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The 78th Legislature: Municipal Courts Legislative Update

by W. Clay Abbott, General Counsel, TMCEC

Moving to Austin to join TMCEC was a great thing for me and my family, but there are a couple of things I miss about West Texas. I miss some of the most down to earth folks on the planet, and I miss summertime thunderstorms. There is nothing quite as exciting as those big storms broiling across empty plains. Or so I thought. We had a West Texas thunderstorm of a legislative session. Some House members got blown as far away as Oklahoma, and I understand some Senators ended up in New Mexico. A grand total of 9,231 separate legislative acts were filed; 4,207 passed. There were 5,592 bills seeking changes in Texas law filed; 1,383 were enacted into law. We tracked about 600 of the bills, and summaries of 127 of the most relevant Acts appear in this issue. Much like those Great Plains tornados, the Legislature has left a lot of changes in its wake. Fortunately, all of the changes are not harmful. While we did get new costs and lost every alternative sentence for CDL holders, we also received clarification on DSC and deferred disposition, MOEPs, not guilty expunctions, and juvenile "surprise birthday warrants."

There were several of these Acts that were amended and changed dozens of times each on the House or Senate floor. Several bills were longer than some good novels. HB 2424, HB 2319,

and HB 3588 all have significant impact on municipal courts even though they were not entirely directed at municipal court.

HB 2424 is primarily a tax bill; yet, deep in the nearly 100 pages of that Act, it reduces the minimum credit for the judicially determined eight to 24 hours in jail or eight hours of community service from \$100 to \$50. Judges will now have the discretion to grant more credit or may grant the minimum \$50 amount. Consolidated court costs was finally made a reality by this Act as well.

HB 3588 was a highways bill, yet that Act created a \$30 court cost on most traffic cases.

HB 2319 was a comprehensive rewrite of the procedures for county juvenile courts, yet it also abolished "surprise birthday party" warrants, replacing them with a twofold enforcement scheme for juvenile offenders who fail to appear or fail to discharge their fines. If the child fails to appear, the court may set the case after the offender turns 17 and the "juvenile now adult" (JNA) commits an adult offense for failing to appear at that hearing. *A capias pro fine* may also be issued on a JNA, if the court uses all available means of collecting from the offender as a child and makes findings that the arrest of the JNA is appropriate for the particular

offender.

Since 1999, we have been waiting on a clean-up of the law on DSC and deferred disposition. With the passage of SB 631, we will finally have it. Most notably, the Act reduces the DSC period from a ridiculous 180-day period to a workable 90-day period.

A first special session has ended with the passage of only one bill. During that special session; DSC, deferred disposition, and the new \$30 State Traffic Fine were all subjects of SB 21. Both the House and Senate passed that bill in different forms. The session

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AROUND THE STATE

Fall Conferences

September 18-20, 2003: Annual Meeting of the Texas Municipal Courts Association, Galveston, San Luis Resort Spa. Included in the agenda is a legislative update and information about collections contracts. The San Luis has provided some very attractive discount rates for TMCA members (\$80 single, \$95 double) but the number of rooms blocked for this event is limited, so reserve your room as soon as possible. Their toll free reservation number is 800/392-5937. The Annual Awards Dinner, honoring both the Clerk of the Year and the Judge of the Year, will be held during the Annual Meeting.

The registration fee is \$95 and covers all educational sessions, materials, parking, the President's Reception, and the Awards Dinner. Additional Awards Dinner tickets are \$45 each. If the 2nd Special Called Session of the 78th Legislature passes any more bills effecting municipal courts, this will be an excellent opportunity to get an update. For more information about the Association and its programs, contact Judge Robert Richter (281/333-9229) or access the web site: www.txmca.com.

October 5-8, 2003: Annual Conference of the Texas Court Clerks Association, San Antonio, Holiday Inn Riverwalk. Contact David Preciado, 210/207-7109 for more information (www.texasclerkclerks.org).

