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LEGISLATIVE UPDATE

87TH TEXAS LEGISLATURE

TEXAS MUNICIPAL COURTS EDUCATION CENTER

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"AROUND THE STATE"

The Texas Municipal Courts Association (TMCA) recognized the 2021 recipients of its Jurist of the Year and Clerk of the Year awards at the association's annual meeting, which was held virtually on July 15, 2021. TMCA selected Hon. Lacy Britten from the Cities of Hurst and Euless as Outstanding Judge of the Year and Jessica Ancira, Director of Municipal Court Services for the City of Seabrook Municipal Court as Outstanding Clerk of the Year. TMCEC would like to recognize and congratulate both of this year's award recipients.

LACY BRITTEN has been the Presiding Municipal Judge for the City of Euless for the past 22 years and the Presiding Judge for the City of Hurst for nine years. Until 2012, she maintained a small private law practice which included child welfare law (CPS), criminal defense of juveniles, and small estate planning. She was formerly the First Assistant/Chief Felony Prosecutor for the Ellis County and District Attorney's Office. She has been a speaker at various civic, legal and law enforcement functions, and was previously an adjunct professor in criminal justice for Navarro College at the Waxahachie Campus. She was selected as the Tarrant County Court Appointed Special Advocates (CASA) Attorney of the Year in 2002. Judge Britten received both a B.B.A. Degree (Cum Laude, 1989), and J.D. Degree (1991) from Baylor University. She resides in Tarrant County with her husband and two daughters.

Her peers who nominated her for this award call her an exceptional and proactive leader. In response to being named Outstanding Judge of the Year, Judge Britten said, "I am very honored to receive this award and want to express my sincere appreciation to TMCA for the recognition. Most of all, I feel so very privileged to work with Lisa Howard (Hurst) and Claudia Quintero (Euless), the court administrators who nominated me. I have been extremely fortunate as a judge to have always had a hard-working, knowledgeable and dependable group of clerks, bailiffs, and marshals with whom to work. It is those individuals who truly make it a pleasure to serve the cities of Hurst and Euless."

JESSICA ANCIRA is the City of Seabrook's first Director of Municipal Court Services. She began her career at Seabrook Municipal Court in 2006 as a Court Administrator. Ms. Ancira completed her Level I and II Clerk Certification within two years of each other (Level I in December 2009 and Level II in August 2011). She has completed over 300 hours of training and is taking steps to become Level III Certified.

According to her peers who nominated her for this award, in response to COVID-19, Ms. Ancira was instrumental in moving the court forward with innovative technology in the office and courtroom, expanding customer outreach, and initiating additional ideas for excellent service. She implemented a virtual telework program for court employees and a live chat for defendants to better communicate with the court. She was attributed with implementing the court's first virtual hearing in May 2020 and remote bench trial in June 2020.

TABLE OF SUMMARIES

Courts, Court Costs, and Administration of Justice

Domestic Violence and Human Trafficking

Gun Laws

Juvenile Justice and the Interests of Children

Local Government

Magistrate Duties and Mental Health

Procedural Law

Substantive Criminal Law

Traffic Safety and Transportation

The New OLC (2.0)! ..... See Page 77 for details

2021 LEGISLATIVE UPDATE
87th Regular Legislature

COURTS, COURT COSTS, AND ADMINISTRATION OF JUSTICE

H.B. 21
Subject: Statute of Limitations Applicable to Sexual Harassment Complaint Filed with Texas Workforce Commission
Effective: September 1, 2021

H.B. 21 amends Sections 21.201 and 21.202 of the Labor Code to extend the statute of limitations for filing complaints regarding sexual harassment with the Texas Workforce Commission (TWC) from 180 days to not later than the 300th day after the date when the misconduct allegedly occurred.

TMCEC: H.B. 21 extends protections for sexual harassment victims by giving them an additional 120 days to report incidents of sexual harassment in the workplace.

H.B. 295
Subject: Funding for Indigent Defense Services
Effective: September 1, 2021

Under current law, Section 79.037(a) of the Government Code requires the Texas Indigent Defense Commission (TIDC) to assist counties in providing indigent defense services by distributing grants from appropriated funds to the county, a law school's legal clinic or program that provides indigent defense services in the county, or an eligible regional public defender who provides indigent defense services in the county. H.B. 295 amends Section 79.037(a) of the Government Code to expand the entities to which the TIDC may provide grants.

TMCEC: H.B. 295 adds two entities to the list of those eligible for TIDC grants: nonprofit corporations that provide indigent defense services in the county and an entity with an interlocal contract that provides administrative services for indigent defense to a county. This creates a somewhat more expansive list when it comes to entities that may receive grant money for county indigent defense. Note that the bill does not make changes that directly affect those charged in municipal courts. Considering the rhetoric regarding those charged with fine-only crimes in recent years, it continues to be surprising not to see indigent defense addressed in municipal courts. As TMCEC noted two years ago following S.B. 346, the Fair Defense Account portion of the Consolidated Fee court cost (which is appropriated for use by TIDC) has been the biggest beneficiary of post-*Salinas* legislative changes, increasing from 8.0143 percent in 2015 to 17.8448 percent in 2017 to 17.8857 percent in 2020. *See* Ryan Kellus Turner and Regan Metteauer, "Case Law and Attorney General Opinion Update" *The Recorder*

(December 2017) at 44 for a summary of *Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017).

H.B. 4293
Subject: Reminder Program for Criminal Defendants
Effective: September 1, 2021

H.B. 4293 amends Chapter 75 of the Government Code by adding Subchapter J (Court Reminder Program). The bill requires the Office of Court Administration (OCA) to develop and make available, no later than September 1, 2022, a court reminder program that would allow counties to send text messages to notify defendants of scheduled court appearances. The program, which is available to counties at no cost, must have the capability to document various data, including the ability to track the number of text reminders sent, identify defendants who lack access to technology, and identify defendants that fail to appear even after the reminder. The program must also comply with applicable state and federal laws requiring the consent of an individual before sending a reminder by text message.

H.B. 4293 also adds Section 75.603 of the Government Code (Municipal Program). This section allows municipalities (and local law enforcement agencies) to partner with OCA or the justices of the justice courts and judges of the county courts, statutory county courts, and certain district courts to allow defendants in municipal courts to receive text reminders of scheduled court appearances. Municipalities are required to pay all the costs associated with sending the text reminders and costs for linking to state court administrator databases.

TMCEC: Anyone that has ever worked in a court can attest that one of the most common reasons for missing court is "I forgot." With this bill, the Legislature is giving defendants another lifeline before non-appearance consequences kick in. In municipal courts, reminders such as these became a common best practice years ago. Municipal courts, however, should pay attention to the final product. OCA has some experience rolling out interactive databases in short order in recent years (both the Citation by Publication website and the Protective Order Registry mandated by the 86th Legislature within the last two years). While there are costs involved for any municipality seeking to partner with OCA or other courts for access to the program, it is possible that there could be benefits vis-à-vis local reminder programs that municipal courts are currently using, especially if a court is currently using a third-party vendor. OCA has until September 1, 2022 to roll out their program (dependent on legislative appropriation), and municipal courts may consider doing a cost benefit analysis on its usefulness by then.

H.B. 4344
Subject: Requiring Timeline for State Commission on Judicial Conduct (SCJC) Complaints
Effective: September 1, 2022

H.B. 4344 amends Chapter 33 of the Government Code (State Commission on Judicial Conduct). The bill amends Section 33.0211 requiring that each member of the SCJC be notified, briefed, and provided detailed information regarding the complaint. The bill also adds Section 33.0212 creating a required timeline for the Commission to act on complaints filed and protocol for complaints not timely filed due to extenuating circumstances.

Additionally, it adds Section 33.0213 authorizing the Commission to put a complaint on hold if it would jeopardize a law enforcement investigation of an action for which the complaint was filed. H.B. 4344 adds Section 33.040, which requires the Commission to prepare annual reports detailing the number of complaints that failed to finalize by the statutory deadline and number of complaints the commission declined to further investigate due to a law enforcement investigation. Under new Section 33.041, the Commission must also file a report for the 88th Legislature regarding statutory changes that would improve the process of filing complaints filed with the Commission.

TMCEC: Under current law, there are not specific time parameters for resolving complaints filed with the SCJC. The complaints could, in theory, potentially remain open for years without resolution. H.B. 4344 creates a series of deadlines that the Commission must follow when resolving the complaint. This brings the

complaint process in line with other legal proceedings, helping ensure a timely final disposition.

H.J.R. 165
Subject: Proposed Constitutional Amendment Giving the State Commission on Judicial Conduct Authority to Enforce the Code of Judicial Conduct on Judicial Candidates
Effective Date: March 25, 2021 (Filed with the Secretary of State)

Concerns have been raised that an inherent unfairness exists in judicial elections: incumbent judges are subject to the Code of the Judicial Conduct whereas their opponent is not if he or she is not a judge during the election. H.J.R. 165 is a proposed constitutional amendment that would give the State Commission on Judicial Conduct authority to enforce the Code of Judicial Conduct on any judicial candidate regardless of whether they are currently a judge.

H.J.R. 165 will send the following proposed amendment to Article V, Section 1-a of the Texas Constitution to Texas voters on November 2, 2021:

(13-a) The Commission may accept complaints or reports, conduct investigations, and take any other action authorized by this section with respect to a candidate for an office named in Subsection (6)(A) of this section in the same manner the Commission is authorized to take those actions with respect to a person holding that office.

S.B. 45
Subject: Prohibition Against Sexual Harassment in the Workplace
Effective: September 1, 2021

Under current law, protections against workplace sexual harassment in Texas apply only to persons who work for an employer with 15 or more employees. S.B. 45 adds Subchapter C-1 (Sexual Harassment) to Chapter 21 of the Labor Code, defining employer as a person who employs one or more employees and establishing that sexual harassment by any employer, regardless of how many persons they employ, is unlawful.

TMCEC: S.B. 45 is noteworthy in that it significantly expands the definition of employer for purposes of sexual harassment claims to include any organization that employs one or more people. Also important to note, however, is the second part of the definition added by the bill. Employer also means a person "who acts directly in the interests of an employer in relation to an employee." This is different from the existing definition found elsewhere in Chapter 21 of the Labor Code. Finally, court administrators and city attorneys should also see a related bill, H.B. 21, regarding the statute of limitations on sexual harassment claims.

S.B. 1134
Subject: Residential Address Confidentiality on Certain Documents for Family Members of Federal and State Court Judges
Effective: September 1, 2021

Under current law, state and federal judges and their spouses may make use of special confidentiality rules protecting their personal and residential information. This information may be redacted from state voter registration records, handgun licenses, public information requests, financial disclosure statements and other campaign reports, property records, tax appraisal records, and driver's licenses. This bill extends these protections to federal bankruptcy judges, U.S. marshals, and U.S. attorneys. Additionally, the protection of spouses' information is extended to cover other certain family members.

TMCEC: In response to the horrific attack against Judge Julie Kocurek in 2015, the 85th Legislature passed S.B. 42, known as the Judge Julie Kocurek Judicial and Courthouse Security Act of 2017. Among other protections restricting the availability of personal information of state judges, the Act contains a section requiring the Texas Ethics Commission to redact the residential address of a federal or state judge or the spouse of a federal or state judge from any financial statement or information derived from a financial statement. Last session, confidentiality was extended to other campaign reports filed with the Texas Ethics Commission and property records like home equity security instruments, releases of lien, special powers of attorney, releases of mortgage, and lost note affidavits. Additionally, county clerks were charged with the task of redacting this information from documents they publish online. Namely, a county clerk must redact the social security number, driver's license number, and

residential address of a federal judge, state judge, or spouse of the federal or state judge upon receipt of a written redaction request by the judge or the judge's spouse. Under the Judge Julie Kocurek Act, municipal judges are included in the definition of state court judges that have personal information protected. S.B. 1134 expands these protections beyond the judge and the judge's spouse to certain family members of the judge, effectively fixing a gap in the law. The bill references the definition of "family member" in Section 31.006 of the Finance Code, which is a person's spouse, minor child, or adult child that resides in the person's home. That change to the various statutes restricting a judge's personal information should greatly expand the applicability to the judge's household and close the gap in protection.

S.B. 1373
Subject: Relating to Imposition and Collection of Fines, Fees, and Court Costs in Criminal Cases
Effective: September 1, 2021

Under current law, Article 103.0081 of the Code of Criminal Procedure allows judges to order the designation of court costs and fees as uncollectible if the defendant is dead, serving a life sentence, or the fee remains unpaid after 15 years. The plain text of the statute, however, applies only to court costs and fees but not to fines. S.B. 1373 amends Article 103.0081 making it applicable to fines, not just court costs and fees. The bill also specifically allows reimbursement fees to be designated uncollectible.

S.B. 1373 amends the Code of Criminal Procedure addressing the applicability of certain court costs. In 2019, S.B. 346 redefined numerous court costs as reimbursement fees. Some have since argued that it implies that these court costs and fees are assessed only at the time of judgment. Court costs and fees, however, may be modified or assessed post-conviction. S.B. 1373 amends the definition of "cost" in Articles 45.004 and 43.015 of the Code of Criminal Procedure by striking the phrase "at the time of judgment" and specifically referencing a reimbursement fee. The result is that a "cost" includes any fee modified or imposed after judgment.

Relatedly, in 2017, the legislature passed S.B. 1913, which required courts to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. Although court orders have language stating that they conducted such an inquiry, some have suggested that courts are not always asking defendants about their inability to pay. S.B. 1373 amends Article 42.15 of the Code of Criminal Procedure, requiring certain judges to inquire "on the record" about the defendant's ability to pay. Note that the bill did not correspondingly add this requirement to Article 45.041, the judgment statute specific to municipal and justice courts (possibly as an oversight or because of non-record courts).

TMCEC: As far as court costs bills go, S.B. 1373 is nowhere near as sweeping as S.B. 346 in 2019 that reimagined state court costs on a broad scale. S.B. 1373 does, however, make important tweaks to court cost changes made during the last three legislative sessions. Among the most impactful for courts may be changes to the "uncollectible fees" statute, which allows courts to order the designation of certain costs and fees as "uncollectible" and essentially close out old post-conviction cases. This provision has quite the history in recent legislative sessions. Article 103.0081 was first added to the Code of Criminal Procedure in 2017 by H.B. 413. TMCEC at the time referred to it as the "Collin County Bill" due to the population bracketing in the bill that resulted in the provisions only applying to Collin County. Legislators went back to the well in 2019 and expanded the statute to remove the population requirement. S.B. 1373 is now a third attempt to clean up Article 103.0081 after questions arose as to why fines were not included in the amounts that could be designated "uncollectible." This may have been construed to mean that a judge could order the costs and fees portion of a judgment to be designated as uncollectible within the parameters of Article 103.0081, but not the fine, thus leaving the judgment unsatisfied and negating the intent of the statute. Separately, H.B. 3774 also made similar changes to Article 103.0081. Is the third time the charm for uncollectible judgments?

S.B. 1923
Subject: Criminal Court Costs, Fines, and Fees Clean-Up Bill
Effective: September 1, 2021

Last session, the legislature passed S.B. 346 to consolidate criminal court costs. S.B. 1923 provides

additional direction for clerks when handling costs and fees, addresses certain fees, and further clarifies the definition of conviction for the purposes of criminal court costs.

S.B. 1923 amends the Local Government Code, Parks and Wildlife Code, and Transportation Code to reclassify certain criminal court fines and fees as reimbursement fees. The bill adds Article 101.004 of the Code of Criminal Procedure (Meaning of Conviction) providing that in Title 2 of the Code of Criminal Procedure, a person is "convicted" if (1) a judgment, a sentence, or both a judgment and a sentence are imposed on the person; (2) the person receives community supervision, deferred adjudication, or deferred disposition; or (3) the court defers final disposition of the case or imposition of the judgment and sentence. Article 102.011 (Reimbursement Fees for Services of Peace Officers) is amended with language specifying that the purpose of the reimbursement fees paid by a defendant convicted of a felony or misdemeanor for the services provided in the case by a peace officer is to defray the cost of such services.

Finally, S.B. 1923 amends Section 51.607 of the Government Code (Implementation of New or Amended Court Costs and Fees) by adding Subsection (d), which provides an exception to the general rule that the imposition or change in the amount of a court cost or fee does not take effect until the next January 1 after the law takes effect. As amended, this general rule does not apply to a court cost or fee if the law imposing or changing the amount of the cost or fee takes effect on or after January 1 following the regular session of the legislature at which the law was enacted.

TMCEC: Although it is fair to call S.B. 1923 the "S.B. 346 Clean-Up Bill," it did not clean up everything. After last session, TMCEC highlighted lingering issues with the broad changes made by S.B. 346. *See* Robby Chapman, "The Consolidation of Court Costs and Reimagining of Fines in Texas: Five Important Considerations," *The Recorder* (April 2020). S.B. 1923 provides a few fixes, including renaming compliance dismissal fees a second time—previously renamed as fines by S.B. 346 last session—as reimbursement fees and also directly addresses the uncertainty surrounding the effective date of new court costs. What's left undone? The bill does not rename the former special expense fee, which S.B. 346 renamed as a fine, nor does S.B. 1923 provide a fix that would allow courts without a juvenile case manager to use money in the Local Truancy Prevention Diversion Fund.

DOMESTIC VIOLENCE AND HUMAN TRAFFICKING

H.B. 39
Subject: Protective Orders
Effective: September 1, 2021

There is growing concern about the number of individuals who face significant barriers in acquiring protective orders to prohibit perpetrators of family violence, human trafficking, sexual abuse, sexual assault, and stalking and other similar offenses from interacting with their victims, especially when the victim is a child. H.B. 39 seeks to reduce those barriers to the filing and enforcement of protective orders by making agreed protective orders civilly and criminally enforceable, amending the list of persons that may file an application for a protective order, and requiring that proof of service on a respondent must be filed before a hearing in which a court may issue a protective order by default due to a respondent's failure to appear.

TMCEC: H.B. 39 pertains to protective orders issued in relation to a suit for dissolution of marriage or a suit affecting the parent-child relationship under Chapter 85 of the Family Code, as well as those issued under Chapter 7B of the Code of Criminal Procedure. Municipal courts have no role in either process, but judges as magistrates should be aware that the change to Section 25.07 of the Penal Code specifies that it is a state jail felony to violate a protective order issued under Subchapter A, Chapter 7B following the defendant's conviction of or placement on deferred adjudication community supervision for an offense if the order was issued with respect to a victim of that offense.

H.B. 1906
Subject: Grants to Reimburse Counties for Cost of GPS Monitoring in Family Violence Cases
Effective: June 15, 2021

Evidence has shown that victims of domestic violence face a great risk of harm when leaving or separating from a batterer. The use of GPS technology can help keep survivors safe while the defendant is free on bond. Costs associated with GPS monitoring are paid for by the defendant, unless the defendant is indigent, in which case the costs fall upon the applicable county. Providing a way to alleviate the costs of GPS monitoring on counties would encourage the use of this technology to help deter future violence.

H.B. 1906 adds Section 772.0077 to the Government Code to require the criminal justice division of the governor's office to establish and administer a grant program to reimburse counties for the costs incurred because of GPS monitoring in cases involving family violence. This program limits a grant recipient's use of funds to monitoring conducted for the purpose of restoring a measure of security and safety to a family violence victim.

TMCEC: GPS monitoring can be a burdensome expense. Magistrates may face difficult decisions when GPS monitoring could be effective, but the county lacks adequate funding. Lifting that burden from counties when GPS monitoring is ordered for an indigent defendant will be welcomed by magistrates who may feel stuck between a rock and a hard place.

H.B. 2633
Subject: Establishing the Trafficked Persons Grant Program
Effective: September 1, 2021

The lack of shelters for victims of human trafficking can facilitate the recruitment of at-risk children, youth, and young adults into sophisticated trafficking operations. Children recovered from trafficking, who may once have been groomed as recruiters, are often placed into facilities with child abuse victims. As a result, many of these recovered children revert to recruiting new trafficking victims, making abused children in nonspecialized facilities easy prey for traffickers.

H.B. 2633 assists in the establishment of standalone facilities dedicated to the recovery and protection of these uniquely vulnerable populations. Specifically, the bill adds Subchapter D to Chapter 50 of the Health and Safety Code creating the trafficked persons grant program to provide dedicated housing and treatment facilities for certain human trafficking victims.

H.B. 3521
Subject: Definition of Coercion for Purposes of Trafficking of Persons
Effective: September 1, 2021

Although coercion is an element of criminal offenses involving adult and child labor trafficking, the term is only defined for offenses related to adult sex trafficking. Prosecutors have suggested that this current definition hinders their ability to prove coercion as an element of certain trafficking offenses.

While a definition of coercion already exists in Section 1.07 of the Penal Code, H.B. 3521 amends Section 20A.01 of the Penal Code to specify that coercion will include destroying, concealing, confiscating, or withholding from a trafficked person the person's government records or other identifying information or documents. Coercion will also include causing a trafficked person, without the person's consent, to become intoxicated to a degree that impairs the person's ability to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services. Similarly, it will also be considered

coercion to withhold alcohol or a controlled substance to a degree that impairs the ability of a trafficked person with a chemical dependency to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services.

H.B. 3721
Subject: Inclusion of Information for Reporting Suspicious Activity to DPS on Human Trafficking Signs or Notices
Effective: September 1, 2021

Several licensees in Texas are required to post signage and notices displaying the national human trafficking hotline number or other information regarding assistance for trafficking victims, including alcoholic beverage permit and license holders, cosmetologists, hospitals, massage schools and establishments, and sexually oriented businesses. Given that the Department of Public Safety (DPS) has a proven history of effectiveness in collecting, analyzing, and culling suspicious activity for investigations, there have been calls to add DPS contact information to the signage displayed in these establishments as the number to contact for tips and reports of suspected trafficking.

H.B. 3721 amends Section 102.101 of the Business & Commerce Code requiring the inclusion of contact information for reporting suspicious activity to the DPS on certain human trafficking signs or notices. Conforming changes are also made to the Alcoholic Beverage Code, the Civil Practice and Remedies Code, the Government Code, the Health and Safety Code, and the Occupations Code.

TMCEC: In 2017, H.B. 29 created 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. H.B. 3721 will require those signs to include information regarding reporting suspicious activity to DPS.

S.B. 315
Subject: Restrictions on the Age of Persons Employed by or Allowed on the Premises of a Sexually Oriented Business
Effective: May 24, 2021

Sexually oriented businesses are a high-risk location for potential human trafficking and exploitation. While these businesses are primarily regulated at the local level, the state legislature has the authority and the obligation to enact additional protections for youth statewide.

S.B. 315 amends Section 51.016 of the Labor Code raising the age of employment in sexually oriented businesses from 18 to 21. The bill also adds Section 106.17 to the Alcoholic Beverage Code and Section 102.0031 to the Business & Commerce Code prohibiting sexually oriented businesses from allowing minors on the premises. Sexually oriented businesses that violate these provisions commit a Class A misdemeanor under Section 102.005 of the Business & Commerce Code or Section 51.031 of the Labor Code. These changes provide mechanisms for safeguarding children from trafficking and sexual exploitation.

S.B. 576
Subject: Smuggling of Persons
Effective: September 1, 2021

Concerns have been raised by local authorities, law enforcement agencies, and landowners that conduct currently punishable as a smuggling offense and the penalties prescribed for such an offense are inadequate. Migrants and local communities alike are put in harm's way as smugglers brazenly continue their efforts. S.B. 576 strengthens smuggling law by revising the conduct constituting a smuggling of persons offense and enhancing the penalty for such an offense under certain circumstances.

S.B. 576 amends Section 20.05 of the Penal Code to provide that a person commits the offense of smuggling of persons if they knowingly take certain actions, including assisting, guiding, or directing two or more individuals to enter or remain on agricultural land without the effective consent of the owner. In the same Section, S.B. 576 removes the existing requirement that a person act with the intent to obtain a pecuniary

benefit to commit the offense of smuggling of persons. Starting September 1, an offense committed with that intent simply enhances the punishment. Currently, smuggling of persons is a felony of the third degree. S.B. 576 makes the offense a felony of the second degree if it is committed to obtain a pecuniary benefit, is committed while knowingly possessing a firearm, or if the actor commits the offense with the intent to flee from a known peace officer or special investigator attempting to lawfully arrest or detain the actor.

S.B. 623
Subject: Relating to the Investigation and Punishment of Certain Sexual Offenses, Protective Orders Issued on the Basis of Certain Sexual Offenses, Crime Victims' Compensation, and the Establishment of a State Sexual Offense Prevention and Response Program for the Texas Military Department
Effective: September 1, 2021

Under current law, victims of sexual assault in Texas military forces must rely on local law enforcement to pursue criminal charges. Such agencies often face jurisdictional challenges when investigating military sexual assault cases. Victims of sexual assault who obtain a military protective order lose its protection when they are no longer active-duty or deployed. S.B. 623 (the Vanessa Guillén Act) adds Subchapter J-1 (Sexual Offense Prevention and Response) to Chapter 432 of the Government Code (Texas Code of Military Justice) establishing a Sexual Assault Response Coordinator outside the chain of command to receive reports of sexual assault and provide victim advocacy services. The bill also designates a Texas Ranger under the Department of Public Safety as an independent criminal investigator for allegations of sexual assault in the Texas military forces. S.B. 623 also provides that military protective orders are sufficient grounds to grant a civilian an ex parte protective order (under Article 7B.002 of the Code of Criminal Procedure) for victims of sexual assault. The bill includes other notification of rights and resources for victims.

TMCEC: Note that protective orders under Article 7B.002 may only be filed in certain district courts, statutory county courts, constitutional county courts, courts of domestic relations, juvenile courts having jurisdiction of a district court, or other courts expressly given jurisdiction under Title 4 of the Family Code (Protective Orders and Family Violence).

S.B. 798
Subject: Identification Documentation for Victims and Children of Victims of Family or Dating Violence
Effective: September 1, 2021

Survivors of family violence face many barriers to rebuilding their lives. Often, survivors of domestic violence are unable to move out of shelters and begin the road to independence because they lack the proper documents. Without a birth certificate or personal identification, a survivor cannot obtain a permanent residence or employment, which is a substantial barrier to independence. S.B. 798 establishes an alternative, no-cost process for obtaining a birth certificate and state-issued ID for victims of dating violence or family violence or a child of a victim of dating or family violence.

S.B. 798 adds Section 191.00491 to the Health and Safety Code requiring the state registrar, a local registrar, or a county clerk to issue, without payment of a fee, a certified copy of a birth record to a requesting individual if they are a victim of dating violence family violence or the victim's child. Similar changes are made in Chapter 521 of the Transportation Code requiring the Department of Public Safety to waive fees when issuing a driver's license or personal identification certificate to a victim of dating violence or family violence or the child of a victim of dating or family violence.

