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

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

During the course of the 85th Legislature, both bills evolved. H.B. 351, as introduced, was a one-page bill with a singular objective. By the time it was signed by the Governor, it was immensely broader in scope than its counterpart, S.B. 1913, which was nearly entirely rewritten during the course of the Session. Despite their similarities, H.B. 351 enjoyed broad support and progressed throughout the legislative process without opposition, while S.B. 1913, at times, struggled.

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

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

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

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

<u>Section by Section Analysis</u>:

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

Section 23 and Section 25 of H.B. 351 amending Article 102.0071 (Justice Court Dishonored Check or Similar Sight Order) and Section 32.21 of the Penal Code (Forgery) are not part of this

summary (See the summary for H.B. 351). Neither is Section 30 creating a commission to study certain criminal offenses. (See the summary for H.B. 351.)

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

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

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

Both bills similarly require such information to be provided to a defendant by third party vendors as part of its services under a collections contract pursuant to Article 103.0031(j) (See, Section 22/Section 24).

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

Section 2/Section 2: Personal Bond Fees

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

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

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

regarding alternatives to full payment (See discussion above.); and (4) the consequences of the defendant's failure to appear.

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

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

Article 45.014(g) is amended in H.B. 351 to require a justice or judge to recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve the arrest warrant and the arrest warrant is resolved in any manner authorized by that code. S.B. 1913 requires that the warrant be recalled if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

Section 10/Section 9: Personal Bond; Bail Bond

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

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

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

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

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

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

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

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

Article 45.041 (Judgment) is amended by adding Subsection (a-1) and amending Subsection (b). Subsection (a-1) requires judges, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the judge is to specify if the fine and costs shall be paid (1) at a later point in time or in intervals, (2) discharged by community services, (3) waived in full or part, or (4) satisfied in a combination of methods (1)-(3). Subsection (b) states that judgments otherwise entered per Article 45.041 for a fine or costs may be waived either partially or entirely per Article 45.0491. (See, below Section 17/Section 16.) (See also, the above analysis of Sections 1 and 24/Sections 1 and 22: Notice of Alternatives to Full Payment).

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

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

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

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

Section 12/Section 11: Appeal Bonds

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

Section 13/Section 12: Show Cause Hearings

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

Note: A show cause hearing is a chance to justify, explain, or prove something to a court. Conducting such a hearing before issuance of a capias pro fine is an additional safeguard that TMCEC has long touted because of its potential to prevent indigent defendants from being arrested over matters of money—matters that are beyond their control. Show cause hearings also have the potential to help courts, law enforcement, and jails save time and money. This amendment to Article 45.045 is another example of codifying a readily accepted "best practice." Show cause hearings are also arguably an essential part of complying with *Bearden v. Georgia*. See, "In the Shadow of *Bearden*, Guidance from Case Law, and the Texas Code of Criminal Procedure, the Case for 'Show Cause' Hearings Prior to Issuing a Capias Pro Fine," *The Recorder* (October 2016) at 21. Such hearings potentially allow consideration of a defendant's ability to pay and allow judges an opportunity to consider the circumstances surrounding failure to discharge the judgment through alternative means. This, of course, assumes the defendant

appears (which is why the amendment contains a safe harbor provision). To be clear, however, when defendants do not appear, this amendment does not alleviate a court from conducting a commitment hearing per Article 45.046. In Texas, the commitment hearing required by the Code of Criminal Procedure is the *primary Bearden* safeguard. Show cause hearings before the issuance of a capias pro fine are a preliminary safeguard (not a substitute).

Section 14/Section 13: Commitment

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

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

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

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

Section 16/Section 15: Expansion of Community Service

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

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

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

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

discretion of a judge and whether the judge believes the entity provides services to the general public that enhances social welfare and the general well-being of the community.

Note: Does expanding the list of community service providers beyond governmental or nonprofit entities pose potential ethical concerns for judges? Yes. Canon 2B prohibits judges from using the judicial office to advance the private interests of third parties. Once again, it appears that a law has been passed that may put judges at odds with the State Commission on Judicial Conduct. (See, Benjamin Gibbs, "Judicial Donation Trust Funds: A Statutory Violation of the Canons of Judicial Conduct?," *The Recorder* (January 2016). Judges be advised, "the Texas Legislature is under no obligation to pass laws that comply with the Code of Judicial Conduct. By the same token, the State Commission on Judicial Conduct (SCJC), in a public statement, has made it clear that just because the act of a judge is legal does not necessarily mean that it is ethical or compliant with the Code of Judicial Conduct." *Id.* at 14. Is the potential for commercialization of community service intimated in Subsection (c-1)?

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

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

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

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

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

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

Subsection (a), as amended, states a court may waive payment of "all or part" of a fine or costs imposed on a defendant. The current requirement that a defendant "defaults in payment" is

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

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

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

These amendments make conforming changes to Article 45.0492, as added by H.B. 350 (2011) and Article 45.0492 as added by H.B. 1964 (2011). Regrettably, despite these amendments, there are still two versions of Article 45.0292. The changes to both versions of Article 45.0492, which are now inconveniently both titled, *Community Service in Satisfaction of Fine or Costs For Certain Juvenile Defendants*, mirror that described in Section 16/Section 15: The Expansion of Community Service.

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

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

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

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

Municipal and county governments may, but are not required to, contract with the DMV and use the Scofflaw Program. The use of the Scofflaw Program by counties, and related contracts and fees, is governed by Section 502.010 of the Transportation Code (County Scofflaw). The use of the Scofflaw Program by municipalities, and related contracts and fees, is governed by Section 702.003 of the Transportation Code.

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

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

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

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

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

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

Under current law, the Department of Public Safety (DPS) may refuse to renew a person's driver's license if (1) the person fails to appear in court as required by law for the prosecution of an offense or (2) fails to pay or satisfy a judgment ordering the payment of a fine and court costs in the manner ordered by the court. Like the Scofflaw Program, the Failure to Appear (FTA) Program is a type of "passive enforcement." It was created in 1995 as a collection and enforcement tool. It requires an interlocal agreement between a local government and DPS. Municipal and county governments may, but are not required to, contract with DPS (which, in turn, contracts with OmniBase Services of Texas for vendor services and automation of the FTA Program). The FTA Program is governed by Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear).

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

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

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

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

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

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

These sections contain repealers and provisions pertaining to applicability.