November 11-14, 2003: Texas Teen Court Conference, Wichita Falls. Contact Myra Weeks, Wichita Falls Teen Court, 940/716-8575 for more information (www.tcac.com).

November 19-22, 2003 Texas Municipal League Annual Conference, San Antonio. Contact TML at 512/719-6300 for more information: (www.tml.org).

TMCA Election Results Announced

The Texas Municipal Courts Association (TMCA) members elected statewide officers and regional members of the Board of Directors for the September 1, 2003 through August 31, 2004 term. The following statewide officers were recently elected for a one-year term:

President-Elect: Judge Dan Francis, Robinson
First Vice-President: Judge Edwin L. Presley, Benbrook
Second Vice President: Judge Daniel J. Simms, Houston
Secretary: Ms. Luane Turvey, Webster
Treasurer: Judge Robert C. Richter, Missouri City

The odd numbered regions elected a member from that region to represent that region on the Board of Directors for a two-year term:

Region 1: Judge Jan B. Matthews, Lubbock
Region 3: Judge Robin Ramsay, Lewisville
Region 5: Judge Robin D. Smith, Midland
Region 7: Judge David Perkins, New Braunfels
Region 9: Judge Robert Barfield, Pasadena

Judge Sharon Hatten will serve as President of the Association for the 03-04 year. She has served as an Associate Judge for the Midland Municipal Court for the past ten years and served on the TMCA Board for the past six years. Judge Hatten assumes office on September 1, 2003.

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| | BCC | Business and Commerce Code | ELECT | Election Code | OC | Occupations Code |
| | CCP | Criminal Code of Procedure | FC | Family Code | PC | Penal Code |
| | CPRC | Civil Practice and Remedies Code | GC | Government Code | TAX | Tax Code |
| | | | HSC | Health & Safety Code | TC | Transportation Code |

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DSC and Deferred

Subject: DSC and Deferred Overhaul SB 631

Effective Date: September 1, 2003

Act amends Articles 45.051 and 45.0511, Code of Criminal Procedure, and Section 472.022, Transportation Code, which govern deferred disposition and drivers safety course (DSC) dismissals. The changes were intended only as a clean-up and clarification, but some substantive changes were made. The Act:

- Added 45.051(f), Code of Criminal Procedure, and 45.0511(s), Code of Criminal Procedure, which prohibits the use of deferred disposition or DSC for traffic offenses committed by a person who holds a commercial driver's license. This ban applies regardless of whether the person was in a commercial vehicle or personal car.
- Amended 45.0511, Code of Criminal Procedure, by changing the deferred period for DSC from 180 days to 90 days. Now the defendant must complete the course and submit proof to the court in 90 days from the date of the order deferring disposition.
- Amended 45.0511, Code of Criminal Procedure, to require the person requesting DSC to submit a driving record and affidavit concerning their record before the end of the deferred period, rather than on request. This requirement was rarely enforced due to impossibility. Now the record and affidavit may be created and returned in the new 90-day deferred period.
- Amended 45.0511(b), Code of Criminal Procedure, clarifying that the 12-month period in which the

defendant did not take a DSC course was the 12 months preceding the date of offense, not the date of request.

- Amended 45.0511(b), Code of Criminal Procedure, clarifying that the defendant's personal appearance could be made by counsel. The defendant need not appear with her or his attorney to request DSC. This applies to adults only.
- Amended 45.051(a), Code of Criminal Procedure, and 45.0511(t), Code of Criminal Procedure, making clear that an order entered under either Article terminated liability under a bail or appearance bond made in the case.
- Amended 45.051(b), Code of Criminal Procedure, clarifying that a judge could order a driving safety course as a condition of deferred disposition, and that the court could order the defendant to provide proof of compliance with the courts conditions on deferred.

Act also makes many nonsubstantive language changes and renumbers many sections. Several Transportation Code provisions dealing with DSC and deferred are moved to Article 45.0511, Code of Criminal Procedure, and repealed.