S.B. 1371
Subject: Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Institutions of Higher Education
Effective: June 7, 2021

Postsecondary educational institutions seeking to comply with legislation passed by the 86th Legislature regarding reporting requirements for incidents of sexual harassment, sexual assault, dating violence, or stalking have reported a potential conflict with other statutory provisions under which victims of such offenses may

use a pseudonym when reporting applicable incidents. S.B. 1371 amends Section 51.252 of the Education Code, establishing that a victim reporting such an incident in the context of a Title IX process at a public or private institution of higher education may choose to do so using a pseudonym under applicable state law.

S.B. 1831
Subject: Punishment for Trafficking of Persons, Online Solicitation, and Prostitution
Effective: September 1, 2021

It is estimated that around 79,000 Texas children and youth have become victims of sex trafficking. Experts and professional advocates indicate that school campuses are hotspots for this crime. In fact, a 2018 survey of trafficking survivors found that 55 percent of the respondents were in school when they were trafficked.

S.B. 1831, named the "No Trafficking Zone Act," addresses the vulnerability of students by increasing penalties for offenses occurring on and around school premises and premises in which school functions are taking place. Specifically, offenders contacting, arranging meetings, or picking up students within this designated "no trafficking zone" will be charged with a first degree felony. This includes the practice of using technology and social media to arrange pick-ups during school hours. "No trafficking zones" will be established on school grounds, at school functions, at school sponsored events, and within 1,000 feet of these areas. Finally, S.B. 1831 provides for the posting of signs that provide information necessary to report suspicious activity in these spaces which, in turn, will reduce the impact that traffickers and their strategic partners have on our children's learning environment.

Section 20A.02 of the Penal Code (Trafficking of Persons) is amended to provide that an offense is a felony of the first degree if the committed on the premises of or within 1,000 feet of the premises of a school or on the premises of or within 1,000 feet of where an official school function or event sanctioned by the University Interscholastic League (UIL) is taking place. Similarly, S.B. 1831 amends Section 43.02 (Prostitution) increasing the punishment to the next highest category if the person offers or agrees to pay for engaging in sexual conduct on the premises of or within 1,000 feet of the school, a school function, or a UIL event.

Section 33.021 of the Penal Code (Online Solicitation of a Minor) is amended to increase the punishment for an offense to the next higher category if it is committed during regular school hours and if the actor knew or should have known that the minor was enrolled in school at the time of the offense.

S.B. 1831 adds Section 37.086 to the Education Code requiring each school to post warning signs of the increased penalties for trafficking of persons. The Texas Education Agency (TEA), in consultation with the human trafficking prevention task force, must adopt rules regarding the placement, installation, design, size, wording, and maintenance procedures for the warning signs required under this section

Additionally, S.B. 1831 adds Section 1001.1021 to the Education Code, requiring that the Texas Commission of Licensing and Regulation (TCLR) to adopt a rule that information relating to human trafficking prevention be included in the curriculum of any driver education course or driving safety course.

GUN LAWS

H.B. 29
Subject: Temporary Secure Storage for Weapons at Certain Public Buildings
Effective: September 1, 2021

H.B. 29 adds Subchapter J (Temporary Secure Weapon Storage For Certain Public Buildings) to Chapter 2165 of the Government Code, authorizing state agencies and political subdivisions to place secure weapon storage lockers in buildings owned by these entities that are generally open to the public. The storage option applies to buildings or portions of buildings where carrying weapons, including a handgun or other firearm, location-restricted knife, club, or other weapons would violate Chapter 46 of the Penal Code or other law, or where the state agency or political subdivision prohibits weapons.

These entities may offer temporary secure weapon storage in the following ways: (1) self-service weapon lockers for temporary secure storage, or (2) temporary secure weapon storage administered by an employee of an agency or political subdivision.

Additionally, H.B. 29 authorizes state agencies and political subdivisions to collect a fee of not more than $5 for the use of a self-service weapon locker or other temporary secure weapon storage. The bill also makes provisions for handling unclaimed weapons. State agencies and political subdivisions offering temporary weapons storage will be required to notify users, and unclaimed weapons become subject to forfeiture if not reclaimed before the 30th day after the date it was placed in storage. A forfeited weapon could be sold or otherwise disposed of by the entity.

TMCEC: Cities should note that only primary or secondary schools, institutions of higher education, and places designated by law enforcement for confinement of persons are specifically excluded from the requirements of the new chapter. Importantly, H.B. 29 also adds Chapter 365 to the Local Government Code, imposing restrictions for public buildings regarding temporary secure weapon storage. This applies to a building or portion of a building that is open to the public where carrying a firearm would violate Chapter 46 of the Penal Code or other law. Compliance with these provisions will require some analysis, as many cities have shared court and city facilities.

H.B. 918
Subject: License to Carry a Handgun for Young Adults Protected by Court Orders Related to Family Violence
Effective: September 1, 2021

Every year, thousands of Texans fall victim to family violence. In state fiscal year 2020 alone, there were nearly 8,500 protective orders issued. While these protective orders are a great first step in stopping further violence or abuse, victims often find themselves seeking other means of personal protection, including obtaining a handgun. If a victim is under 21 years of age, however, they cannot legally obtain a license to carry a handgun. H.B. 918 amends Chapter 411 of the Government Code to address this and allow individuals over the age of 18 to obtain a handgun license within certain parameters.

H.B. 918 amends Section 411.172 of the Government Code, outlining the eligibility criteria for a license to carry a handgun for an individual at least 18 years old but not yet 21. The bill makes the individual who is at least 18 but not yet 21 years old eligible for a license to carry a handgun if the person is protected under a protective order issued under Title 4 of the Family Code, Subchapter A, Chapter 7B of the Code of Criminal Procedure, or an active magistrate's order for emergency protection (MOEP) under Article 17.292 of the Code of Criminal Procedure. The individual must still satisfy any other non-age-related eligibility requirements under federal law.

Additionally, H.B. 918 adds Section 411.1735 to the Government Code, requiring that a license to carry obtained in this manner must bear a protective order designation on the face of the license.

TMCEC: Offenses involving family violence were a big focus of the legislature last session, and that trend continues this session regarding possession of handguns for victims of family violence. H.B. 918 carves out an exception to the standard age of 21 required elsewhere in the law (and reflected in the "Constitutional Carry" bill, H.B. 1927) when a protective order is in place. A related bill, H.B. 2675, also authorizes expedited procedures to obtain a license to carry for individuals or a member of that person's household or family protected under a protective order.

H.B. 957
Subject: Local, State, and Federal Regulation of Firearm Suppressors
Effective: September 1, 2021

Section 46.05 of the Penal Code includes a criminal offense for an individual who intentionally or knowingly possesses, manufactures, transports, repairs, or sells certain weapons, including a firearm silencer unless the silencer is classified as a curio or relic by the U.S. Department of Justice or the individual otherwise possesses, manufactures, transports, repairs, or sells the silencer in compliance with federal law. Proponents of a broader view of the Second Amendment to the U.S. Constitution have argued that Texas's prohibition on possessing firearm suppressors infringes on their rights.

H.B. 957 amends Section 46.05(a) of the Penal Code, removing firearm suppressors from the list of prohibited weapons in the Penal Code. With possession no longer a third degree felony, the bill imposes new regulations for their lawful possession. It adds Chapter 2 to the Government Code and defines "firearm," "firearm suppressor," "generic and insignificant part," and "manufacture." Additionally, Subchapter B of the new chapter designates a firearm suppressor that is manufactured and remains in Texas as not subject to federal law or federal regulation. Subchapter C explicitly proscribes state officials from adopting rules, orders, ordinances, or policies that enforce a federal firearm suppressor regulation that is inconsistent with state law. The bill details that no person employed by or otherwise under the direction or control of a political subdivision of the state may enforce or attempt to enforce any federal firearm suppressor regulation. Violation of these sections may result in the denial of state grant funds.

H.B. 1069
Subject: Carrying of a Handgun by Certain First Responders
Effective: September 1, 2021

Some concerned parties have noted that first responders may be susceptible to violence while carrying out their responsibilities, particularly in rural areas, as they are often the first ones on the scene of an incident before police arrive. Currently, first responders are not afforded the opportunity to carry a handgun while on duty to defend themselves.

H.B. 1069 adds Chapter 179 to the Local Government Code, authorizing first responders employed or supervised by counties or municipalities with smaller populations who are handgun license holders to carry a handgun while carrying out their duties, contingent on the first responder obtaining liability insurance and completing applicable training. Notably, Section 179.055 allows a first responder to discharge a handgun while on duty only in self-defense.

Additionally, under the new chapter, a qualifying municipality may adopt policies allowing the licensed carry of handguns by first responders who have completed specific training under new Section 411.184(d) of the Government Code and obtained an appropriate liability policy under Section 179.053 of the Local Government Code. Cities may not adopt policies, however, that generally prohibit a first responder who holds a license from either carrying a handgun or from storing their handgun on premises and vehicles controlled by the political subdivision.

H.B. 1069 adds Section 411.184 to the Government Code, outlining the training course and requirements for first responders. The bill mandates that the public safety director of the Department of Public Safety is required to adopt rules to implement Section 411.184 no later than December 1, 2021. A qualified handgun instructor may not offer the training course before January 1, 2022.

H.B. 1069 also creates a new defense for first responders who are charged with criminal trespass by a license holder under Sections 30.06 and 30.07 of the Penal Code.

TMCEC: H.B. 1069 includes significant changes for first responders employed by cities across Texas. It is important to note, though, that the changes are applicable only to cities with a population of 30,000 or less or counties with a population of 250,000 or less that have not adopted Chapter 174 of the Local Government Code (Fire and Police Employee Relations).

H.B. 1407
Subject: Carrying of a Handgun by a License Holder in a Motor Vehicle
Effective: September 1, 2021

Under current law, individuals with a license to carry a handgun are permitted to carry a handgun on their person when in a motor vehicle, but are subject to prosecution if the handgun is visible in the motor vehicle, but not on their person. H.B. 1407 amends Section 46.035 of the Penal Code, expanding the exception to the offense of Unlawful Carry by a License Holder if the handgun was in a holster and the license holder was in a vehicle.

TMCEC: Several bills passed this session covering firearms. One particular focus area for legislators appeared to be language requiring shoulder or belt carry for handguns. A related bill, H.B. 2112, also amended Section 46.035 regarding the carrying of handguns in a holster. Interestingly, Section 46.035 of the Penal Code (Unlawful Carrying of Handgun by License Holder) was separately repealed in Section 26 of another gun bill, H.B. 1927.

H.B. 1500
Subject: Authority of the Governor and Certain Political Subdivisions to Regulate Firearms, Ammunition, Knives, Air Guns, Explosives, and Combustibles During Disasters and Emergencies
Effective: September 1, 2021

In March of 2020, during the onset of the COVID-19 pandemic in the United States, many governors and local leaders issued mandatory "stay-at-home orders," which required the temporary closure of businesses deemed "non-essential." In many states, businesses that exclusively sold firearms and ammunition were not listed as essential businesses and were required to close. H.B. 1500 amends the Government Code and the Local Government Code to ensure that neither the governor, nor local governments, have the authority to prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range during a declared state of disaster.

Specifically, H.B. 1500 amends Section 418.003 of the Government Code, adding a limitation to the provisions governing emergency management. It clarifies that the emergency management powers do not authorize any person to prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range in connection with a disaster. The bill also amends Section 418.019, authorizing the governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, other than explosives or combustibles that are components of firearm ammunition, rather than of alcoholic beverages, firearms, explosives, and combustibles.

H.B. 1500 also makes changes to the allowable content of the governor's emergency directives. The bill amends Section 433.002(b) of the Government Code, removing the governor's ability to issue emergency directions on the sale, storage, use, and transportation of weapons and ammunition. Similarly, it amends Section 433.0045(a), preventing directives from prohibiting or restricting the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range, in connection with a state of emergency.

Finally, H.B. 1500 deletes Section 299.001(b)(4) from the Local Government Code, removing municipalities' authority to regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster if the municipality finds the regulations necessary to protect public health and safety.

H.B. 1920
Subject: Prohibiting the Possession of a Weapon in a Secured Area of an Airport
Effective: September 1, 2021

Some Texas airports have raised concerns about inadequacies in state law protecting against potential insider threats for airport security, particularly the airport operations area, known as the airside, ramp, tarmac, or backside of the terminal. For example, current law does not prevent an airline employee from possessing a weapon in the airport operations area. This gap creates jurisdictional challenges for state airport law enforcement responding to threats. H.B. 1920 amends Section 46.03 of the Penal Code,

relating to the places that weapons are prohibited. The bill expands the definition of an airport's "secured area" under Section 46.03(c)(3) of the Penal Code to include aircraft parking areas that are used by common carriers in air transportation but not by general aviation and to which access is controlled under federal law. Additionally, it amends Section 46.03(e), creating a defense to prosecution if the actor was authorized by a federal agency or the airport operator to possess a firearm in a secured area.

H.B. 1927
Subject: Carrying of a Firearm by Persons 21 Years of Age or Older and Not Otherwise Prohibited by State or Federal Law from Possessing a Firearm
Effective: September 1, 2021

Proponents of a broader view of the Second Amendment to the U.S. Constitution have argued that state law infringes on the free exercise of the right to bear arms by requiring a license to legally carry a handgun. H.B. 1927 amends various provisions of the Penal Code, Code of Criminal Procedure, Education Code, Government Code, Health and Safety Code, Labor Code, and Alcoholic Beverage Code, making it generally legal for individuals who are 21 years of age or older to possess a firearm and carry a handgun without first obtaining a license. H.B. 1927 retains the license to carry a handgun as optional to allow reciprocity with states that have not passed similar legislation.

TMCEC: Named the Firearm Carry Act of 2021, H.B. 1927 is known colloquially as "Constitutional Carry." The far-reaching changes made by the bill touch on several statutes reflected in various sections. Cities and prosecutors should examine this bill closely.

Selected Section-by-Section Analysis:

Section 2: Right to Bear Arms and Those Prohibited

Although it makes sweeping changes to the ability to carry firearms, it is important to note that certain persons that are prohibited from possessing or carrying firearms under current law do not gain the right to possess or carry under H.B. 1927. These include persons convicted of a felony as described by the provisions of Section 46.04 of the Penal Code (Unlawful Possession of Firearm), persons convicted of certain assault offenses under Section 22.01 of the Penal Code, which are punishable as a Class A misdemeanor and involving a member of the person's family or household (Assault – Family Violence), certain persons who are the subject of a protective order under Section 46.04(c) of the Penal Code (providing that an offense is committed if a person possesses a firearm after receiving a certain order), and persons meeting any of the criteria listed in Section 922(g) of Title 18 of the United States Code, including persons adjudicated to be mentally incompetent.

Section 3: Disarming by a Peace Officer

H.B. 1927 amends Article 14.03 of the Code of Criminal Procedure, adding Subsection (h) regarding a peace officer's duties when encountering and disarming a person carrying a handgun. Subsection (h)(1) authorizes a peace officer to disarm a person at any time the officer reasonably believes it is necessary for the protection of the person, officer, or another individual. If the person is discharged from the scene, the officer must return the handgun if certain requirements are met. Subsection (h)(2) authorizes a peace officer to temporarily disarm a person that enters a secure portion of a law enforcement facility, but the agency must provide a gun locker or other secure area to temporarily store the handgun.

Note: In addition to this provision in H.B. 1927, four bills passed this session relating to storage of handguns and holsters. Secured locations were also addressed in S.B. 20 (hotels), H.B. 1920 (airports), and H.B. 29 (public buildings). Considering the number of municipal shared-use facilities, it is important to note distinctions between the requirements in H.B. 29 with regard to public buildings and the amendments made to Article 14.03 by H.B. 1927 pertaining to law enforcement facilities. In H.B. 1927, the definition of a "law enforcement facility" in Section 411.207 of the Government Code is specifically referenced and only includes the building or portion of the building used *exclusively* by law enforcement. In H.B. 29, "public buildings" broadly include a building or portion

of a building used by a state agency or a political subdivision. Other parameters in H.B. 29 not included for law enforcement facilities include the requirement to post a sign and authority to provide self-service weapon lockers.

Section 4: Expunction

H.B. 1927 amends Article 55.01 of the Code of Criminal Procedure (Right to Expunction), adding Subsection (a)(1)(C) expanding the entitlement to an expunction of all arrest records and files if the person was convicted of an offense committed before September 1, 2021, under Section 46.02(a) of the Penal Code (Unlawful Carrying Weapons), as that section existed before that date.

Note: Authority to conduct a Chapter 55 expunction was once limited to district courts, but changes made by H.B. 557 in 2017 expanded that authority to municipal courts of record and justice courts within certain parameters. The amendments made by H.B. 1927 expand the instances in which a person may petition for expunction to include any conviction under Section 46.02(a) of the Penal Code (Unlawful Carrying Weapons (UCW)), as the offense existed prior to September 1, 2021. Because of the volume of past arrests for that offense, this change could result in numerous petitions for expunction. However, UCW is a crime generally punishable as a Class A misdemeanor. Municipal courts of record and justice courts only have authority to expunge fine-only offenses under Chapter 55. H.B. 1927 authorizes the expunction for the Class A misdemeanor in Section 46.02(a) but does not include the Class C misdemeanor in Section 46.02(a-4) pertaining to possession of certain knives.

Section 7: Online Firearm Safety and Handling Course

H.B. 1927 adds Section 411.02097 to the Government Code, requiring the Department of Public Safety (DPS) to develop and make accessible an internet course on firearm safety and handling. The bill requires the course to be free of charge. The DPS is also required under added Section 411.02096 to prepare an annual report on certain firearm statistics until 2028.

Note: This course appears to be separate from any course required for a license to carry a handgun or the other class that the DPS is required to develop for first responders pursuant to H.B. 1069. Interestingly, the course mandated by H.B.1927 lacks the parameters commonly seen in most firearms training, including any requirement that the training be conducted by a qualified handgun instructor or that it include field instruction. Both of these requirements, among others, are listed in the H.B. 1069 course.

Section 16: Municipal Authority to Regulate

The bill amends Section 229.001(b) of the Local Government Code (Firearms; Air Guns; Knives; Explosives), which relates to municipal regulatory authority. Specifically, it restricts the regulation of individuals lawfully carrying a handgun in places like a public park; public meeting of a city, county, or other governmental body; political rally, parade, or official meeting; or non-firearms-related school, college, or professional athletic event. Under current law, such restrictions in regulation of those places applied to license holders. This change reflects the purpose of the bill in broadening who may lawfully carry a handgun.

Section 17: Criminal Trespass

H.B. 1927 amends Section 30.05 of the Penal Code (Criminal Trespass), adding Subsections (c) and (d-3) and amending existing Subsections (d) and (f). Subsection (c) lists the sign specifications if a person wants to provide notice by means of a sign that firearms are prohibited on a person's property (in addition to the general methods of trespass notice provided in Section 30.05(b)(2) that are not specific to firearms). The signage specifications (signs posted at each entrance with prescribed language, in both English and Spanish, appearing in contrasting colors with block letters at least one inch in height, displayed in a conspicuous manner) largely track those already existing in Section 30.06(b)(3) (Trespass by License Holder with a Concealed Handgun) and Section 30.07(b)(3) (Trespass by License Holder with an Openly Carried Handgun).

Current law provides that Criminal Trespass is generally a Class B misdemeanor. However, if the offense is committed in certain places, it is punishable as a Class A or Class C misdemeanor. For example, it is a Class C if the offense is committed on agricultural

land and within 100 feet of the boundary of the land or on residential land and within 100 feet of a protected freshwater area. H.B. 1927 adds Section 30.05(d-3) providing that an offense is also a Class C misdemeanor (punishable by a fine not to exceed $200) if the person enters the property, land, or building with a firearm or other weapon and the sole basis on which entry on the property, land, or in the building was forbidden is that entry with a firearm or other weapon was forbidden. It is enhanced to a Class A misdemeanor if the person personally received notice that entry with a firearm or other weapon was forbidden and failed to depart.

Section 22: Unlawful Carrying Weapons

H.B. 1927 amends Section 46.02(a) of the Penal Code, providing that the crime of Unlawful Carrying Weapons (UCW) is restricted to a person that is younger than 21 years of age at the time of the offense or has been convicted in the prior five years of an offense under Section 22.01(a)(1) (Assault), 22.05 (Deadly Conduct), 22.07 (Terroristic Threat), or 42.01(a)(7) or (8) (Disorderly Conduct by displaying or discharging a firearm in a public place). Additionally, the bill creates three new offenses by adding Section 46.02(a-5) (displays handgun in plain view), Section 46.02(a-6) (carries a handgun while intoxicated), and Section 46.02(a-7) (carries a handgun and was prohibited from possessing a firearm under Section 46.04(a), (b), or (c) of the Penal Code). All three new offenses have express exceptions. Note that the language in added Section 46.02(a-5) and (a-6) is almost identical to that in Section 46.035(a) and (d) respectively (Unlawful Carrying of Handgun by License Holder), which was repealed by H.B. 1927. Those offenses apply to license holders under current law but H.B. 1927 makes them applicable instead to persons under Section 46.02 as new ways to commit UCW (with an added exception in 46.02(a-6)). The repeal of Section 46.035 is discussed *infra*.

The amendments to Section 46.02(a) extensively alter the offense of UCW. The offense as it existed prior to the effective date of the bill on September 1, 2021, is eligible for expunction under Chapter 55. The new offenses under Section 46.02(a-5) and (a-6) are both Class A misdemeanors. Section 46.02(a-7), however, is either a second or third degree felony. Note that the bill repealed Section 46.02(c) which made an offense under that section a third degree felony if committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

Section 23: Places Weapons Prohibited

Under current law, Section 46.03(a) of the Penal Code (Places Weapons Prohibited) lists certain premises where it is an offense to possess or go with a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) of the Penal Code. Subsection (a-1) lists separate premises where location-restricted knives are specifically prohibited. H.B 1927 repeals Subsection (a-1) and adds all but one of the premises in it to Subsection (a) broadening the prohibition on those premises to not just location-restricted knives, but also firearms, clubs, or prohibited weapons listed in Section 46.05(a). The one premises that was repealed from Subsection (a-1) but not added to Subsection (a) is that of a church, synagogue, or other established place of religious worship.

In addition, the bill adds to the list of places weapons are prohibited in Section 46.03(a) the premises of a civil commitment facility and the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551 of the Government Code, and if the entity provided notice as required by that chapter. This language moved to Section 46.03(a) from repealed Sections 46.035(b)(6) and 46.035(c), respectively. An offense under Section 46.03(a)(10) (civil commitment facility) is punishable

as a Class A misdemeanor. An offense under Section 46.03(a)(14) (open meeting) is punishable as a third degree felony.

As alluded to above, H.B. 1927 repeals Section 46.035 of the Penal Code (Unlawful Carrying of Handgun by License Holder; discussed *infra* under Section 26). However, offenses in repealed Sections 46.035(a-1), (a-2), and (a-3) that applied to license holders and handguns found a new home. H.B. 1927 added those offenses to Sections 46.03(a-2), (a-3), and (a-4) of the Penal Code (Places Weapons Prohibited). For example, as amended, it is an offense under Section 46.03 (instead of Section 46.035) for a license holder to carry a partially or wholly visible handgun and display it in plain view of another person on the premises of an institution of higher education (Section 46.03(a-2)); to carry a handgun on the campus, at a sponsored activity, or in certain vehicles of a private or independent institution of higher education that has established certain prohibitions and notice (Section 46.03(a-3)); and to intentionally carry a concealed handgun on a portion of a premises on the campus of an institution of higher education with certain prohibitions and notice (Section 46.03(a-4)). All these offenses were listed in Section 46.035 prior to its repeal by this bill. The classification of such conduct in Section 46.03 (Class A misdemeanor) stayed the same as it was in Section 46.035.

The current version of Section 46.03 provides that "amusement park" and "premises" have the meaning assigned by Section 46.035. Because H.B. 1927 repeals Section 46.035, the bill takes the definitions of those terms from repealed Section 46.035(f) and adds them to Section 46.03(c). The bill also adds the definition of "license holder," which likewise comes from repealed Section 46.035(f).

Section 24: Criminal Street Gangs

H.B. 1927 adds Section 46.04(a-1), making carrying a firearm a Class A misdemeanor if the person is a member of a criminal street gang and carries it in a motor vehicle or watercraft.

Section 25: Nonapplicability and Defenses

H.B. 1927 amends Section 46.15 of the Penal Code (Nonapplicability), making the offenses in new sections in 46.03 and 46.04 inapplicable to certain persons. For example, new Sections 46.03(a)(14) and 46.04(a-1) of the Penal Code are inapplicable to persons listed in Section 46.15(b) (i.e., persons in the actual discharge of official duties as a member of the armed forces or state military forces; engaging in certain hunting, fishing, or other sporting activity; traveling; holding a security officer commission under certain circumstances, etc.). Under amended Section 46.15(j), new sections 46.03(a)(7), (a-2), (a-3), and (a-4) do not apply to an individual who carries a handgun as a participant in a historical reenactment.

Section 46.15(m) creates a defense to prosecution if the person carrying a handgun in a prohibited place promptly departs after personally receiving notice from the owner that handguns are prohibited. Amended Section 46.15(n) provides that such a defense does not apply if the prescribed sign was posted prominently at each entrance to the premises or at the time of the offense, the actor knew that carrying a firearm or other weapon on the premises was prohibited. Section 46.15(o) outlines the requirements for a person providing written notice by posting a sign that firearms and other weapons are prohibited under Section 46.03 on the premises or other property. Sections 46.15(p) and (q) state that certain offenses under Section 46.03 do not apply if the person was not given effective notice.

Section 26: Repealed Provisions

H.B. 1927 repeals several statutes in the Alcoholic Beverage Code, Chapter 411 of the Government Code, and Chapter 46 of the Penal Code, including Section 46.035. Section 46.035 of the Penal Code (Unlawful Carrying of Handgun by License Holder). While most of the language (offenses and some defenses to prosecution) in Section 46.035 found a new home in Sections 46.02, 46.03, and 46.15 of the Penal Code, some provisions were truly repealed. Under current law, Section 46.035 listed several offenses that could be committed by license holders carrying (or sometimes displaying) a handgun on certain premises (i.e., certain institutions of higher education, certain businesses with a permit or license under the Alcoholic Beverage Code, certain sporting events, amusement parks, civil commitment facilities, and the room or rooms where an open meeting of a governmental entity is held (if

prescribed notice was provided)). As mentioned, the bill found a new home for those offenses.

