your court's list of acceptable community service programs.
  - Definition of acceptable organizations for which defendants may perform community service has been expanded to include work or job skills training programs, educational institutions, and organizations other than nonprofit organizations as approved by the judge.
- ☐ Update your court's procedures for notifying DPS for driver's license renewal or denial and the county tax assessor-collector's office for the "Scofflaw" registration denial.
  - Court should have a form letter to the county tax assessor-collector indicating that additional fees have been waived for good cause.
  - Court should add "dismissal with prejudice by motion of the appropriate prosecuting attorney" to the reasons for DPS driver's license reinstatement.
  - Court should draft a letter informing DPS that a defendant has been found indigent, waiving the administrative fee for license reinstatement.

Changes in Court:

After a plea of guilty or nolo contendere and setting of a fine:

- ☐ Inquire as to the defendant's ability to pay.
  - Judge may not compel a defendant to disclose financial information. However, a judge is required by statute to make this inquiry unless the defendant will pay the fine and costs in full immediately.
  - If the defendant will not disclose financial information, the defendant is not presumed indigent.
  - The burden to establish inability to pay still rests with the defendant.
- ☐ Court must inform the defendant about alternatives to full payment if the defendant is unable to pay the full amount.
- ☐ If the defendant does not have sufficient income or resources to immediately pay all or part of the fine and costs, the order must specify one of the following:
  1. Fine and costs shall be paid at a later time or in intervals.
  2. Fine and costs shall be discharged by performance of community service.
  3. Fine and costs are waived in full or in part.
  4. Fine and costs shall be satisfied through any combination of the prior three methods.

Waiving Fines and/or Costs:

- ☐ Court may waive payment of all or part of a fine or cost imposed if the court determines, based on information/proof presented to the court, that:
  - Defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs AND discharging the fine or costs through community service or other method under Chapter 45 would be an undue hardship.

- Defendant is presumed to be indigent or not to have sufficient resources or income to pay all or part of the fine or costs if the defendant:
  - is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or
  - is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

☐ Defendant has burden of producing proof of inability to pay. Court should tell defendant what information and documents to bring to assist the court in making a determination.

In Jail:

Before Setting Bond after a Charge Has Been Filed in Your Court:

☐ The judge may require the defendant to give a personal bond.

☐ A bail bond may only be set if:
- Defendant has failed to appear;
- Judge determines that the defendant has sufficient resources or income to give a bail bond; and
- Judge determines a bail bond is necessary to secure the defendant's appearance.

☐ Establish a system for checking whether the defendant has posted the bail bond within 48 hours (*e.g.*, a calendar or reminder system):
- If the judge sets a bail bond and the defendant remains in custody without posting the bail bond within 48 hours, the judge must reconsider the requirement of a bail bond.
  - This does not apply if a judge required a personal bond, or if the defendant has the ability to post a bail bond but refuses to do so.
- In reconsideration, the judge must presume that the defendant does not have sufficient resources or income to give a bond. Judge may require a personal bond.

Webinars on Legislative Issues

TMCEC has planned three webinars on new laws from the 85th Session. Remember that if you missed the "live" one, it is archived and may be viewed the next day.

- September 7, 2017 *Changes for Municipal Courts: 85th Legislative Session*, presented by Hon. Ed Spillane, Presiding Judge, City of College Station
- September 21, 2017 S.B. 42: *Court Security Requirements*, presented by Hon. Allen Gilbert, Presiding Judge, City of San Angelo
- October 12, 2017 *Bail and Jail*, presented by Hon. Robin Ramsay, Presiding Judge, City of Denton

Visit our Online Learning Center (OLC) for more information on how to participate in upcoming webinars or access archived webinars. Login to the OLC using the following instructions:

1. Type http://online.tmcec.com into your browser's address bar or click here: TMCEC OLC
2. Once on the Online Learning Center home page, find the login box in the upper left corner of the page.
3. Enter your username and password and click Login. You should have received a letter detailing your login information; if you have not received the letter, please contact TMCEC at 800.252.3718 or 512.320.8274 or by emailing tmcec@tmcec.com.

H.B. 355
Subject: Prohibiting Sex Offenders from Residing on College Campuses
Effective: September 1, 2017

With the issue of sexual assault and rape being at the forefront of college campus safety discussions, it seems to be a statutory oversight that sex offenders on the Department of Public Safety Sex Offender Registry are allowed to live in an on-campus dormitory or on-campus housing facility.

H.B. 355 adds Article 62.064 of the Code of Criminal Procedure, prohibiting a person subject to registration as a sex offender from residing on the campus of public or private institutions of higher learning unless (1) the person is assigned a numeric risk level of one using the sex offender screening tool outlined in Article 62.007 of the Code of Criminal Procedure, and (2) the institution approves of the person residing on campus. The bill also amends Article 62.058 of the Code of Criminal Procedure requiring local law enforcement to include a statement describing the prohibition under added Article 62.064 to a person being provided a registration form for verification under the Sex Offender Registration Program.

H.B. 681
Subject: Restricting Information that Relates to a Person Convicted or Granted a Dismissal after Deferred Disposition for a Fine-Only Misdemeanor
Effective: September 1, 2017

Public availability of certain fine-only misdemeanor records may carry a stigma that can limit housing and other opportunities. Additionally, maintaining court records and related documents in perpetuity may have a financial burden for Texas counties and cities. H.B. 681 creates Section 45.0218 of the Code of Criminal Procedure, making records and information following deferred disposition or final conviction confidential after five years.

TMCEC: H.B. 681 is very similar in intent to another bill passed this session, S.B. 47. Both bills seek to address records and other information available to the public regarding deferred disposition or convictions for fine-only misdemeanors. Part of this arises from privacy groups advocating to limit public access to certain records. There has been a realization that what some call "low level" or "minor offenses" actually carry important legal and societal consequences.

S.B. 47 mandates a study of how these records are held in Texas counties, but H.B. 681 goes a step further, essentially sealing records and information on deferred disposition or convictions after five years. At first glance, this is redundant, considering state records retention schedules. Section 441.158 of the Government Code provides that the Texas State Library and Archives create records retention schedules for local government and criminal records. These schedules currently provide that criminal case records only be retained for five years from the date of disposition and two years for dismissals. Consequently, deferred disposition and conviction records may be confidential after five years under H.B. 681, but those records likely will have already been destroyed.

Under H.B. 681, however, all records, files, and information stored by *electronic means or otherwise* are confidential and may not be disclosed to the public. Case file records may have been destroyed in accordance with the records retention schedules, but this may not include information stored electronically in case management software, online, or by other administrative means. In addition to entities such as the Department of Public Safety, defense counsel, and judges, H.B. 681 permits inspection by insurance companies if the offense is a traffic offense. This could conceivably allow these companies to inspect electronic records related to traffic offenses, including after deferred disposition, even after the case file itself has long since been destroyed.

H.B. 1264
Subject: Agreements Between Municipalities for Concurrent Jurisdiction
Effective: September 1, 2017

The City of Rowlett has assumed responsibility for first responder services such as police, fire, and ambulance services for a segment of the I-30 corridor running over Lake Ray Hubbard which is owned by the City of Dallas. Therefore, Rowlett police officers must file citations in Dallas municipal courts for Class C misdemeanor traffic offenses which occur on that stretch of highway.

H.B. 1264 addresses this situation by amending Articles 4.14 and 13.045 of the Code of Criminal Procedure and Section 29.003 of the Government Code to allow certain municipalities to enter into an agreement providing concurrent jurisdiction for municipal courts for all criminal cases arising under state law and offenses punishable by fine only if the offense is committed within 2.25 miles of the boundary on a segment of highway in the state highway system that traverses a major water supply reservoir.

H.B. 1266
Subject: Continuance for Insufficient Notice of Trial
Effective: September 1, 2017

It is problematic when a trial court sets certain pre-trial motions without providing notice to either the state or the defense as this leaves little time for witnesses to be contacted and for attorneys to prepare before being called into a hearing. H.B. 1266 remedies this problem by requiring notice to the parties in the case to ensure that all parties are able to properly prepare.

Chapter 29 of the Code of Criminal Procedure (Continuance) is amended by adding Article 29.035 (For Insufficient Notice of Hearing or Trial). Subsection (a) requires a trial court, notwithstanding Article 28.01 (Pre-Trial) or any other provision of Chapter 29 governing continuance, to grant a continuance of a criminal action on oral or written motion of the state or the defendant if the trial court sets a hearing or trial without providing to the attorney for the state and the defendant, or the defendant's attorney, notice of the hearing or trial at least three business days before the date of the hearing or trial. Subsection (b) provides that the new article does not apply during the period between the date the trial begins and the date the judgment is entered.

Article 29.035 of the Code of Criminal Procedure applies to a criminal action pending before a trial court on or after its effective date (September 1, 2017) regardless of whether the offense that is before the trial court was committed before, on, or after the effective date.

H.B. 4147
Subject: Appeals from a Judgment or Conviction in a Municipal Court of Record
Effective: September 1, 2017

TMCEC: At the time of the passage of H.B. 731, The Uniform Act on Municipal Courts of Record, 1999, the Legislature had no way of knowing how many municipalities would choose to create municipal courts of record or where such courts would be located. Prior to the Act, the creation of a municipal court of record required state legislation. By 2015, there were 155 municipal courts of record in Texas. Notably, only 51 were created by acts of the Legislature. There was also no way of knowing whether such courts would be located in counties with a statutory county court. (Today, statutory county courts only exist in 91 of the Lone Star State's 254 counties.)

H.B. 4147 amends the Government Code to clarify that a county court has jurisdiction of any appeal from a judgment or conviction in a municipal court of record located in that county if the county does not have a county criminal court, county criminal court of appeal, municipal court of appeal, or county court at law.

Section 30.00014(a) of the Government Code (Appeal) is amended to provide that if a county does not have a county court at law under Chapter 25 (Statutory County Courts), the county court has jurisdiction of any appeal.

Section 2 of the bill states that it is intended only to clarify existing law with respect to a judgment or conviction that occurs in a municipal court of record and is appealed to a county court.

S.B. 46
Subject: Juror Identification Numbers
Effective: September 1, 2017

Calling out a juror's name while polling the jury for a verdict in open court can pose a safety risk to the juror, particularly in controversial cases. Allowing judges to use juror identification numbers when polling the jury can reduce this risk.

S.B. 46 amends Article 37.05 of the Code of Criminal Procedure (Polling the Jury) allowing a judge to assign each juror an identification number to use in place of a juror's name for the purpose of polling the jury.

S.B. 291
Subject: Hearing and Use of Writ of Attachment of a Witness
Effective: September 1, 2017

In 2016, a sexual assault victim witness was subject to a writ of attachment, issued in the judge's chambers, and ordered into custody of the Harris County jail. After breaking down during her testimony and leaving the courtroom, she was hospitalized in the county psychiatric hospital for 10 days. Upon discharge from that hospital, she was detained and booked in the Harris County jail. While in jail, she was re-victimized and her mental state rapidly diminished. These events took place during the Christmas holidays and she remained in jail into January. More procedure and accountability can help prevent this sort of horrific event from occurring in Texas.

S.B. 291 adds Article 24.111 of the Code of Criminal Procedure (Hearing Required before Issuance of Certain Writs) requiring a judge to hold a hearing before issuing a writ of attachment to determine if it is in the best interest of justice. A judge should use an affidavit submitted by the requesting attorney to aid in this determination, and the witness to be served with the writ should have an attorney appointed to them.

Other amendments to the Code of Criminal Procedure include Article 24.011 (Subpoena; Child Witness) and Article 24.12 (When Attachment May Issue) which require an attorney who requests a writ of attachment to include a statement of good faith and reason to believe that the witness is material. Article 24.221 (Affidavit Regarding Confinement) and 24.222 (Hearing During Confinement of Witness) requiring a sheriff who takes a witness into custody pursuant to added Article 24.111 to submit an affidavit to the issuing court stating that the person has been taken into custody. A witness confined at least 24 hours may request a hearing regarding whether continued confinement is necessary.

S.B. 291 also adds Article 2.212 of the Code of Criminal Procedure (Writ of Attachment Reporting) requiring the court clerk for a district, statutory county, or county court to report to the Texas Judicial Council a writ of attachment issued by their court not later than 30 days after it is issued.

H.B. 9
Subject: Ransomware Offense in the Texas Cybercrime Act
Effective: September 1, 2017

Ransomware is malicious software used to interfere with the victim's ability to access their data on the victim's computer system or network until the victim pays the criminal to return access to the victim.

H.B. 9 amends Chapter 33 of the Penal Code by adding Sections 33.023 and 33.024. Section 33.023 creates a Class C misdemeanor: electronic data tampering (1) for a person who knowingly alters data as it transmits between two computers in a computer network or computer system without the effective consent of the owner, and (2) for a person who knowingly introduces malware or ransomware onto a computer, computer network, or computer system without the effective consent of the owners and without legitimate business purposes. Section 33.023 establishes that software is not ransomware for the purposes of an electronic data tampering offense if the software restricts access to data because authentication is required to upgrade or access purchased content or because access to subscription content has been blocked for nonpayment.

Section 33.024 creates a Class C misdemeanor: intentional decryption of encrypted private information through deception and without a legitimate business purpose. It is a defense to prosecution if the conduct was pursuant to an agreement with the owner for the purpose of assessing or maintaining security of the information or of a computer, computer network, or computer system or if providing other services related to security.

These two Class C misdemeanors can be enhanced to a Class B or Class A misdemeanor, state jail felony, or third, second, or first degree felony depending on the aggregate harm.

H.B. 9 amends Section 33.03 of the Penal Code to add affirmative defenses that the actor was an officer, employee, or agent of a communications common carrier or electronic utility and committed the proscribed act in the course of employment while engaged in an activity that is a necessary incident to service of the communications common carrier or electric utility.