Subject: CDL Rules and a Slightly Different DSC Clean-up SB 1904

Effective Date: September 1, 2003; Sections 522.081 and 522.087 of the Transportation Code: June 1, 2005

Act amends several sections of the Transportation Code, which overhaul and tighten up CDL regulations and suspension provisions. The Act also amends Articles 45.051 and 45.0511, Code of Criminal Procedure, in a nearly identical fashion to SB 631. The notable exception is the inclusion of Articles 45.051(c)(1) and 45.0511(l)(1), Code of Criminal Procedure. These

two Sections require the court to adjudicate the defendant guilty at the end of a DSC deferred or deferred disposition on a traffic violation. This provision is unfathomable at best, and totally destroys any purpose for the whole scheme of deferred dispositions at worst. Fortunately, these Sections are clearly in conflict with the newly amended provisions in SB 631. SB 631 contains a provision stating that if other legislation passes concerning Articles 45.051 and 45.0511, Code of Criminal Procedure, it is deemed to have passed last, regardless of passage dates. Both Acts were signed by the Governor on the same day, but this provision mandates that SB 631's provisions control.

Court Costs

Subject: Technology Fund HB 1066

Effective Date: September 1, 2003

Act amends Article 102.0172, Code of Criminal Procedure, which allows cities to create a technology fund by ordinance. The amendment added maintenance of technological enhancements as a valid use of the fund. Cities should review and amend their ordinances creating this fund so that their courts may use the fund to pay for service and maintenance agreements on technology purchased for courts. Also, the sunset provision, which required the fund to expire September 1, 2005, was repealed.

Subject: Court Costs Added, Failure to Pay Tolls Penalty, and the Kitchen Sink HB 3588

Effective Date: September 1, 2003

Act adds Section 542.4031, Transportation Code, creating a \$30 court cost on convictions for offenses, including parking and pedestrian offenses, under Subtitle C, Rules of the Road, Transportation Code. It is

reported quarterly to the Comptroller's Office. The city, however, will retain only a five percent handling fee instead of the usual 10 percent handling fee. The Comptroller will deposit 67 percent of the fund in general revenue and 33 percent to a trauma facility and emergency medical services account. This court cost is effective for conviction of offenses committed on or after September 1, 2003. (Section 51.607, Government Code, making court costs effective January 1st after the legislative session, does not apply to this cost. See, SB 325 and HB 2424.)

Further, the Act adds Section 370.177, Transportation Code, creating offenses for failure to pay tolls. An operator of a vehicle commits an offense under Section 370.177(a), Transportation Code, if he or she drives or tows a vehicle through a toll collection facility and does not pay a toll. This offense applies to operators and the identity of the operator must be proven at trial. Section 370.177(b), Transportation Code, makes the registered owner of a vehicle legally responsible for the toll and up to a \$100 administrative fee if their vehicle is driven or towed through a toll collection facility and the toll is not paid. This liability goes with ownership of the vehicle not with the failure to pay the toll. A registered owner of a vehicle, a lessee of a vehicle, or a subsequent owner who, after receiving written notice of nonpayment of a toll and administrative fee, and who fails to pay the toll and fee commits an offense under Section 370.177(d), Transportation Code. The notice must be sent within 30 days of the failure to pay the toll, and must require payment no sooner than the 30th day after the notice is sent. Each violation of Subsections (a) or (d) are separate misdemeanor offenses punishable by a fine not to exceed \$250. The court must also collect the proper toll and administrative fee and forward the toll and fee to the turnpike authority or

entity operating the toll collection facility. (See, HB 1208 and HB 1464.)

Act also amends Section 522.003(25), Transportation Code, which defines a "Serious Traffic Offense" for regulation of commercial driver's license (CDL) holders. The amendments make clear that a traffic violation by a CDL holder committed in a commercial vehicle **or a personal vehicle** is covered as a "Serious Traffic Offense" by Chapter 522, Transportation Code. The Act also makes many other changes to the CDL law. These changes are effective June 1, 2005.