Current Section 46.035 also has defenses to prosecution for certain offenses contained therein. Some of those defenses moved to Section 46.15 (Nonapplicability). However, some did not (and were truly repealed). This is true for some because, with the amendments from H.B. 1927, the defense is no longer needed. For example, Subsection (h-1), which has two versions, provides a defense to certain offenses in Sections 46.035(b) and (c) for an active judicial officer (as defined by Section 411.201 of the Government Code). The offenses in Sections 46.035(b) and (c) found new homes in Sections 46.02 and 46.03 of the Penal Code. Section 46.15(a)(4) provides that Sections 46.02 and 46.03 do not apply to active judicial officers (as defined by Section 411.201 of the Government Code).

Section 46.035 was separately amended by other bills that also passed this session. Harmonizing these bills may prove to be a challenging exercise in statutory construction.

H.B. 2112
Subject: Carrying of Holstered Handguns by Handgun License Holders
Effective: September 1, 2021

Under current law, Texas license holders may be subject to criminal charges for carrying a handgun in plain view unless the weapon is in a shoulder or belt holster. However, there are many different types of holsters, including waistband holsters designed to sit either under your belt or outside of your belt, ankle holsters, shoulder holsters, and pocket holsters. Some law enforcement agencies have indicated that the critical part of carrying a firearm safely is that it is housed in a holster, not necessarily the type of holster. S.B. 2112 deletes language specifying that license holders carry handguns in a "shoulder or belt" holster in Sections 30.05(f); 30.07(f); 46.02(a-1); 46.035(a), (b), (c), and (d); and 46.15(b) of the Penal Code. The remaining language would only require that an openly carried handgun be in a holster.

TMCEC: There were a significant number of bills passed this session covering firearms, especially regarding shoulder or belt carry requirements for handguns. A related bill, H.B. 1407, also amended Section 46.035 regarding holstered handguns while in a vehicle. Interestingly, to Section 46.035 of the Penal Code (Unlawful Carrying of Handgun by License Holder) was separately repealed in Section 26 of another gun bill, H.B. 1927.

H.B. 2622
Subject: Enforcement of Federal Laws Regulating Firearms, Firearm Accessories, and Firearm Ammunition
Effective: September 1, 2021

Proponents of a broader interpretation of the Second Amendment to the U.S. Constitution regarding the right to keep and bear arms have expressed concerns that federal officials may erode that right. H.B. 2622 amends the Penal Code to add Section 1.10 prohibiting political subdivisions from contracting with a federal agency or official with respect to certain prohibitions on firearms. Political subdivisions that violate the provisions outlined in the section may not receive state funds.

H.B. 2675
Subject: License to Carry a Handgun for a Person at Increased Risk of Becoming a Victim of Violence
Effective: September 1, 2021

Many Texans acquire a license to carry a handgun to protect their families and themselves. For example, family disputes or other outside traumatic events can change someone's life in an instant, placing them in danger from people who may wish to cause them undue harm. There have been calls to provide further protections to Texans who feel their lives may be in danger due to external circumstances.

H.B. 2675 amends Section 411.177 of the Government Code by adding Subsection (b-1) to create a process for expedited handgun licensure for applicants seeking an "at-risk" designation under new Section 411.184. A person is eligible for an at-risk designation if they (or a member of their household) is protected under (1) a temporary restraining order or injunction issued after the filing of a suit for dissolution of marriage; (2) a temporary ex parte order or a protective order issued in relation to family violence; (3) a protective order

issued for victims of sexual assault or abuse, stalking, or trafficking; or (4) a magistrate's order issued for emergency protection for an offense involving family violence, trafficking, sexual assault, or stalking. The designation also extends to persons participating in the address confidentiality program under Subchapter B, Chapter 58 of the Code of Criminal Procedure.

TMCEC: This bill is similar to H.B. 918, which creates a licensing process for young adults 18-20 years old who are under certain protective orders related to family violence.

S.B. 20
Subject: Carrying and Storing a Handgun or Handgun Ammunition by a Hotel Guest
Effective: September 1, 2021

The Castle Doctrine in Texas presumes that using force is reasonable and justified when another person unlawfully and with force enters or attempts to enter your habitation, vehicle, or work place; attempts to remove you, by force, from your habitation, vehicle, or work place; or was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery. In the context of self-defense, "habitation" means any structure or vehicle that is adapted for overnight living by a person. Some argue that habitation can include a hotel room, so lawful gun owners should be allowed to store their handguns in their hotel rooms.

S.B. 20 amends the Occupations Code by adding Chapter 2155, which prohibits a hotel or similar business from adopting a policy that completely prohibits guests from lawfully carrying or storing handguns and ammunition on the premises.

The bill also affords hotel guests defenses to prosecution for the offenses of criminal trespass, trespass by license holder with a concealed handgun, and trespass by license holder with an openly carried handgun under Sections 30.05, 30.06, and 30.07 of the Penal Code.

TMCEC: The Castle Doctrine is the legal doctrine allowing certain protections for a person defending that person's home. It has been a part of the English common law for centuries (going back at least to *Semayne's Case* decided in 1604), but it has been hotly debated in recent years in the United States following various incidents where defendants invoked the doctrine. S.B. 20 wades into that debate, expanding certain concepts from the doctrine to hotels. The bill does this in numerous ways, but primarily by restricting hotels in Texas from prohibiting the carrying of firearms in the hotel. A hotel may, however, require a handgun and handgun ammunition to be carried in a concealed manner.

Of note to municipal courts, S.B. 20 also amends the criminal trespass statutes in Sections 30.05, 30.06, and 30.07 of the Penal Code. Each of these sections contains a Class C misdemeanor for criminal trespass. The bill adds defenses to prosecution for hotel guests that are charged with trespass under these statutes. For 30.06 and 30.07 in particular, there has been a busy legislative history since the two offenses became law in 2016. In addition to the enabling legislation by the 84th Legislature, amendments to the requirements have been added by the 85th, 86th, and now 87th Legislatures.

S.B. 550
Subject: Relating to the Manner of Carrying a Handgun by a Person who Holds a License
Effective: September 1, 2021

Several offenses in the Penal Code include defenses to prosecution relating to how a licensed handgun owner carries their firearm. These sections currently require that openly carried handguns be secured in a shoulder or belt holster. S.B. 550 amends Sections 46.035, 30.05(f), 30.07(f), 46.02(a-1), and 46.15(b) of the Penal Code to delete the "shoulder or belt" holster requirement. In this way, the bill expands the types of holsters that can be used by a person who holds a license under Subchapter H, Chapter 411 of the Government Code.

TMCEC: Currently, a licensed handgun owner who open carries is limited to carrying in a shoulder or belt holster, but neither type of holster is defined by statute. There were concerns that some persons with disabilities had difficulty wearing standard shoulder

or belt holsters, and that other types of holsters would allow for better access to handguns while maintaining safety. Three other bills also remove the strict "shoulder or belt" requirement (H.B. 2112, H.B 1927, and H.B. 1407). Notably, Section 46.035, amended by S.B. 550, is repealed by H.B. 1927.

JUVENILE JUSTICE AND THE INTERESTS OF CHILDREN

H.B. 699
Subject: Public School Attendance Requirements for Students with Life-threatening Illnesses
Effective: June 7, 2021

Although public school districts are required to excuse a student's temporary absence for an appointment with a medical professional, there is no excused absence requirement for a student facing a serious long-term illness. H.B. 699 (Riley's Rule) amends Section 25.087 of the Education Code (Excused Absences) requiring a school district to excuse a student from attending school for an absence resulting from a serious or life-threatening illness or related treatment that makes the student's attendance infeasible, if the student or the student's parent or guardian provides a certification from a physician licensed to practice medicine in this state specifying the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

The bill also amends Section 25.0915 (Truancy Prevention Measures) prohibiting a school district from referring the student to truancy court if the school determines that the student's truancy is the result of severe or life-threatening illness or related treatment. In that instance, the school is required to offer additional counseling.

H.B. 699 adds Subsection 25.092(a-3) excluding an excused absence for a severe or life-threatening illness under Section 25.087(b)(3) from consideration in determining whether the student has satisfied attendance requirements.

Riley's Rule applies beginning with the 2021-2022 school year.

H.B. 785
Subject: Behavior Improvement Plans and Behavioral Intervention Plans
Effective: June 4, 2021

Without frequent reviews, the efficacy of a behavior improvement plan or behavioral intervention plan (collectively BIP) diminishes for promoting good behavior and helping students thrive. Specifically, behaviors may escalate, or new behaviors may emerge, leading to more severe disciplinary actions like placements in restrictive settings, missed class time, or interactions with law enforcement. This is particularly true for students receiving special education services, who are subject to disciplinary action at a higher rate.

H.B. 785 amends Section 29.005 of the Education Code (Individualized Education Program) requiring the committee that developed the child's individualized education program (IEP) to review a BIP (if one is included as part of the IEP) at least annually and more

frequently if appropriate. The review must specifically address changes in a student's circumstances that may impact the student's behavior (such as the placement of the student in a different educational setting, an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents, a pattern of unexcused absences, or an unauthorized unsupervised departure from an educational setting) or the safety of the student or others.

The bill also amends Section 37.0021 of the Education Code (Use of Confinement, Restraint, Seclusion, and Time-Out) and 37.004 (Placement of Students with Disabilities) making restraint, time-out, and certain disciplinary action additional triggers for review of the BIP.

H.B. 785 applies beginning with the 2021-2022 school year.

H.B. 2669
Subject: Confidentiality of a Child's Criminal Records Related to Certain Misdemeanor Offenses
Effective: September 1, 2021

After the 83rd Legislative Session (2013), the Code of Criminal Procedure contained two versions of Article 45.0217: (1) Confidential Records Related to the Conviction of or Deferral of Disposition for a Child and (2) Confidential Records Related to Charges Against or the Conviction of a Child. H.B. 2669 attempts to resolve possible confusion and misinterpretation of the law. The bill reenacts Article 45.0217 (Confidential Records Related to Charges Against or Conviction of a Child) providing that all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense, other than a traffic offense, are confidential and may not be disclosed to the public. This is subject to Article 15.27 of the Code of Criminal Procedure (Notification to Schools Required) and Subsection (b) of reenacted 45.0217 regarding who may inspect the information subject to Subsection (a).

TMCEC: In 2013, two versions of 45.0217 made it in the books. One version (amended by S.B. 393 and 394) made such records and files confidential for a child who is convicted of *and has satisfied the judgment* for or who has received a dismissal after deferred disposition for a fine-only misdemeanor other than a traffic offense. The other version (amended by H.B. 528) made such records and files confidential for a child who *is charged with*, is convicted of, *is found not guilty of*, *had a charge dismissed for*, or *is granted* deferred disposition for a fine-only misdemeanor other than a traffic offense.

On July 10, 2013, David Slayton, Administrative Director of the Office of Court Administration, submitted a request for opinion (RQ-1136-GA) to the attorney general regarding the conflicts between the two versions (among other questions). On January 2, 2014, the Office of the Attorney General issued Opinion No. GA-1035, which was highly anticipated by courts and juvenile justice practitioners. The opinion stated that the bills (S.B. 393, S.B. 394, and H.B. 528) do not irreconcilably conflict. Specifically, the conditions of the House Bill include the conditions of the Senate Bill (though the opinion conceded in a footnote that this construction of the two versions of Article 45.0217 arguably make the Senate Bills superfluous (i.e., redundant or unnecessary), but because H.B. 528 had an enactment date four months after S.B. 393 and S.B. 394, it cannot be said that the Senate Bills enacted a meaningless statute because the Senate Bills operated independently during that time.). According to the opinion, withholding of some records will be required under H.B. 528 but not under S.B. 393 and S.B. 394. The opinion did not say which records but presumably that meant cases in which a child is charged, found not guilty, the charge has been dismissed, or deferred disposition is granted. *See* Ryan Kellus Turner, "Making Sense of GA-1035: Attorney General Opines Conflicts Between Recent Juvenile Confidentiality Amendments Are Not Irreconcilable," *The Recorder* (January 2014 at 3). According to the opinion, because the versions do not conflict, they each became effective on January 4, 2014.

Apparently, this opinion did not clear up all the confusion. Though the bill analysis from the Senate Research Center for H.B. 2669 is not specific, it recognized the possibility that the "repeated language" may result in confusion or misinterpretation of the law. Now the conflict is over. H.B. 2669 codifies broader confidentiality. Though historically, the records of children in criminal court have been treated no differently than any other criminal record, that has changed. This bill is one of many filed in the past two sessions that demonstrate a growing belief that children should be treated differently in criminal courts. For example, a youth diversion bill that would have provided municipal courts with more tools to divert children was filed in the 86th and 87th legislatures (which incidentally would have made the same change to Article 45.0217 as H.B. 2669). Though it has not yet passed, it continues to gain traction and support.

H.B. 3165
Subject: Affirmative Defense to an Allegation of Truant Conduct
Effective: June 4, 2021

H.B. 3165 amends Section 65.003 of the Family Code (Truant Conduct) to add an affirmative defense to an allegation of truant conduct if one or more of the absences required to be proven were due to the child's voluntary absence from the child's home because of abuse, as defined by Section 261.001 of the Family Code. The affirmative defense is not available if, after deducting the absences due to abuse, there remains sufficient absences to constitute truant conduct. Like the other affirmative defenses in Section 65.003, the burden of proof (preponderance of the evidence) is on the child regarding such absences. The bill applies beginning with the 2021-2022 school year.

H.B. 3379
Subject: Adding a Reasonableness Standard to the Duty to Report Child Abuse and Neglect
Effective: September 1, 2021

Currently, Section 261.101 of the Family Code (Persons Required to Report; Time to Report) requires professionals to make a report when they have cause to believe that a child has been or may be abused or neglected. H.B. 3379 clarifies that the duty to report arises when a professional has "reasonable" cause to suspect abuse.

TMCEC: Section 261.101 defines "professionals" as individuals who are licensed or certified by the state or who are employees of a facility licensed, certified, or operated by the state and who—in the normal course of official duties or duties for which a license or certification is required—have direct contact with children. Attorneys are licensed by the State and mentioned specifically in Section 261.101(c). Though municipal judge is not an occupation licensed by the State (nor expressly mentioned in the statute), an attorney judge should examine Section 261.101 and the greater Subchapter B (Report of Abuse or Neglect; Immunities) if they have questions about their duty to report in their capacity as judge.

The term "professionals" also explicitly includes juvenile probation officers and juvenile detention or correctional officers. Though juvenile case managers (JCMs) have job duties similar to those types of officers, JCMs meet training certifications set by the governing body of their employing governmental entity (and are not licensed by the state).

H.B. 4158
Subject: Making the Health and Human Services Commission an Approved Recipient of Confidential Information from the Juvenile Justice Information System
Effective: June 8, 2021

The juvenile justice information system contains confidential information. The Department of Public Safety (DPS) may only disseminate this information according to Section 58.106(a) of the Family Code. H.B. 4158 amends this section to add the Health and Human Services Commission to the list of approved recipients.

TMCEC: In 2011, municipal courts exercising jurisdiction over juveniles were added to the list of entities eligible to receive confidential information from DPS under Section 58.106.

S.B. 279
Subject: Requiring Public Schools to Include Suicide Prevention Information on Student I.D.

Cards
Effective: June 14, 2021

S.B. 279 adds Sections 38.353 and 51.91941 to the Education Code. Section 38.353 requires both the National Suicide Prevention Lifeline and the Crisis Text Line be included on the identification card of students in grade six or higher. Section 51.91941 mirrors these requirements for public institutions of higher education. The I.D. cards may also include local suicide prevention resources.

S.B. 452
Subject: Relating to Prevention and Early Intervention Programs and Practices
Effective: September 1, 2021

Evidence-based practice requirements help the state provide high quality services for children and families across Texas in situations where there is a risk of abuse or neglect. This bill updates current law relating to prevention and early intervention services to ensure that the state provides the best possible prevention programming and services intended to prevent child abuse or neglect.

S.B. 452 bill amends Chapters 264 and 265 of the Family Code to make requirements relating to parenting education programs provided by the Department of Family and Protective Services (DFPS), including requirements relating to program outcomes, evaluation by DFPS, and submission of a legislative report, applicable to prevention and early intervention programs or practices. The bill revises the criteria in Section 265.151 for a program or practice to be considered evidence-based or promising and requires that evidence-informed programs and practices must: (1) combine well-researched interventions with clinical experience and ethics and client preferences and culture to guide and inform the delivery of treatments and services; (2) have an active impact evaluation program or demonstrate a schedule for implementing an active impact evaluation program; (3) substantially comply with a program manual or design that specifies the purpose, outcome, duration, and frequency of the program services; and (4) employ well-trained and competent staff and provide continual relevant professional development opportunities to the staff.

The bill amends Section 265.152 revising the outcome requirements for evidence-based prevention and early intervention programs and practices and includes improved maternal and child health and increased protective factors for youth among those requirements.

TMCEC: Article 45.056(c) permits juvenile case managers (JCMs) employed by a municipality to provide prevention services to a child considered at risk of entering the juvenile justice system and intervention services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses. Improvements to programs provided by DFPS such as those made in S.B. 452 benefit juvenile defendants and their families when connected to such programs by a JCM.

S.B. 642
Subject: Requiring the Development and Adoption of Protocols for Children at Risk of Relinquishment
Effective: June 14, 2021

The relinquishment avoidance program is a joint endeavor between the Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS). This program was designed as a funding mechanism to provide residential treatment to children/youth who were typically being discharged from a psychiatric hospital yet too dangerous to return home and required residential treatment services.

Current policies and procedures for admitting children into the program are not designed in a way that allows children and families in crisis (the families that the program was originally intended for) to quickly access the services. Access to the relinquishment avoidance program services currently requires that an abuse/neglect investigation of the parents be conducted by DFPS/CPS even when no allegation of abuse or neglect has been made. The wait time to access these services can be six to 12 weeks due to the required DFPS/Child Protective Services (CPS) abuse/neglect investigations and the multiple evaluations and assessments required for eligibility. Most families needing these services do not have six to 12 weeks to wait. This creates unnecessary trauma for the family and unnecessary costs to the state. S.B. 642 adds

Section 262.353 to the Family Code (Procedure for Relinquishing Child to Obtain Services) clarifying that HHSC may not require DFPS to conduct a child abuse or neglect investigation before allowing the child to participate in the program unless there is an allegation of abuse or neglect of the child.

S.B. 1164
Subject: Relating to the Prosecution of the Offense of Sexual Assault
Effective: September 1, 2021

During the 85th Legislative Session, the legislature passed S.B. 7 to address improper relationships and educator misconduct in Texas schools. S.B. 1164 amends Section 22.011 adding coaches, tutors, and certain caregivers who use their power and influence to exploit the other person's dependency on them to the list in Subsection (b) that constitutes "without the consent of the other person" for purposes of the felony offense of sexual assault.

S.B. 1191
Subject: Definition of School Resource Officer
Effective: September 1, 2021

Under current law, school resource officers (SROs) must complete a school-based law enforcement training program within 180 days of duty assignment and successfully complete an active shooter course. Once these requirements are met, the SRO will obtain a certificate from the Texas Commission on Law Enforcement. Because the definition of SRO is so broad under current law, it was unclear whether peace officers who work at public schools for occasional activities such as sporting events must meet those requirements. S.B. 1191 settles the issue by amending the definition of "school resource officer" in Section 1701.601 of the Occupations Code, providing that the term does not include a peace officer who provides law enforcement at (1) a public school only for extracurricular activities or (2) a public school event only for extracurricular activities.

S.B. 1955
Subject: Exempting Learning Pods from Certain Local Government Regulations
Effective: June 8, 2021

During the beginning of the COVID-19 pandemic, many parents in Texas established "learning pods" in their homes for the purpose of educating their children and their children's peers. Some parents have chosen to maintain these pods, even as schools have and are continuing to open their doors again. S.B. 1955, the Learning Pod Protection Act, prohibits local governments from regulating learning pods.

S.B. 1955 adds Chapter 27 to the Education Code (Learning Pods). Section 27.001 defines a learning pod as a group of children who, based on the voluntary association of the children's parents, meet together at various times and places to participate in or enhance the children's primary or secondary academic studies, including participation in an activity or service provided to the children in exchange for payment.

Section 27.002 exempts learning pods from any ordinance, rule, regulation, policy, or guideline adopted by a local governmental entity that applies to a school district campus or child-care facility, including any requirements regarding staff-to-child ratios, staff certification, background checks, physical accommodations, or building or fire codes. Further, any group, building, or facility associated with or used by a learning pod is exempt from any ordinance, rule, regulation, policy, or guideline adopted by a local governmental entity that would not apply to the group, building, or facility if it was not associated with or used by a learning pod.

S.B. 1955 also prohibits local governments or school district employees from (1) conducting site inspections orinvestigative visits or (2) taking any action to discriminate against or distinguish anyone (parent, student, or teacher) participating in a learning pod. The bill prohibits school districts and local governments from requiring any forms of registration or reporting to any authorities relating to the operation of the learning pod.

Finally, Section 27.002 may not be construed to alter or affect (1) a parent's right to choose a home-school setting for the parent's child or (2) the regulation of a child-care facility.

LOCAL GOVERNMENT

H.B. 54
Subject: Prohibiting Law Enforcement Contracts with Reality Television Shows
Effective: May 26, 2021

In March 2019, Javier Ambler was chased for more than 20 minutes by Williamson County sheriff's deputies after the deputies attempted to initiate a traffic stop on Ambler for not dimming his headlights to oncoming traffic. Ambler did not pull over and the pursuit ended when his vehicle crashed in Austin. During the confrontation that followed, Ambler was tased multiple times and ultimately died in what the medical examiner called congestive heart failure in combination with forcible restraint.

The entire encounter was filmed by a television crew from *Live PD*, a ride-along style reality television show. At the time, Williamson County had a contract with the production company that produced *Live PD*, allowing for the ride-along and filming. An independent analysis of use-of-force reports by the Austin American-Statesman found that violent encounters between Williamson County sheriff's deputies and civilians nearly doubled in the year after *Live PD* cameras began following deputies.

H.B. 54 amends Chapter 614 of the Government Code prohibiting accompanying and filming peace officers for reality television programs.

H.B. 525
Subject: Relating to the Protection of Religious Organizations
Effective: June 18, 2021

Concerns were raised during the COVID-19 pandemic that many religious institutions were required to shut down while other businesses and organizations were able to remain open and operational. H.B. 525 amends the Government Code by adding Chapter 2401 (Protection of Religious Organizations), which classifies a religious organization as an essential business at all times in Texas, including during a declared state of disaster. It also classifies the organization's religious activities as essential activities even if the activities are not listed as essential in an order issued during the disaster.

The bill provides that a governmental entity (including a municipality) may not (1) at any time, including during a declared state of disaster, prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization's foundational faith-based mission and purpose; or (2) during a declared state of disaster order a religious organization to close or otherwise alter the organization's purposes or activities.

H.B. 525 authorizes a person to assert a violation of the bill's provisions and authorizes the attorney general to bring an action for injunctive or declaratory relief against a governmental entity or an officer or employee of a governmental entity to enforce compliance with the bill's provisions.

H.B. 738
Subject: Residential and Commercial Building Requirements of Municipalities, Counties, and Emergency Services Districts
Effective: January 1, 2022, except Section 5(b) takes effect September 1, 2021

The statewide municipal residential and commercial building codes have not been updated since 2001. In the aftermath of Hurricane Harvey, the General Land Office and the Federal Emergency Management Agency published reports describing how buildings

built to more modern standards fared better in the storm. H.B. 738 adopts statewide the 2012 International Residential Code and International Building Code as the municipal residential building code and municipal commercial building codes. H.B. 738 allows municipalities to adopt local amendments to the code, but any amendments must be adopted by ordinance after holding a public meeting.

The bill also adds Section 250.011 of the Local Government Code (Residential Fire Protection Sprinkler Systems), which provides restrictions on a municipal ordinance, bylaw, order, building code, or rule related to the installation of a multipurpose residential fire protection sprinkler system or any other fire protection sprinkler system in a new or existing one- or two-family dwelling.

The bill takes effect January 1, 2022, except for the provision requiring municipalities to establish rules and take other actions necessary to implement the building code updates before that date, which would take effect September 1, 2021.

H.B. 914
Subject: Authority of Certain Municipal Employees to Request Removal and Storage of Abandoned or Illegally Parked Vehicles
Effective: September 1, 2021

Vehicle removal is the single most effective enforcement tool available to address abandoned or illegally parked vehicles. Currently, only peace officers have the authority to direct parking facility owners and towing companies to remove these vehicles, even though officers often have more pressing public safety matters to address. H.B. 914 amends Section 2308.354 of the Occupations Code to authorize a designated municipal employee to request the towing and storage of vehicles that are either illegally parked or abandoned where on-street parking is regulated by an ordinance.

H.B. 1082
Subject: Personal Information of Elected Public Officer
Effective: May 19, 2021

Under current law, only statewide elected officers and members of the legislature can elect to withhold certain personal information from public disclosure, including their home address. Local officials, however, are not afforded these privacy protections. H.B. 1082 amends Chapter 552 of the Government Code, expanding protections to "an elected public officer" to reduce harassment of local elected officials and ensure their privacy is protected.

H.B. 1118
Subject: Local Government Compliance with Cybersecurity Training Requirements
Effective: May 18, 2021

Cybersecurity and data privacy continue to be a concern for state and local government officials. Over the past year, the state has continued to witness cyber-attacks against governmental entities, both at the state and local levels of government. As the state performs more business functions, transactions, and open meetings online, it is increasingly important to ensure that employees and officials are aware of common cyber-attacks. In 2019, the 86th Legislature passed H.B. 3834, which requires state and local government employees, appointed agency commissioners, elected local officials, and state and local contractors to take a cybersecurity awareness training developed through the Texas Department of Information Resources (TDIR). The deadline to complete that training recently passed in June 2021. Interested parties, however, have identified areas of this statute that need clarification to best implement the training and ensure compliance.

H.B. 1118 adds Section 772.012 to the Government Code (Compliance with Cybersecurity Training Requirements), requiring that local governments seeking to apply for a grant under Chapter 772 must indicate in writing compliance with the required cybersecurity training.

Additionally, H.B. 1118 amends Section 2054.5191 of the Government Code, requiring local governments to require government employees and elected or appointed officials who use a computer for at least 25 percent of that person's duties to complete cybersecurity training. Local governments must identify these persons at least once a year. If the persons are noncompliant with the requirements, the local government may deny access to the computer system or database. The bill also adds Subsection (f), creating exceptions from

the requirements for certain persons in the military or granted leave for a legal or other reason.

Finally, H.B. 1118 adds Subsection (a), requiring the TDIR to develop a form for local governments to verify and indicate employee completion of the required cybersecurity class.