H.B. 351
Subject: Punishment for Forgery and a Related Fee
Effective: September 1, 2017

Last session, the Governor signed H.B. 1396, which updated the property crime "value ladder" to reflect 20 years of inflation. Forgery was unintentionally left out of the threshold adjustment. This amendment corrects this oversight and updates the threshold ladder for forgery crimes related to fake checks, money orders, and other simple transactions to match the penalty ladder for the rest of Texas' theft offenses.

Section 25 contains an amendment of Section 32.21 of the Penal Code, to bring the offense of forgery in line with the damage amounts for all other property crimes, including the similar crime of theft by check. As amended, when an actor engages in conduct to obtain or attempt to obtain a property or service and the value of the property is less than $100, the offense is a Class C misdemeanor.

In Section 23, Article 102.0071 of the Code of Criminal Procedure is amended to allow a justice court to collect fees from an individual convicted of forging a check per Section 3.506 of the Business and Commerce Code.

H.B. 435
Subject: Carrying Handguns and the Application of Certain Handgun License Laws to Certain Persons
Effective: September 1, 2017

Requiring volunteer emergency services personnel who carry handguns to remove their handguns before they are allowed on certain premises to perform their duties could result in dangerous delays in the rendering of emergency services. H.B. 435 addresses this issue providing a defense to prosecution under Sections 30.06 (Trespass by License Holder with a Concealed Handgun) and 30.07 (Trespass by License Holder with and Openly Carried Handgun) of the Penal Code for license holders who are volunteer emergency services personnel. That term is defined in new Subdivision (18) of Section 46.01 of the Penal Code. Section 12 of the bill provides a similar defense to prosecution under certain subsections of Section 46.035 of the Penal Code (Unlawful Carrying of Handgun by License Holder) for volunteer emergency services personnel, the attorney general, an assistant attorney general, a U.S. attorney, and an assistant U.S. attorney.

Section 13 of the bill amends Section 46.15(a) of the Penal Code making Sections 46.02 (Unlawful Carrying Weapons) and 46.03 (Places Weapons Prohibited) of the Penal Code inapplicable to the attorney general, an assistant attorney general, a U.S. attorney, an assistant U.S. attorney (if licensed to carry a handgun under Chapter 411 of the Government Code), as well as volunteer emergency services personnel if the person is carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code, and engaged in providing emergency services.

Section 7 of the bill permits a state hospital to prohibit a license holder from carrying a handgun on the property of the hospital by providing written notice. A violation could result in a civil penalty.

TMCEC: Section 6 of the bill amends Section 411.209 of the Government Code (Wrongful Exclusion of Handgun License Holder) prohibiting a state agency or political subdivision from putting up signs described by Section 30.06 of the Penal Code, referring to that law, or referring to a license to carry a handgun that wrongfully exclude a license holder from entering places owned or leased by the governmental entity (unless they are prohibited by Section 46.03 or 46.035 of the Penal Code). Section 411.209 was enacted last Session (84th Legislative Session) in the wake of open carry legislation. However, when enacted, this section failed to strike the outmoded "concealed handgun license" (See, Regan Metteauer, "Everything Has Not Changed: What Municipal Courts Need to Know about Guns and New Legislation," *The Recorder* (January 2016)). H.B. 435 strikes "concealed," but, aside from correctly naming the license, it is unclear if H.B. 435 makes a substantive change to a city's liability under Section 411.209. H.B. 435 makes that section inapplicable to a written notice provided by a state hospital under Section 552.002, Health and Safety Code.

H.B. 683
Subject: Misrepresentation of an Object or Vehicle by Use of Law Enforcement Insignia
Effective: September 1, 2017

To maintain public trust in law enforcement, it is important for communities to distinguish between peace officers and private security companies in municipalities.

H.B. 683 removes the population restriction of two million or more in Section 341.904 of the Local Government Code (Possession or Use of Law Enforcement Identification, Insignia, or Vehicle in a Municipality), so that the offense (Class B misdemeanor) may be committed in any municipality.

The bill amends Section 37.12 of the Penal Code (False Identification as Peace Officer; Misrepresentation of Property) to expressly include vehicles in the Class B misdemeanors found in Subsections (a) and (d).

Additionally, if the item was used or intended for use exclusively for decorative, artistic, or dramatic presentation,

such use is no longer a defense to prosecution, but is instead an exception.

As amended, for purposes of Section 37.12, an item bearing an insignia of a law enforcement agency includes an item that contains the word "police," "sheriff," "constable," or "trooper."

The bill adds language to Subsection (d) that intentionally or knowingly misrepresenting an object as property belonging to a law enforcement agency includes intentionally or knowingly displaying an item bearing an insignia of a law enforcement agency in a manner that would lead a reasonable person to interpret the item as property belonging to a law enforcement agency.

H.B. 1424
Subject: Operation of Unmanned Aircrafts over Certain Facilities and Sports Venues
Effective: September 1, 2017

Concerned observers have noted a lack of restrictions on drone flights above correctional facilities, detention facilities, and large-capacity sports venues in Texas. H.B. 1424 seeks to address security concerns by restricting the unauthorized operation of unmanned aircraft over these facilities and venues.

H.B. 1424 amends Section 423.0045 of the Government Code to expand the conduct that constitutes an offense involving the unlawful operation of an unmanned aircraft over certain facilities to include operation not higher than 400 feet above ground level over a correctional facility or detention facility; allowing an unmanned aircraft to make contact with a correctional facility or detention facility, including any person or object on the premises of or within the facility; or allowing an unmanned aircraft to come within a distance of a correctional facility or detention facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

The bill defines "correctional facility" as a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice, a municipal or county jail, or a confinement facility operated by or under contract with the Federal Bureau of Prisons and defines "detention facility" as a facility operated by or under contract with U.S. Immigration and Customs Enforcement for the purpose of detaining aliens and placing them in removal proceedings.

The bill enhances the penalty for an offense involving the unlawful operation of an unmanned aircraft over a correctional facility, detention facility, or critical infrastructure facility from a Class B misdemeanor to a Class A misdemeanor if the actor has previously been convicted of the offense created by the bill for the unlawful operation of an unmanned aircraft over a sports venue.

H.B. 1424 also adds Section 423.0046 creating a Class B misdemeanor for a person who operates an unmanned aircraft not higher than 400 feet above ground level over a sports venue, defined by the bill as an arena, automobile racetrack, coliseum, stadium, or other type of area or facility that has a seating capacity of 30,000 or more people and is primarily used for one or more professional or amateur sports or athletics events.

The bill exempts the following from committing the offense: the federal government, the state, a governmental entity, or a law enforcement agency; a person under contract with or otherwise acting under the direction or on behalf of any of those entities; an operator of an unmanned aircraft that is being used for a commercial purpose, if the operator is authorized by the FAA to conduct operations over the airspace; an owner or operator of the sports venue; a person under contract with or otherwise acting under the direction or on behalf of an owner or operator of the sports venue; and a person who has the prior written consent of the owner or operator of the sports venue.

The penalty for such an offense enhances from a Class B misdemeanor to a Class A misdemeanor if the actor has previously been convicted of the offense or of an offense involving the unlawful operation of an unmanned aircraft over a correctional facility, detention facility, or critical infrastructure facility.

TMCEC: This is the Legislature's second attempt to tweak the Texas Privacy Act since it was passed into law four years ago. The Texas Privacy Act was intended to address privacy concerns over images of individuals or private property captured by unmanned aircraft. See, Colin Norman, "The Texas Privacy Act: Tall Enough Fences to Keep Out Nosy Drones?," *The Recorder* (April 2014). In addition, the Act sought to remove certain airspace from drone use that is over sensitive or critical areas. Currently, these include areas such as dams, refineries, and electrical power substations. H.B. 1424 adds correctional facilities and sports venues to that list.

This turned out to be a timely, and prescient, addition to the Texas Privacy Act. In July 2017, a South Carolina inmate at a maximum security prison managed to orchestrate a successful escape using a drone to deliver wire cutters to the prison. Separately, the Legislature addressed other issues with the Texas Privacy Act in S.B. 840 and H.B. 1643. Considering the higher level misdemeanors attached to the offense spelled out in H.B. 1424, this could be one part of the Texas Privacy Act that proves to be the effective deterrent that privacy advocates hoped for in 2013.

H.B. 1643
Subject: Regulation of Unmanned Aircraft by Political Subdivisions
Effective: September 1, 2017

H.B. 1643 adds Section 423.009 of the Government Code (Regulation of Unmanned Aircraft by Political Subdivision) authorizing a municipality to adopt or enforce any ordinance, order, or other similar measure regarding the use of an unmanned aircraft: (1) during a special event (defined in the statute); (2) by the municipality; or (3) near a facility or infrastructure owned by the municipality (if the municipality provides notice and a hearing and receives federal authorization). However, an ordinance, order, or other similar measure that regulates outside these parameters violates Subsection 423.009(b) and is void and unenforceable.

The bill also amends Section 423.0045(a)(1) (Offense; Operation of Unmanned Aircraft over Critical Infrastructure Facility) by adding structures that provide wired or wireless telecommunication services and concentrated animal feeding operations to the list of designated critical infrastructure facilities protected from unauthorized flight by unmanned aircrafts. Additionally, it adds to the list certain oil and gas locations enclosed by fences or other physical barriers, including: oil or gas drilling sites; groups of tanks used to store crude oil; gas or chemical production facilities; oil or gas wellheads; and any oil or gas facility that has an active flare. An offense is a Class B misdemeanor (Class A misdemeanor if the person has been convicted previously of an offense).

TMCEC: In absence of specificity in Section 423.009, is a criminal offense created by municipal ordinance a Class C misdemeanor with a maximum fine of $500 per Section 54.001 of the Local Government Code?

Other bills related to the use of drones: S.B. 840 and H.B. 1424.

H.B. 1771
Subject: Discharge of a Firearm along the Canadian River in Potter County
Effective: September 1, 2017

H.B. 1771 amends Chapter 287 of the Parks and Wildlife Code (Potter County) by adding Section 287.001 (Discharge of Prohibited Firearm) to make it a Class C misdemeanor for a person to discharge a firearm or shoot an arrow in or on the bank of the Canadian River, within the designated area specified in this section between the Canadian River extending from the intersection of U.S. Highways 287 and 87.

This section does not apply to individuals acting within the scope of their duty as a peace officer or an employee of the Texas Department of Parks and Wildlife, the discharge of a shotgun loaded with ammunition that releases only shot when discharged. This section does not limit the ability of a license holder to carry a concealed handgun under the authority of Subchapter H, Chapter 411 of the Government Code.

H.B. 1810
Subject: Offense of Possession or Promotion of Lewd Visual Material Depicting a Child
Effective: September 1, 2017

Currently, state law offenses involving child pornography leave a grey-area for certain images that, while depicting a child in a sexually suggestive manner, do not fit the legal requirements to be punished under Section 43.26 of the Penal Code (Possession or Promotion of Child Pornography).

H.B. 1810 addresses this issue by adding Section 43.262 to the Penal Code (Possession or Promotion of Lewd Visual Material Depicting a Child) to make it a state jail felony for a person to possess or promote images that depict the lewd exhibition of a child. A person commits the offense if they promote or possess "visual material" as defined in 43.26(b) that depicts a child under 18 clothed or unclothed in a sexually suggestive manner, without literary, artistic, or scientific merit, and the person does so in the interest of sexual gratification. An offense under this section is a state jail felony. The punishment can be enhanced to a third or second degree felony for subsequent convictions. It is not a defense that the depicted underage person consented to the creation of the visual material.

H.B. 1819
Subject: Engaging in Certain Conduct with Respect to a Firearm Silencer
Effective: September 1, 2017

H.B. 1819 purportedly addresses restrictions related to firearm silencers that affect the availability of these products for individuals who wish to purchase them for hearing protection. The bill amends Section 46.05 of the Penal Code (Prohibited Weapons) to exclude a firearm silencer that is classified as a curio or relic by the U.S. Department of Justice or otherwise possessing, manufacturing, transporting, repairing, or selling a firearm silencer in compliance with federal law.

The bill also adds language to Subsection 46.05(l) excluding from the offense explosive weapons, machine guns, and short-barrel firearms that are otherwise not subject to the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

TMCEC: To be clear, it is still illegal to have a silencer in Texas (as long as it is not a curio or relic, or is otherwise permitted by the federal government). The buried lead lies in the added language in Subsection 46.05(l) resulting from a Senate amendment. Some gun enthusiasts refer to this language as "The Mossberg Amendment," named for the Mossberg 590 Shockwave, and believe this bill to legalize that particular firearm in Texas based on an ATF ruling.

H.B. 1884
Subject: Additional Community Service Hours for Repeat Litter Offenses
Effective: September 1, 2017

Every year, the state spends millions of dollars on cleanup for litter and illegal dumping. A recent study by Texans for Clean Water revealed the City of Houston spent over $13 million in 2015 for litter cleanup. According to a recent Texas Department of Transportation survey, there has been an 81 percent increase in litter along state roads and highways.

H.B. 1884 seeks to deter further acts of littering and dumping by requiring repeat offenders of offenses under Sections 365.012 (Illegal Dumping; Discarded Lighted Materials; Criminal Penalties), 365.013 (Rules and Standards; Criminal Penalty), and 365.016 (Disposal of Litter in a Cave; Criminal Penalty) of the Health and Safety Code to perform up to 60 community service hours as provided by Article 42A.304(e) of the Code of

Criminal Procedure, in addition to satisfying any fine or penalty required by these sections. Amended Article 42A.304(e) permits a court to credit the amount of community service performed by a defendant under that subsection toward any amount of community service the defendant is ordered to perform under another provision of this code as a result of the defendant's inability to pay a fine or cost imposed in the judgment for the applicable offense.