Of collateral importance, the Act creates a Driver's Responsibility System in Chapter 708, Transportation Code. It is based on a system of points related to traffic convictions that cause surcharges to apply when reapplying for a driver's license. DPS must make a list of "moving violations" that receive points. DPS may not include speeding less than 10 percent over the posted limit. Each separate incident may receive two points and three points if an accident resulted. Upon reaching six or more points in 36 months the driver is assessed a surcharge of \$100 plus \$25 for each extra point. DPS must collect the surcharge and may use automatic license suspension to collect. Installment payments and credit card payment are provided for the citizen's comfort. A five-point warning by mail is also required.

If a driver is convicted of DWI, a \$1,000 (first DWI), \$1,500 (Subsequent DWI), or \$2,000 (DWI with BAC over 0.16) surcharge is collected by DPS. A no insurance violation under Chapter 601, Transportation Code, earns the driver a surcharge of \$250 per year. A no DL conviction under Section 521.021, Transportation Code, results in a surcharge of \$100. These surcharges last three years.

The good news is DPS collects them. The bad news is that DPS will need

more information on the 30-day conviction reports. The system seems to have no way to contest the application by DPS of the surcharge. This increases the need for accuracy in the 30-day reports from courts because errors seem to be permanent.

This 150-page Act—also amended 40 or so times—includes a couple of other legislative changes of note. Chapter 548, Transportation Code, is amended to create an administrative process to handle commercial vehicle safety violations. The laws concerning salvaged vehicles and salvage yards are largely rewritten. Section 501.102, Transportation Code, makes a violation of the provisions of that Chapter concerning titles to salvage vehicles a Class C misdemeanor, enhanced on subsequent violations.

Act amends Sections 544.007 and 545.151, Transportation Code, changing and clarifying the law concerning Failure to Yield. If a traffic control device fails, the intersection is treated as having a stop sign.

Act amends Section 545.066, Transportation Code, to make Passing a School Bus that results in serious bodily injury a Class A misdemeanor, and a state jail felony on a subsequent injury violation.

Act adds Section 601.450, Transportation Code, requiring a feasibility study of creating a computer insurance verification system. A report is due by July 1, 2004. If the report is positive, the system will be implemented by January 1, 2005. A \$1.00 fee collected with automobile registration will be used to fund the study and program, if feasible. Keep your fingers crossed.

Finally, Act modifies Section 681.001 and 681.011, Transportation Code, replacing the term "parking" with the term "standing" in the provisions prohibiting unauthorized parking in a disabled parking space. Standing

includes stopping an occupied or unoccupied vehicle while not actively receiving or discharging passengers. The whole statute is conformed to the use of the term “standing.”

Subject: Consolidated Court Costs, Jail Credit, Community Service, Changes to the Tax Code, and New Class C Misdemeanor Offenses HB 2424

Effective Date: Consolidated Court Costs are effective January 1, 2004 for offenses committed on or after January 1, 2004. Subsection (d) of Section 133.102, Local Government Code, provides that money collected as court costs imposed on offenses committed before January 1, 2004, that the city shall report the total of fees collected for the calendar quarter. The change to the amount for jail credit and the amount to credit for community service is effective January 1, 2004. The provisions pertaining to the Tax Code and the offenses are effective July 1, 2003.

Chapter 133 is added to the Local Government Code providing for consolidation and standardization of court costs. Court costs are consolidated into “consolidated fees” to be collected upon conviction. Section 133.102 provides that the amount collected on convictions of nonjailable misdemeanors offenses including violations of city ordinances is \$40. Parking and pedestrian offenses are excluded from costs. (Note: The \$30 fee required to be collected on Transportation Code, Subtitle C, Rules of the Road offenses including parking and pedestrian offenses is not consolidated and must be collected in addition to the \$40 dollars on those type of offenses. See, HB 3588.)