H.B. 1475
Subject: Relating to Municipal Board of Adjustment (BOA) Zoning Variances Based on Unnecessary Hardship
Effective: September 1, 2021

Last session, the legislature took action to make necessary reforms to help clarify the process of appealing a land development decision to a BOA, the municipal board that grants zoning variances. Currently, municipalities have a list of items that are considered hardships for purposes of appealing to the BOA for a zoning variance. However, some have argued that there is no consistency across cities. Moreover, these hardships are not spelled out in code, potentially resulting in arbitrary or nonsensical requirements. For example, in some cities, economic and financial reasons are not considered a hardship, which is one of the major reasons a person would apply for a variance.

To address this issue, H.B. 1475 amends Section 211.009 of the Local Government Code by adding Subsection (b-1) to provide more consistency in the process. Subsection (b-1) lists several grounds that a BOA may consider to determine whether compliance with an ordinance as applied to a structure would result in unnecessary hardship, including the financial cost of compliance with a certain ordinance and whether complying with a specific ordinance would result in the structure being out of compliance with another required ordinance. This may result in providing property owners with more certainty and consistency when applying for a zoning variance from a municipal BOA.

H.B. 1476
Subject: Vendor's Remedies for Nonpayment of a Contract with a Political Subdivision of the State
Effective: September 1, 2021

Section 2251.042 of the Government Code requires a governmental entity to notify a vendor of an error with an invoice submitted for payment by the vendor within 21 days after it is received. The governmental entity, however, is not required to give the vendor specific notice of the amount the entity considers erroneous. Some argue that the absence of specific notice does not provide sufficient clarity for the vendor and allows governmental entities to withhold all funds until the dispute is resolved.

H.B. 1476 amends Section 2251.042 to require a governmental entity to notify a vendor of an error or disputed amount in an invoice submitted for payment by the vendor within 21 days after receiving the invoice. The notice must include a detailed statement of the amount that is disputed. The governmental entity may withhold no more than 110 percent of the disputed amount.

H.B. 1900
Subject: Municipalities that Defund Municipal Police Departments
Effective: September 1, 2021

Recently, some cities across the United States, including in Texas, have taken action to cut police department budgets. Some have argued that these actions could leave Texans more vulnerable to crime. H.B. 1900 adds Chapter 109 to the Local Government Code (Determination of Defunding Municipalities) to create a framework for the determination of what the chapter calls a defunding municipality. This enables the criminal justice division of the governor's office to identify an applicable municipality that reduces appropriations to its police department year-over-year as a defunding municipality.

Consequences following a determination that a municipality is a defunding municipality include restrictions on these municipalities' powers regarding annexation, taxation, and charges from a municipality owned utility, as applicable, until the reductions are reversed. Consequently, H.B. 1900 amends Chapter 43 of the Local Government Code, regarding annexation by a defunding municipality; Chapter 26 and Chapter 321 of the Tax Code, regarding taxation by a defunding municipality; Chapter 810 of the

Government Code, regarding retirement funding by a defunding municipality; and Chapter 33 of the Utilities Code, regarding rates and fees charged by a defunding municipality.

H.B. 2073
Subject: Quarantine Leave for Fire Fighters, Peace Officers, Detention Officers, and Emergency Medical Technicians Employed by, Appointed by, or Elected for a Political Subdivision
Effective: June 15, 2021

The recent pandemic affected communities across Texas. As Texans struggled to make the best of a very tough situation, first responders remained vigilant and answered the calls of the public they protect and serve. Through riots, storms, and their normal duties they are expected to perform, many were exposed to COVID-19. To protect first responders, many local governments made the decision to order these first responders to quarantine. Unfortunately, among those who were forced to quarantine because of exposure doing their duties, many were forced to use vacation or sick leave to cover the costs associated with the quarantining employee's absence. For many this seemed punitive and unfair. H.B. 2073 resolves this issue by adding Section 180.008 of the Local Government Code requiring the governing body of a political subdivision to develop and implement a paid quarantine leave policy for fire fighters, peace officers, detention officers, or emergency medical technicians.

H.B. 2127
Subject: Designation of Certain Municipal Property as "Public Entertainment Zones"
Effective: September 1, 2021

H.B. 2127 amends Chapter 108 of the Alcoholic Beverage Code (Advertising) to allow municipalities with a population of 175,000 or more to designate areas owned by the municipality and containing a public safety facility as "public entertainment zones." The bill adds such zones to Section 108.82 of the Alcoholic Beverage Code (Alcoholic Beverage Consumption in Public Entertainment Facilities and Zones). As a result, concessionaires within these zones may allow patrons with alcoholic beverages to enter or leave a licensed or permitted premises within the area if the alcoholic beverage (1) is in an open container (as defined by Section 49.031 of the Penal Code); (2) appears to be possessed for present consumption; (3) remains within the confines of the zone (unless on a passenger train), excluding a parking lot; and (4) was purchased legally at a licensed or permitted premises within the zone.

TMCEC: Most U.S. cities prohibit the general possession of open containers of alcohol in public places. Under current law, Texas allows for limited exceptions to this prohibition for designated public entertainment facilities. This bill expands the exception slightly to newly created "public entertainment zones," which encompasses more open-air properties like parks. The bill analysis specifically references Epic Central, a 172-acre park located in the heart of the Dallas-Fort Worth Metroplex.

H.B. 2205
Subject: Applicability of the International Swimming Pool and Spa Code (ISPSC) to Certain Pools, Spas, and Other Swimming Areas
Effective: September 1, 2021

Concerns have been raised regarding disparate municipal codes regulating pool and spa construction, alteration, remodeling, and repair that have resulted in a patchwork of regulations across the state. This may make it difficult for companies to maintain common business protocols and supplies for pool repair and construction. There have been calls to allow municipalities that choose to regulate pools and spas to adopt more recent versions of the ISPSC and to ensure that relevant state agencies with limited oversight of pools and spas are not creating parallel rules that conflict with ISPSC adoption. H.B. 2205 amends Section 341.0645 of the Health and Safety Code and Section 214.103 of the Local Government Code to address these issues by authorizing municipalities to adopt a more recent version of the ISPSC.

H.C.R. 1
Subject: Supporting Prayers, Including the Use of the Word "God" at Public Gatherings and Displays of the Ten Commandments in Public Educational Institutions and other Government

Buildings
Effective: June 18, 2021

H.C.R. 1 is resolution signed by the governor that the 87th Legislature of the State of Texas support prayers, including the use of the word "God," at public gatherings and displays of the Ten Commandments in public educational institutions and other government buildings.

S.B. 4
Subject: Provisions in Agreements Between Governmental Entities and Professional Sports Teams Requiring the United States National Anthem to be Played at Team Events
Effective: September 1, 2021

Recently, concerns have been raised around the state and nation about the intentional disregard for our nation's national anthem as professional sports teams in taxpayer-subsidized stadiums have chosen to omit playing the national anthem before sporting events much to the dismay of many Texans. S.B. 4 adds Chapter 2274 to the Government Code (Agreements with Professional Sports Teams) providing that a governmental entity may not enter into an agreement with a professional sports team that requires a financial commitment by the state or any governmental entity unless the agreement includes a written agreement stating that the United States national anthem will be played at the beginning of each team sporting event. A team's failure to comply with this provision constitutes a default of the agreement. S.B. 4 subjects the team in default to any penalty that was in the agreement, which could include repayment of any money paid to the team by the state or governmental entity. Additionally, any team that defaults the agreement may subject the team to debarment from contracting with the state in the future. If a governmental entity fails to timely adhere to the required default provision, the attorney general may intervene to enforce the provision.

S.B. 58
Subject: Financing of Cloud Computing Services by a Political Subdivision
Effective: June 3, 2021

The Public Property Finance Act allows governmental entities to finance purchases of personal property, including computer hardware and equipment, but current law does not include cloud computing services. These services are increasingly replacing computer hardware for data storage, cybersecurity enhancements, and processing and can offer governmental entities the ability to decrease costs and deploy systems more efficiently. S.B. 58 amends Section 271.003 of the Local Government Code to include cloud computing services in the definition of personal property in the act in order to give governmental entities another option for securing technology tools to more efficiently run operations.

S.B. 111
Subject: Certain Duties of Law Enforcement Agencies Concerning Information Subject to Disclosure to a Defendant
Effective: September 1, 2021

Under Article 39.14 of the Code of Criminal Procedure (Discovery), prosecutors are required to turn over to the defense all material evidence except those items that are exempted by statute. Prosecutors are obligated to disclose this evidence to the defendant, but in many instances, prosecutors are reliant on the release of evidence, known or not known to exist, collected by the investigating law enforcement agency. If an investigating law enforcement agency does not turn over information or evidence to the prosecutor, the prosecutor can face sanctions including reprimand, censure, termination, and even disbarment for subsequent failure to disclose the information to the defense. Law enforcement agencies, however, are not compelled to disclose the information, nor do they face sanctions for their inadvertent or willful failure to release all evidence or required information to prosecutors.

S.B. 111 amends Chapter 2 of the Code of Criminal Procedure (General Duties of Officers) by adding Article 2.1397 (Duties of Law Enforcement Agency Filing Case) requiring a law enforcement agency that files a case with the attorney representing the state to submit to the prosecutor a written statement from an agency employee with knowledge of the case acknowledging that all documents, items, and information in the possession of the agency that are required to be disclosed to the defendant in the case

under Article 39.14 have been disclosed to the state's attorney. The bill also requires that anything collected after the investigating agency files a case with the state's attorney which is subject to Article 39.14 also be promptly turned over to the state's attorney.

TMCEC: If this is not an issue that a prosecuting attorney has actively encountered, then it is certainly something that the prosecutor has thought about at some point. In many instances, the prosecutor must take on good faith that everything has been provided from law enforcement. Prosecutors are under a legal and ethical obligation to provide certain evidence, and every prosecutor will remember what happened to Michael Morton. It is possible that the impetus for this bill, though, was the situation addressed in H.B. 54, the Javier Ambler Act. In that case, the Travis County District Attorney alleged that the Williamson County Sheriff's Office was refusing to turn over potentially exculpatory video evidence to prosecutors. Both the Williamson County Sheriff and the General Counsel for the Williamson County Attorney's Office were later indicted on evidence tampering charges.

Interestingly, S.B. 111 specifically excludes "attorneys representing the state in a justice or municipal court under Chapter 45." This means that the new provisions requiring law enforcement to submit a written statement regarding discovery would not be applicable to municipal court prosecutions. It is unclear as to why municipal and justice court prosecutors were excluded but may be something to watch in future legislative sessions.

S.B. 282
Subject: Prohibition Against Appropriation by the Legislature and the Use of Public Money by a Political Subdivision to Settle or Pay Certain Sexual Harassment Claims
Effective: September 1, 2021

Sexual harassment affects two out of every five women and one out of every five men in Texas. Currently, however, Texas law contains no prohibition on the use of appropriated funds to pay for sexual harassment claims against elected and appointed officials. In 2014, $84,000 in federal taxpayer dollars were used to pay a settlement for a sexual assault allegation by one United States congressman. In response, the United States Congress placed strong restrictions on the use of federal taxpayer dollars to pay for such claims. Without similar prohibitions in state law, Texas taxpayers could be forced to pay for sexual harassment claims against elected or appointed officials.

S.B. 282 adds Chapter 576 of the Government Code prohibiting the Texas Legislature from appropriating money and state agencies from using appropriated money to settle or pay a sexual harassment claim against an elected or appointed member of the executive, legislative, or judicial branch of state government.

The bill also adds Section 180.008 of the Local Government Code prohibiting municipalities and other political subdivisions from using public money to settle or otherwise pay a sexual harassment claim made against a person who is an elected or appointed member of the governing body of the political subdivision or an officer or employee of the political subdivision.

S.B. 475
Subject: State Agency and Local Government Information Management and Security, Including Establishment of the State Risk and Authorization Management Program and the Texas Volunteer Incident Response Team
Effective: June 14, 2021, except Chapter 2062 of the Government Code takes effect September 1, 2021

The legislature has made significant strides in improving the state's cybersecurity posture in recent years. During the interim, the Texas Cybersecurity Council and the Texas Privacy Protection Advisory Council made recommendations to further improve cybersecurity standards for state agencies and improve data management. S.B. 475 implements those recommendations by addressing third party providers' security, establishing a volunteer cybersecurity incident response team, implementing best practices for managing and securing data, and prohibiting state agencies from acquiring, retaining, or disseminating data used to identify an individual or the individual's location without written consent.

TMCEC: Cyber security and the protection of the state's technology infrastructure has become a necessary hot topic with an increasing number of cyber-attacks. In recent years, victims have included a case management software vendor as well as the Office of Court Administration. S.B. 475 further addresses issues pertaining to state agencies in this area. The bill is primarily aimed at state agencies. However, S.B. 475 adds Subchapter N-2 to Chapter 2054 of the Government Code (Texas Volunteer Incident Response Team). The bill includes in the definition of "participating entity" a local government that receives assistance under that subchapter during a cybersecurity event. The Department of Information Resources is tasked by the bill with developing guidelines which include the process for a participating entity to request and obtain the assistance of the incident response team and the requirements to receive such assistance.

The bill also amends Section 2054.601 of the Government Code (Use of Next Generation Technology) adding robotic process automation to the list of technologies that state agencies and local governments are required to consider.

Also noteworthy for municipalities, Section 9 of the bill adds Subchapter E to Chapter 2059 of the Government Code. That subchapter permits the Department of Information Resources to create "Regional Network Security Centers." An entity described in existing law under Section 2059.058 may participate with these new centers. This includes municipalities under Section 2059.058(b)(3) of the Government Code. It remains to be seen how the department will act on this authority, as S.B. 475 allows the Department of Information Resources until December 1, 2021, to create the framework for the regional groups.

S.B. 877
Subject: Inspection of Municipal Buildings During a Declared Disaster
Effective: June 8, 2021

During the pandemic, several city inspection departments were shut down for extended periods of time. Throughout the duration of the closure, city inspectors were not available to proceed on the inspection and permitting process. This caused some commercial and residential real estate projects to come to a halt. Some have argued that these delays ultimately increased costs, stretched project timelines, and put a damper on economic development. S.B. 877 adds Section 214.220 to the Local Government Code, outlining inspection during a declared disaster. The bill expands the list of qualified professionals that may perform inspection during a declared disaster to help tackle the backlogs experienced in disaster areas.

S.B. 967
Subject: Expiration and Extension of Certain Public Health Orders Issued by a Health Authority
Effective: September 1, 2021

Current law allows local public health authorities to impose public health orders without input from local elected officials. While it is important for a health department to have discretion in the initial imposition of an order to protect public health, the lack of elected official involvement in the process may reduce public confidence in the order. S.B. 967 adds Section 121.026 to the Health and Safety Code, providing that a public health order issued by a health authority under Chapter 121 or other law expires on the 15th day following the date the order is issued unless, before the 15th day by majority vote: (1) the governing body of a municipality or the commissioners court of a county that appointed the health authority extends the order for a longer period; or (2) if the health authority is jointly appointed by a municipality and county, the commissioner's court of the county extends the order for a longer period.

S.B. 1090
Subject: Regulations Adopted by Governmental Entities Regarding Land Use Restrictions and Building Products, Materials, or Methods Used in the Construction or Renovation of Residential or Commercial Buildings
Effective: September 1, 2021

In 2019, the Texas Legislature overwhelmingly passed H.B. 2439 to protect housing affordability and homeowner choice. The bill allowed the enactment of building codes with local amendments, but it prohibited a city from using a building code or other local ordinance to mandate vendor-driven and product-

specific mandates in construction, which result in the direct or indirect prohibition of other products approved by national codes and standards. The purpose was to prevent cities and other governmental entities from being in the business of picking winners and losers in the competitive market if the products have been approved as safe and fit for their intended use per consensus-based building codes. With numerous exemptions for various safety issues, historical areas, and lighting concerns, it ensured that those areas would not be affected by the bill.

Though that 2019 bill exempted lighting issues in existing Dark Sky Communities, an unintended result made it difficult, if not impossible, for cities to become new Dark Sky Communities. S.B. 1090 amends Section 3.000.002(c) of the Government Code to further exempt lighting ordinances if a governmental entity adopts a resolution stating its intent to become a Dark Sky Community and regulates lighting in a manner that is not more restrictive than necessary to become a certified Dark Sky Community.

The bill also provides that land use restrictions that have historically been enforced by certain cities under Subchapter F, Chapter 212 of Local Government Code will not be affected by the 2019 legislation. Amended Section 212.151 makes Subchapter F applicable to a municipality with a population of less than 4,000 that is located in two counties, one of which has a population greater than 45,000, and borders Lake Lyndon B. Johnson.

TMCEC: Not sure what a "Dark Sky Community" is or want more information on outdoor lighting or light pollution ordinances? *See* Ryan Kellus Turner, "Blinded by the Light: The Enforcement of Outdoor Lighting Ordinances in Texas" *The Recorder* (February 2015).

S.B. 1168
Subject: Authority of a Municipality to Impose a Fine or Fee in Certain Areas in the Municipality's Extraterritorial Jurisdiction
Effective: June 7, 2021

Under current law, certain municipalities may impose fines and fees on residents in their extraterritorial jurisdiction (ETJ), even when the area has been disannexed or the voters rejected an attempt to govern them through a municipal annexation election required by recent changes to state law. In the 85th Legislative Session, the legislature passed S.B. 6 giving Texas citizens living outside the city limits the right to vote on municipal annexation. Many of these same Texans now find themselves subject to regulation, including the threat of municipal fines and fees, after voting against annexation at the ballot box. Current state law gives municipalities the authority to impose fines and fees on these residents because they still reside in the city's ETJ.

S.B. 1168 amends Chapter 42 of the Local Government Code by adding Section 42.9025, which prohibits municipalities from imposing fines and fees by ordinance in their ETJ where voters have rejected annexation, or the area has been disannexed. The bill includes exceptions, including certain utility services.

S.B. 1225
Subject: Authority of a Governmental Body Impacted by a Catastrophe to Temporarily Suspend the Requirements of the Public Information Law
Effective: September 1, 2021

In the past, catastrophes, natural disasters, and other similar emergencies rendered it difficult or impossible for impacted governmental bodies to timely respond to Public Information Act (PIA) requests, either due to emergency work related to the catastrophe or, in some cases, because government offices were closed due to inaccessibility or damage. In 2019, S.B. 494 codified a long-standing informal practice of allowing governmental bodies, on rare occasions, to temporarily suspend certain PIA provisions during a catastrophe. When pandemic-related closures began in March 2020, dozens of governmental bodies across Texas filed catastrophe notices. Some have argued that this created roadblocks to information during the pandemic. While a temporary suspension of responding to PIA requests may be necessary during a disaster, overuse of the catastrophe notice provision may not be consistent with the spirit of the law.

S.B. 1225 amends Section 552 of the Government Code to place further restrictions on the suspension of the PIA during a catastrophe.

TMCEC: Courts should remember that Chapter 552 specifically excludes the judiciary from the provisions of the PIA. Instead, court records requests typically fall under the common law right of inspection or Rule 12. Nevertheless, courts often look to provisions within the PIA to create court records processes and procedures when they are not addressed under other law. Considering the last year, courts would also be well served to give thought to timely records requests responses during a disaster.

S.B. 1585
Subject: Requirements for the Designation of a Property as a Historic Landmark and the Inclusion of a Property in a Historic District by a Municipality
Effective: September 1, 2021

In 1987, the Texas Legislature authorized city councils to regulate historical structures of significance through zoning regulations. This was largely seen as a critical step to preserving Texas's heritage for generations to come, as well as ensuring that there would be a process for the preservation and rehabilitation of these structures. In order for a building to be designated as a historic structure, it can be initiated by the city or the property owner. Currently, if the property owner opposes designation being initiated by the city, the property must receive a supermajority vote of either the zoning, planning, or historical commission, in addition to the supermajority vote at city council. In 2019, H.B. 2496 required municipalities to receive a supermajority vote at the commission level (city council was already required) when designating a structure as historic against a property owner's wishes. The bill specifically provided three options for municipalities at the commission level: planning commission, zoning and platting commission, or historic landmark commission. The goal of this provision was to provide cities with flexibility due to the fact that some cities may only have one board that serves all three purposes or may have a separate board for each. However, some cities have interpreted this provision to mean that they may "shop around" the vote depending on schedule and preference. It has been noted that while some cities have a single board, others that have all three boards will frequently choose a different board depending on where the city feels the vote will be most successful. This is a major disadvantage for property owners whose property is designated against their will.

S.B. 1585 amends Section 211.0165 of the Local Government Code, providing that a municipality with more than one zoning, planning, or historical commission must designate one of those commissions as the entity with exclusive authority to approve the designations of properties as local historic landmarks and the inclusion of properties in a local historic district. S.B. 1585 also expands the protections for landmark designations by requiring property owner consent or a three-fourths vote at the commission and council level to include a property in a historic district.

S.B. 2188
Subject: Municipal or County Regulation of Residential Detention Facilities for Immigrant or Refugee Children
Effective: September 1, 2021

When opening a private business, such as a restaurant or daycare, certain permits and approvals are required. This is done to ensure the health and well-being of local residents. However, recently, in Midland, Texas, a property owner changed the use of their land without obtaining necessary state and local permits by contracting with the federal government to place children on the site. There is currently no prior authorization required to do this. S.B. 2188 adds Section 250.011 to the Local Government Code (Residential Immigrant or Refugee Child Detention Facilities), allowing municipal and county governments to adopt and enforce a local ordinance, order, or other regulation necessary to ensure that a residential child detention facility meets certain community health, safety, and welfare standards.

S.J.R. 27
Subject: Proposing a Constitutional Amendment to Prohibit this State or a Political Subdivision of this State from Prohibiting or Limiting Religious Services of Religious Organizations
Effective: Filed with the Secretary of State on May 19, 2021 (Subject to voter approval on November 2, 2021)

S.J.R. 27 proposes a constitutional amendment to prohibit the state or any political subdivision of the state from limiting or prohibiting religious services. The proposed constitutional amendment must be submitted to the voters at the election to be held on November 2, 2021. If it is passed by voters, its new home will be Article I, Section 6-a of the Texas Constitution.

MAGISTRATE DUTIES AND MENTAL HEALTH

H.B. 766
Subject: Entry into the Texas Crime Information Center of Information Regarding Orders Imposing a Condition of Bond in a Criminal Case Involving a Violent Offense
Effective: January 1, 2022 (except where noted below)

Often, bond conditions imposed for serious or violent offenses restrict the defendant from going near or interacting with the victim or other individuals potentially at risk. However, such conditions are not entered into the law enforcement database maintained by the Department of Public Safety (DPS), the Texas Crime Information Center (TCIC). This puts law enforcement at a disadvantage when confronting individuals who are out on bond and hinders their ability to protect individuals for whom the conditions are imposed. H.B. 766 adds Article 17.50 of the Code of Criminal Procedure requiring magistrates to notify the sheriff of the condition and provide certain information. This notice must be made as soon as practicable but not later than the next day after the date a magistrate issues an order imposing a condition of bond under Chapter 17 C.C.P. for a violent offense.

"Violent offense" is defined to include certain offenses in the Penal Code (e.g., murder, kidnapping, sexual assault) and any offense involving family violence as defined by Section 71.004 of the Family Code (Family Violence).

Specifically, the magistrate shall provide (1) information listed in Section 411.042(b)(6) of the Government Code (requiring DPS to collect, among other things, information about persons subject to conditions of bond imposed for the protection of the victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case); (2) name and address of victim or other named person the bond condition is intended to protect; (3) the date the order releasing the defendant on bond was issued; and (4) the court that issued the order. If the magistrate subsequently revokes the bond that contained a condition described above, modifies the terms of or removes a condition of the bond, or disposes of the underlying criminal charges, then Article 17.05(c) requires the magistrate to notify the sheriff to provide information that is sufficient to enable the sheriff to modify or remove the appropriate record in the database.

The bill also includes requirements for the sheriff (Subsection (d)) and the clerk of a court that issues an order described above (Subsection (e)).

No later than December 31, 2021, DPS must modify TCIC to enable the database to accept the information required by Article 17.50 (this requirement is effective September 1, 2021). DPS must also develop a form for use by magistrates and sheriffs to facilitate the required data collection.

TMCEC: The changes implemented by H.B. 766 are a big step forward and have been in the works for some time. In 2015, H.B. 2455 created a task force to promote uniformity in the collection and reporting of data surrounding family violence, sexual assault,

stalking, and human trafficking. The task force consisted of thirty-four members representing 21 state and local agencies (including TMCEC), and in its final report submitted September 2016, the task force called for legislation to be passed to mandate that conditions of bond in cases involving family violence, sexual assault, and human trafficking be entered into TCIC as a stand-alone record, instead of being attached to protective order records.

H.B. 2287
Subject: Data Collection and Receipt of Certain Reports by and Consultation with the Collaborative Task Force on Public School Mental Health Services
Effective: September 1, 2021

The Collaborative Task Force on Public School Mental Health Services was established by the 86th Legislature (2019) to evaluate school-based mental health programs and ensure that taxpayer dollars were being well spent. However, the Texas Education Agency (TEA) lacks specific authority to request the data needed to implement and effectively assess these state-funded programs.

H.B. 2287 amends Section 38.3071 of the Education Code allowing the Collaborative Task Force on Public School Mental Health Services, or the TEA on behalf of the task force, to request data from or consult with: (1) school districts; (2) open-enrollment charter schools; (3) regional education service centers; (4) local mental health authorities; and (5) other entities that possess information relevant to the task force's duties under Section 38.308. In requesting data or consulting with permitted entities, the task force and TEA may not disclose a student's medical or educational information and would have to ensure any request or consultation complied with required privacy and confidentiality of student information. An entity has until the 60th business day after receiving a request for data to comply.

The bill also amends Section 38.308 (Duties of the Task Force) adding collection of certain data to the duties of the task force (Section 38.308) and permitting the task force to consult with certain experts and stakeholders. The Health and Human Services Commission and regional educational service centers must report regularly to the task force. The requirement of such reporting expires December 1, 2025.

TMCEC: Though juvenile case managers are not included in the list of stakeholders the task force may consult, the list is not exhaustive. The task force would be a good connection for any juvenile case manager, especially one who is school based.

H.B. 2831
Subject: Relating to the Confinement in County Jail of Persons with Intellectual or Developmental Disabilities
Effective: September 1, 2021

The incidence of mental health disorders among the population of detained persons who have intellectual or developmental disabilities (IDD) is about three times higher than the general population. This heightens several risk factors inherent in the incarceration of persons with IDD. Providing adequate resources and support for the population with IDD in county jails may decrease recidivism. H.B. 2831 requires the Texas Commission on Jail Standards (TCJS) to (1) create an advisory committee to make recommendations on matters related to the confinement in county jail of persons with IDD; (2) monitor and improve intake processes in county jails; and (3) jointly develop with the Texas Commission on Law Enforcement (TCOLE) a training program for county jailers related to IDD.