TMCEC: While the amendments to the offenses in Chapter 365 of the Health and Safety Code contemplate an offense that may be a Class C misdemeanor, it is important to note that this bill makes no reference to community service as provided in Chapter 45 (Justice and Municipal Courts). Chapter 42A of the Code of Criminal Procedure is inapplicable to municipal courts (including municipal courts of record). H.B. 1884 only seems to contemplate adjudication of illegal dumping and mandatory community service in county and district courts.

H.B. 1935
Subject: Restrictions on Carrying Knives in Certain Locations
Effective: September 1, 2017

H.B. 1935 amends the definition of illegal knives in Chapter 46 of the Penal Code (Weapons) (and Sections 52.031 and 53.01 of the Family Code) replacing the term "illegal knife" with "location-restricted knife," defined in amended Section 46.01(6) of the Penal Code (Definitions) as a knife with a blade over five and one-half inches. The bill removes references to the following in that provision: hand instrument designed to cut or stab another by being thrown; dagger, including but not limited to a dirk, stiletto, and poniard; bowie knife; sword; or spear.

Additionally, the bill amends Section 46.02 of the Penal Code (Unlawful Carrying of Weapons), removing "illegal knife" from the applicability of that offense. However, the bill adds Subsection (a-4) creating a new Class C misdemeanor for persons under the age of 18 that intentionally, knowingly, or recklessly carry a location-restricted knife unless it is (1) on the person's own premises; (2) inside of or directly en route to a motor vehicle or watercraft owned by the person or under their control; or (3) under the direct supervision of the person's parent or legal guardian.

Amended Subsection 46.15(e) provides that Section 46.02(a-4) does not apply to a person carrying a location-restricted knife used in a historical demonstration or in in a ceremony in which the knife is significant to the performance of the ceremony.

Under current law, an offense under Section 46.03(a) of the Penal Code (Places Weapons Prohibited) is a third degree felony. H.B. 1935 adds Subsection (g-1) providing that if the weapon that is the subject of the offense is a location-restricted knife, an offense under this section is a Class C misdemeanor, except that the offense is still a third degree felony if the offense is committed under Subsection (a)(1) (taking or possessing a prohibited weapon on the physical premises of a school or educational institution).

In the same vein, H.B. 1935 adds Subsection 46.03(a-1) prohibiting carrying a location-restricted knife on additional premises, punishable as a Class C misdemeanor. The premises include businesses that primarily serve alcoholic beverages on-site (51 percent or more of their revenue); any high school, collegiate, or professional sporting event or interscholastic event (unless the person is a participant and such a knife is being used in the event); correctional facilities; hospitals, nursing facilities, and mental hospitals; amusement parks; or any established place of religious worship.

TMCEC: As a result of H.B. 1935, come September 1, it will generally be lawful for a person to carry what is classified under current law as an illegal knife. This change is not as unbridled as it may seem. The bill creates certain restrictions for "location-restricted" knives (knives with a blade over five and one-half inches), including places where such knives are prohibited and restrictions on persons under the age of 18. Amended law will, however, treat such knives differently from other weapons, especially regarding punishment.

Come September 1, it will no longer be a third degree felony under amended Section 46.03 of the Penal Code to possess or go with an illegal knife on the premises of any government court or offices utilized by the court. It is instead a Class C misdemeanor to possess or go with a "location-restricted" knife on such premises.

The bill does not legalize daggers, bowie knives, or swords for purposes of Section 46.03. Those are statutorily undefined terms that created confusion for both law enforcement and knife owners. The bill simplifies the definition of the type of knife that is criminalized by Chapter 46: a knife with a blade over five and one-half inches. "Knife" is defined in Section 46.01(7) as any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument. If the blade of the dagger, bowie knife, or sword is over five and one-half inches, it is a location-restricted knife for purposes of Chapter 46 and a person is prohibited from possessing or going with it on the premises of a government court or offices utilized by the court.

As introduced, this bill would have removed altogether the category of illegal knife. An amendment resulting in the version of the bill that passed came after Harrison Brown, a student at the University of Texas in Austin was stabbed to death on campus by another student on May 1, 2017 with a weapon described as a Bowie knife with a blade longer than five and one-half inches. Three others were injured.

H.B. 2817
Subject: Punishment and Deterrence of Crimes Involving Bison, Cattle, and Horses
Effective: September 1, 2017

Interested parties contend that criminal penalties for individuals who kill another person's cattle, bison, or horses are inconsistent with similar offenses of parallel magnitude. H.B. 2817 addresses this issue by expanding the conduct that constitutes a third degree felony criminal mischief offense to include such behavior, specifically conduct in which an actor causes the death of one or more head of cattle or bison or one or more horses by discharging a firearm or other weapon or by any other means. H.B. 2817 also creates an exception to the application of the criminal mischief statute for intentionally or knowingly damaging, destroying, or tampering with the tangible property of the owner when the personal property was a head of cattle or bison killed, or a horse killed, in the course of the actor's regular agricultural labor duties and practices, or in discharge of official duties as a member of the Armed Forces.

TMCEC: Don't mess with a person's cattle in Texas. The new offense would be a third degree felony: that's two to ten years' imprisonment in the Texas Department of Criminal Justice.

H.B. 2880
Subject: Threat of Use or Exhibiting a Firearm on School Property or a School Bus
Effective: September 1, 2017

Some school resource officers have indicated the need for a criminal punishment for the threatened exhibition or use of a firearm in or on school property or on a school bus that recognizes the severity of the threat but also does not bring the lifelong consequences of a felony charge against a student. H.B. 2880 addresses that need by amending Section 37.125 of the Education Code to decrease the penalty for such an offense from a third degree felony to a Class A misdemeanor, unless the actor was in possession of or had immediate access to a firearm. In the latter case, the offense would remain a third degree felony.

H.B. 2908
Subject: Enhanced Criminal Penalties for Crimes Committed Against Peace Officers or Judges
Effective: September 1, 2017

Recent tragic events have hastened a call for greater protection for peace officers and judges from offenses committed because of bias or prejudice against public servants responsible for the the enforcement of laws.

H.B. 2908 amends current law relating to the punishment for a criminal offense committed against a person because of bias or prejudice on the basis of status as a peace officer or judge and increases criminal penalties.

Article 42.014 of the Code of Criminal Procedure (Finding that Offense was Committed Because of Bias or Prejudice) is amended to add peace officers and judges to the list of persons which penalties are enhanced if the criminal act was committed based on a bias or prejudice.

Section 20.02 of the Penal Code (Aggravated Assault) is amended to add Subsection 20.02(c)(3) to make it a second degree felony for a person to restrain an individual he knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty, in retaliation or because of an exercise of official power or performance of an official duty as a peace officer or judge.

Section 22.01 of the Penal Code (Assault) is amended to add Subsection (b-2) to make it a second degree felony for a person to assault a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

Section 22.07 of the Penal Code (Terroristic Threat) is amended to add Subsection (c-1) to make it a state jail felony to threaten to commit an offense involving violence against a person they know is a peace officer or judge.

Section 49.09 of the Penal Code is amended to enhance an offense committed under Section 49.07 (Intoxication Assault) to a first degree felony if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer or judge while the officer or judge was in the actual discharge of an official duty.

TMCEC: Court security and the protection of public servants turned out to be recurring themes this session. The attempted assassination of Travis County District Judge Julie Kocurek spurred the Legislature to pass S.B. 42, providing new protections for judges and their spouses. Elsewhere, the Legislature looked at the availability of public information to those who may abuse it across the state. H.B. 2908 addresses not only crimes against judges, however, but also law enforcement. This follows the ambush of police officers by a sniper in Dallas last year. In the Dallas shooting, five officers were killed and nine others were wounded, including two civilians. H.B. 2908 specifically increases the punishment in the Penal Code for crimes committed against both judges and law enforcement, and adds both peace officers and judges to the affirmative finding of bias or prejudice required by Article 42.014 of the Code of Criminal Procedure.

H.B. 3019
Subject: Injury to a Child, Elderly, or Disabled Individual
Effective: September 1, 2017

Interested parties express concern over the current scope of the offense of injury to a child, elderly individual, or disabled individual in relation to negligent operators of boarding home facilities. H.B. 3019 seeks to address this concern by including certain conduct committed by persons associated with such a facility in the conduct that constitutes that offense.

H.B. 3019 amends Section 22.04 of the Penal Code to specifically include a boarding home to the list of institutions held to a higher level of culpability for the offense of injury to a child, elderly individual, or disabled individual. The bill further adds mental illness, as defined by Section 571.003 of the Health and Safety Code to the definition of disabled individual in Section 22.04(c)(3) of the Penal Code.

H.B. 3453
Subject: Regulation of Game Rooms in Certain Counties
Effective: June 15, 2017

Currently, certain counties have the authority to regulate certain aspects of game rooms and assert that this authority offers greater protection to promote the public health, safety, and welfare of residents in those counties and would similarly benefit other counties. H.B. 3453 amends Section 234.132 of the Local Government Code to extend the authority to regulate game rooms to a county that is located in the Permian Basin, a county along the Louisiana Border, and two other counties with certain populations. A violation of a game room regulation under Section 234.132 is a Class A misdemeanor.

H.B. 3535
Subject: Taking of Feral Hogs and Coyotes Using Hot Air Balloon
Effective: September 1, 2017

The growing feral hog and coyote population continues to be a significant problem for landowners across Texas, specifically because of damage to crops.

H.B. 3535 amends Chapter 43 of the Parks and Wildlife Code (Special Licenses and Permits) by adding Section 43.1076 permitting a qualified landowner or landowner's agent to contract to participate as a hunter or observer in using a hot air balloon to hunt depredating feral hogs or coyotes under the authority of Subchapter G (Permits to Manage Wildlife and Exotic Animals from Aircraft).

TMCEC: Under Section 43.107 of the Parks and Wildlife Code (not amended by this bill), failure to timely submit required reports regarding permits to use an aircraft to manage wildlife and exotic animals (which, because of this bill will include hot air balloons) is a Class C Parks and Wildlife Code misdemeanor.

Why hot air balloons? Proponents of the bill point to them as a particularly effective method for taking these animals. Under current law (Section 43.1075), landowners may use helicopters to take depredating feral hogs or coyotes, however, that is expensive and the noise from the helicopter scares the animals away. A hot air balloon is quieter and more stable to shoot from.

S.B. 7
Subject: Improper Relationship Between Educator and Student
Effective: September 1, 2017

There have been too many cases involving an educator who has an inappropriate relationship with a student in one school district and then moves and obtains employment in another school district without the new school district ever receiving notice of the inappropriate relationship. The goal of S.B. 7 is to reduce the risks faced by school districts and students by closing loopholes and providing penalties for conduct relating to an inappropriate relationship between an educator and a student.

Section 21.12 of the Penal Code (Improper Relationship between Educator and Student) requires a school employee to hold an appropriate certificate for their position at the school in order to be charged with the offense. S.B. 7 amends that section to strike the certificate language and clarifies that any employee described in Section 21.003(a) of the Education Code can be charged with this offense regardless of holding a certificate or not. Section 21.003(a) includes teachers, teacher interns or teacher trainees, librarians, educational aides, administrators, educational diagnosticians, and school counselors An offense under this section is a felony of the second degree.

S.B. 7 eliminates language that requires an educator work in the same school district that the student attends or that the educator provide education services to the student, thereby expanding the offense.

S.B. 7 creates a state jail felony of failure to follow reporting procedures as described in Section 21.006(c) of the Education Code, by principals or superintendents if it is done with the intent to conceal an educator's criminal record or alleged incident of misconduct.

TMCEC: In September 2016, the Texas Court of Criminal Appeals affirmed a decision of the 9th Court of Appeals in Beaumont that Section 21.12 did not include within the scope of prohibited relationships, relationships between students and a school district peace officer. *State v. Sutton*, PD-1051-15 (Tex. Crim. App. Sept. 14, 2016). Many suspected that in 2017 the Legislature would broaden the scope of employees included under the offense. While the offense was expanded, the types of school employees described in Section 21.003(a) was not expanded by S.B. 7.

S.B. 8
Subject: Offenses Related to Dismemberment Abortions, Partial Birth Abortions, Reporting Requirements, and Donating or Selling Human Fetal Tissue
Effective: September 1, 2017

S.B. 8 adds Subchapters F (Partial-Birth Abortions) and G (Dismemberment Abortions) to Chapter 171 of the Health and Safety Code (Abortion). Section 171.102 prohibits a physician or other person from knowingly performing a partial birth abortion (defined) and Section 171.153 of the Health and Safety Code prohibits a person from intentionally performing a dismemberment abortion (defined) unless necessary in a medical emergency; both sections are punishable as a state jail felony.

Neither offense applies to a woman upon whom each respective type of abortion is performed. The offense in Section 171.102 does not apply to a physician who performs a partial-birth abortion that is necessary to save the life of a mother under certain circumstances. The offense in Section 171.153 does not apply to an employee or agent acting under the direction of a physician who performs a dismemberment abortion, or a person who fills a prescription or provides equipment used in a dismemberment abortion.

New Section 171.154 contains extensive provisions regarding the statutory construction of Subchapter G.

The bill adds Section 173.007 of the Health and Safety Code creating a Class A misdemeanor for offering a woman monetary or other consideration to have an abortion for the purpose of donating human fetal tissue. It is also a Class A misdemeanor to knowingly or intentionally solicit or accept tissue from a fetus gestated solely for research purposes. Both are punishable by a fine not to exceed $10,000.

S.B. 8 amends Section 245.11 of the Health and Safety Code creating a Class A misdemeanor for violating physician reporting requirements laid out in Subsections (b), (c), and (d) of this section.

The bill amends the definition of abortion in Section 245.002 of the Health and Safety Code and adds references to that section in other sections of the Health and Safety Code and certain sections of the Family Code that define abortion.

Under added Section 48.03 of the Penal Code, a person commits a state jail felony if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human fetal tissue for economic benefit. It is a defense to prosecution that employees or contractors of an accredited public or private institution of higher education acquired, received, or transferred human fetal tissue while fulfilling a donation authorized by Section

173.005 of the Health and Safety Code. This section does not apply to human fetal tissue acquired, received, or transferred for other certain purposes.

S.B. 208
Subject: Regulating the Sale of Explosives to a Metal Recycling Entity
Effective: September 1, 2017

Undetonated explosives are dangerous. Recycling metal is an important industry. S.B. 208 addresses the dangers associated with undetonated explosive devices that are presented for sale at metal recycling entities and notes that the presence of such devices at metal recycling entities poses a threat to the general public. S.B. 208 seeks to address these concerns by providing for the regulation of metal recycling entities with regard to explosive devices.

S.B. 208 amends Section 1956.040 of the Occupations Code to create a Class A misdemeanor for knowingly selling an explosive device to a metal recycling entity, a metal recycling entity knowingly buying such explosive device, or a metal recycling facility storing or allowing the storage of an explosive device on their premises. A metal recycling facility is considered to be storing an explosive device if they have not reported its presence within 72 hours of being presented the explosive device for sale or attempted sale.

These three new Class A misdemeanors are enhanced to a second degree felony if at trial it is shown that the offense caused death or serious bodily injury as a result of the detonation of an explosive device. A metal recycling entity shall report the possession of an explosive device unknowingly purchased not later than the close of business on the entity's first working day after the date the possession of the device is discovered.

S.B. 227
Subject: Repeal of a Loophole Preventing Prosecution for Certain Substances in Penalty Group 2 of the Texas Controlled Substances Act
Effective: September 1, 2017

Texas law classifies dangerous synthetic drugs under the Texas Controlled Substances Act. Specifically, S.B. 172, 84th Legislature, Regular Session, 2015, provided a comprehensive approach to classifying synthetic hallucinogens, also known as "25-I" or "N-Bomb." That bill included a provision codified as Section 481.103(d) of the Health and Safety Code. This provision prohibited a conviction for manufacture, delivery, or possession for a substance in Penalty Group 2 of the Texas Controlled Substances Act, as long as that substance was approved by the federal Food and Drug Administration.

While this provision was well-intentioned to provide an extra layer of statutory security to consumers who use a legally prescribed substance, the practical effect was not so clear. There had been reports that, because of this language, some Texas prosecutors were unable to convict individuals who possessed or delivered federally approved drugs that were not prescribed to those individuals. Section 481.103(d) is not necessary to protect patients who have been legally prescribed a substance that appears in Penalty Group 2 of (Section 481.116(a) of the Health and Safety Code). S.B. 227 repeals the offending language, aligning Penalty Group 2 with other provisions of the Texas Controlled Substances Act.

TMCEC: In recent years, the state has struggled to keep up with regulation of synthetic drugs. The ever changing chemical compounds have frustrated the Legislature's attempts to clearly outlaw certain synthetics. This is the second attempt to address "25-I" after the 84th Legislature. This issue will likely not be going away. For more information on issues with designer drugs, see, Ned Minevitz, "Designer Drugs: How Drivers Might be Circumventing Intoxicated Driving Laws" *The Recorder* (January 2014).

S.B. 840
Subject: Unmanned Aircraft Authorized to Capture Images of Private Individuals or Property Within 25 Miles of the U.S. Border for Law Enforcement
Effective: September 1, 2017

Current law prohibits the use of an unmanned aircraft to capture an image of an individual or privately owned real property in this state "with the intent to conduct surveillance on the individual or property captured in the image." The introduced version of the bill that created this provision included an exception which provided that it would be a "defense to prosecution" that an image was captured within 25 miles of the border "for the sole purpose of enforcing border laws." The version of the bill that ultimately passed, and the current law today, break this exception in two: current law contains a law-enforcement exception and a blanket exception for images captured within 25 miles of the border, regardless of purpose.

Under current law, then, it would appear to be entirely lawful for any person for any reason to "use an unmanned aircraft to capture an image of an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image," provided the person or property is within 25 miles of the border. S.B. 840 addresses this issue by amending Section 423.002 (Nonapplicability) of the Government Code and also provides an additional defense to the laundry list enumerated in Subsection (a).

TMCEC: This is the Legislature's second attempt to tweak the Texas Privacy Act since it was passed into law four years ago. The Texas Privacy Act was intended to address privacy concerns over images of individuals or private property captured by unmanned aircraft. See, Colin Norman, "The Texas Privacy Act: Tall Enough Fences to Keep Out Nosy Drones?" *The Recorder* (April 2014).

At the time, TMCEC noted that enforcement of the Class C misdemeanors in the Act could be cumbersome partly due to the lengthy list of specific situations where the Act was "not applicable" (the list contained 19 very specific situations, procedurally defenses, where the Act did not apply). In 2015, the Legislature again amended the Act, adding two more defenses to the list, and bringing the total to 21. S.B. 840 continues that trend, this time renumbering the list, expanding law enforcement permitted uses, and adding insurance companies. In addition, another bill, H.B. 1424, separately addressed offenses under the Act. It remains to be seen if the Texas Privacy Act will serve as an effective enforcement tool of privacy rights in Texas.

S.B. 1232
Subject: Inappropriate Conduct Between a Person and an Animal
Effective: September 1, 2017

S.B. 1232 creates an offense in the Penal Code for the crime of "bestiality." Current law only classifies sexual crimes against animals as "public lewdness" under Section 21.07 of the Penal Code.

Bestiality is generally defined as an act that involves the touching of the mouth or genital region of a person to the mouth or genital region of an animal. A person also commits an offense if they cause that activity, promote that activity, allow the activity to occur on their premises, or buy/sell an animal for the purpose of that activity. An offense of this nature is a state jail felony. If the animal is seriously harmed or killed in the commission of the offense, the offense is a second degree felony. If community supervision is ordered, a judge may cause a defendant to surrender all animals in their possession, prohibit a defendant from owning/possessing an animal, or require counseling or other treatment.

TMCEC: Note that in addition to this new offense, S.B. 1232 creates a new presumption at cruelly treated animal hearings (Subchapter B of Chapter 821 of the Health and Safety Code, Disposition of Cruelly Treated Animal). A conviction for bestiality is now prima facie evidence that *any* animal in that person's possession has been cruelly treated.

S.B. 1390
Subject: Exempting Research Institutions from Tax Stamp Requirements for Cigarettes
Effective: September 1, 2017

Chapter 154 of the Tax Code currently provides for a Class A misdemeanor for possession of cigarettes that do not have a tax stamp affixed to the packaging and a third degree felony for their transportation. S.B. 1390 adds Section 154.026 to the Tax Code which exempts cigarettes sold by a manufacturer directly to a research facility exclusively for research purposes from having a tax stamp. Such cigarettes should contain package labeling with "Experimental Use Only," "Reference Cigarettes," or other similar wording.

S.B. 1553
Subject: Requirements for Ejecting an Unauthorized Person from School Grounds
Effective: June 15, 2017

It is a Class C misdemeanor under current law (Section 37.107 of the Education Code) for an unauthorized person to trespass on school grounds. S.B. 1553 amends Section 37.105 of the Education Code, which regulates the ejection of unauthorized persons from school grounds, to provide that an administrator, resource officer, or peace officer may only eject a person if that person poses a substantial risk of harm to any person or the person behaves in a manner that is inappropriate for a school setting. The school administrator, resource officer, or peace officer must issue a verbal warning that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; the person must persist in that behavior before they can be ejected.

TMCEC: The amendment described above is in Section 5 of the bill. Other changes in the law contained in Sections 1-3 take effect on September 1, 2017.

S.B. 1649
Subject: Repeated Criminal Trespass on a College Campus
Effective: September 1, 2017

Colleges and universities across Texas are unique environments that strive to provide teaching, scholarship, and innovation. Given that the nature of these environments makes them attractive places; they may attract individuals with malicious and dangerous intentions. Some have argued that these individuals are insufficiently deterred by current criminal trespass penalties. S.B. 1649 seeks to improve campus safety by revising the conduct that constitutes the offense of criminal trespass.

S.B. 1649 amends Section 30.05 of the Penal Code to allow the enhancement of a charge of criminal trespass to a Class A misdemeanor if the commission of that crime takes place on a college campus and the defendant has been previously convicted of trespass on a college campus. At the punishment stage of a trial in which the prosecutor seeks to increase the punishment under this amended section, the defendant may avoid the enhancement by showing, by a preponderance of the evidence, that they were engaging in speech protected by the 1st Amendment to the U. S. Constitution.

TMCEC: S.B. 1649 was no doubt in part influenced by the murder of 18-year-old Haruka Weiser on the University of Texas at Austin campus in April 2016. Weiser was walking back to her campus dorm room when she was allegedly assaulted and murdered by Meechaiel Criner, a homeless 17-year-old drifter who was reportedly on the campus attempting to open car doors. During the investigation, students indicated that a significant homeless population in the area had been an ongoing concern for years. This was further borne out by University police reports, indicating that there had been 165 crimes involving people unaffiliated with the school that year alone. S.B. 1649 makes trespass on the grounds of an institution of higher learning a Class A misdemeanor (alongside current offenses such as trespass at a critical infrastructure facility and trespass while carrying a deadly weapon).

S.B. 1871
Subject: Theft of Petroleum Products
Effective: September 1, 2017

Growing oil field fuel and equipment theft in Texas includes increasingly sophisticated hydrocarbon theft operations, pipe and scrap metal theft, solar panel and battery theft, and vandalism. Booms in the Eagle Ford Shale and the Permian Basin have made the oil and gas industry a prime target for criminals, and the increased oil and gas activity has led to increased crime rates. Yet, even with the recent downturn, crime rates have not decreased; layoffs and disgruntled workers reportedly account at least in part for this continued theft. The FBI-led Oilfield Theft Task Force in Midland estimates that the Permian Basin region alone averages between $200,000 and $300,000 in theft a month in tools, pipes, and valves that easily can be resold. What's more, that figure does not include the one to three percent of estimated stolen product in the state. Based upon production of more than one billion barrels of oil and condensate in Texas in 2016, the ESC estimates that industry is realizing an annual loss of 10 to 30 million barrels, equivalent to a revenue loss of $450 million to almost $1.5 billion at today's prices. While currently it is illegal to steal petroleum products and oil and gas equipment, stakeholders believe a more specific, targeted oil and gas theft statute with a steeper penalty ladder would provide prosecutors with a better tool to dismantle these criminal enterprises, allowing them to put heightened pressure on a defendant to implicate other persons "higher up the chain" in the criminal enterprise.

To address these concerns, S.B. 1871 creates a new offense, Section 31.19 of the Penal Code (Theft of Petroleum Products or Oil and Gas Equipment). A person commits an offense if the person unlawfully appropriates petroleum products with the intent to deprive the owner of the property by possessing, removing, delivering, receiving, purchasing, selling, moving, concealing, or transporting the petroleum product; or making or causing a connection to be made with, or drilling or tapping or causing a hole to be drilled or tapped in, a pipe, pipeline, or tank used to store or transport a petroleum product. A person also commits an offense if the person unlawfully appropriates oil and gas equipment with the intent to deprive the owner of the oil and gas equipment. For purposes of this offense, appropriation is unlawful if it is without the owner's effective consent. An offense is a felony. Classifying the degree of felony is based upon the total value of the stolen petroleum products or oil and gas equipment. By reducing the amount of oil that is sold illegally, S.B. 1871 aims to minimize economic damage to the oil and gas industry.

TMCEC: Oil and Texas go together like chips and salsa. It should come as no surprise that petroleum products and oil and gas equipment are to be treated distinctly from other types of theft. Under the general theft penalty ladder, theft of under $100 is a Class C misdemeanor. Under Section 31.19, if the value of the object stolen is less than $10,000, the offense is a state jail felony.

TRAFFIC SAFETY AND TRANSPORTATION

H.B. 62
Subject: Criminal Offense of Using a Wireless Communication Device While Operating a Motor Vehicle; Alex Brown Memorial Act
Effective: September 1, 2017

Distracted driving continues to be a significant factor in property damage, injury, and death on this state's roads and highways. Prior to passing this bill, Texas was one of just four states with no statute that addressed distracted driving on a statewide level. H.B. 62, the Alex Brown Memorial Act, prohibits the use of a wireless communication device for electronic messaging while operating a motor vehicle unless the vehicle is stopped.

The bill adds Section 545.4251 of the Transportation Code (Section 8), under which an operator commits an offense if the operator uses a portable wireless communication device (defined by the statute) to read, write, or

send an electronic message (also defined) while operating a motor vehicle unless the vehicle is stopped. To be prosecuted, the behavior must be committed in the presence of or within the view of a peace officer or established by other evidence.

Affirmative defenses include using a portable wireless communications device (1) in conjunction with a hands-free device, (2) to navigate using a GPS or navigation system, (3) to report illegal activity, (4) to summon emergency help, (5) to enter information into a software application that provides information relating to traffic and road conditions to users of the application, (6) to read an electronic message the person reasonably believes to concern an emergency, (7) to relay information in the course of the operator's occupational duties to a dispatcher or digital network or software application service (if the device is permanently or temporarily affixed to the vehicle), or (8) to activate a function that plays music.

It is not an offense for operators of authorized emergency or law enforcement vehicles to use a portable wireless communication device while acting in an official capacity or for operators licensed by the Federal Communications Commission to operate a radio frequency device other than a portable wireless communication device.

An offense under Section 545.4251 is punishable by a fine of at least $25 and not more than $99 unless the defendant has been previously convicted at least one time of an offense under that section (if shown at trial). Then the fine range is $100 - $200. However, it is a Class A misdemeanor punishable by a fine not to exceed $4,000 and confinement in jail for a term not to exceed one year if the defendant caused the death or serious bodily injury of another person (if shown at trial).

A peace officer who stops a motor vehicle for an alleged violation of Section 545.4251 may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless authorized by other law. The bill also amends Section 543.004 of the Transportation Code requiring an officer to issue a written notice to appear if the offense is the use of a wireless communication device under Section 545.4251.