H.B. 3363
Subject: Certain Search Warrants in a Criminal Investigation and the Admissibility of Evidence Obtained Through Certain Searches
Effective: September 1, 2021

In step with advances in technology and growth in the electronic communications industry over the past decade, offenders often leave electronic footprints useful to law enforcement. Under current law, law enforcement agencies can request electronic consumer data to assist in locating fugitives. However, large, well-known electronic communications service providers recently began denying or ignoring such requests. H.B. 3363 adds Subchapter G-1 (Prospective Location Information) to Chapter 18B of the Code of

Criminal Procedure. New Article 18B.322 requires a warrant to obtain the disclosure of location information (defined by added Article 18B.001(9-b) of the Code of Criminal Procedure) by a provider of an electronic communications service or a provider of a remote computing service. The application for a warrant under Article 18B.322 must be filed with a district judge. Only certain prosecutors or prosecutors' assistants may file the application.

H.B. 3363 also removes the language in Article 18.06 of the Code of Criminal Procedure (Execution of Warrants) regarding time periods for executing certain warrants and moved it to Article 18.07 (Days Allowed for Warrant to Run). The bill also adds a 10-day execution period for location information warrants under Article 18B.322.

S.B. 49
Subject: Procedures Regarding Defendants with a Mental Illness or Intellectual Disability
Effective: September 1, 2021

In 2019, the Texas Judicial Commission on Mental Health established a legislative research committee composed of judicial stakeholders and mental health providers to make recommendations to improve laws relating to mental health and intellectual and developmental disabilities. S.B. 49 makes some of the recommended improvements.

Under current law, Article 16.22 of the Code of Criminal Procedure (Early Identification of Defendants Suspected of Having Mental Illness or Intellectual Disability) requires the sheriff or municipal jailer, after receiving credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, to provide written or electronic notice to the magistrate. The magistrate, upon determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, must order the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to interview the defendant and provide the magistrate a written report of the interview and other information collected on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments. S.B. 49 amends Article 16.22 to provide that a magistrate is not required to order the interview and collection of other information under Article 16.22(a)(1) if the defendant is no longer in custody.

Currently, Article 16.22(b-1) requires the magistrate to provide copies of the written report to the defense counsel, the attorney representing the state, and the trial court. S.B. 49 amends Article 16.22(b-1) to also require the magistrate to provide copies of the written report to (1) the sheriff or other person responsible for the defendant's medical records while the defendant is confined in county jail; and (2) as applicable, (A) any personal bond office established under Article 17.42 for the county in which the defendant is being confined; or (B) the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail. The amendments to 16.22 only apply to a person who is arrested on or after September 1, 2021.

S.B. 49 also amends Article 17.04 of the Code of Criminal Procedure (Requisites of a Personal Bond) creating exceptions to the oath requirement in Subsection (3). New Subsection (b) provides that a personal bond is not required to contain the oath if (1) the magistrate makes a determination under Article 16.22 that the defendant has a mental illness or is a person with an intellectual disability, including by using the results of a previous determination under that article; (2) the defendant is released on personal bond under Article 17.032; or (3) the defendant is found incompetent to stand trial in accordance with Chapter 46B. The amendments to 17.04 only apply to a personal bond that is executed on or after September 1, 2021.

Chapter 511 of the Government Code governs the Texas Commission on Jail Standards (TCJS). Section 511.009 (General Duties) includes a requirement that TCJS adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care

and treatment of prisoners. S.B. 49 amends Section 511.009(d) providing that such rules must require that a prisoner with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determines is necessary for the care, treatment, or stabilization of the prisoner.

S.B. 64
Subject: Peer Support Mental Health Network for Certain Law Enforcement Personnel
Effective: June 14, 2021

In 2019, the number of law enforcement officers (LEOs) nationwide who died by suicide (228) was nearly double the number killed in the line of duty (132). There were 19 LEO suicides in Texas alone. Several factors affect the mental health of our first responders. LEOs witness numerous critical incidents during their careers. Exposure to trauma such as these incidents can lead to several mental health conditions, including depression and post-traumatic stress disorder. S.B. 64 adds Subchapter M-1 to Chapter 1701 of the Occupation Code, creating a voluntary peer support network focused on training LEOs to provide support to each other. S.B. 64 requires the Texas Commission on Law Enforcement to develop the peer support network for law enforcement officers not later than January 1, 2022. The peer support network must include peer-to-peer support; training for peers and peer service coordinators including suicide prevention training; technical assistance for program development, peer service coordinators, licensed mental health professionals and peers; and identification, retention, and screening of licensed mental health professionals.

S.B. 112
Subject: Use of Tracking Equipment by Law Enforcement
Effective: September 1, 2021

S.B. 112 makes identical amendments to Chapter 18B of the Code of Criminal Procedure as H.B. 3363 regarding search warrants for the disclosure of certain location information held in electronic storage (*See* bill summary for H.B. 3363 *supra*). In addition to those amendments, S.B. 112 amends Article 18B.202 of the Code of Criminal Procedure (Order Authorizing Installation and Use of Mobile Tracking Device) requiring a law enforcement officer's affidavit to state facts and circumstances that provide *probable cause* to believe criminal activity has been, is being, or will be committed; and the installation and use of a mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity. Under current law, only *reasonable suspicion* is required. The bill purports to bring this provision in line with other sections of the Code of Criminal Procedure and the 4th Amendment.

TMCEC: Note that only a district judge may issue a warrant for location information (Article 18B.322 of the Code of Criminal Procedure) or order installation of a mobile tracking device (Article 18B.202).

S.B. 454
Subject: Mental Health Services Development Plans and Local Mental Health Authority Groups
Effective: June 4, 2021

The Health and Human Services Commission contracts with 39 local mental health authorities (LMHAs) to deliver mental health services locally to Texans. In 2019, the 86th Legislature passed S.B. 633 as a one-time initiative to better leverage the resources of individual LMHAs by requiring LMHAs to work together on a regional plan to build new capacity, reduce local government costs, lower emergency room visits, and reduce transportation costs. Due to the COVID-19 pandemic, the regional planning groups were only able to partially fulfill the legislative intent of S.B. 633. S.B. 454 adds Section 531.0222 to the Government Code directing the continuation of the LMHA regional planning groups and making the planning process permanent.

S.B. 1359
Subject: Requiring Law Enforcement Agencies to Adopt Mental Health Leave Policies for Peace Officers
Effective: September 1, 2021

Law enforcement officers face some of the most mentally stressful situations imaginable. To equip law enforcement agencies with every tool available to serve their officers' mental health needs, S.B. 1359 adds Subchapter A-1 (Mental Health Leave) to Chapter

614 of the Government Code (Peace Officers and Fire Fighters). The bill requires a law enforcement agency to develop and adopt a mental health leave policy for peace officers who experience a traumatic event in the scope of that employment. New Section 614.015 defines "law enforcement agency" as an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

The mental health leave policy must: (1) provide clear and objective guidelines establishing the circumstances under which a peace officer is granted mental health leave and may use mental health leave; (2) entitle a peace officer to mental health leave without a deduction in salary or other compensation; (3) enumerate the number of mental health leave days available to a peace officer; and (4) detail the level of anonymity for a peace officer who takes mental health leave. The policy may provide a list of mental health services available to peace officers in the area of the agency.

Section 2 of the bill requires development of the policy as soon as practicable after September 1, 2021.

PROCEDURAL LAW

H.B. 80
Subject: Discharge of Fines and Costs Through Community Service
Effective: September 1, 2021

The number of youth in foster care is increasing statewide with more than 11,000 children entering the conservatorship of the Department of Family and Protective Services (DFPS) during the last 10 years. Foster youth who accrue justice-related unpaid fines and court costs are more likely to reoffend when compared to their peers who are able to pay.

H.B. 80 amends Article 45.041 of the Code of Criminal Procedure to prohibit a justice of the peace or municipal judge from requiring a defendant who is under the conservatorship of DFPS, or in extended foster care, to pay any amount of a fine and costs imposed by the justice or judge. The bill authorizes the justice or judge to require the defendant to perform community service in lieu of the payment of fine and costs as appropriate. The bill applies to a sentencing proceeding that commences before, on, or after the bill's effective date.

TMCEC: This procedural safeguard will protect children and young adults from facing financial burdens that may be more appropriately discharged through community service. This continues a pattern over the last 10 years of encouraging judges to utilize community service when dealing with young defendants. In 2011, both H.B. 350 and H.B. 1964 created Article 45.0492 allowing children to discharge fines and costs through community service or tutoring, without a requirement to consider their ability to pay. H.B. 80 takes this a step forward for youth in foster care by prohibiting the requirement of payment altogether. Additionally, it is worth noting that this provision is placed in the judgment statute, Article 45.051, where the required ability to pay inquiry is also found. H.B. 80 permits the judge to consider community service for foster care youth "when imposing a fine and costs," and as a practical matter, courts may want to consider adding an inquiry into foster care status to open court sentencing processes.

H.B. 569
Subject: Credit Toward Payment of Fine and Costs for Those Confined Before Sentencing
Effective: September 1, 2021

H.B. 569 seeks to address some of the financial barriers that persons who have been incarcerated may face after their release from confinement by requiring

they receive credit for time served applied to fine-only misdemeanor offenses.

H.B. 569 amends three different articles in Chapter 45 of the Code of Criminal Procedure. The required notice in Article 45.014 sent to a defendant for failure to appear in court after receiving a citation must now also notify the defendant that they may be eligible to receive credit for time served. The notice must be sent before a warrant is issued. Amended Article 45.041 creates an additional time credit for a defendant who is arrested and is confined for another offense after receiving a citation for a misdemeanor offense. The time credit received under this provision would be at a rate of at least $150 per day. Finally, amended Article 45.048 raises a defendant's credit for time served following the defendant's arrest to a daily rate of at least $150 if the defendant was incarcerated for eight hours up to 24 hours.

TMCEC: From a legal standpoint, the effect of H.B. 569 will be significant for municipal courts in Texas. While many judges may already allow credit for time served on unrelated charges, this credit is now mandated. A close inspection of the statutory language does reveal that the judge shall credit for time the defendant was confined in jail or prison "while serving a sentence for another offense." It should be noted that a defendant may *never* be sentenced to jail for a fine-only misdemeanor. From an administrative standpoint, H.B. 569 will also have courts going back to edit language in their non-appearance letters. Article 45.014(e), the requirement that courts provide notice with specific requirements prior to issuing an arrest warrant for failure to appear at the initial court setting, was just added to the Code of Criminal Procedure in 2017. H.B. 569 does not provide verbatim language but does require a statement added to that notice regarding jail credit.

H.B. 929
Subject: Requiring Officers to Keep Body Cameras on While Active in Investigations
Effective: September 1, 2021

H.B. 929, named the Botham Jean Act, amends Section 1701.655 of the Occupations Code (Body Worn Camera Policy) requiring that a peace officer who is actively participating in an investigation keep the camera activated for the entirety of the officer's active participation in that investigation. Additionally, H.B. 929 adds a provision requiring a policy for body cameras to address the collection of the body worn camera, including the video and audio recorded by the camera as evidence.

TMCEC: H.B. 929, or "Bo's Law," is named after Botham Jean, a man shot and killed by an off-duty Dallas police officer inside his apartment. The officer, who said she thought she had walked into her own apartment, did not have her body camera activated. Subchapter N of the Occupations Code was originally added in 2015 to comprehensively outline the use of body cameras by law enforcement, including the requirement in Section 1701.655 that departments have a policy regarding the use of body cameras. Police advisors will want to review these existing body camera policies in light of the amendments.

H.B. 1071
Subject: Qualified Facility or Therapy Dogs in Certain Court Proceedings
Effective: September 1, 2021

The prevalence of therapy dogs in courtrooms has increased in recent years as a means of helping traumatized victims who, over the course of giving witness testimony, may experience anxiety. In 2019, a federal law was introduced and passed in the senate to allow certified facility dogs into federal courtrooms for that purpose. However, facility or therapy animals are not allowed in any state courtrooms in Texas.

H.B. 1071 authorizes the presence of a qualified facility dog or qualified therapy animal in certain court proceedings to help support Texans and help witnesses feel safe while supporting the justice system.

H.B. 1071 adds Section 21.012 to the Government Code to authorize a party to an action filed in a court in Texas to petition the court for an order authorizing a qualified facility dog or qualified therapy animal to be present with a witness who is testifying before the court through in-person testimony or closed-circuit video teleconferencing testimony.

TMCEC: As courts return to in-person proceedings following more than a year of Zoom court, it would

be a good time to review procedures and local rules governing things like animals in the courtroom. When drafting these rules, judges will want to note that H.B. 1071 is not open-ended. The bill allows courts to not only impose restrictions on the presence of the qualified dog, but also issue instructions to the jury as applicable.

H.B. 3340
Subject: Appeal of Order to Destroy Dangerous Dog
Effective: September 1, 2021

State law allows for the appeal of a court's determination that a dog is dangerous. However, despite wording in current law, some have raised concerns that a dog can be destroyed before a person has the time and opportunity to appeal the court's decision.

H.B. 3340 amends Section 822.042 of the Health and Safety Code (Requirements for Owner of Dangerous Dog) to provide that any order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal and to prohibit a court from ordering the destruction of a dog during the pendency of an appeal under Section 822.0424.

TMCEC: H.B. 3340 is a bill that on its surface seems a bit duplicative. In 2015, H.B. 1436 amended Section 822.042 to prohibit courts from ordering destruction of a dog following a determination that the animal was dangerous. The language added six years ago ("the court may not order the destruction of a dog during the pendency of an appeal.") is struck and then replaced nearly verbatim in this bill. The only additions are language stating the appeal period (10 calendar days, in line with other municipal court appeals) and that this includes a hearing held in justice court. The Health and Safety Code has always been a bit vague when it comes to actual procedures for conducting animal hearings, and these amendments do little to change that. It remains to be seen whether there is some history behind this bill involving a justice court hearing or if it is, as stated in public comments on the bill, a solution in search of a problem.

H.B. 3774
Subject: Court Omnibus Bill
Effective: September 1, 2021

Historically, the Texas Legislature has accounted for changes in population and litigation trends by establishing new courts or changing existing ones. Several factors are analyzed in the evaluation process, including caseloads, case backlogs, substantial population growth, and county support. In order to ensure that the creation of new courts and the modification of existing ones proceeds in an orderly manner, H.B. 3774 consolidates these changes into a single omnibus courts bill.

TMCEC: H.B. 3774 contains 19 articles and is over 125 pages in length. Several of the articles apply to municipal courts.

Article 3: Justice and Municipal Courts

Article 4.14 of the Code of Criminal Procedure (Jurisdiction of Municipal Court) and Section 29.003 of the Government Code (Jurisdiction) are both amended to authorize a municipality to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality to establish concurrent jurisdiction for *all* criminal cases arising under state law that are punishable by fine only. Under current law, municipalities may only enter into agreements for cases involving ordinances or cruelly treated animal cases that arise under Section 821.022 of the Health and Safety Code. This is a significant change allowing for much more far-reaching concurrent jurisdiction agreements.

Article 45.0241 of the Code of Criminal Procedure (Acceptance of Defendant's Plea) is added prohibiting a justice or judge from accepting a plea of guilty or nolo contendere in open court unless it appears that the defendant is mentally competent, and the plea is free and voluntary. This reiterates U.S. Supreme Court precedent in *Drope v. Missouri*, 420 U.S. 162 (1975) that convicting an incompetent defendant of a crime is unconstitutional. Article 45.0241 requires municipal judges to now follow the same requirements that have been in place for county and district judges under Article 26.13 (Plea of Guilty).

H.B. 3774 amends Article 103.003 of the Code of Criminal Procedure (Collection) to authorize municipal court clerks to collect money payable to the municipal court. Article 103.0081 (Uncollectible Fees) is amended to authorize a court to make a finding that a fine, fee, or item of cost (rather than just a fee or item of cost) is uncollectible if the officer believes the defendant is deceased, the defendant is serving a sentence for imprisonment for life or life without parole, or the fine, fee, or item of cost has been unpaid for at least 15 years. This latest amendment in the saga of what was known as the "Collin County Bill' when originally passed in 2017, is almost a mirror image of changes also made this session to Article 103.0081 by S.B. 1373. The changes made by H.B. 3774 and S.B. 1373, however, are not exactly the same. The latter bill adds "reimbursement" to the fee named in Article 103.0081 to reflect recent changes to court costs definitions made in 2019. Otherwise, both add "fine" to the statute, addressing a potential problem authorizing judges to declare all outstanding judgment amounts uncollectible.

Article 5: Magistrates and Magistrate Courts

H.B. 3774 amends Article 4.01 of the Code of Criminal Procedure (What Courts Have Criminal Jurisdiction), adding magistrates appointed by the Collin County Commissioners Court, the magistrates appointed by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County, and the magistrates appointed by the judges of the district courts of Tom Green County to a list of courts that have jurisdiction in criminal actions. Subchapter PP is added to Chapter 54 of the Government Code creating the Brazoria County Criminal Law Magistrate Court which will have concurrent criminal jurisdiction with the justice courts of the county.

Additionally, Section 54.1502 of the Government Code is amended specifying that a magistrate has concurrent criminal jurisdiction with the municipal court in Burnet County, if approved by the municipality and Burnet County. The Burnet County magistrate currently has concurrent criminal jurisdiction with the justice courts.

Article 8: Habeas Corpus

H.B. 3774 amends Article 11.072 of the Code of Criminal Procedure (Procedure in Community Supervision Case), allowing a habeas corpus applicant to serve a copy on the attorney representing the state by electronic filing or via email in addition to the existing approved methods of certified mail or personal service. Article 11.07 (Procedure After Conviction Without Death Penalty) is amended doubling the timeline an attorney representing the state will have to answer the application for writ of habeas corpus from 15 days to 30 days after the date the copy of the application is received.

Article 16: Misdemeanor Cases

S.B. 346 created Article 45.0445 in the Code of Criminal Procedure requiring, in most cases, a judge to hold a hearing to determine whether a judgment imposes an undue hardship after a defendant notifies a judge of difficulty paying the fine and costs. H.B. 3774 makes no procedural change to this article but it does change the heading from Reconsideration of Fine or Costs to Reconsideration of *Satisfaction of* Fine or Costs (emphasis added). This follows concerns written about by TMCEC and voiced by some judges that the name implied the ability for defendants to have a hearing reconsidering the actual judgment. In municipal courts, where the majority of court users are unrepresented, this could set unrealistic and incorrect legal expectations for pro se defendants as to what this hearing is about. The changes to Article 45.0445 reflect a more accurate representation of the purpose of the hearing, as a judge does not change the judgment or sentence, but rather may consider alternate means of satisfaction or discharge.

Article 66.252 (Reporting of Information by Local Entities) of the Code of Criminal Procedure is amended to provide that a judge with jurisdiction of a fine-only misdemeanor involving family violence may order a law enforcement officer to use a uniform incident fingerprint card to take fingerprints of an offender charged with family violence, but not arrested. This creates more clarity after changes made by H.B. 1528 in 2019 required law enforcement to prepare a uniform incident fingerprint card, but did not take into account

that fine-only family violence charges may be initiated by citation or complaint, which may involve little law enforcement involvement, if any.

SUBSTANTIVE CRIMINAL LAW

H.B. 246
Subject: Criminal Offense of Improper Relationship Between Educator and Student
Effective: September 1, 2021

Concerns have been raised regarding ambiguity in the definition of what constitutes an improper teacher-student relationship, a second degree felony under Section 21.12 of the Penal Code (Improper Relationship Between Educator and Student). Some have argued that the definition of sexual contact should be clarified in the law. H.B. 246 amends Section 21.01 of the Penal Code, defining "sexual contact" with regard to the offense of improper relationship between an educator and a student. Under the new definition, "sexual conduct" means any touching of the anus, breast, or any part of the genitals of a student by an employee of a school with intent to arouse or gratify the sexual desire of any person.

Additionally, H.B. 246 amends Section 21.12 of the Penal Code prohibiting the release of the name of an employee accused of committing an offense under that section until the employee is indicted. A school may release the name, though, to report the accusation or to investigate.

H.B. 375
Subject: Continuous Sexual Abuse of a Young Child or Disabled Individual
Effective: September 1, 2021

According to the federal Bureau of Justice Statistics, the rate of sexual assault against persons with disabilities is three and a half times higher compared to persons without disabilities and more than seven times higher against persons with intellectual disabilities. H.B. 375 amends Section 21.02 of the Penal Code, establishing the same criminal penalties for continuous sexual abuse of a person with a disability as those that currently exist for the offense of continuous sexual abuse of a young child. The offense is a first degree felony punishable by imprisonment for life or for a minimum of 25 years or maximum of 99 years.

H.B. 574
Subject: Criminal Offenses Involving Elections
Effective: September 1, 2021

Legislation enacted by the 85th Legislature sought to root out alleged election fraud in Texas by codifying conduct constituting an election fraud offense, such as unlawfully influencing a voter, casting a ballot under false pretenses, and lying to an election official. Some have argued that this should be further expanded. H.B. 574 amends Chapter 276 of the Election Code by adding Section 276.014 (Other Election Offenses) to create a second degree felony for intentionally or knowingly counting votes the person knows are invalid or refusing to count votes the person knows are valid.

H.B. 624
Subject: Increased Penalties for Crimes Done in Retaliation for Being a Public Servant
Effective: September 1, 2021

Police officers face doxing and attacks on account of their occupation. Public servants already have some protection under law. However, these protections

do not extend to their family members or to retired police. H.B. 624 amends Chapter 12 of the Penal Code to increase the penalty for offenses committed knowingly against a public servant, their family, or property or in retaliation for or on account of the service or status of the person as a public servant. The bill bumps the punishment up to the penalty prescribed for the next higher category of offense. The increase in punishment is limited to offenses under Sections 21.16, 21.18, 21.19, 22.011, 28.02, 28.03, 30.05, 32.51, 33.02, 42.07, or 42.072. H.B. 624 also defines a "member of a public servant's family" as a person related to the public servant within the second degree of consanguinity.

H.B. 1024
Subject: Allowing Certain Entities to Deliver or Sell Alcoholic Beverages To-Go
Effective: May 12, 2021

Prior to COVID-19, restaurants were prohibited from selling alcohol directly to consumers for off-premises consumption. Some of these regulations were waived via Emergency Order during the pandemic. H.B. 1024 makes aspects of these waivers permanent.

The bill amends the Alcoholic Beverage Code to authorize certain permit holders to allow the pickup and delivery of alcoholic beverages in tamper proof containers for off-premises consumption as part of the pickup or delivery of food prepared at the permitted premises. The bill also amends Section 28.1001 (Off-Premises Delivery of Alcoholic Beverages) to define "tamper-proof container." Additionally, the bill states that alcohol may not be taken from premises by or delivered to anyone under the legal drinking age of 21, while Subsection (e) prohibits a person who picks up or delivers an alcoholic beverage from transporting the alcoholic beverage in the passenger area of a motor vehicle.

TMCEC: Under Section 49.031 of the Penal Code, motorists are prohibited from having open or unsealed containers of alcohol in the passenger area of the vehicle. An offense under this section is a Class C misdemeanor. An "open container" is defined as a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed. H.B. 1024 allows for the delivery or pick-up of alcoholic beverages that are not in an original container sealed by the manufacturer. This is a potential conflict. However, both the bill and the current statute prohibit a person who picks up or delivers an alcoholic beverage from transporting the alcoholic beverage in the passenger area of a motor vehicle. The issue is whether alcohol-to-go in a tamper-proof container is an "open container."

H.B. 1128
Subject: Persons Permitted in Polling Place or Place Where Ballots Are Counted
Effective: September 1, 2021

During the 2020 presidential election, many election workers expressed concerns about individuals who entered polling and ballot processing facilities. Many of these people also refused to leave. Some have argued that current election laws were too vague to give election judges the authority or confidence to expel certain people loitering in election facilities. H.B. 1128 amends Sections 61.001, 87.026, and 127.008 of the Election Code, listing which people are allowed in facilities where voting or ballot processing occurs.

TMCEC: H.B. 1128 should come as no surprise to anyone in light of the 2020 presidential election. Before and after election night, news crews across the nation showed images of polling places swamped with people, from actual voters, to protestors, to so-called poll watchers. This bill harmonizes multiple Election Code statutes and lists who is allowed in the polling place in one statute. The list--added to Section 61.001 of the Election Code (Bystanders Excluded; Unlawful Presence of Candidate)--is lengthy and leaves one hoping there is space to accommodate all those people (15 different individuals are named). The addition of "watcher" is interesting in that the definition of watcher in Chapter 33 of the Election Code is not referenced in the amendments to Chapter 61. "Watcher" is separately defined under current law in Section 33.001 of the Election Code and is generally a person appointed by a candidate or political party. Additionally, municipal court practitioners will need to familiarize themselves

with the list of those permitted in the polling place, as Unlawful Presence at a Polling Place is still a Class C misdemeanor.

H.B. 1156
Subject: Creating a Criminal Offense for Financial Abuse of Elderly Individuals
Effective: September 1, 2021

Elderly Texans are uniquely at risk of financial abuse and exploitation. To address this concern, H.B. 1156 creates an offense for the financial abuse of an elderly individual. The bill adds Section 32.55 to the Penal Code (Financial Abuse of Elderly Individual), establishing penalties ranging from a Class B misdemeanor to a first degree felony depending on the value of the applicable property. The bill makes it a Class B misdemeanor if the value of the property taken, appropriated, obtained, retained, or used is less than $100; a Class A misdemeanor if the value is between $100 and $750; a state jail felony if the value is between $750 and $2,500; a felony of the third degree if the value is between $2,500 and $30,000; a felony of the second degree if the value is between $30,000 and $150,000; and a felony of the first degree if the value is $150,000 or more.

TMCEC: The bill defines both "financial abuse" and "financial exploitation." The latter has an expansive definition encompassing a wide range of both conduct and actors, meaning there are many possible ways to commit this offense.

H.B. 1280
Subject: Prohibiting Abortion if the U.S. Supreme Court Were to Issue Judgment
Effective: September 1, 2021 (except where noted below)

The U.S. Supreme Court case *Roe v. Wade* prohibits the criminalization of abortion. H.B. 1280 creates a trigger law that would criminalize abortion, to the extent permitted, on the 30th day after *Roe v. Wade* is overturned. In anticipation, the bill amends the Health and Safety Code by adding Chapter 170A (Performance of Abortion) to make it an offense for a person to knowingly perform, induce, or attempt an abortion. However, a licensed physician may perform an abortion if—in the exercise of reasonable medical judgment—continued pregnancy would risk the mother's life or substantial impairment of a major bodily function. The bill details that a woman's threats of suicide or self-harm may not substantiate the risk of death or a substantial impairment.