Section 545.4251 preempts all local ordinances, rules, or other regulations adopted by a political subdivision relating to the use of a portable wireless communication device by the operator of a motor vehicle to read, write, or send an electronic message (See the commentary for this bill, supra, for a discussion of the effect of the Special Session called by the Governor on preemption.).

H.B. 62 amends Section 708.052 of the Transportation Code prohibiting the Department of Public Safety from assigning points to a person' s license if the person is convicted of the offense in Section 545.4251.

This bill also adds a specific penalty to Section 545.424 of the Transportation Code (Operation of a Vehicle by Person Under 18 Years of Age): a fine of at least $25 and not more than $99 unless the defendant has been previously convicted at least one time of an offense under either Subsection 545.424(a) or (b); then the offense is punishable by a fine of at least $100 and not more than $200. Previously, Section 545.424 did not apply to a person operating a motor vehicle while accompanied in the manner required by Section 521.222(d)(2) for the holder of an instruction permit. As amended, only Subsection 545.424(a-1) does not apply to such a person.

Section 6 of the bill amends the definition of "hands-free device" in Section 545.425 of the Transportation Code.

Section 7 also amends Section 545.425 of the Transportation Code requiring a municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle to include on the required signs whether use of a wireless communication device with a hands-free device is allowed in the political subdivision. Section 8 of the bill requires the Texas Department of Transportation to post certain signs.

TMCEC: Governor Abbott announced a Special Session that will begin on July 18, 2017. Included in the 20 identified items that will be taken up in Special Session is preemption of local ordinances that ban using mobile devices beyond texting while driving. While H.B. 62 only preempts ordinances regulating texting while driving, cities should pay careful attention to the Special Session in the event preemption is broadened to include regulating all use of a wireless communication device. The Governor is targeting "a patchwork of regulations" across the state.

This bill is the result of a long battle fought by Representative Tom Craddick and many other traffic safety advocates. Four of the authors filed H.B. 80 last Session (2015), which did not pass in the Senate. In 2013, H.B. 63 also failed to pass in the Senate. In 2011, H.B. 242 passed both houses only to be vetoed by then Governor Rick Perry. Governor Abbott signed H.B. 62 on June 6, 2017 ending the effort to create a statewide ban of behavior that causes deaths on Texas roads. Just over two months prior to signing, a driver killed 13 people on March 29, 2017 when he crashed into a church bus in Uvalde County. Department of Public Safety records showed he was texting while driving.

H.B. 100
Subject: Regulating Transportation Network Companies
Effective: May 29, 2017

Transportation network companies (TNCs) utilize digital technology platforms to provide on-demand and highly automated private ride services. These services connect passengers with willing drivers who use their personal vehicles to provide rides. However, no consistent and predictable statewide regulation of TNCs exists in Texas, resulting in an inefficient and confusing patchwork of rules across local jurisdictions. H.B. 100 establishes a uniform, rational statewide framework for regulating TNCs, enabling TNCs to help provide Texans with greater mobility options, earning opportunities, and increased public safety.

H.B. 100 adds Chapter 2402 (Transportation Network Companies) of the Occupations Code. Subchapter A (General Provisions) includes definitions, the nature of TNCs, drivers, and vehicles, and controlling authority.

Under Section 2402.003, the regulation of TNCs, drivers logged into a digital network, and vehicles used to provide digitally prearranged rides (1) is an exclusive power and function of state government and (2) may not be regulated by a municipality or other local entity. This includes by imposing a tax, requiring an additional license or permit, setting rates, or imposing other requirements. Chapter 2402 does not affect the ability of a local authority to take an action described by Section 542.202 of the Transportation Code (Powers of Local Authorities) or enforce a provision of Subtitle C, Title 7 of the Transportation Code (Rules of the Road) or any other state law relating to the operation of traffic on public roads. As of May 29, 2017, any municipality's ordinance or policy related to TNCs or drivers authorized to access a TNC's digital network is void and has no effect.

An airport owner or operator may impose regulations on a TNC that provides digitally prearranged rides to or from the airport. The governing body of a governmental entity with jurisdiction over a cruise ship terminal may also impose regulations on a TNC that provides digitally prearranged rides to or from the terminal. Those exceptions are limited.

Subchapter B (Permit Required) requires a permit for operating a TNC in Texas and provides for a fee.

Subchapter C (Operation of Transportation Network Companies) addresses, inter alia, insurance (the requirements of Chapter 1954 of the Insurance Code governing TNCs and drivers logged into a digital network), shared rides, fares, identification of drivers, electronic receipts, intoxicating substance policies, driver requirements, vehicle requirements, disorderly passengers, nondiscrimination, accessibility to disabled passengers, and agreements with local entities for large events.

Subchapter D (Records and Other Information) requires TNCs to maintain certain records and addresses collection, use, and disclosure of records and other company information as well as disclosure of passenger information. Section 2402.154 allows a municipality and a TNC to voluntarily enter into an agreement regarding sharing the company's data with the municipality.

Subchapter E (Enforcement) authorizes the Texas Department of Licensing and Regulation (TDLR) to suspend or revoke a permit issued to a TNC that violates a provision of Chapter 2402.

H.B. 561
Subject: Operating Package Delivery Vehicles
Effective: May 26, 2017

H.B. 561 adds Subchapter G (Package Delivery Vehicles) to Chapter 551 of the Transportation Code (Operation of Bicycles, Mopeds, and Play Vehicles). Section 551.452 provides for "Package Delivery" license plates for vehicles operated for the purpose of picking up and delivering mail, parcels, and packages if the vehicle is an all-terrain vehicle, golf cart, neighborhood electric vehicle, recreational off-highway vehicle, or a utility vehicle. The vehicle must be equipped with head lamps, tail lamps, reflectors, a parking brake, and mirrors, in addition to any other equipment required by law.

Under Section 551.453, a motor carrier may operate, for the purpose of picking up or delivering mail, parcels, or packages, a vehicle bearing license plates issued under Section 551.452 on a public highway that is not an interstate or limited-access or controlled-access highway and that has a speed limit of not more than 35 miles per hour. Section 551.456 authorizes such vehicles to cross intersections, including on or through a road or street that has a speed limit of more than 35 miles per hour.

The Department of Motor Vehicles may not require registration of a vehicle operated under Subsection 551.452(a) unless the registration is required by other law.

Section 551.455 authorizes municipalities to allow a motor carrier to operate, for the purpose of picking up or delivering mail, parcels, or packages, a vehicle bearing license plates issued under Section 551.452 on all or part of a public highway that (1) is in the corporate boundaries of the municipality and
(2) has a speed limit of not more than 35 miles per hour.

Section 551.454 authorizes property owners' associations to adopt reasonable safety and use rules for the operation of vehicles bearing package delivery license plates issued under Section 551.452.

Subchapter G controls in the case of a conflict between it and other law, including Chapters 502 and 663 of the Transportation Code.

H.B. 912/S.B. 848
Subject: Parent-Taught Driver Education Courses and Driving Safety Courses
Effective: June 15, 2017/June 9, 2017

Other than the effective date, H.B. 912 and S.B. 848 are identical bills. Both bills amend Section 1001.112 of the Education Code expanding the pool of individuals eligible to teach parent-taught driver education courses to include individuals designated by a parent, legal guardian, or a judge of a court with jurisdiction over the person on a form prescribed by the department, if they meet the following qualifications: are at least 25 years of age, do not charge a fee for conducting the course, have at least seven years of driving experience, and otherwise qualify to conduct a course under this section. Amended Section 1001.112 creates a seven-year limit on

disqualification from conducting such courses for individuals convicted of driving while intoxicated and removes the disqualification of being disabled because of mental illness.

The bills also amend Sections 1001.055, 1001.056, 1001.206, and 1001.351 to provide for electronic issuance of certificates. Under these new provisions in Chapter 1001, driving safety course providers may deliver uniform certificates of completion electronically. Municipal courts should be prepared for the submission of these certificates from defendants who received them electronically and have printed them at home.

Amendments to Sections 1001.204, 1001.205, and 1001.206 remove the requirement that a driver education school or driving safety school have owners, instructors, and course providers respectively who are of good reputation and character.

H.B. 920
Subject: Operating All-Terrain Vehicles
Effective: September 1, 2017

H.B. 920 amends Section 663.037 of the Transportation Code (Operating on Public Roadway Prohibited) requiring a triangular orange flag that is at least six feet above ground level attached to the back of an all-terrain vehicle driven on certain public roadways. This replaces the requirement of a triangular orange flag on top of an eight-foot-long pole.

Section 663.037, as amended, also authorizes persons other than just peace officers to operate an all-terrain vehicle on a public street, road, or highway that is not an interstate or limited-access highway. Additional persons include law enforcement, firefighting, ambulance, medical, or other emergency services.

H.B. 1249
Subject: Criminal Offense of Operating a Motor Vehicle that Resembles an Emergency Medical Vehicle
Effective: September 1, 2017

H.B. 1249 addresses concerns regarding the operation of vehicles purchased from an authorized emergency medical services (EMS) provider when the useful life of the vehicle has expired without the removal of the easily recognized identifying insignia, such as the star of life emblem and emergency lights, which can mislead a reasonable person as to the vehicle's purpose.

New Section 773.017 of the Health and Safety Code prohibits operating a motor vehicle that resembles an EMS vehicle unless the person uses the motor vehicle as an EMS vehicle under Chapter 773 or for other legitimate governmental functions including police or firefighting services. A violation of Section 773.017 is a Class C misdemeanor.

A motor vehicle resembles an emergency medical services vehicle if the motor vehicle has on the exterior of the motor vehicle any of the following markings or features: (1) the word "ambulance" or a derivation of that word; (2) a star of life as trademarked by the National Highway Traffic Safety Administration; (3) a Maltese cross commonly used by fire departments; (4) forward-facing flashing red, white, or blue lights; (5) a siren; (6) the words "critical care transport," "emergency," "emergency medical services," or "mobile intensive care unit"; or (7) the acronym "EMS" or "MICU."

Section 773.017 does not apply to a motor vehicle bearing a license plate issued or approved under Section 504.501 (Classic Motor Vehicles and Travel Trailers; Custom Vehicles; Street Rods) or 504.502 (Certain Exhibition Vehicles) of the Transportation Code.

H.B. 1372
Subject: Proper Use of Child Safety Seats Curriculum in Driver Education and Driving Safety Courses
Effective: September 1, 2017

H.B. 1372 adds Section 1001.1091 to the Education Code adding proper use of child passenger safety seat systems to the curriculum of driver education and driving safety courses.

H.B. 1791
Subject: Use of Connected Braking Systems to Maintain Distance Between Vehicles
Effective: May 18, 2017

There is an increased use of connected braking technology by major truck fleets in the United States, whereby a convoy of two vehicles are linked together wirelessly so the rear vehicle can control its speed based on the behavior of the front vehicle, surrounding traffic, and weather conditions. Several state and federal agencies, research institutes, and private sector companies have participated in projects demonstrating how connected braking technology improves safe driving conditions for the vehicles using the technology as well as surrounding vehicles.

H.B. 1791 seeks to provide clarity in the law regarding the use of connected braking systems in Texas. H.B. 1791 amends Section 545.062 of the Transportation Code (Following Distance) permitting a vehicle equipped with a connected braking system to be assisted by the system to maintain an assured clear distance or sufficient space as required by this section. "Connected braking system" means a system by which the braking of one vehicle is electronically coordinated with the braking system of a following vehicle.

TMCEC: While not creating a new offense, H.B. 1791 does amend Section 545.062 which contains the traffic offense of following too closely.

H.B. 1793
Subject: Inspection of Certain Commercial Vehicles Not Domiciled in the State
Effective: May 26, 2017

Many Texas trucks and trailers registered as commercial motor vehicles are not domiciled in Texas, which forces those vehicles to travel long distances to obtain the required valid annual inspection. The expense of this obligation, especially considering driver wages and per diems, fuel, and the necessary downtime for the trucks and trailers, may be forcing some in the industry to register their fleets in states that have less burdensome registration and inspection requirements, resulting in a loss of revenue to the state.

H.B. 1793 amends Section 548.203 of the Transportation Code (Exemptions) exempting from the state's compulsory annual inspection a commercial motor vehicle registered in this state or under the International Registration Plan as authorized by Section 502.091 of the Transportation Code that is not domiciled in this state and has been issued a certificate of inspection in compliance with federal motor carrier safety regulations.

Such vehicles are subject to any fees established by the Transportation Code that would apply to the vehicle if it were subject to the inspection requirements of Chapter 548, including a fee under Section 548.504 (Inspection of Commercial Motor Vehicle) or 548.5055 (Texas Emission Reduction Plan Fee).

H.B. 1823
Subject: Diacritical Marks in Vital Statistics, Driver's Licenses, and Personal Identification Certificates
Effective: September 1, 2017

H.B. 1823 adds Section 191.009 of the Health and Safety Code and Sections 521.127 and 522.030 of the

Transportation Code. Each of these additions ensure that their respective departments (the Department of State Health Services and the Department of Public Safety) include any diacritical marks that appear in a person's name in vital statistics, driver's licenses, identification cards, commercial driver's licenses, and commercial driver's permits. The new sections define a diacritical mark as a mark used in Latin script to change the sound of a letter to which it is added or used to distinguish the meaning of the word in which the letter appears. The term includes accents, tildes, graves, umlauts, and cedillas.

TMCEC: These marks are used in German, Greek, Hebrew, Spanish, and many other languages. Such marks are critical to correct pronunciation and meaning. They may also be important in avoiding and detecting matters of false identification.

H.B. 1956
Subject: Operating Certain Off-Highway Vehicles
Effective: September 1, 2017

Over time, applicable statutes have resulted in confusion for both drivers and some law enforcement officers as to the proper operation of all-terrain vehicles, utility vehicles, and recreational off-highway vehicles. H.B. 1956 addresses this issue by providing for clarification with regard to the operation of these vehicles.