An offense under this chapter is a second degree felony but is enhanced to a first degree felony if an unborn child dies as a result. It also creates a civil penalty of not less than $100,000 for each violation. While the chapter may not be construed to authorize the imposition of a punishment on a pregnant female who receives an abortion, the bill does limit the conduct of medical professionals. As an additional punishment, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who commits an offense under this section.

TMCEC: This bill is notable for two reasons. One, trigger legislation is rare because it is not readily applicable or enforceable. And two, unlike past abortion legislation, this bill does not contain exceptions for cases of rape or incest.

This Act takes effect September 1, 2021, except Section 2 takes effect, to the extent permitted, on the 30th day after the issuance of a certain judgment of the U.S. Supreme Court or the adoption of a certain amendment to the U.S. Constitution.

H.B. 1306
Subject: Increasing the Penalty for Assault, Aggravated Assault of Process Server
Effective: September 1, 2021

Process servers are essential to the judicial process. Due to the nature of their job, they may interact with those who have committed criminal offenses, and there have been recent cases of process servers being attacked for simply performing job duties. H.B. 1306 creates two felony offenses for assault or aggravated assault of a process server.

H.B. 1306 makes several changes to Chapter 22 of the Penal Code. The amended Section 22.01 (Assault)

adds a definition for the term "process server" and increases the punishment from a Class A misdemeanor to a felony of the third degree for assault committed against a person the actor knows is a process server while the person is performing a duty as a process server. Similarly, H.B. 1306 amends Section 22.02 (Aggravated Assault) by increasing the punishment from a felony of the second degree to a felony of the first degree for aggravated assault committed against a person the actor knows is a process server while the person is performing a duty as a process server.

H.B. 1400
Subject: Creation of the Criminal Offense of Impersonating a Private Investigator
Effective: September 1, 2021

To legally operate as a private investigator in Texas, one must obtain a license from the Department of Public Safety. These private investigators deal with personal and highly sensitive and emotional matters that could drastically affect their clients' lives. While information acquired by unlicensed investigators can be thrown out in court, there are those who suggest this is not sufficient to safeguard the interests of individuals who fall victim to someone impersonating a private investigator and that penalties are needed to discourage unlicensed investigators from defrauding clients. H.B. 1400 seeks to prevent the use of the title of private investigator to manipulate vulnerable individuals by creating the offense of impersonating a private investigator.

H.B. 1400 amends Subchapter P, Chapter 1702, Occupations Code by adding Section 1702.3876 (Impersonating Private Investigator) to create a Class A misdemeanor if a person impersonates a private investigator with the intent to induce another to submit to the person's pretended authority or to rely on the person's pretended acts of a private investigator or if a person knowingly purports to exercise any function that requires licensure as a private investigator. The offense is enhanced to a felony of the third degree if it is shown that the defendant has previously been convicted of the same offense.

H.B. 1518
Subject: Extending Hours for Selling Alcoholic Beverages in Hotels
Effective: September 1, 2021

Although many hotel guests are provided a minibar in their room that can be accessed at any time, they are only permitted to purchase and consume drinks at the hotel bar during certain hours. As a result of COVID-19, Texas tourism and hospitality industries suffered a huge monetary loss, and these restrictions may be of further detriment to these industries. H.B. 1518 seeks to address this issue by authorizing alcoholic beverages to be sold to and consumed by hotel guests in hotel bars at any time.

H.B. 1518 amends Section 105.06 of the Alcohol Beverage Code (Hours of Consumption) by adding Subsection (f) to authorize a person who is a registered guest of a hotel to consume or possess alcoholic beverages in the hotel bar at any time. Additionally, the bill amends Chapter 105 of the Alcoholic Beverage Code by adding Section 105.091 (Hours of Sale; Hotel Bar) to define "hotel bar" as an establishment that is located in a hotel and holds a permit or license providing for the on-premises consumption of alcoholic beverages.

Furthermore, Section 105.05(b) of the Alcoholic Beverage Code (Hours of Sale: Malt Beverages) is amended to allow holders of a retail dealer 's on-premise or off-premise license to sell malt beverages for off-premise consumption between 10:00 a.m. and noon.

H.B. 1535
Subject: Texas Compassionate-Use Act and Medical Cannabis
Effective: September 1, 2021

H.B. 1535 establishes compassionate-use review boards to evaluate and approve proposed research programs to study the medical use of low-THC cannabis in the treatment of certain patients. It also amends the definition of low-THC cannabis (which is permitted for certain individuals with qualifying conditions under the Texas Compassionate-Use Act) found in Section 169.001(3) of the Occupations Code. Currently, the maximum amount of tetrahydrocannabinols (THC), the psychoactive component of cannabis, permitted in low-THC cannabis is .5%. H.B. 1535 increases it to 1%.

H.B. 1535 adds post-traumatic stress disorder to the list of eligible medical cannabis conditions in Section

169.003 of the Occupations Code. It also removes the requirement that a cancer be "terminal" to be eligible. Finally, H.B. 1535 permits the new compassionate-use review boards to approve additional qualifying conditions.

TMCEC: Numerous cannabis related bills were filed in 2021. H.B. 1535 is the only one that passed. In recent years, states across the country have been easing—or eliminating—criminal penalties related to cannabis. While Texas has not (yet) passed any monumental statewide cannabis legislation, H.B. 1535 shows the direction the winds are blowing. Stay tuned in 2023 when there will undoubtedly be another litany of cannabis bill filings. Pay particular attention to any bills that would convert certain instances of cannabis use or possession to Class C Misdemeanors.

H.B. 1540
Subject: Preventing Human Trafficking of Certain At-risk Persons
Effective: September 1, 2021

H.B. 1540 codifies wide-ranging legislative recommendations from the Texas Human Trafficking Prevention Task Force. Pertinent to magistrates, the bill amends Section 20A.02 of the Penal Code (Trafficking of Persons) expanding the circumstances under which human trafficking could be a first degree felony. Enhanceable circumstances include if the actor recruited, enticed, or obtained the victim of the offense from a shelter or facility operating as a residential treatment center that served runaway youth, foster children, the homeless, or persons subjected to human trafficking, domestic violence, or sexual assault.

In the same vein, the bill amends Section 30.05 of the Penal Code (Criminal Trespass) to specifically include entering or remaining on the property of a general residential operation operating as a residential treatment center. Such offenses would be Class A misdemeanors (up to one year in jail and/or a maximum fine of $4,000). Additionally, H.B. 1540 would require general residential operations functioning as residential treatment centers to post "No Trespassing" notices on their grounds at specified locations. The bill specifies what would have to be included on the notices, including a description of the Penal Code offense of criminal trespass. The Health and Human Services Commission (HHSC) would be required to provide the notices to the centers, and the executive commissioner would have to determine requirements on the placement of the signs.

Persons operating the centers would commit a Class C misdemeanor (maximum fine of $500) if they had been provided signs by the commission and they did not display the signs as required within 30 days of receipt. The bill incorporates "general residential operations functioning as a residential treatment center" into provisions dealing with child safety zones, drug-free zones, and gang-free zones. The bill also adds requirements for the minimum standards for licensed childcare facilities and registered family homes under Sections 42.042(e), (g), and (g-2) of the Human Resources Code.

The bill amends the definition of "coercion" under Section 20A.01 of the Penal Code. Changes create a uniform definition of coercion to be used in all cases involving adult sex and labor trafficking and child labor trafficking by moving the definition to cover all these circumstances.

Finally, H.B. 1540 adds drink solicitation to the list of current acts or offenses, including human trafficking, that can trigger an automatic denial of certain alcoholic beverage permits or licenses if specified circumstances occurred and the application was made within a specified time period.

TMCEC: H.B. 1540 seeks to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, curb economic markets that facilitate human trafficking, and investigate and prosecute human trafficking offenders.

H.B. 1694
Subject: Creating a Defense to Prosecution for Those Calling 911 for Drug Overdoses
Effective: September 1, 2021

Fear of arrest and fear of police involvement can lead bystanders to delay or forgo calling 911, increasing the risk of overdose deaths. Good Samaritan drug overdose laws have shown evidence of effectiveness since people become more likely to call 911 during

an overdose. In addition, law enforcement officers in states that have adopted Good Samaritan laws have reported that these laws have improved citizens' image of law enforcement.

Currently, 40 states and the District of Columbia have enacted some form of a Good Samaritan or 911 drug immunity law. Texas has a Good Samaritan law regarding underage drinking where the individual would not face any criminal consequence if medical assistance was sought for themselves or another person who was in a state of emergency as a result of consumption. H.B. 1694 encourages people to call for help and reduce overdose deaths in Texas.

H.B. 1694, known as the Jessica Sosa Act, amends Sections 481.115, 481.1151, and 481.116 of the Health and Safety Code to establish defenses to prosecution for possession of small amounts of certain controlled substances for the first person to request (during an ongoing medical emergency) medical assistance in response to an overdose of another person, remained on the scene until the assistance arrived, and cooperated with medical assistance and law enforcement personnel. The defense also applies if the person was the victim of a possible overdose for which assistance was requested, by the actor or by another person, during an ongoing medical emergency.

The defenses to prosecution are not available in all instances. Under Sections 481.1151 and 481.116, the defenses are not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant; the actor was committing another offense (other than specific offenses to which a defense to prosecution under the bill's provisions applies); the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under the Texas Controlled Substances Act, Texas Dangerous Drug Act, or statutory provisions relating to abusable volatile chemicals; the actor was acquitted in a previous proceeding in which the actor successfully established a defense to prosecution under the bill's provisions; or if, in the previous 18 months, the actor requested emergency medical assistance in response to a possible overdose.

TMCEC: The Jessica Sosa Act reflects sound public policy to protect Texans from overdose in many situations. H.B. 1694 is reminiscent of recent changes (in 2011 and 2017) to Chapter 106 of the Alcoholic Beverage Code specifying that consumption and possession offenses do not apply to minors that are requesting medical assistance for possible alcohol overdoses or that are reporting sexual assault for themselves or another.

H.B. 1699
Subject: Expanding Hunting of Unbanded Pen-Reared Quail or Pheasant on Private Property
Effective: May 19, 2021

H.B. 1699 adds Section 42.0211 to the Parks and Wildlife Code, allowing a person to hunt unbanded pen-reared quail or pheasant on private property. The bill would not allow a property owner to exceed a bag limit or to take quail or pheasant during a closed season. The bill also does not affect the requirements to acquire a license under Section 45.001 of the Parks and Wildlife Code for the propagation of game birds.

TMCEC: Section 42.025 of the Parks and Wildlife Code provides the general penalty (Class C Parks and Wildlife Code misdemeanor) for a person who violates any provisions of Chapter 42 (General Hunting License), some of which relate to bird hunting on private property and appropriate licensing. This bill carves out a narrow exception to these provisions for the taking of specific species by landowners.

H.B. 1755
Subject: Allowing Dine-In Customers to Take Wine from a Restaurant Holding a Mixed Beverage Permit
Effective: September 1, 2021

Current law allows restaurants holding mixed beverage permits to send patrons home with open-but-recorked wine bottles. H.B. 1755 amends Section 28.10(b) of the Alcoholic Beverage Code to allow restaurant goers to take an opened or unopened bottle of wine to-go.

H.B. 1758
Subject: Law Enforcement Use of Force by Means of Drone
Effective: September 1, 2021

H.B. 1758 amends the Code of Criminal Procedure by adding Article 2.33 (Law Enforcement Policy on Use of Force by Drone). A "drone" is defined to include an unmanned aircraft, watercraft, ground vehicle, or robotic device that is controlled remotely by a human operator or operates autonomously through computer software or programming. Article 2.33 requires law enforcement agencies that use or intend to use a drone, to adopt a written policy regarding its use of force by means of a drone before using a drone, and to update the policy as necessary. It also states that not later than January 1 of each even-numbered year, law enforcement agencies are required to submit the policy to the Texas Commission on Law Enforcement (TCOLE) in the manner prescribed by TCOLE.

The Penal Code is amended to include Section 9.54, which provides a limitation on the use of force via drone. It provides that, notwithstanding any other law, the use of force, including deadly force involving a drone is justified under Subchapter E (Law Enforcement) only if: (1) at the time the use of force occurred, the actor was employed by a law enforcement agency; (2) the use of force would have been justified under another provision of Subchapter E and did not involve the use of deadly force by means of an autonomous drone; and (3) before the use of force occurs, the law enforcement agency employing the actor adopted and submitted to TCOLE a policy on the agency's use of force by means of a drone, as required by Article 2.33 of the Code of Criminal Procedure, and the use of force conformed to the requirements of that policy.

TMCEC: This is a historic amendment to Chapter 9 of the Penal Code (Justification Excluding Criminal Responsibility) and Subchapter E which governs law enforcement. While the sponsor's statement of intent provides that "it is imperative for state government to begin exploring and inventorying how this technology is used across the state," what the public will want to know is if law enforcement is authorized to use deadly force via a drone. The answer is "no" if it is an autonomous drone (i.e., it operates autonomously through computer software or programing). However, if the drone is not autonomous (i.e., it is controlled remotely by a human operator), then force (including deadly force) can be used as otherwise justified under Subchapter E.

H.B. 1925
Subject: Banning Camping in Public Places and Limiting Regulation of Camping by Political Subdivisions
Effective: September 1, 2021

H.B. 1925 amends the Penal Code by adding Section 48.05 (Prohibited Camping), creating a Class C misdemeanor offense for intentionally or knowingly camping in a public place without effective consent of the officer or agency having the legal duty or authority to manage the public place. The bill defines "camping" as residing temporarily in a place with shelter (including a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or anything other than clothing, designed to protect a person from detrimental weather conditions). Intent or knowledge may be established through evidence associated with sustaining a living accommodation including cooking, making a fire, storing personal belongings for an extended period, digging, or sleeping.

Consent given by an officer or agency of a political subdivision is not effective unless given for: (1) recreational purposes; (2) the purpose of sheltering homeless individuals in compliance with a plan approved under Subchapter PP, Chapter 2306 of the Government Code; (3) purposes permitted by a beach access plan approved under Section 61.015 of the Natural Resources Code; or (4) purposes related to providing emergency shelter during a disaster declared under Section 418 of the Government Code.

An ordinance, order, rule, or other regulation prohibiting camping in public places is not preempted if it (1) is compatible with or more stringent than Section 48.05 or (2) relates to an issue not specifically addressed by Section 48.05.

Before or at the time a citation is issued, peace officers must make a reasonable effort to (1) advise the person of lawful camping locations; and (2) contact an appropriate official to give information on the prevention of human trafficking or other services that would reduce the likelihood of illegal camping. This requirement is waived if the peace officer determines there is an imminent threat to the health or safety of any person to the extent that compliance with that subsection is impracticable.

A peace officer who arrests or detains a person for an offense under Section 48.05 is required to permit the person to remove their property or take custody of the property and retrieve it after being released from custody. A fee may not be charged for the storage or release of property.

Chapter 2306 of the Government Code is amended to include Subchapter PP detailing the approval process for political subdivisions to designate property to be used by homeless individuals for camping. Notably, it prohibits public parks from being designated for this purpose.

Chapter 364 of the Local Government Code (Enforcement of Public Camping Bans) forbids a local entity from adopting a policy that prohibits or discourages peace officers or prosecutors from enforcing any public camping ban. The attorney general may bring an action to enjoin a violation of this section. And violations may result in the loss of state grant funds. However, entities may still encourage diversion.

H.B. 1958
Subject: Regulation of Export-Import Processing Facilities
Effective: June 7, 2021

Texas has nine export-import facilities along its international border with Mexico. U.S. origin animals are staged at these facilities for inspections and permitting by Mexican officials before being exported to Mexico. Currently, the Texas Animal Health Commission (TAHC) does not receive notification when animals are rejected for export due to inadequate records, disease, or pest concerns.

To address these issues, H.B. 1958 adds Section 161.0445 of the Agriculture Code (Regulation of Export-Import Processing Facilities), which defines "export-import facility," creates a duty for export-import facilities to notify TAHC within 24 hours after an animal received or held at the facility is refused export, grants TAHC the power to order testing, and expands the commission's rule-making authority. Finally, the bill makes violations of the new section a Class C misdemeanor (enhanceable to a Class B with prior conviction).

TMCEC: Rejected animals pose high risks to local animal health and Texas's livestock, fiber, and food industries. H.B. 1958 responds to risks by allowing TAHC to more effectively mitigate disease exposure and threats from high-risk livestock refused entry into international trade and ensuring private and public export-import facilities have consistent reporting requirements. As part of these changes, the bill creates a new Class C misdemeanor. Cities housing import-export facilities—El Paso, Del Rio, Laredo, Brownsville, Presidio, and Eagle Pass—may start to see this charge as part of their municipal court jurisdiction.

H.B. 2106
Subject: Enforcing Prohibition on Payment Card Skimmers at Gas Stations
Effective: September 1, 2021

Card skimming devices record and steal payment card information from unsuspecting consumers and result in hundreds of millions of dollars in annual financial losses. In 2019, the Texas Legislature authorized the attorney general to promulgate rules to ensure merchants employ best practices to deter and punish the installation of card skimmers. H.B. 2106 transfers that rulemaking authority to the Texas Commission of Licensing and Regulation (TCLR) and charges the Texas Department of Licensing and Regulation (TDLR) with administration and enforcement. The bill makes minor changes to terminology in the criminal offenses existing in Section 106.103 of the Business & Commerce Code and also amends Section 607.1021, adding a civil penalty for card skimming in addition to existing criminal penalties.

H.B. 2168
Subject: Repealing Criminal Offense for Certain Charitable Raffle Ticket Sales by Professional Sports Team Charitable Foundations
Effective: June 8, 2021

Under current law, professional sports teams conducting charitable raffles are limited to accepting only certain types of payment. H.B. 2168 amends Chapter 2004 of the Occupations Code by repealing Sections 2004.002(1-a) and 2004.009(a), removing the definition of debit card and repealing the criminal penalties associated with accepting any form of

payment other than U.S. currency or a debit card for the purchase of these raffle tickets.

TMCEC: An offense under Section 2004.009 of the Occupations Code is a Class C misdemeanor. H.B. 2168 removes one possible mode of commission.

H.B. 2326
Subject: Possession and Transportation of Certain Nonindigenous Snakes
Effective: September 1, 2021

H.B. 2326 amends Section 43.851(a) of the Parks and Wildlife Code to add Burmese pythons to the types of nonindigenous snakes that require a permit to possess or transport in the state. The bill also increases the punishment for failure to obtain a permit from a Class C to a Class B misdemeanor for subsequent convictions under Subchapter V (Nonindigenous Snake Permit).

H.B. 2366
Subject: Increasing Penalties for Using Laser Pointers and Fireworks Against Law Enforcement
Effective: September 1, 2021

H.B. 2366 amends Section 42.13 of the Penal Code (Use of Laser Pointers), to increase the penalties for using a laser against a law enforcement officer, currently a Class C misdemeanor. This bill makes the penalty a third degree felony if it causes bodily injury to the officer and first degree felony if it causes serious bodily injury.

The bill also creates Chapter 50 of the Penal Code (Fireworks), which establishes a criminal offense for the unlawful use of fireworks. Under Section 50.02, it is a state jail felony for a person to explode or ignite fireworks with the intent to (1) interfere with the lawful performance of an official duty by a law enforcement officer or (2) flee from a person the actor knows is a law enforcement officer attempting to lawfully arrest or detain the actor.

TMCEC: It has been 14 years since use of laser pointers aimed at airplanes were the subject of a new criminal offense in the 80th Legislature. Now, proponents of the bill identify that laser pointers and fireworks have been used against law enforcement officers at protests. Others argue that H.B. 2366 would impose overly punitive penalties that could have a chilling effect on legitimate protest.

H.B. 3157
Subject: Increasing the Penalty for Criminal Offenses of Violation of Civil Rights of and Improper Sexual Activity with Persons in Custody
Effective: September 1, 2021

Section 39.04(a)(2) of the Penal Code makes it an offense for an official, employee, or volunteer at a correctional facility to violate the civil rights of a person in custody or to engage in improper sexual activity with a person in custody. Currently, a violation of an inmate's civil rights is punishable as a Class A misdemeanor and improper sexual activity with persons in custody is punishable as a state jail felony. H.B. 3157 amends Section 39.04(b) of the Penal Code to increase the penalties for these offenses. The bill makes violating the civil rights of a person in custody a third degree felony (two to 10 years in prison and an optional fine of up to $10,000) and improper sexual activity with someone in custody a second degree felony. Offenses committed against an individual in the Texas Juvenile Justice Department or a juvenile in a correctional facility are first degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000).

H.B. 3289
Subject: Adjusting Penalties Relating to Violations of Agricultural Quarantines for Pecan Trees
Effective: September 1, 2021

H.B. 3289 strengthens civil and criminal penalties for violations of quarantines for agriculture affected by horticultural diseases and pests. First, the bill amends Section 71.012 of the Agriculture Code, relating to civil penalties, by adding Subsection (a-1). The new subsection provides that persons who violate a rule or quarantine relating to a pest or disease affecting pecans or pecan trees are liable to the state for a civil penalty of $500-$20,000 for each violation. First-time offenders who are registered florists or nursery owners under Section 71.043 may remedy the violation by entering into and completing a compliance agreement with the Department of Agriculture. Each day a violation continues may be considered a separate violation.

H.B. 3289 also makes similar adjustments to criminal penalties under Section 71.013. An offense is a Class C misdemeanor, but the bill adds Subsection (b-1), which provides that first-time offenders who are registered florists or nursery owners under Section 71.043 may—in lieu of a criminal penalty—remedy the violation by entering into a compliance agreement with the Department of Agriculture and returning, treating, or destroying the article subject to the quarantine as directed.

H.B. 4555
Subject: Requiring Felony Information on Ballot Applications
Effective: September 1, 2021

Under current law, an individual who has a previous felony conviction is barred from running for public office unless they have been pardoned or otherwise released from the conviction-related disabilities. However, ballot applications lack a place to provide any proof of pardon or release.

H.B. 4555 amends Section 141.031 of the Election Code (General Requirements for Application) to require that a candidate's application for a place on the ballot include an indication that the candidate has not been convicted of a felony, has been pardoned, or has otherwise been released from the resulting disabilities. The bill also requires a person who has been convicted of a felony to include proof that they are eligible for public office. Finally, the bill creates a Class B misdemeanor in Section 37.10 of the Penal Code (Tampering with Governmental Record) for a person who knowingly provides false information under that section of the ballot application, which must now include a statement informing candidates of the potential offense under Section 141.039 of the Election Code (Official Application Form).

TMCEC: In addition to creating a new offense, the bill may also have implications for elected municipal judges.

S.B. 69
Subject: Prohibiting the Use of Certain Neck Restraints by Police and Creating a Duty of Peace Officers to Intervene and Report Instances of Excessive Force
Effective: September 1, 2021

Choke holds and other methods to restrict airflow employed by peace officers involve the compression of a person's neck. When misapplied, these actions can lead to serious injury or death. S.B. 69 amends Chapter 2 of the Code of Criminal Procedure by adding Articles 2.1387 and 2.33. Article 2.33 (Use of Neck Restraints During Search or Arrest Prohibited) prohibits a peace officer from intentionally using a choke hold, carotid artery hold, or similar neck restraint in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person. Additionally, Article 2.1387 (Intervention Required for Excessive Force; Report Required) creates a duty to intervene for officers to stop or prevent fellow peace officers from using excessive force against a suspect. The bill also creates a duty to report incidents of excessive force.

S.B. 109
Subject: Revising the Criminal Offense of Fraudulently Securing Document Execution
Effective: September 1, 2021

Currently, Section 32.46 of the Penal Code makes securing execution of documents by deception a crime. Due to concerns that the financial exploitation of the elderly and individuals with disabilities is increasing, S.B. 109 amends Section 32.46(a) of the Penal Code to include stronger protections of vulnerable Texans. The bill removes the requirement that the crime be committed "by deception" and instead requires that the conduct be committed *without the effective consent* of the person who signed or executed the document. The bill defines "effective consent" and includes consent to be given by a person legally authorized to act for the owner. Finally, S.B. 109 renames the offense to "fraudulent securing of document execution" and makes conforming changes.

TMCEC: An offense under Section 32.46 ranges from a Class C misdemeanor to a first degree felony depending on the value of the property, service, or pecuniary interest at stake. Penalties are enhanced if the crime is committed against a public servant or an elderly individual.

S.B. 149
Subject: Expanding the Types of Facilities It Is

Illegal to Operate a Drone Over
Effective: September 1, 2021

Section 423.0045 of the Government Code limits the operation of unmanned aircraft (drones) over correctional facilities, detention centers, and critical infrastructure facilities. S.B. 149 amends Section 423.0045(a)(1-a) to expand the definition of a critical infrastructure to include public or private airports and military installations owned or operated by or for the federal government, the state, or another governmental entity.

TMCEC: *See* Colin Norman, "The Texas Privacy Act: Tall Enough Fences to Keep Out Nosy Drones?" *The Recorder* April 2014.

S.B. 248
Subject: Electronic Cigarette (E-Cigarette) Regulation
Effective: September 1, 2021

Currently, retailers are not required to obtain a permit from the Comptroller of Public Accounts of Texas prior to selling e-cigarettes (whereas they are for tobacco sales). Furthermore, penalties for selling e-cigarettes to minors are currently inconsistent with penalties for selling tobacco to minors. S.B. 248 seeks to rectify these two issues by creating a permitting framework for e-cigarette retailers and harmonizing penalties and regulations related to selling tobacco and e-cigarettes to minors. It adds Chapter 147 (E-Cigarette Retailer Permits) to the Health and Safety Code and creates a new Class A misdemeanor for selling e-cigarettes without a valid permit under Section 147.0152.

S.B. 248 also broadens the definition of e-cigarette under Section 161.081(1-a) of the Health and Safety Code. It adds "a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this subdivision" to the existing definition. By extension, this broadens Texas's underage smoking law (Section 161.252 of the Health and Safety Code) to include the possession of, purchase of, consumption of, acceptance of, or use of fake ID seeking to procure *substances* that can be used in conjunction with an e-cigarette.

S.B. 500
Subject: Establishing a Criminal Offense for Operating a Boarding Home Facility Without a Permit
Effective: September 1, 2021

Chapter 260 of the Health and Safety Code controls the licensing of boarding home facilities. Concerns have been raised that local permitting requirements for boarding home facilities are difficult to enforce since judges are reluctant to issue warrants for what is seen as a low-level offense. S.B. 500 adds Section 260.0051 (Criminal Penalty), creating a Class B misdemeanor for persons who operate a boarding home facility without a permit in a county or municipality that requires such a permit.

S.B. 516
Subject: Increasing the Criminal Penalty for the Offense of Criminal Mischief that Impairs or Interrupts Access to an Automated Teller Machine
Effective: September 1, 2021

Under current law, it is a second degree felony to steal an ATM or its contents while an unsuccessful theft is only a state jail felony for "criminal mischief." S.B. 516 increases the criminal penalty for criminal mischief related to ATMs. The bill amends Section 28.03(b) of the Penal Code making criminal mischief a third degree felony if a person causes whole or partial impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss.

TMCEC: In 2020, banks in Texas reported hundreds of smash-and-grab incidents involving ATMs that resulted in millions of dollars in cash, increased insurance fees, and ATM replacement costs for banks and inconvenienced their customers. S.B. 516 seeks to deter the recent spike by increasing the criminal penalty for damaging or stealing an ATM or its contents.

S.B. 530
Subject: Adding Repeated Social Media Posts to Conduct Establishing Harassment
Effective: September 1, 2021

Current provisions for harassment under Section 42.07 of the Penal Code do not protect against harassment via indirect communication through the internet or social media. S.B. 530 adds Section 42.07(a)(8) to

include the act of repeated publishing on websites and social media in a manner reasonably likely to cause emotional distress, abuse, or torment to the list of conduct establishing harassment. The bill carves out an exception for matters of public concern as defined by Section 27.001 of the Civil Practice and Remedies Code. Offenses under Section 42.07 are Class B misdemeanors. Punishment is enhanced to a Class A if the offense encourages the suicide or harm of a child or the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A of the Civil Practice and Remedies Code.

TMCEC: While current law prohibits harassment in certain forms, including electronic communications such as text messages, it does not protect against harassment posted on the internet and not sent directly to the victim. S.B. 530 protects individuals against cyberbullying and online harassment by closing gaps in enforcement to keep step with technological changes. The exception for "matters of public concern" likely responds to 1st Amendment concerns raised in previous sessions.

S.B. 599
Subject: Relating to the Seizure, Removal, and Disposal of Abandoned or Unlawful Fishing Devices
Effective: September 1, 2021

Texas game wardens routinely encounter illegal or abandoned fishing devices in public waters in Texas. Current regulations require a public posting of notice of seizure, request to destroy the devices, and maintaining records throughout the court processes before destruction. The requirements create an impediment for the removal of trash from Texas waterways.

S.B. 599 amends the Parks and Wildlife Code by adding Section 12.1104 (Removal and Disposal of Abandoned Fishing Device). The section first defines "abandoned fishing device" as any unattended fishing device located in the public water of this state that is placed in violation of a provision of this code or commission rule. It then designates these devices as litter for purposes of Section 365.011 of the Health and Safety Code, making them subject to immediate disposal. The bill also permits the Parks and Wildlife Department to adopt rules governing the removal and disposal of these devices.
S.B. 599 amends Section 12.1105(d) of the Parks and Wildlife Code to increase immunity for law enforcement destruction of seines, trawls, traps, or other such devices. Finally, the bill repeals Section 12.1105(c), which required law enforcement officers to issue seizure notices for the aforementioned devices.

TMCEC: S.B. 599 streamlines the removal process by designating these abandoned items as litter and removing cumbersome notification processes. Notably for municipal courts, the designation of abandoned fishing devices as litter creates a new way to commit a Class C misdemeanor littering offense.

S.B. 675
Subject: Allowing the Parks and Wildlife Commission to Declare Special Open-Season Hunting for Veterans and Active-Duty Members of the Military
Effective: May 30, 2021

The Parks and Wildlife Commission has limited authority to provide for special open seasons for the taking and possession of game animals and game birds. S.B. 675 amends Chapter 61 of the Parks and Wildlife Code to authorize the Commission to provide for special open seasons during which the taking and possession of certain migratory game birds is restricted to veterans and active-duty members of the U.S. armed forces. The bill also sets out provisions relating to the proof of veteran or active-duty status required to participate in the special open season. This brings state hunting laws in accordance with federal hunting laws.

TMCEC: Section 61.901 of the Parks and Wildlife Code provides the general penalty (Class C Parks and Wildlife Code misdemeanor) for violations of Chapter 61, or any proclamation of the Commission issued under the authority of Chapter 61.

S.B. 768
Subject: Increasing the Criminal Penalties for Manufacture or Delivery of Fentanyl and Related Substances
Effective: September 1, 2021

Due to the lethality of fentanyl, there have been calls to create a more stringent punishment system for the drug's manufacture or delivery. S.B. 768 removes fentanyl, alpha-methylfentanyl, or any of its derivatives from Penalty Group 1 and places them in a new category, Penalty Group 1-B, under the Texas Controlled Substances Act (Chapter 481 of the Health and Safety Code). The bill also creates a new offense for the manufacture or delivery of such Penalty Group 1-B substances, which start at a state jail felony for an amount of less than one gram and increase to life imprisonment and a fine up to $500,000 for 400 grams or more.

S.B. 1056
Subject: Relating to Criminal Liability for Reporting False Information to Draw an Emergency Response; Creating an Offense
Effective: September 1, 2021

Swatting is the act of falsely reporting an emergency or crime to law enforcement or emergency service with the intent of having an emergency response deployed to a specific location. These false reports have become more frequent and resulted in mental and physical injuries to the targeted victims and witnesses. This practice is both costly and dangerous.

S.B. 1056 adds Section 42.0601 to the Penal Code (False Report to Induce Emergency Response) creating an offense if the person makes a report of a criminal offense or an emergency or causes a report of a criminal offense or an emergency to be made, the person knows that the report is false, the report causes an emergency response from a law enforcement agency or other emergency responder, and in making the report or causing the report to be made, the person is reckless with regard to whether the emergency response may directly result in bodily injury to another person.
This offense is a Class A misdemeanor. However, it is a state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of this offense. It is a third degree felony if the false report was of a criminal offense to which a law enforcement agency or other emergency responder responded and a person suffered serious bodily injury or death as a direct result of lawful conduct arising out of that response.
This offense may be prosecuted in any county in which the defendant resides, the false report was made, or a law enforcement agency or other emergency responder responded to the false report.
S.B. 1056 also amends Section 51.03 of the Family Code (Delinquent Conduct; Conduct Indicating a Need for Supervision) providing that conduct that violates Section 42.0601 of the Penal Code, if the child has not previously been adjudicated as having engaged in conduct violating that section, constitutes conduct indicating a need for supervision (CINS).

TMCEC: Classifying swatting as CINS is a departure from the current delineation of juvenile misconduct under the Family Code. Currently, behavior that would constitute a jailable offense if committed by an adult would be considered delinquent conduct, while CINS is reserved for conduct the violates an ordinance or a penal law punishable by fine only.

S.B. 1365
Subject: Public School Organization, Accountability, and Fiscal Management
Effective: September 1, 2021

Among numerous provisions modifying the authority and organization of school boards, the bill amends Section 44.052(c) of the Education Code (Failure to Comply with Budget Requirements; Penalty). Under the section, a trustee of a school district who votes to approve any expenditure of school funds in violation of a provision of the code, for a purpose for which those funds may not be spent, or in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits a Class C misdemeanor.

TRAFFIC SAFETY AND TRANSPORTATION

H.B. 9
Subject: Obstructing Passageway of Emergency Vehicles or Access to Hospitals
Effective: September 1, 2021

Concerns have been raised that, particularly during protests, individuals have purposely impeded emergency vehicles or access to hospitals. H.B. 9 amends Section 42.03(c) of the Penal Code (Obstructing Highway or Other Passageway). Currently, Section 42.03(c) is a Class B misdemeanor. H.B. 9 creates a state jail felony enhancement when an individual knowingly (1) prevents the passage of an authorized emergency vehicle, as defined by Section 541.201 of the Transportation Code, that is operating the vehicle's emergency audible or visual signals required by Section 546.003 of the Transportation Code; or (2) obstructs access to a hospital licensed under Chapter 241 of the Health and Safety Code, or other health care facility that provides emergency medical care, as defined by Section 773.003 of the Health and Safety Code.

H.B. 9 also amends Article 42A.517 of the Code of Criminal Procedure directing courts to require defendants granted community supervision for a conviction of an offense punishable as a state jail felony under Section 42.03 of the Penal Code to submit to not less than 10 days confinement in county jail.

H.B. 113
Subject: Peer-to-Peer Car Sharing Program Insurance Requirements
Effective: September 1, 2021

H.B. 113 adds Chapter 113 to the Business & Commerce Code, which creates motor vehicle insurance guidelines and standards for peer-to-peer car sharing programs. Section 113.0052 provides that a peer-to-peer car sharing program shall ensure that, during each car sharing period, the owner and the driver are both insured.

TMCEC: Peer-to-peer car sharing programs (not to be confused with ride-sharing programs such as Uber and Lyft) have recently gained popularity in Texas. Peer-to-peer car sharing, facilitated by apps such as Turo, allows car owners to loan their vehicle to others. Unlike ride-sharing programs, the vehicle owner does not operate the vehicle while it is loaned out. This results in insurance coverage complexities that H.B. 113 addresses. H.B. 113 is of interest to municipal courts primarily in the context of Failure to Maintain Financial Responsibility.

H.B. 558
Subject: Required Blood Draws
Effective: September 1, 2021

Currently, when a person is arrested on suspicion of impaired driving or boating, there is not always a requirement that law enforcement take the operator's blood for the presence of alcohol—it is only required when there is a child passenger involved. As such, law enforcement will sometimes opt for a breathalyzer test. H.B. 558 amends the Transportation Code to add another scenario where a blood specimen is required. It adds Section 724.012(a-1) to the Transportation Code, which requires the taking of a blood specimen when (1) a person is arrested for an offense under Chapter 49 of the Penal Code involving a motor vehicle or watercraft; (2) the person refuses the officer's request to submit to the taking of a specimen voluntarily; (3) the person was the operator of a motor vehicle or watercraft involved in an accident that the officer reasonably believes was the result of the impairment; and (4) at the time of the arrest, the officer reasonably believes that any individual has died, will die, or has

suffered serious bodily injury as a direct result of the accident. H.B. 558 also adds Section 724.012(e) to the Transportation Code, which provides that a peace officer may not require (force) the taking of blood when a defendant does not consent under Section 724.012 (which also includes the existing child passenger required blood warrant) unless he or she first obtains a blood warrant or has probable cause to believe that exigent circumstances exist.

H.B. 1116
Subject: Toll Collection and Enforcement
Effective: May 15, 2021

Certain trips appearing to motorists to be on a single tollway are actually multiple tollways operated by multiple entities. For example, State Highway 288 between Harris and Brazoria Counties consists of three distinct tollways. In the event a motorist violates a toll and does not pay, the middle portion of the trip is separated from the other two and follows a separate collections process. Once separated, the original invoicing entity cannot resolve the issue, making it harder for users to resolve their fines.

H.B. 1116 amends Section 228.059 of the Transportation Code to provide that if an entity other than the Texas Department of Transportation (TxDOT) enters into a tolling services agreement with another local toll project entity, then a violation is governed by the fine and fee structure of the entity that issues the initial toll invoice.

TMCEC: Under Section 228.0547(c) of the Transportation Code, failure to timely pay state highway tolls imposed by TxDOT or an entity under Section 228.059 is a Class C misdemeanor. The court in which a person is convicted of this offense shall collect the unpaid tolls and administrative fees and forward the amounts to TxDOT. H.B. 1116 provides that notwithstanding this provision (and other listed provisions), a toll collected pursuant to an agreement for tolling services with a toll project entity, as defined by Section 371.001 of the Transportation Code, other than TxDOT is governed by the fee and fine structure of the entity issuing the initial toll invoice. Reference to Section 228.0547 in the bill is possibly due to the attorney general's opinion (Tex. Att'y Gen. Op. No. KP-0184 (2018)) regarding the applicability of the authorized but limited administrative fee in that section. This bill is relevant in determining what unpaid tolls and administrative fees to collect upon conviction under Section 228.0547.

H.B. 1257
Subject: Removal of Abandoned Mobile Homes
Effective: September 1, 2021

Concerns have been raised that abandoned mobile homes on roadways present a grave traffic danger to motorists, especially at night. Despite these dangers, law enforcement officers currently do not have authority to remove them. H.B. 1257 adds Section 545.3051(a)(3)(E) to the Transportation Code, which gives law enforcement officers the authority to remove an "unattended manufactured home," as defined by Section 1201.003 of the Occupations Code, from a roadway or right-of-way.

H.B. 1281
Subject: Expanding Permissible Golf Cart Operation
Effective: June 15, 2021

There is concern that legislation in 2019 (H.B. 1548) requiring license plates to operate golf carts on highways unintentionally burdens residential and master planned communities that are designed to accommodate golf cart transportation. H.B. 1281 adds Section 551.403(b) to the Transportation Code, which provides an exception to the golf cart license plate requirement: no license plate is required to operate a golf cart in master planned communities as described in Section 551.403(a) of the Transportation Code if the posted speed limit does not exceed 35 miles per hour. H.B. 1281 expands the definition of "master planned community" for the purposes of golf cart operation to include residential subdivisions as defined by Section 209.002(9) of the Property Code for which a county or municipality has approved one or more plats. H.B. 1281 also amends Section 551.403(3)(B) of the Transportation Code, renumbering it as 551.403(a)(3)(B) and permitting golf cart operation on roadways that are not more than five miles (rather than two miles) from the location where the golf cart is usually parked for transportation to and from a golf course.

Lastly, H.B. 1281 simplifies Section 551.404(c) of the Transportation Code to authorize commissioners courts in certain counties with populations of less than 500,000 to permit golf cart operation on certain highways. Currently, 551.404(c) uses complicated geographic guidelines to determine which counties' commissioners courts have such authorization.

H.B. 1560
Subject: Texas Department of Licensing and Regulation (TDLR), Alcohol and Drug Education Programs, and Driving Safety Courses
Effective: September 1, 2021 (except where noted below)

TDLR is Texas's umbrella occupational licensing and regulatory agency. Following its sunset review, TDLR operations have been renewed through August 2033. H.B. 1560 extensively revises Chapter 1001 of the Education Code, which covers driver education and training. Notably, H.B. 1560 adds a comprehensive framework for administering driver education and training online. It also adds requirements for parent-taught education providers, including a requirement that TDLR determine that the provider has an adequate method of submitting and validating course completion documentation.

The bill amends Article 45.051 of the Code of Criminal Procedure (Suspension of Sentence and Deferral of Final Disposition) by removing Subsection 45.051(b-1)(2)(B), which permits a judge during the deferral period to require a driving safety course designed for drivers younger than 25 years of age. H.B. 1560 also amends Section 106.115(a) of the Alcoholic Beverage Code to remove drug and alcohol driving awareness programs approved by the Texas Education Agency as one of the possible required conditions of deferred disposition for minors charged with public intoxication or Chapter 106 minor alcohol offenses. The bill repeals Article 45.0511(u) of the Code of Criminal Procedure, which provides an exception to the general requirement in Article 45.0511(b)(2) to order a defendant to complete a driving safety course (DSC) or applicable motorcycle course if the judge requires completion of a specialized driving safety course that includes four hours of instruction encouraging the use of child passenger safety seat systems.

TMCEC: H.B. 1560 appears to limit the sentencing options related to driving-safety, drug, and alcohol programs. However, even as amended, the deferred disposition statute (Article 45.051) grants broad sentencing authority related to such programs. Further, Article 45.051(b)(10) authorizes judges to require during the deferral period any reasonable condition. Note that the changes to Section 106.115 of the Alcoholic Beverage Code and Article 45.051 of the Code of Criminal Procedure, with respect to participation in a court-ordered program or course, apply to a court order entered on or after June 1, 2023. A court order entered before that date is governed by the law in effect on the date the order was entered. The repeal of Article 45.0511(u) of the Code of Criminal Procedure takes effect June 1, 2023.

H.B. 1693
Subject: Court Access to Motor Vehicle Insurance Verification Program
Effective: June 4, 2021

H.B. 1693 addresses concerns that courts handling motor-vehicle-insurance-related offenses face difficulties verifying a defendant's motor vehicle insurance status. It creates Section 601.455 of the Transportation Code, which gives municipal and justice courts access to the insurance verification program that the Department of Insurance is required to establish under Section 601.452 of the Transportation Code—known as TexasSure. Notably, such access is only granted for the "purpose of court proceedings." Any costs associated with accessing the verification program shall be paid out of the county or municipal treasury, as applicable.

TMCEC: H.B. 1693 has the potential to streamline Failure to Maintain Financial Responsibility cases under Chapter 601 of the Transportation Code by giving municipal courts an easier avenue to accurately ascertain a defendant's motor vehicle insurance status.

H.B. 1759
Subject: Operation of Motor Vehicles When "On-Track Equipment" is Present at a Railroad Crossing
Effective: September 1, 2021

Concerns exist that various railroad related provisions in the Transportation Code do not include scenarios where equipment other than a train is on the tracks. H.B. 1759 adds a definition for "on-track equipment" to Section 545.001 of the Transportation Code: "any car, rolling stock, equipment, or other device that, alone or coupled to another device, is operated on a railroad track." H.B. 1759 then adds the phrase "or other on-track equipment" after any place the word "train" is used in Chapter 545, Subchapter F of the Transportation Code.

TMCEC: H.B. 1759 broadens the scope of Rules of the Road violations related to railways, including failure to stop for an approaching train (Section 545.251(a), (b)) and failure to yield the right-of-way to a train in hazardous proximity (Section 545.251(c)). On September 1, these offenses will also include the failure to stop or yield to any on-track equipment.

H.B. 1787
Subject: Liability Coverage for a Temporary Vehicle Provided by an Automobile Repair Facility
Effective: September 1, 2021

In 2019, the Texas Legislature generally banned named driver automobile insurance policies (H.B. 259). Also in 2019, the Texas Legislature enacted legislation (H.B. 3420) requiring an individual's primary physical damage coverage on their vehicle to carry forward to cover a loaner vehicle provided while his or her primary vehicle is being repaired. Currently, however, Section 1952.060(d)(2) of the Insurance Code (enacted by H.B. 3420) provides that such carry forward coverage does not extend to individuals not covered in a named driver policy. H.B. 1787 amends the language of Section 1952.060(d)(2) to be consistent with the prohibition on named driver policies. It changes it to exclude persons specifically named "in a named driver exclusion" from temporary carry forward insurance.

H.B. 2152
Subject: Online Renewal of Vehicle Registration
Effective: September 1, 2021

While online vehicle registration currently exists in Texas, there is no express authorization for it in the Transportation Code. H.B. 2152 adds Section 502.0435 to the Transportation Code to expressly permit individuals that are eligible to renew their vehicle registration to do so online through an online registration system maintained by the Texas Department of Motor Vehicles.

H.B. 2749
Subject: Commercial Motor Vehicle (CMV) Safety Standards Enforcement in Certain Counties
Effective: May 24, 2021

Concerns exist that the number of peace officers eligible to enforce CMV safety standards in Ellis County is insufficient. Section 644.101 of the Transportation Code lists which municipalities' peace officers are eligible to apply for certification to enforce CMV safety standards. H.B. 2749 amends Section 644.101 to include sheriffs and deputy sheriffs in counties with a population of (1) less than 250,000, (2) that are adjacent to two counties that each have a population of more than 1.2 million, and (3) that contain two highways that are part of the national system of interstate and defense highways. At this time, this change will only impact Ellis County.

H.B. 3026
Subject: Autonomous Vehicle Registration
Effective: September 1, 2021

H.B. 3026 adds Section 547.618 of the Transportation Code (Equipment Required for Certain Automated Motor Vehicles) to exempt an automated motor vehicle that is designed to be operated exclusively by the automated driving system from state motor vehicle equipment laws or regulations that relate to or support motor vehicle operation by a human driver and are irrelevant for an automated driving system. The bill also changes the heading of Section 545.452 to Exclusive Regulation of the Operation of Automated Motor Vehicles and Automated Driving Systems and amends the section to provide that the operation of automated motor vehicles, including any commercial use, and automated driving systems is exclusively governed by Subchapter J (Operation of Automated Motor Vehicles) and Section 547.618.

TMCEC: Common vehicle features such as mirrors and seat belts are not necessary if a vehicle is not

designed to have a human operator. It is thus logical that such features should not be on the safety inspection checklist for such vehicles. H.B. 3026 indicates that the State of Texas is taking steps to embrace self-driving vehicles—a burgeoning technology that has the potential to monumentally impact transportation and the criminal jurisprudence of traffic offenses.

H.B. 3212
Subject: Including Street Racing in Driver Education and Driving Safety Course Curricula
Effective: September 1, 2021

H.B. 3212 adds Section 1001.1021 to the Education Code to require that information relating to the dangers and consequences of street racing in violation of Section 545.420 of the Transportation Code be included in the curriculum for each driver education and driving safety course.

H.B. 3282
Subject: Authorizing District Engineers for the Texas Department of Transportation (TxDOT) to Temporarily Lower the Speed Limit at a Highway Maintenance Activity Site
Effective: June 15, 2021

The Texas Transportation Commission has the authority to alter the prima facie speed limits for all roads in the state highway system. However, current law does not provide the authority and flexibility necessary to quickly lower speed limits in state highway maintenance work zones on a daily or job-by-job basis. H.B. 3282 adds Section 545.3531 to the Transportation Code, authorizing a district engineer to temporarily lower a prima facie speed limit without commission approval if they determine that the standard limit is unreasonable or unsafe because of highway maintenance activities at the site.

A speed limit temporarily altered under Section 545.3531 becomes the prima facie prudent and reasonable speed limit and supersedes any other established speed limit for the area once TxDOT places temporary speed limit signs and conceals other signs. The temporary speed limit is effective for 45 days or until the maintenance activity has been completed at the site, whichever comes first.

TMCEC: TxDOT district engineers join municipalities, counties, and commanding officers of U.S. military reservations as statutory recipients of authority to alter speed limits. Determining whether a speed limit temporarily altered under Section 545.3531 is effective may be challenging.

H.B. 3665
Subject: Broadening the Definition of a Bicycle
Effective Date: September 1, 2021

The current definition of "bicycle" found in Section 541.201 of the Transportation Code excludes bicycles that are modified for use by riders with disabilities. H.B. 3665 amends Section 541.201 to include in the definition of bicycle devices with three wheels, two of which are parallel, and at least one of the three wheels is more than 14 inches in diameter. The definition of bicycle is also expanded to include devices with any number of wheels and adaptive technology that allows the device to be ridden by a person with a disability.

TMCEC: H.B. 3665 makes such devices expressly street legal as two-wheeled bicycles currently are and establishes these devices as within the scope of every Rules of the Road offense that can be committed on a bicycle.

H.B. 3927
Subject: Temporary Motor Vehicle Tags
Effective: September 1, 2021

There is concern related to the prevalence of the unauthorized sale and use of temporary motor vehicle tags. Temporary motor vehicle tags, typically provided by the dealer following a motor vehicle's sale, allow a car to be operated legally prior to registration. H.B. 3927 increases safeguards against the unauthorized sale and use of temporary tags.

Currently, no process exists in the Transportation Code for the issuance of temporary tags to a buyer that is not a Texas resident or for vehicles purchased at a public auction. H.B. 3927 adds Sections 503.063(i) and 503.063(j) to the Transportation Code, which provide such processes.

H.B. 3927 also adds Section 503.0632 to the Transportation Code, which gives the Department of Motor Vehicles (DMV) the authority to limit the number of temporary tags a motor vehicle dealer or converter may issue each calendar year. The DMV may increase the number if a dealer or converted demonstrates a need based on vehicle sales volume. Section 503.0632 also gives the DMV authority to deny a dealer or converter access to the temporary tag database if the DMV determines that they have fraudulently obtained temporary tags.

S.B. 181
Subject: Alternatives to Driver's License Suspension Following Drug Offenses
Effective: September 1, 2021

Currently, under Section 521.372 of the Transportation Code, a person's driver's license is automatically suspended for at least six months upon conviction of an offense under the Controlled Substance Act or a drug offense. This section's enactment coincided with the enactment of a federal law (23 U.S.C. Section 159) in 1991 that requires states to impose these mandatory driver's license suspensions.

S.B. 181's passage was contingent on the passage of S.C.R. 1 (the Texas Legislature's formal opposition to these federally mandated suspensions; see the summary for S.C.R. 1 *infra*). S.B. 181 ends these mandatory suspensions by amending the Code of Criminal Procedure and the Transportation Code. The bill adds Article 102.0179 to the Code of Criminal Procedure, which imposes a new $100 fine on defendants who are convicted of drug offenses but whose licenses are not suspended. Section 521.372 of the Transportation Code is amended to only require driver's license suspensions for individuals convicted of felony drug offenses or two or more misdemeanor drug offenses in a three-year period. S.B. 181 also adds Section 521.372(b-1) to the Transportation Code, which gives judges the discretion to suspend a defendant's driver's license for a first misdemeanor drug offense if doing so is in the interest of public safety. Finally, S.B. 181 provides that licenses currently suspended under Section 521.372 of the Transportation Code shall be reinstated three months after the United States Secretary of Transportation informs Texas that federal highway funds will not be withheld, if such a decision is made.

TMCEC: The drug offenses that currently result in mandatory driver's license suspensions are Class B Misdemeanors or higher. S.B. 181, however, is relevant to municipal courts because it reflects an ongoing trend in Texas of eliminating scenarios that could result in a person's driver's license being suspended. A defendant's driver's license status is often relevant to municipal court cases. TMCEC's constituents are well-served by staying apprised of any legislative changes that impact the validity of driver's licenses.

S.B. 289
Subject: Excused School Absences for Driver's License or Learner's Permit Appointments
Effective: June 14, 2021

Currently, schools may not consider a student's absence as excused due to a student's learner's permit or driver's license appointment. S.B. 289 adds Section 25.087(b-7) to the Education Code, which allows a school district to excuse a student who is 15 years old or older from attending school to visit a driver's license office to obtain a driver's license or learner's license. During the period a student is in high school, school districts may only excuse up to one day of school for obtaining a learner's license and up to one day for obtaining a driver's license (a maximum of two excused absences per student during high school).

S.B. 374
Subject: Municipal Annexation of Certain Road Rights-of-Way
Effective: June 14, 2021

S.B. 374 amends Section 43.1055 of the Local Government Code (Annexation of Road Rights-of-Way on Request of Owner or Maintaining Political Subdivision) to eliminate the distinction between

roads and rights-of-way by changing the language from "roads and rights-of-way" to "road rights-of-way."

S.B. 374 also adds Section 43.1056 of the Local Government Code (Annexation of Contiguous or Connecting Rights-of-Way) allowing municipalities annexing areas under Chapter 43 of the Local Government Code to annex any rights-of-way of a street, highway, alley, or other public way or of a railway line, spur, or roadbed that is contiguous or runs parallel to the municipality's boundaries and contiguous to the area being annexed. Rights-of-way may only be annexed under Section 43.1056 if the municipality provides written notice to the owner of the right-of-way and the owner does not submit a written objection before the date of the proposed annexation. The width requirements in Section 43.054 of the Local Government Code do not apply to annexation under Section 43.1055.