H.B. 1956 amends Section 663.001 of the Transportation Code (Definitions) adding utility vehicle to the vehicles to which statutory provisions relating to the operation of certain off-highway vehicles apply.

The bill changes the heading to Subchapter B of Chapter 663 of the Transportation Code to Off-Highway (formerly All-Terrain) Vehicle Operator Education and Certification and makes conforming changes throughout that chapter.

H.B. 1956 repeals the following provisions of the Transportation Code: Section 551.401(2) (definition of utility vehicle in Subchapter F Golf Carts and Utility Vehicles), Section 663.001(1) (definition of all-terrain vehicle for the purposes of Chapter 663) as amended by Chapters 131 (S.B. 487) and 895 (H.B. 1044), Acts of the 83rd Legislature, Regular Session, 2013; and Section 663.003 (Recreational Off-Highway Vehicles).

H.B. 2319/S.B. 1102
Subject: Operation of Certain Overweight Vehicles on Highways and Intermodal Shipping Container Permit
Effective: June 9, 2017/June 1, 2017

Due to the increased weight of their fuel systems, natural gas trucks weigh more than comparable diesel trucks, sometimes weighing up to 2,000 pounds more. This means that full-load carriers operating natural gas trucks often must reduce their loads. As a result, carriers operating natural gas trucks can experience revenue losses of up to two to three percent per load, and may not be able to carry some bulk loads that are carried in fixed load trailers that cannot be easily changed. To address this, Congress passed the FAST Act in December of 2015 to allow states to exempt the added weight of natural gas fuel tanks, up to 2,000 pounds from interstate weight limits.

In light of the FAST Act, many states have enacted legislation extending the exemption on both their interstate and local highways. S.B. 1102 and Section 1 of H.B. 2319 are identical, with the exception of the effective date. (The rest of the sections in H.B. 2319 are not found in S.B. 1102.) Section 1 of H.B. 2319 and S.B. 1102 add Subsection 621.101(b-1) of the Transportation Code, authorizing a vehicle or combination of vehicles powered by an engine fueled primarily by natural gas to exceed any weight limitation under this section by an amount equal to the difference between the weight of the vehicle attributable to the natural gas tank and fueling system carried by that

vehicle and the weight of a comparable diesel tank and fueling system. However, such a vehicle or combination of vehicles may not exceed 82,000 pounds. (Notably, Section 621.101 of the Transportation Code is the offense of operating an overweight vehicle.)

H.B. 2319 also adds Section 623.0172 of the Transportation Code requiring the Texas Department of Motor Vehicles (DMV) to issue a permit for a sealed intermodal shipping container moving by a truck-tractor and semitrailer combination that has six total axles and is equipped with a roll stability support safety system and truck blind spot systems. Among other requirements, the gross weight of the combination may not exceed 93,000 pounds. The DMV shall restrict vehicles operating under this permit to certain routes. The permit does not authorize operation on certain roads or bridges or transportation of hazardous material.

The DMV shall initially set the fee for a permit in an amount not to exceed $2,000 and beginning in 2022, on September 1 of each even-numbered year, set the fee based on certain estimates. Beginning in 2022, The Texas Department of Transportation shall conduct a study concerning vehicles operating under this permit.

TMCEC: See also, S.B. 1524 for a similar permit in new Section 623.402 of the Transportation Code. Both bills create an annual permit for sealed intermodal shipping containers moving in international transportation by a truck-tractor and semitrailer combination that has six total axles (among many other specifications). H.B. 2319 does so by adding Subsection 623.0172(b) of the Transportation Code. S.B. 1524 does so by adding Subsection 623.402(a) of the Transportation Code. Those provisions are identical. S.B. 1524 also authorizes the DMV to issue a permit for intermodal shipping containers with a combination that has seven total axles in Subsection 623.402(b).

S.B. 1524 authorizes the DMV to issue a permit whereas H.B. 2319 requires the DMV to issue it ("may" vs. "shall" respectively).

Unlike S.B. 1524, H.B. 2319 lacks preemption language. S.B. 1524 prohibits the governing body of a municipality from regulating based on weight the movement and operation on a state highway or county or municipal road of a combination of vehicles operating under a permit issued under new Section 623.402 of the Transportation. H.B. 2319 lacks such language.

The fee varies between the bills. H.B. 2319 requires the DMV to initially set the fee for a permit under Section 623.0172 in an amount not to exceed $2,000 (to be reevaluated in even numbered years beginning in 2022). S.B. 1524 requires a fee of $6,000 to accompany an application for a permit under Subsections 623.402(a) or (b). Each bill requires a different allocation of the fee and directs the allocation to different funds (H.B. 2319 requires 90 percent of the fee collected to be deposited to the state highway fund, five percent to the DMV fund, and five percent to the appropriate county road and bridge fund; S.B. 1524 requires 50 percent of the fee to be deposited to the state highway fund, 30 percent to be equally divided among and distributed to each county designated in the permit application, 16 percent to be equally divided among and distributed to each municipality designated in the permit application, and four percent to be deposited to the Texas Department of Motor Vehicles fund.)

There are also variances between the bills regarding route restrictions. Additionally, S.B. 1524 provides for a permit sticker and related Class C misdemeanor, whereas H.B. 2319 does not.

Time will tell whether these bills will be construed to create three different permits (one under each of Subsection 623.0172(b), 623.402(a), and 623.402(b)) or if Subsections 623.0172(b) and 623.402(a) will be construed as the same permit. To make things more interesting, H.B 2319 took effect on June 9, 2017. S.B. 1524 takes effect on January 1, 2018. H.B. 2319 passed last in time.

H.B. 2501
Subject: Insurance Requirements for Certain Nonemergency Medical Transportation
Effective: September 1, 2017

Non-Emergency Medical Transportation (NEMT) providers bring patients to routine and follow-up medical appointments, improving patient outcomes and lowering healthcare costs. These companies are increasingly using a rideshare model or have announced partnerships with Uber, Lyft, and similar companies. The problem is that current law inhibits NEMT providers from securing needed automobile insurance to operate in Texas if those providers use a rideshare model.

In 2015, the 84th Legislature passed H.B. 1733 to clarify insurance responsibilities for transportation network companies (TNC) and their drivers. That bill established insurance coverage requirements during certain "gap periods" where a driver was not yet carrying a passenger, but was waiting for a passenger request. However, the bill's definition of "transportation network company" was written in a way that excludes NEMT providers, which has made it difficult for some providers to secure required auto insurance.

H.B. 2501 amends Section 1954.002 of the Insurance Code making Chapter 1954 (Insurance for Transportation Network Company Drivers) inapplicable to entities arranging nonemergency medical transportation unless they connect riders and drivers through a digital network, contract individually with each driver, and otherwise meet all requirements under the Medicaid or Medicare program for delivery of nonemergency medical transportation services.

H.B. 2812
Subject: Use of Certain Lighting Equipment on Security Patrol Vehicles
Effective: September 1, 2018

Motorists must be able to differentiate between law enforcement vehicles and vehicles used by private security entities. Sometimes lighting equipment makes this difficult.

H.B. 2812 amends a Class C misdemeanor offense, Section 547.305 of the Transportation Code (Restrictions on Use of Lights). Section 547.305 providing that a security patrol vehicle may only be equipped with green, amber, or white lights. The bill defines "security patrol vehicle" and clarifies that a motor vehicle is equipped with a lamp or illuminating device under Section 547.305 regardless whether the lamp or illuminating device is attached to the motor vehicle temporarily or permanently or activated.

H.B. 2968
Subject: Golf Carts or Utility Vehicles on Public Highways in Certain Counties
Effective: May 26, 2017

H.B. 2968 amends Section 551.404 of the Transportation Code increasing the population size (less than 37,000 instead of 30,000) of an otherwise qualified county in which a commissioners court may allow an operator to use a golf cart or utility vehicle on the public highway. It also adds any peninsula that borders the Gulf of Mexico that otherwise meets the qualifications.

H.B. 3050
Subject: Driver's and Learner Licenses
Effective: September 1, 2017

H.B. 3050 addresses various issues currently experienced by the Department of Public Safety (DPS). The bill cleans up several provisions of the Transportation Code to reflect the newer term "learner license" rather than the

old term "instructional permit." Previous legislative sessions have changed the term, but did not update all parts of the code.

Section 2 amends Section 521.009 of the Transportation Code permitting the governing body of a municipality to enter into an agreement with DPS to permit municipal employees to provide services at a municipal office relating to the issuance of renewal and duplicate driver's licenses, election identification certificates, and personal identification certificates. A participating municipality must remit applicable fees to DPS.

Section 5 amends Section 521.1211 of the Transportation Code (Driver's License for Peace Officer) allowing federal special investigators who live in Texas to use an alternative approved address in the county in which they work, rather than their residence address, on a driver's license.

H.B. 3051
Subject: Categories Used to Record Race and Ethnicity of Persons Stopped for or Convicted of Traffic Offenses
Effective: September 1, 2017

Currently, Texas law does not conform to national standards for reporting race and ethnicity when the data is exchanged, stored, retrieved, or analyzed in electronic form.

H.B. 3051 amends Article 2.132 of the Code of Criminal Procedure (Law Enforcement Policy on Racial Profiling) to conform to the national standards and lists race and ethnicity as five categories under Subsection (a)(3): Alaska native or American Indian; Asian or Pacific Islander; black; white; and Hispanic or Latino.

The bill also amends Section 543.202 of the Transportation Code (relating to required conviction records kept by courts) to list race and ethnicity as the same five categories.

H.B. 3087
Subject: Definitions of Highway Maintenance and Service Vehicles
Effective: September 1, 2017

H.B. 3087 amends Section 547.001 of the Transportation Code (Definitions for purposes of Chapter 547, Vehicle Equipment) adding "highway maintenance vehicle" and "service vehicle." The bill changes the heading of Section 547.105 to Maintenance and Service Vehicle (instead of Equipment) Lighting Standards and expands the type of equipment for which the Texas Department of Transportation adopts lighting standards and specifications from highway maintenance equipment to highway or traffic maintenance vehicles, which include such equipment, and service vehicles and makes that expansion applicable to the prohibition against operating equipment that is not equipped with lamps or does not display the required lighted lamps.

TMCEC: A violation of Chapter 547 of the Transportation Code is a Class C misdemeanor. The general penalty provision is Section 547.004.

H.B. 3254
Subject: Enforcement of Motor Carrier Regulations
Effective: January 1, 2018

The Department of Motor Vehicles (DMV) needs additional authority in regulating motor carriers and enforcing that regulation, including authority to deny a motor carrier registration to a carrier that changes names or operates under various aliases to continue operations without remedying previous penalties or sanctions, which are often related to safety. H.B. 3254 expands such authority.

H.B. 3254 amends Section 645.004 of the Transportation Code, the Class C misdemeanor for violating a rule adopted under Chapter 645, making it an offense to fail to register as required by the unified carrier registration plan and agreement or fail to submit information and documents as required by the unified carrier registration plan and agreement.

The bill amends Section 643.054 of the Transportation Code allowing the DMV to deny a registration if the applicant is owned, operated, managed, or otherwise controlled by or affiliated with a person that the Department of Public Safety has determined has an unsatisfactory safety rating under applicable federal regulations or has multiple violations of commercial motor vehicle safety standards or rules of the road. The bill authorizes the DMV to deny a supplement to a motor carrier's application for registration if the motor carrier has unpaid administrative penalties assessed under statutory provisions relating to motor carrier registration or vehicle size and weight.

Section 643.058 of the Transportation Code as amended prohibits a motor carrier from renewing a registration that has been expired for more than 180 days but authorizes the motor carrier to obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

As amended, Section 643.153 of the Transportation Code replaces the requirement for a motor carrier that is required to register and that transports household goods for compensation to file a tariff with the DMV that establishes maximum charges for transportation between two or more municipalities with the requirement for such a motor carrier to file a tariff that establishes maximum charges for all transportation services.

The amendment to Section 644.151 of the Transportation Code makes it a Class A misdemeanor to knowingly operate a commercial motor vehicle in violation of an out-of-service order issued under 49 C.F.R. Section 385.13(d)(1) or owns, leases, or assigns a person to drive a commercial motor vehicle that is knowingly operated in violation of an out-of-service order issued under 49 C.F.R. Section 385.13(d)(1). The offense is a state jail felony or a second degree felony if it is shown at trial that the vehicle caused bodily injury or death respectively.

H.B. 3272
Subject: Suspension, Revocation, or Cancellation of a Driver's License or Personal Identification Certificate
Effective: September 1, 2017

H.B. 3272 amends Section 521.292 of the Transportation Code (Department's Determination for License Suspension) allowing an action against any driver under 18 years of age, not just those with a provisional license. This makes all minors who hold a driver's license subject to suspension for two or more moving violations committed within a 12-month period.

The bill also amends Section 521.294 of the Transportation Code (Department's Determination for License Revocation) removing the requirement that the Department of Public Safety (DPS) revoke a person's license if the person has been reported by a court under Section 521.3452 for failure to appear or has been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of a fine (for persons age 14 to 16 when the offense was committed).

H.B. 3272 amends Section 521.300 of the Transportation Code providing for a hearing under Subchapter N of Chapter 521 (General Provisions Relating to License Denial, Suspension, or Revocation) to be conducted by telephone or video conference call if the presiding officer provides notice to the affected parties.

Amended Section 521.314 of the Transportation Code authorizes DPS to cancel a license or certificate if the holder paid the required fee for the license or certificate by check or credit card that was returned to DPS or not honored by the funding institution or credit card company due to insufficient funds, a closed account, or any other reason.

TMCEC: This bill also amends Article 45.050 of the Code of Criminal Procedure (Failure to Pay Fine; Failure to Appear; Contempt: Juveniles) prohibiting confinement of a juvenile for failure to appear.