S.B. 445
Subject: School Bus Flashing Warning Signals
Effective: September 1, 2021

The COVID-19 pandemic forced schools across Texas to suspend in-person education on campuses. As many students depend on their school's free and reduced lunches, numerous school districts deployed school buses to deliver food to students' homes. Currently, however, school buses are not permitted to use their stop alert systems (i.e., stop sign arm and flashing warning signals) any time except when students are entering or exiting the bus. S.B. 445 amends Section 547.701 of the Transportation Code to permit school buses to use their stop alert systems when they are distributing food or technological equipment for educational purposes to a student or a student's parent/guardian.

TMCEC: This change in law affects the Rules of the Road offense in Section 547.701 of the Transportation Code, punishable as a Class C misdemeanor under the general penalty provision in Section 542.401 of the Transportation Code.

S.B. 763
Subject: Urban Air Mobility (UAM)
Effective: June 14, 2021

According to proponents, UAM is a new, innovative mode of transportation that will streamline and modernize the future of mobility for passengers and cargo by relying on underutilized aerial transit routes. UAM will reduce the current burden on infrastructure, decrease traffic congestion, and lower harmful emissions.

This emerging industry will involve innovative vehicle designs and system technologies, new operational procedures, and embrace the sharing and services economy to enable a novel transportation service network. The UAM industry will also involve partnering with federal, state, and local governments to effectively incorporate UAM solutions into current transportation networks. The Dallas-Fort Worth area is expected to be an early test location for UAM in 2025, as well as a hub for commercial operations and investment. However, a survey of state, local, and federal law should occur, and stakeholders should be able to provide input in order to develop a safe and efficient regulatory system for UAM to operate in the state.

S.B. 763 adds Section 21.004 to the Transportation Code creating the Urban Air Mobility Advisory Committee at the Texas Department of Transportation (TxDOT) to assess current state law and any potential changes that are needed to facilitate the development of UAM operations and infrastructure in Texas. The bill also directs TxDOT to appoint committee members from across the state representing law enforcement, transportation experts, the UAM industry, local governments, and the public. After holding meetings and conducting research, the committee will make recommendations to the legislature in September 2022 so the legislature can adopt laws in 2023 for the development and regulation of UAM operations and infrastructure in 2023 and beyond.

TMCEC: While UAM could serve various purposes, it is often associated with the phrase "passenger drones"—small aerial vessels, similar to helicopters—that can conveniently transport humans. While this industry is still in its infancy, Texas cities should be aware of its potential to significantly alter Texas's transportation landscape.

S.B. 792
Subject: Authorizing Specialty License Plates and Parking Placards for Vehicles of Certain Disabled Veterans
Effective Date: January 1, 2022 (except Section 7 takes effect September 1, 2021)

Currently, individuals with disabled veteran license plates may be granted handicapped parking placards regardless of whether they are mobility impaired. Concerns have been raised that this has led to a lack of available spots. S.B. 792 requires individuals with disabled veteran license plates to obtain the International Symbol of Access on their license plate, as described in Section 504.201(f) of the Transportation Code, before they may obtain a handicapped parking placard.

S.B. 792 adds Section 504.202(b-1) to the Transportation Code to give eligible disabled veterans an avenue to apply for a license plate or placard with the International Symbol of Access. Section 504.202(b-2) is also added to permit organizations that register vehicles primarily for the transport of individuals eligible under Section 504.202(b-1) to obtain such license plates.

TMCEC: Under Section 681.011 of the Transportation Code, it is a Class C misdemeanor to improperly occupy a space reserved for persons with disabilities. Prior to S.B. 792, any person with a disabled veteran license plate could utilize handicapped parking regardless of whether they were mobility impaired. This bill limits that privilege to veterans who opt to obtain a special license plate issued under Section 504.202(b-1).

S.B. 901
Subject: Commercial Motor Vehicle (CMV) Safety Standards Enforcement in Certain Counties
Effective: September 1, 2021

Concerns exist that the number of peace officers eligible to enforce CMV safety standards in certain areas of the Permian Basin region is insufficient. Section 644.101 of the Transportation Code lists which municipalities' peace officers are eligible to apply for certification to enforce CMV safety standards. S.B. 901 amends Section 644.101 to include sheriffs and deputy sheriffs in counties located within 30 miles of New Mexico and adjacent to two or more counties that generated $100 million or more in oil and gas production tax revenue during the preceding state fiscal year. This change will only impact counties in the Permian Basin.

S.B. 941
Subject: Scenic Byways Program (SBP)
Effective: September 1, 2021

Currently, Texas is the only state that does not have an SBP. With the creation of an SBP, the communities along qualifying byways would be eligible for federal funding if they chose to apply for it. With these federal grant funds, local communities and organizations could promote tourism or beautification efforts such as welcome centers or promotional material. Importantly, S.B. 941 only applies to roads designated under Texas statutes as already prohibited from having any new billboards. S.B. 941 adds Section 391.256 to the Transportation Code directing the Texas Department of Transportation (TxDOT) to establish a State SBP. TxDOT will plan, design, and establish the program for designating highways as State Scenic Byways which will include a process that outlines the application process for the political subdivisions and community groups interested in receiving grants. Additionally, the bill designates qualifying highways as those already listed under Section 391.252 of the Transportation Code as a State Scenic Byway. The Texas Transportation Commission must prohibit by rule outdoor advertising in a manner consistent with 23 U.S.C. Section 131(s) on a State Scenic Byway designated under Section 391.256.

S.B. 1047
Subject: Blood Search Warrant Execution in Adjacent County
Effective: September 1, 2021

Concerns exist regarding the validity of collecting a blood specimen in alcohol-related driving offenses in which a warrant is issued in one county, while it appears that the blood draw is taken in a separate, neighboring county. This is particularly concerning in municipalities located in more than one county and counties that do not have adequate testing capabilities and thus rely on neighboring counties. S.B. 1047 adds Article 18.067 to the Code of Criminal Procedure

permitting blood draws in any county adjacent to the county in which the blood search warrant was issued as long as the officer executing the warrant is authorized to make arrests in the county of execution. The bill also amends Article 18.10 of the Code of Criminal Procedure (How Return Made) permitting blood specimens seized under Article 18.067 to be returned to the county in which the warrant was issued without a court order.

S.B. 1055
Subject: Motor Vehicle Accidents Involving Pedestrians or other Vulnerable Road Users Within a Crosswalk
Effective: September 1, 2021

S.B. 1055 adds Section 545.428 to the Transportation Code creating a new Class A Misdemeanor if a person, with criminal negligence, causes bodily injury to a pedestrian or a person operating a bicycle, motor-assisted scooter, electronic personal assistive mobility device, neighborhood electric vehicle, or golf cart in a crosswalk. The offense is a state jail felony if the person suffers serious bodily injury. The bill creates an affirmative defense to prosecution if at the time of the offense the vulnerable road user was violating a provision of Subtitle C (Rules of the Road) related to walking, movement, or operation in a crosswalk or on a roadway.

S.B. 1055 also amends Sections 544.007(b) and 544.007(c) of the Transportation Code, which address vehicles turning at intersections with circular green signals (green lights) and green arrows, respectively. Currently, turning vehicles in these situations must yield the right-of-way to pedestrians lawfully in an adjacent crosswalk. These two sections are amended to require vehicle operators to *stop* and yield the right-of-way to pedestrians.

TMCEC: Interestingly, S.B. 1055's new stopping requirement only extends to pedestrians, which is defined by Section 541.001(3) of the Transportation Code as a "person on foot." When S.B. 1055 takes effect, motorists turning left or right facing green lights or arrows at intersections will be subject to different rules depending on whether a person lawfully in an adjacent crosswalk is on foot or not. If a person in a crosswalk is, for example, on a bicycle or motor-assisted scooter, there will be no requirement that the motorist stop before proceeding—the motorist need only yield the right-of-way.

S.B. 1064
Subject: Motor Vehicle Registration of Exempt County Fleets
Effective: September 1, 2021

Annual registration renewals for local governments with large motor vehicle fleets are time-consuming and costly. S.B. 1064 adds Section 502.0025 to the Transportation Code (Extended Registration of Certain County Fleet Vehicles). Subsection (a) provides a definition for "exempt county fleet:" a group of two or more non-apportioned motor vehicles, semitrailers, or trailers owned by and used exclusively in service of a county with a population of 3.3 million or more. Subsection (b) gives the Department of Motor Vehicles a mandate to develop and implement a system of registration to allow an owner of an exempt county fleet to register vehicles in the fleet for an extended registration period of not less than one year or more than eight years. Currently, Harris County is the only county in Texas with a population of 3.3 million or more.

S.B. 1308
Subject: Study on Autonomous Vehicles at International Ports of Entry
Effective: June 18, 2021

Increased traffic and multiple inspection points at the U.S.-Mexico border in Texas are contributing to significant delays, which can have a negative impact on commerce. According to a 2019 study from the Waco-based Perryman Group, wait times at Texas's ports of entry cost the state more than $32 billion in just over three years.

S.B. 1308 requires the Texas Department of Public Safety and the Texas Department of Transportation, in consultation with the Texas Transportation Institute, to conduct a study on the benefits of using certain motor vehicle technologies to alleviate traffic congestion at certain ports of entry in this state. This act will (1) evaluate the potential benefits of using automated

driving systems and connected driving systems in alleviating traffic congestion at international ports of entry and (2) provide a report for future legislation regarding technological improvements.

S.B. 1308's expiration date is September 1, 2023.

TMCEC: S.B. 1308, along with H.B. 3026 (autonomous vehicle registration; see the bill summary *supra*), represents an effort by the 87th Texas Legislature to enable autonomous vehicles to play a role in Texas's transportation and commercial landscapes. So far, autonomous vehicles have not significantly impacted municipal court operations or misdemeanor traffic offenses in Texas—but they have the potential to do so in the future.

S.B. 1480
Subject: Alcohol and Drug Education Programs
Effective: September 1, 2021

S.B. 1480 provides statutory changes and updates related to alcohol and drug educational programs. It adds Subtitle M to Title 2 of the Government Code, which provides detailed processes related to the regulation of court-ordered programs. Court-ordered programs include the alcohol education program for minors, the drug offense educational program, the intervention program for intoxication offenses, and the educational program for intoxication offenses. Subtitle M also sets eligibility requirements and term limits for program providers seeking licensure. It also requires licensing bodies, such as the Texas Department of Licensing and Regulation, to provide for the form, content, and distribution of certificates of completion for court-ordered programs. Two new criminal offenses are also created. Section 171.0356 of the Government Code makes it a Class A Misdemeanor to knowingly sell, trade, issue, or otherwise transfer, or possess with intent to sell, trade, issue, or otherwise transfer, a certificate of program completion or a certificate number to a person not authorized to possess the certificate or number. Section 171.0357 makes it a Class A misdemeanor to knowingly possess a certificate of program completion or a certificate number that the person is not authorized to possess. Finally, S.B. 1480 amends multiple parts of Texas law that currently provide that judges order defendant to "attend" court-ordered programs. It changes the language from "attend" to "successfully complete."

S.B. 1495
Subject: Highway Racing and Reckless Driving Exhibitions
Effective: September 1, 2021

S.B. 1495 amends Section 42.03 of the Penal Code (Obstructing Highway or Other Passageway) by adding Subsection (d), which makes the Class B Misdemeanor of Obstructing Highway or Other Passageway enhanceable to a Class A Misdemeanor if, at the time of the offense, the person was engaged in a reckless driving exhibition. The bill also adds Subsection (f) to provide a definition for reckless driving exhibition: an operator of a motor vehicle, on a highway or street and in the presence of two or more persons assembled for the purpose of spectating the conduct, intentionally: (1) breaks the traction of the vehicle's rear tires; (2) spins the vehicle's rear tires continuously by pressing the accelerator and increasing the engine speed; and (3) steers the vehicle in a manner designed to rotate the vehicle. Added Subsection (e) makes an offense under Section 42.03 enhanceable to a state jail felony if the defendant has a prior conviction under Section 42.03(d) or was intoxicated, as defined by Section 49.01 of the Penal Code, at the time of the offense.

S.B. 1495 creates a new Class B misdemeanor in Section 545.4205 of the Transportation Code (Interference with Peace Officer Investigation of Highway Racing or Reckless Driving Exhibition). Under Section 545.4205, a person commits an offense if the person uses the person's body, a car, or a barricade to knowingly impede or otherwise interfere with a peace officer's investigation of conduct prohibited under Section 545.420 of the Transportation Code (Racing on Highway) or a reckless driving exhibition as defined by the new Section 42.03(f) of the Penal Code.

TMCEC: Street racing and other unsafe exhibitions are deadly trends that were exacerbated by decreased traffic on Texas roadways during the COVID-19 pandemic. The Legislature made cracking down on them a priority in 2021. S.B. 1495 does not create any new offenses within municipal court jurisdiction. Cities should nonetheless keep a watchful eye for any street racing or reckless driving exhibition related citations filed in municipal court and take steps to have them

filed in the proper court. This has been an issue with Reckless Driving citations for years. Furthermore, municipal judges that perform magistration should be aware of new offenses.

S.B. 1815
Subject: Motor Vehicle Size and Weight Limitations
Effective: September 1, 2021

To prevent lawsuits and the loss of federal highway funds, S.B. 1815 harmonizes Texas laws related to motor vehicle size and weight limitations with federal standards.

S.B. 1815 adds Subchapter K (Automobile Transporters) to Chapter 622 of the Transportation Code (Special Provisions and Exceptions for Oversize or Overweight Vehicles). Subchapter K defines three terms: automobile transporter, backhaul, and stinger-steered. It also sets parameters for automobile transporters that are stinger-steered: they may carry loads that extend not more than four feet beyond its front and six feet beyond its rear.

The bill also amends Section 622.902 of the Transportation Code, which lists exceptions to the motor vehicle maximum length provisions (Section 621.203 through 621.205 of the Transportation Code), to include towaway trailer transporter combinations if the overall length of the combination is not longer than 82 feet.

S.B. 1815 broadens Section 622.952 of the Transportation Code, which currently only excepts fire department vehicles from the Transportation Code's weight limits located in Section 621.101. It is broadened to include all "emergency" vehicles, which are defined as vehicles designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations.

Lastly, S.B. 1815 amends Chapter 623 of the Transportation Code (Permits for Oversize or Overweight Vehicles). Currently, the law allows the Department of Motor Vehicles (DMV) to issue permits to *persons* to operate oversize or overweight vehicles. This amendment changes the process to allow the DMV to issue permits that attach to vehicles, not people. It also adds the transport of commodities to Chapter 623. Currently, Chapter 623 only covers the transport of equipment.

S.B. 1817
Subject: Vehicle Registration Holds
Effective: September 1, 2021

Chapter 501 of the Transportation Code permits the Department of Motor Vehicles (DMV) to refuse, cancel, suspend, or revoke a motor vehicle title in certain situations. S.B. 1817 adds Section 501.051(d), which requires the DMV to place a hold on processing a title application for a motor vehicle if the DMV receives a request for a hold accompanied by evidence of a legal action regarding ownership of or a lien interest in the motor vehicle. The hold shall continue until a final, non-appealable judgment is entered in the action or the party requesting the hold requests that the hold be removed.

S.B. 1817 also adds Section 501.053(f) to the Transportation Code, which prohibits titling of salvage and nonrepairable motor vehicles as defined by Section 501.091 of the Transportation Code. It also adds Section 501.052(f), which prohibits a person from appealing a DMV determination that a vehicle is not eligible for a title because it is a salvage or nonrepairable vehicle.

S.B. 2054
Subject: Fees for Driver Education Courses, Driving Safety Courses (DSC), and Driver's License Examinations
Effective: September 1, 2021

In 2019, the Texas Legislature passed H.B. 123, which created a fund to pay for costs associated with obtaining driver's licenses and state identification for youth in foster care and youth and young adults experiencing homelessness. Continuing this initiative, S.B. 2054 adds Section 521.168 to the Transportation Code, which requires the Texas Workforce Commission (TWC) to, upon request, pay the fees associated with meeting requirements imposed under Chapter 521 of the Transportation Code (driver's licenses) or Chapter

1001 of the Education Code (driver education and DSC) for individuals who are (1) eligible for a driver's license fee exemption under Section 521.1811 of the Transportation Code or (2) younger than 26 years old and were in a the managing conservatorship of the Department of Family and Protecting Services on or before their 18th birthday or are a homeless child or youth as defined by 42 U.S.C. Section 11434a.

S.B. 2054 also requires the TWC to establish a process for such individuals to request that the TWC pay these fees.

TMCEC: S.B. 2054 opens the door for eligible defendants to request that the TWC cover "the fees associated with" court-ordered DSC. S.B. 2054, however, does not list which specific fees shall be covered. In addition to the cost to the provider for administering DSC, court-ordered DSC can also entail court costs, an administrative fee, and a reimbursement fee. It is worth monitoring how the TWC defines "associated with" for the purposes of the new Section 521.168.

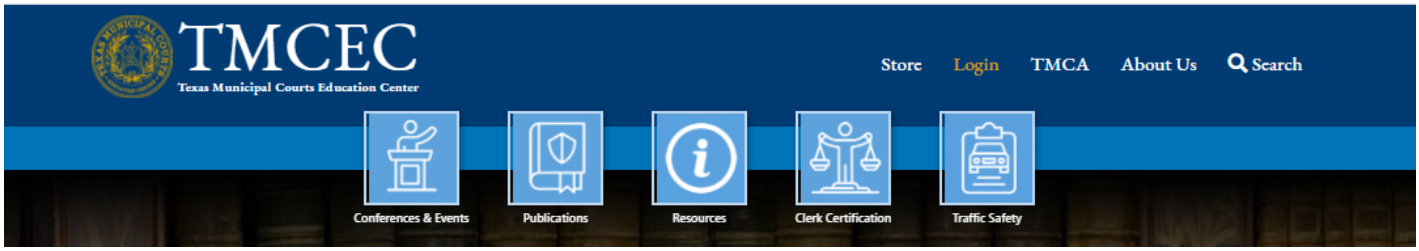
S.C.R. 1
Subject: Opposition to Mandatory Driver's License Suspensions for Drug Offenses
Effective: May 28, 2021

States are required under federal law (23 U.S.C. Section 159) to enact and enforce a mandatory driver's license suspension of at least six months for an individual convicted of a drug-related offense, including a misdemeanor. Failure to do so could result in a withholding of 10% of a state's federal aid for highways. In 1991, Texas enacted Section 521.372 of the Transportation Code, which provides for mandatory driver's license suspensions of at least six months upon final conviction of an offense under the Controlled Substances Act, a drug offense, or a felony under Chapter 481 of the Health and Safety Code that is not a drug offense.

Under federal law, as an alternative to enacting and enforcing mandatory driver's license suspensions for drug offenses, a state's governor can submit a certification to the U.S. Secretary of Transportation expressing opposition to such mandates. In doing so, a governor must also certify that the state legislature has adopted a concurrent resolution expressing the same opposition.

S.C.R. 1 is the Texas legislature's concurrent resolution expressing official opposition to Texas's enforcement of such a law. It was signed by Governor Greg Abbott on May 28, 2021. The legislature's rationale for S.C.R. 1 is that 23 U.S.C. 159 inappropriately limits the ability of Texas courts to exercise discretion in determining punishment. The legislature also notes that driver's license suspensions make it difficult for defendants to keep a job and provide for their family.

TMCEC: This bill is not merely symbolic. S.B. 181, which also passed this session, significantly amends Section 521.372 of the Transportation Code to eliminate mandatory driver's license suspensions following drug offenses in certain situations (see the bill summary for S.B. 181 *supra*). S.B. 181's passage was contingent upon the passage of S.C.R. 1.



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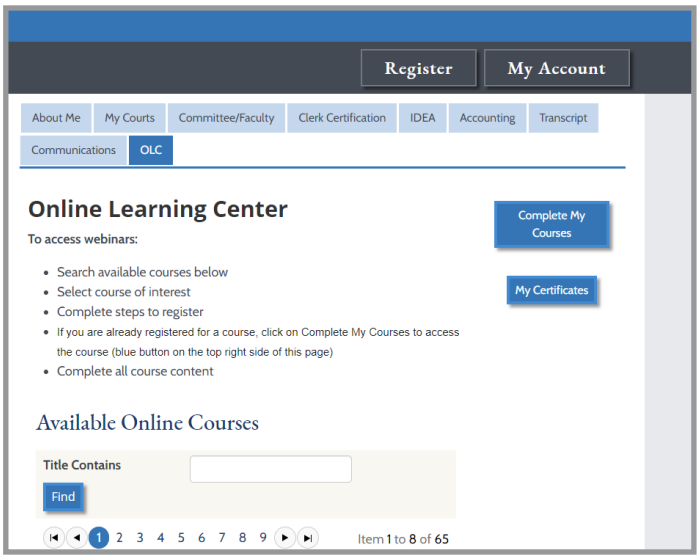

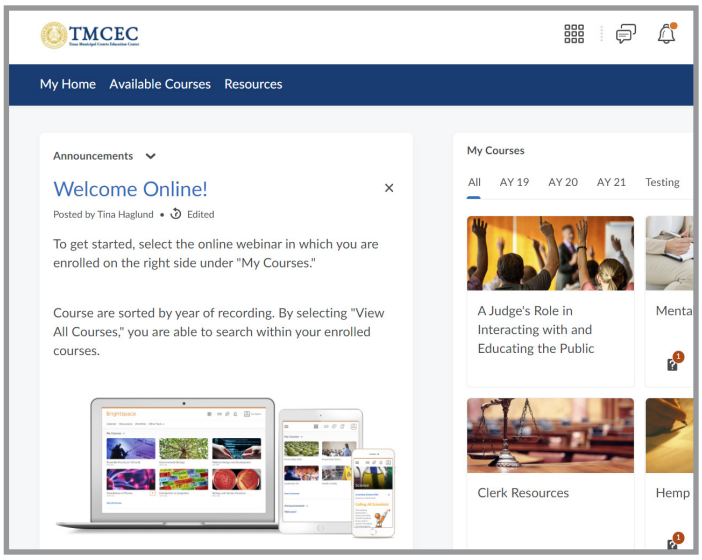

FY22 TMCEC ACADEMIC SCEDULE

At-A-Glance

Seminar	Date(s)	City	Venue
East Texas Regional Clerks Seminar	October 25-27, 2021	Tyler	Holiday Inn Tyler Conference Center
East Texas Regional Judges Seminar	October 27-29, 2021	Tyler	Holiday Inn Tyler Conference Center
Fundamentals: Constitutional Criminal Procedure + Legislative Changes	November 3-4, 2021	Laredo	La Posada Hotel
Central Texas Regional Clerks Seminar	November 15-17, 2021	Austin	Austin Southpark Hotel
Central Texas Regional Judges Seminar	November 15-17, 2021	Austin	Austin Southpark Hotel
Regional Roundtables	December 1-2, 2021	Georgetown	Sheraton Austin Georgetown Hotel + Conference Center
New Clerks Seminar	December 6-10, 2021	Austin	Austin Southpark Hotel
New Judges Seminar	December 6-10, 2021	Austin	Austin Southpark Hotel
South Central Regional Clerks Seminar	January 5-7, 2022	San Antonio	Omni San Antonio at the Colonnade
South Central Regional Judges Seminar	January 5-7, 2022	San Antonio	Omni San Antonio at the Colonnade
Clerks Level III Assessment Clinic	January 25-28, 2022	Pflugerville	Courtyard by Marriott Austin Pflugerville + Pflugerville Conference Center
Gulf Coast Regional Clerks Seminar	Jan 31 - Feb 2, 2022	Galveston	Moody Gardens Hotel
Gulf Coast Regional Judges Seminar	Jan 31 - Feb 2, 2022	Galveston	Moody Gardens Hotel
Houston Metro Regional Clerks Seminar	February 14-16, 2022	Houston	Omni Houston Hotel
Houston Metro Regional Judges Seminar	February 14-16, 2022	Houston	Omni Houston Hotel
Prosecutors Seminar	February 23-25, 2022	Pflugerville	Courtyard by Marriott Austin Pflugerville + Pflugerville Conference Center
Motivational Interviewing, Screening, + Brief Intervention	February 25, 2022	Plugerville	Courtyard by Marriott Austin Pflugerville + Pflugerville Conference Center
North Texas Regional Judges Seminar	March 8-10, 2022	Dallas	Hilton Dallas Lincoln Centre
North Texas Regional Clerks Seminar	March 8-10, 2022	Dallas	Hilton Dallas Lincoln Centre
Traffic Safety Conference	March 28-30, 2022	Dallas	Hilton Dallas Lincoln Centre
Panhandle Regional Judges Seminar	April 11-13, 2022	Lubbock	Overton Hotel + Conference Center
Panhandle Regional Clerks Seminar	April 11-13, 2022	Lubbock	Overton Hotel + Conference Center
Teen Court	April 18-19, 2022	Georgetown	Sheraton Austin Georgetown Hotel + Conference Center
South Texas Regional Judges Seminar	May 2-6, 2022	South Padre Island	Isla Grand Beach Resort
South Texas Regional Clerks Seminar	May 2-6, 2022	South Padre Island	Isla Grand Beach Resort
Court Security Conference	May 16-18, 2022	Austin	Austin Southpark Hotel

Seminar	Date(s)	City	Venue
Fundamentals: Constitutional Criminal Procedure + Legislative Changes (Judges)	May 26-27, 2022	Big Spring	TBD
Juvenile Case Managers Conference	June 6-8, 2022	Austin	Austin Southpark Hotel
Court Administrators Seminar	June 20-22, 2022	Houston	TBD
Prosecutors Seminar	June 20-22, 2022	Houston	TBD
West Texas Regional Judges Seminar	June 27-29, 2022	Odessa	Odessa Marriott Hotel + Conference Center
West Texas Regional Clerks Seminar	June 27-29, 2022	Odessa	Odessa Marriott Hotel + Conference Center
Courts, Cities, + Councils Ordinances Seminar	July 6-8, 2022	Georgetown	Sheraton Austin Georgetown Hotel + Conference Center
New Judges Seminar	July 25-28, 2022	Austin	Austin Southpark Hotel
New Clerks Seminar	July 25-28, 2022	Austin	Austin Southpark Hotel
Impaired Driving Symposium	August 1-2, 2022	TBD	TBD
Mental Health Conference	August 17-19, 2022	Corpus Christi	Omni Corpus Christi Hotel

Registration for the Fall will begin in mid-September. Details to be announced.

Additional events will be added throughout AY 2022.

Keep up with the latest by visiting: tmcec.com/calendar/

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