H.B. 3654
Subject: Definition of Road Machinery for Purposes of Certain Provisions Governing Vehicle Equipment
Effective: September 1, 2017

State law governing vehicle equipment in relation to the rules of the road applies to road machinery, but this type of apparatus is not clearly defined.

H.B. 3654 amends Section 547.001 of the Transportation Code defining "road machinery" for purposes of Chapter 547 (Vehicle Equipment). Road machinery means a self-propelled vehicle that was originally and permanently designed as machinery, is not designed or used primarily to transport persons or property, and is only incidentally operated on a highway.

S.B. 312
Subject: Toll-Related Offenses; Sign Height and Spacing Requirements; Garage or Repair Shop Ordinances
Effective: September 1, 2017

S.B. 312 enacts the Sunset Advisory Commission's recommendations regarding the Texas Department of Transportation (TxDOT). Sunset recommended continuing TxDOT for 12 years along with several other statutory modifications that are contained in this legislation.

TMCEC: The following provisions of S.B. 312 are most notable for city attorneys and municipal courts.

Toll-Related Offenses:

S.B. 312 affects toll-related offenses, amending Section 228.054 of the Transportation Code (Class C misdemeanor for failing or refusing to pay a toll) deleting the reference to Section 228.0545 and changes the heading of both sections, Section 228.054 to Toll Payment Required; Emergency Vehicles Exempt and Section 228.0545 to Toll Not Paid at Time of Use; Invoice). TxDOT may provide the invoice under Section 228.0545 by first class mail or as an electronic record (if a registered owner agrees to it).

S.B. 312 creates a new offense for failing to pay the toll invoice, Section 228.0547, a misdemeanor punishable by $250. A person may not be convicted of more than one offense under this section in a 12-month period. The court in which the person is convicted shall collect the unpaid tolls and administrative fees and forward the amounts to TxDOT. The person convicted is also liable for court costs under the statute. The bill makes the presumptions, evidence, and defense provisions in Section 228.056 applicable to the offense in Section 228.0547.

S.B. 312 removes the offense in Section 228.059 (Failure to Pay State Highway Toll or Administrative Fee imposed by Other Entity). Note that the changes in law regarding toll collection procedures and billing apply only to a toll incurred on or after March 1, 2018.

Sign Height and Spacing:

The bill also affects sign height requirements, adding Section 391.038 of the Transportation Code restricting the height of signs existing on March 1, 2017 that were erected before that date to 85 feet, excluding a cutout that extends above the rectangular border of the sign measured from either the grade level of the centerline of the main-traveled way or if the main-traveled way is below grade, from the base of the sign structure. Under the statute, a person may rebuild a sign existing on March 1, 2017 that was erected before that date without obtaining

a new or amended permit from TxDOT as long as it is rebuilt in the same location and at a height that does not exceed the height of the sign on that date.

New Section 391.039 of the Transportation Code prohibits TxDOT from requiring an electronic sign owned by a municipality with a population of more than 200,000 located in a county on the Texas-Mexico border with a population of less than 300,000 to be more than 500 feet from another sign.

Duty on Striking Structure, Fixture, or Highway Landscaping

It is a Class C misdemeanor to fail to comply with the requirements in Section 550.025 of the Transportation Code (Duty on Striking Structure, Fixture, or Highway Landscaping). S.B. 312 removes the requirement in Subsection (a)(3) to report the accident if required by Section 550.061. However, both the requirement to report under Section 550.061 and the Class C misdemeanor for failing to do so under Subsection 550.061(c) remain.

Garage or Repair Shop Ordinances

S.B. 312 amends Section 550.067 of the Transportation Code (Municipal Authority to Require Accident Reports) authorizing a municipality to require the person in charge of certain garages or repair shops if a vehicle shows evidence of having been involved in an accident described by Section 550.062(a) (relating to a law enforcement officer's accident report), rather than an accident requiring a report to be filed under Section 550.061 (Operator's Accident Report) or 550.062 (Officer's Accident Report) to report the damage to certain entities.

S.B. 1187
Subject: Operating a Motor Vehicle Without Financial Responsibility
Effective: June 1, 2017

Texas law requires all drivers to maintain automobile insurance and to show proof of financial responsibility when requested by an officer during a traffic stop. In some instances, even though a driver has insurance and the officer has knowledge that the driver or automobile is in fact insured, a citation will be issued to the driver. In Texas, most patrol cars used by law enforcement have the ability to determine whether or not an automobile has the required level of liability insurance. During a traffic stop, officers routinely are able to run an automobile's license plate or vehicle identification number to confirm this information through the TexasSure Vehicle Insurance Verification Program.

S.B. 1187 amends Section 601.053 of the Transportation Code (Evidence of Financial Responsibility) prohibiting an officer from issuing a citation for an offense under Section 601.191 (Operation of Motor Vehicle in Violation of Motor Vehicle Liability Insurance Requirement; Offense) unless the officer attempts to verify through the verification program that financial responsibility has been established for the vehicle and is unable to make that verification.

The bill also amends Section 601.191 requiring a citation issued for an offense under that section to include an affirmative indication that the peace officer was unable at the time of the alleged offense to verify financial responsibility for the vehicle through the verification program established under Subchapter N (Financial Responsibility Verification Program) of Chapter 601.

S.B. 1187 amends Section 708.103 of the Transportation Code, adding Subsection (a-1), which prohibits the Department of Public Safety from assessing a surcharge on the license of a person based on an offense under Section 601.191 if the person proves to DPS under Subsection 601.231(b) that the person had financial responsibility at the time the offense was alleged to have occurred.

TMCEC: Contact your local print shop or electronic citation software provider and add this to the laundry list of requirements for the citation. So far, implemented practices for an affirmative indication include a check box or a written statement or notation by the officer. This bill caused unexpected panic among some jurisdictions. To be clear, this bill does not affect the jurisdiction of the court, filing a complaint, or the offense itself. It does not require a dismissal if a citation that lacks the required affirmative indication is filed in a court.

This bill makes sense. TexasSure, the vehicle insurance verification database, has been available to law enforcement statewide since 2008. Now they are required to use it, resulting in fewer citations filed for operating a motor vehicle in violation of Section 601.051 when there was no violation.

S.B. 1501
Subject: Regulation, Licensing, and Enforcement of Motor Vehicle Towing, Booting, and Storage
Effective: June 15, 2017, except Sections 7, 10, and 20(b) take effect September 1, 2018

A recent strategic planning process undertaken by the Texas Department of Licensing and Regulation indicated that certain regulations and licensing requirements involving vehicle towing, booting, and storage could be eliminated without endangering public health, safety, or welfare. S.B. 1501 seeks to remove some of these regulations and revise certain authority to conduct booting and towing activities.

S.B. 1501 amends Section 2308.2085 of the Occupations Code expressly authorizing a local authority to regulate, in areas in which the entity regulates parking or traffic, booting activities, including operation of booting companies and operators that operate on a parking facility, any permit and sign requirements in connection with the booting of a vehicle, and fees that may be charged in connection with booting.

Regulations adopted under Section 2308.2085 must incorporate the requirements of Sections 2308.257 (Booting of Unauthorized Vehicle) and new 2308.258 (Boot Removal), include procedures for vehicle owners and operators to file a complaint with the local authority regarding a booting company or operator, and provide for the imposition of a penalty for a violation of new Section 2308.258.

The bill defines "local authority" as a state or local governmental entity authorized to regulate traffic or parking (Section 2308.002).

Section 2308.151 authorizes a person to perform booting operations and operate a booting company unless the person is prohibited by a local authority under Section 2308.2085, removing the requirement of a license.

In certain counties, the addition of Section 2308.210 authorizes possible punishment by a fine not less than $1 or more than $200 for a towing company or operator that violates a provision of an order by a commissioners court establishing a program under that section.

Added Section 2308.258 requires a booting company responsible for the installation of a boot on a vehicle to remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot. That section also requires the booting company to waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to remove it within that time. If the booting company installed more than one boot on a vehicle, it is prohibited by this section from charging a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

S.B. 1523
Subject: Creation of the State Safety Oversight Program for Rail Fixed Guideway Public Transportation Systems
Effective: June 1, 2017

In 1996, the Federal Transit Administration established the State Safety Oversight (SSO) program, which oversees rail fixed guideway public transportation systems. As a result, an eligible state must obtain statutory authority for its SSO program and designate a state agency to oversee and enforce safety at rail fixed guideway public transportation systems in its jurisdiction from engineering, construction, and revenue operations. In 1997, the Texas Legislature designated the Texas Department of Transportation (TxDOT) as the SSO agency.

S.B. 1523 puts Texas in line with federal SSO requirements.

The bill designates Sections 455.001 through 455.004 of the Transportation Code as Subchapter A (General Powers and Duties) and adds Subchapter B (State Safety Oversight Program) to detail the requirements, responsibilities, and procedures of TxDOT regarding rail fixed guideway public transportation systems.

S.B. 1524
Subject: Vehicles Transporting Intermodal Shipping Containers
Effective: January 1, 2018

S.B. 1524 adds Subchapter U (Intermodal Shipping Containers) to Chapter 623 of the Transportation Code (Permits for Oversize or Overweight Vehicles). Added Section 623.401 defines "intermodal shipping container" and new Section 623.402 authorizes the Department of Motor Vehicles (DMV) to issue an annual permit for movement of a sealed intermodal shipping container under two different sets of circumstances and conditions found in Subsections (a) and (b). Added Section 623.404 provides for a permit fee of $6,000.

Subchapter U also addresses route restrictions, designation of movement, permit conditions, a permit sticker, and permit and weight record documents. Section 623.409 creates a Class C misdemeanor for failing to display the sticker described by Section 623.407(a) in the manner required by that section, failing to carry a permit issued under Subchapter U, or failing to carry or present a weight record as required by Section 623.408(b).

S.B. 1524 amends Section 623.019 of the Transportation Code expressly giving jurisdiction of any offense under that section to a justice or municipal court (removing the restriction that the municipal court only had jurisdiction if the fine did not exceed $500).

Amended Section 621.303 of the Transportation Code prohibits municipalities from regulating, because of weight, the movement and operation of a combination of vehicles operating under a permit issued under new Section 623.402 on a state highway or county or municipal road.

S.B. 1524 amends Section 550.062 of the Transportation Code (Officer's Accident Report) requiring the officer's accident report to include the weight and number of axles of the vehicle combination if the accident involved a combination of vehicles operating under a permit issued under new Section 623.402.

The bill adds Section 623.070 of the Transportation Code, providing that Subchapter D of Chapter 623 (Heavy Equipment) does not apply to the transportation of an intermodal shipping container as defined by Section 623.401, regardless whether the container is sealed or unsealed.

TMCEC: See also, H.B. 2319. That bill requires the DMV to issue an annual permit for the international transportation of an intermodal shipping container that meets certain specifications. See the commentary for H.B. 2319 for a comparison of permits.

S.B. 2006
Subject: Erecting and Maintaining Certain Outdoor Signs Regulated by the Texas Department of Transportation
Effective: June 15, 2017

S.B. 2006 amends provisions in Chapters 391 (Highway Beautification on Interstate and Primary Systems and Certain Roads) and 394 (Regulations of Outdoor Signs on Rural Roads) of the Transportation Code replacing the phrase "outdoor advertising" with "commercial signs." Added Subsection 391.031(b-1) provides that a person does not commit an offense (Class C misdemeanor) under Section 391.031 if the person holds a permit issued by the Texas Department of Transportation and erects or maintains a commercial sign located within 660 feet of the nearest edge of a right-of-way in an area in which the land use is designated industrial or commercial under authority of law or is not designated industrial or commercial under authority of law, but the land use is consistent with an area designated industrial or commercial.

The bill amends the Class C misdemeanor in Section 391.061 changing the type of sign prohibited in that section from outdoor advertising to a commercial sign. Likewise, the type of sign prohibited in the Class C misdemeanor in Section 391.067 is now a commercial sign instead of "outdoor advertising."

TMCEC: It has been two years since the U.S. Supreme Court in *Reed v. Town of Gilbert*, which addressed when municipalities may impose content-based restrictions on signage. The case also addressed the level of constitutional scrutiny that should be applied to content-based restrictions on speech. The case has had broad implications in appellate decisions throughout the nation, including here in Texas. This bill attempts to resolve free speech conflicts in the Texas Highway Beautification Act. The 3rd Court of Appeals, in *Auspro Enters., LP v. Tex. DOT*, 2016 Tex. App. LEXIS 9469 (Tex. App.—Austin August 26, 2016, pet. filed), found sections contained in Subchapter B (Regulation of Outdoor Advertising Generally) and Subchapter C (License and Permit for Outdoor Advertising) unconstitutional. According to the court, the plain language of the HBA defines "outdoor advertising" so broadly that the Act's restrictions on speech apply to both commercial and noncommercial speech. Both subchapters contain Class C misdemeanors under which each day is a separate offense. This opinion severed all of the content-based provisions, including Section 391.031(b) (Unlawful Outdoor Advertising; Offense) (punishable by fine of $500 - $1,000) Section 391.037 (Outdoor Advertising by Certain County Agriculture Fairs), Section 391.061(c) (Outdoor Advertising Without License; Offense) (punishable by fine of $500 - $1,000), and Section 391.070 (Exceptions for Certain Nonprofit Organizations). See, Ryan Kellus Turner and Regan Metteauer, "Case Law and Attorney General Opinion Update," *The Recorder* (December 2016) at 9.

No state billboard regulations would be problematic, especially because some of the federal highway money the state receives is contingent on having effective regulations over outdoor advertising. S.B. 2006 maintains the current scope of billboard regulation in Texas while resolving any free speech conflicts by shifting the regulatory focus away from a sign's content and instead focuses on whether or not a sign is leased, and therefore, being used for commercial purposes.

S.B. 2075
Subject: Vehicle Registration
Effective: September 1, 2017

S.B. 2075 contains recommendations from the Department of Motor Vehicles (DMV) regarding vehicle registration, including provisions related to fees and the process for when a closed county tax assessor collector's office's transactions can be performed by a different county.

The bill amends Section 502.057 of the Transportation Code (Registration Receipt) providing that a receipt for the renewed registration of a vehicle generated by an online registration system approved by the DMV is proof of the

vehicle's registration until the 31st day after the date of renewal on the receipt.

Amended Section 504.202 (Veterans with Disabilities) allows veterans to register a motor home even if it has a gross vehicle weight of more than 18,000 pounds.

S.B. 2205
Subject: Automated Motor Vehicles
Effective: September 1, 2017

S.B. 2205 creates Subchapter J (Operation of Automated Motor Vehicles) in Chapter 545 of the Transportation Code, adding a new vehicle classification: automated motor vehicle or automated driving system. Section 545.451 defines an automated driving system as hardware and software that, when installed on a motor vehicle and engaged, are collectively capable of performing, without any intervention or supervision by a human operator (1) all aspects of the entire dynamic driving task for the vehicle on a sustained basis, and (2) any fallback maneuvers necessary to respond to a failure of the system. An automated motor vehicle means a motor vehicle on which an automated driving system is installed.

Section 545.452 provides that automated motor vehicles and automated driving systems are exclusively governed by Subchapter J, expressly prohibiting political subdivisions and state agencies from imposing a franchise or other regulation related to the operation of an automated motor vehicle or automated driving system.

Section 545.453 provides that a licensed human operator is not required to operate a motor vehicle in an automated driving system installed on the vehicle is engaged. Also, when such a system is engaged, the owner of the system is considered the operator solely for the purpose of assessing compliance with applicable traffic or motor vehicle laws, regardless of whether the person is physically present in the vehicle while it is operating.

The bill authorizes an automated motor vehicle to operate in the state regardless whether a human operator is physically present, but may not operate on a highway (with or without a human) unless the vehicle is capable of operating in compliance with applicable traffic and motor vehicle laws, is equipped with a recording device installed by the manufacturer, complies with applicable federal law and federal motor vehicle standards, is registered and titled by law, and is covered by insurance (Section 545.454).

Under Section 545.455, in the event of an accident, the automated motor vehicle or any human operator shall comply with Chapter 550 (Accidents and Accident Reports) of the Transportation Code.

TMCEC: Ponder the implications of Section 545.453 on the enforcement of criminal traffic laws. Does this change everything? The future presents interesting questions and possibilities.

Special Session
Tree Planting Credit to Offset Tree Mitigation Fees Imposed by a Municipality
1 H.B. 7
Effective: December 1, 2017

A "tree mitigation fee" is a cost imposed by a city in connection with the removal of a tree from private property. Many Texas cities regulate the removal of trees from private property as development occurs. Some cities require the property owner to pay the city a mitigation fee as a condition for the issuance of a permit to remove a tree.

Chapter 212 of the Local Government Code is amended by adding Section 212.905 (Regulation of Tree Removal) which precludes a city from prohibiting the removal of or imposing a tree mitigation fee for the removal of a tree that: (a) is diseased or dead; or (b) poses an imminent or immediate threat to persons or property. It also prohibits a city from requiring a person to pay a tree mitigation fee for the removed tree if the tree: (a) is located on a property that is an existing one-family or two-family dwelling that is the person's residence; and (b) is less than 10 inches in diameter at the point on the trunk 4.5 feet above the ground.

A city that imposes a tree mitigation fee for tree removal on a person's property must allow that person to apply for a credit for tree planting to offset the amount of the fee. Section 212.905 governs such credits. Section 212.905 does not apply to property within five miles of a federal military base in active use as of December 1, 2017.

At-A-Glance

Seminar	Date(s)	City	Hotel Information
Regional Clerks Seminar	October 23-25, 2017	Longview	Hilton Garden Inn 905 East Hawkins Parkway, Longview, TX 75605
Regional Judges Seminar	October 25-27, 2017	Longview	Hilton Garden Inn 905 East Hawkins Parkway, Longview, TX 75605
Regional Judges & Clerks Seminar	November 14-16, 2017	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
New Judges & Clerks Seminar	December 11-15, 2017	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
Regional Judges & Clerks Seminar	January 8-10, 2018	San Antonio	Omni at Colonnade 9821 Colonnade Blvd. San Antonio, TX 78230
Regional Clerks Seminar	January 22-24, 2018	Galveston	San Luis Resort 5222 Seawall Blvd. Galveston, TX 77551
Level III Assessment Clinic	January 29-Feb 1, 2018	Austin	Crowne Plaza 6121 North IH-35 Austin, TX 78752
Clerks One Day Clinic	February 8, 2018	McAllen	Doubletree Suites 1800 S 2nd St, McAllen, TX 78503
New Judges & Clerks Orientation	February 9, 2018	Austin	TMCEC 2210 Hancock Drive Austin, TX 78756
Regional Judges & Clerks Seminar	February 11-13, 2018	Houston	Omni at Westside
Regional Judges Seminar	February 18-20, 2018	Galveston	San Luis Resort 5222 Seawall Blvd. Galveston, TX 77551
Regional Clerks Seminar	March 5-7, 2018	Addison	Crowne Plaza 14315 Midway Road, Addison, TX 75001
Regional Judges Seminar	March 7-9, 2018	Addison	Crowne Plaza 14315 Midway Road, Addison, TX 75001
Prosecutors Conference	March 21-23, 2018	Houston	Omni at Westside 13210 Katy Freeway Houston, TX 77079
Traffic Safety Conference	March 26-28, 2018	San Antonio	Omni at Colonnade 9821 Colonnade Blvd. San Antonio, TX 78230
Regional Judges & Clerks Seminar	April 2-4, 2018	Lubbock	Overton Hotel 2322 Mac Davis Ln, Lubbock, TX 79401
Teen Court Planning Seminar	April 23-24, 2018	Georgetown	TBD
Regional Clerks Seminar	April 30-May 2, 2018	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd. S. Padre Island, TX. 78597
Regional Attorney Judges Seminar	May 6-8, 2018	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd. S. Padre Island, TX. 78597
Regional Non-Attorney Judges Seminar	May 8-10, 2018	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd. S. Padre Island, TX. 78597
Bailiffs & Warrant Officers Conference	May 14-16, 2018	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
New Judges & Clerks Orientation	May 18, 2018	Austin	TMCEC 2210 Hancock Drive Austin, TX 78756
Regional Judges & Clerks Seminar	June 4-6, 2018	El Paso	Wyndham Airport 2027 Airway Blvd, El Paso, TX 79925
Juvenile Case Manager Conference	June 11-13, 2018	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
Prosecutors & Court Administrators Conference	June 25-27, 2018	San Antonio	Marriott Northwest 3233 NW Loop 410, San Antonio, TX 78213
New Judges & Clerks Seminar	July 16-20, 2018	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
Impaired Driving Symposium	August 2-3, 2018	Horseshoe Bay	Horseshoe Bay Resort 200 Hi Cir N, Horseshoe Bay, TX 78657

https://register.tmcec.com/

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY18 REGISTRATION FORM:
Regional Judges & Clerks Seminar, Court Administrators, Bailiffs & Warrant Officers, Traffic Safety, Level III Assessment Clinic, and Juvenile Case Managers

Conference Date: _____ Conference Site: _____

Check one:

☐ Non-Attorney Judge ($100)
☐ Attorney Judge not-seeking CLE credit ($100)
☐ Attorney Judge seeking CLE credit ($200)
☐ Regional Clerks ($100)

☐ Traffic Safety Conference - Judges & Clerks ($100)
☐ Level III Assessment Clinic ($150)
☐ Court Administrators Seminar ($150)
☐ Bailiff/Warrant Officer ($150)
☐ Juvenile Case Manager ($150)

By choosing TMCEC as your MCLE provider, attorney-judges help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name *(please print legibly)*: Last Name: _____ First Name: _____ MI: _____

Names you prefer to be called (if different): _____ Female/Male: _____

Position held: _____ Date appointed/hired/elected: _____ Are you also a mayor?: _____

Emergency contact (Please include name and contact number):_____

HOUSING INFORMATION - Note: $50 single room fee each night

TMCEC will make all hotel reservations from the information you provide on this form. **TMCEC will pay for a double occupancy room for two nights with another seminar participant at all regional judges and clerks seminars.** To share with a specific seminar participant, you must indicate that person's name on this form. If you do not wish to share, please add $50 a night for a single room. I request

☐ a private room ($50 per night : ____ # of nights x $50 = $_____). TMCEC can only guarantee a private room; type of room (queen, king, or two double beds*) is dependent on hotels availability. Special Request: _____

☐ a room shared with a seminar participant. Room will have two double beds. TMCEC will assign roommate **or** you may request roommate by entering seminar participant's name here:_____

☐ I do not need a room at the seminar.

Hotel Arrival Date (this **must** be filled out in order to reserve a room): _____

*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: _____ Email Address: _____

Court Mailing Address: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ Fax: _____

Primary City Served: _____ Other Cities Served:_____

***Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiffs/Warrant Officers' program.

Judge's Signature: _____ Date:_____

TCOLE PID: _____ BAILIFF DOB FOR TCOLE PID #_____

I have read and accepted the cancellation policy, which is outlined in full on page 11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form (with all applicable information completed) and full payment of fees.**

_____ _____
Participant Signature (may only be signed by participant) *Date*

PAYMENT INFORMATION:

Registration/CLE Fee: $_____ + Housing Fee: $_____ = Amount Enclosed: $_____

☐ Check Enclosed *(Make checks payable to TMCEC)*
☐ Credit Card

Credit Card Payment:

Amount to Charge: *Credit Card Number* *Expiration Date*

Credit card type: $_____ _____ _____

☐ *MasterCard*
☐ *Visa*

Name as it appears on card (print clearly): _____

Authorized signature: _____

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email address here:

_____

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY18 REGISTRATION FORM:

New Judges, New Clerks, and Prosecutors Conferences

Conference Date: _____ Conference Site: _____

Check one:

☐ New, Non-Attorney Judge Program ($250)
☐ New Clerk Program ($250)
☐ Non-municipal prosecutor seeking CLE credit ($450)
☐ Non-municipal prosecutor not seeking CLE credit ($350)

☐ Prosecutor not seeking CLE/no room ($150)
☐ Prosecutor seeking CLE/no room ($250)
☐ Prosecutor not seeking CLE/with room ($300)
☐ Prosecutor seeking CLE/with room ($400)

By choosing TMCEC as your MCLE provider prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name *(please print legibly)*: Last Name: _____ First Name: _____ MI:_____
Names you prefer to be called (if different): _____Female/Male: _____
Position held: _____
Date appointed/hired/elected: _____Years experience: _____
Emergency contact (Please include name and contact number): _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. **TMCEC will pay for a single occupancy room at the following seminars**: four nights at the new judges seminars, four nights at the new clerks seminars, and two nights at the prosecutors conference (if selected). To share with another seminar participant, you must indicate that person's name on this form.

☐ I need a private, single-occupancy room. TMCEC can only guarantee a private room; type of room (queen, king or two double beds*) is dependent on hotels availability. Special Request: _____

☐ I need a room shared with a seminar participant. Room will have two double beds. TMCEC will assign you a roommate or you may request a roommate by entering seminar participant's name here: _____

☐ I do not need a room at the seminar.

Hotel Arrival Date (this **must** be filled out in order to reserve a room):_____

*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: _____ Email Address: _____
Court Mailing Address: _____ City: _____ Zip:_____
Office Telephone #: _____ Court #: _____ Fax: _____
Primary City Served: _____ Other Cities Served:_____

STATUS (*Check **all** that apply):*

☐ Full Time ☐ Part Time ☐ Attorney ☐ Non-Attorney ☐ Court Clerk ☐ Deputy Court Clerk
☐ Presiding Judge ☐ Court Administrator ☐ Prosecutor ☐ Mayor (*ex officio* Judge)
☐ Associate/Alternate Judge ☐ Justice of the Peace ☐ Other _____

I have read and accepted the cancelation policy, which is outlined in full on page 11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form and full payment of fees.**

_____ _____
Participant Signature (May only be signed by participant) *Date*

PAYMENT INFORMATION: Payment **will not** be processed until all pertinent information on this form is complete.

☐ Check Enclosed *(Make checks payable to TMCEC)* **Amount Enclosed: $_____**
☐ Credit Card
Credit Card Payment:

	Amount to Charge:	*Credit Card Number*	*Expiration Date*
Credit card type:	$_____	_____	_____

☐ *MasterCard*
☐ *Visa* *Name as it appears on card (print clearly):* _____
Authorized signature: _____

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email addess here:
_____

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

TEXAS MUNICIPAL COURTS
EDUCATION CENTER
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AUSTIN, TX 78756
www.tmcec.com

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TMCEC MISSION STATEMENT

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

TMCEC Personal Academic Profile

Your personal profile has many of the answers you seek! Go to register.tmcec.com.

TMCEC constituents are persons who are currently employed by a city and are appointed or sworn officers of a Texas municipal court. This includes judges, court support personnel, prosecutors, juvenile case managers, and bailiff/warrant officers.

Each constituent has a personal profile that shows important details about a person's academic records. This information is just a click away and may provide the answers to the most common administrative questions.

Log in and click on the tabs (words) to display the following information:

- Upcoming Events: Events that you are currently registered to attend
- Past Events: Events you have previously attended and a printable certificate for your attendance
- Transcript: Chronological list of your academic record
- Clerk Certification: The status of your certification
  - Renewal years & dates of each level
  - EXAM Status
  - You can also upload renewal applications with information from other providers
  - Your renewal status and the status of your certification exam

It is NOT necessary for you to file a "Renewal Application" if you are a Certified Court Clerk Level I or II AND have attended a 12-16 hour TMCEC program. This will be done automatically for you within 2-4 weeks following the proper completion of your "Record of Attendance" at the end of the program.

Register Online: register.tmcec.com