Section 133.002, Local Government Code, defines for the purposes of Chapter 133 the following terms: “fee,” “indigent,” and “treasurer.” “Indigent” means an individual who

earns not more than 125 percent of the income standard established by applicable federal poverty guidelines. According to DPS, this includes singles making \$7,470 a year and increases for family size up to earnings of \$25,390 a year for a family of eight. “Treasurer” means the custodian of money in a municipal or county treasury, as appropriate. “Fee” is defined to mean a criminal fee listed under Section 133.003 and a civil fee under Section 133.004.

Section 133.003, Local Government Code, lists the costs and fees as criminal fees that are consolidated. The following fees apply to municipal court:

- The “consolidated fee” imposed under Section 133.102, Local Government Code;
- The time payment fee imposed under Section 133.103, Local Government Code;
- Fees for services of a peace officer employed by the State imposed under Article 102.011, Code of Criminal Procedure;
- The administrative fee for failure to appear or failure to pay or satisfy a judgment imposed under Section 706.006, Transportation Code; and
- Fines on conviction imposed under Section 621.506(g), Transportation Code.

The “consolidated fee” under Section 133.102, Local Government Code, includes the following court costs:

- Consolidated Court Costs
 - Abused Children’s Counseling,
 - Crime Stoppers Assistance,
 - Breath Alcohol Testing,
 - Bill Blackwood Law Enforcement Management Institute,

- Law Enforcement Officers Standards and Education,
- Comprehensive Rehabilitation,
- Operator’s and Chauffeur’s License,
- Criminal Justice Planning, and
- Fair Defense Account;
- Compensation to Victims of Crime Fund;
- Fugitive Apprehension Account;
- Judicial and Court Personnel Training Fund; and
- Correctional Management Institute of Texas and Criminal Justice Center Account.

Section 133.101, Local Government Code, defines conviction for the purposes of collecting court costs and fees. It provides that a person is considered to have been convicted in a case if:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the person;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

This last category codifies the Comptroller’s position on court approved “pre-trial deferrals” in which a defendant makes even a conditional plea of guilty. Special care should be applied to “pre-trial deferrals”; this should be a purely prosecutorial continuance function. If the court defers final disposition in any way, costs must be collected.

Articles 102.004 (jury fee), 102.011 (fees collected for services of a peace officer), and 102.014 (Child Safety Fund), Code of Criminal Procedure, and Section 542.403 (Traffic Fund),

Transportation Code, are amended to include the above definition of conviction for the purposes of collecting the fees.

Section 133.054, Local Government Code, requires clerks to keep a record of money collected and city treasurers to keep a record of money collected and on deposit in the treasury. Sections 133.055 and 133.056 provide that all costs and fees collected to be remitted to the State Comptroller must be reported quarterly on the last day of the month following the quarter. Under Section 133.058, cities still keep 10 percent as a handling fee. (Note: However, the \$30 fee required to be collected on Transportation Code, Subtitle C, Rules of the Road offenses including parking and pedestrian offenses only provides for a five percent handling fee.) Court fees may be deposited in an interest bearing account. If no fees are collected during a quarter, the city must still report the quarter in the regular manner stating that no fees were collected.

Section 621.506, Transportation Code, is amended to provide that fines due to be paid to the State collected for certain offenses committed under Section 621.506 are to be reported in the same manner as court costs and fees—quarterly. Section 621.506 relates to the offense of operating or loading overweight vehicles. The city is required to send the Comptroller 50 percent of the fine unless the offense occurred within 20 miles of an international border in which instance the city must use the money for road maintenance.

Section 706.006, Transportation Code, is amended to provide that the \$30 administrative fee shall be collected for each complaint or citation reported under Chapter 706. Hence, complaints for failure to appear may now be reported to the Department of Public Safety under the “Failure to Appear Program.” The \$30 administrative fee

is reported in the same manner as other court costs—quarterly.

The time payment fee is recodified in Section 133.103. The time payment fee is reported quarterly the same as other court costs under Section 133.055. The fee is still \$25 and the court must send in 50 percent to the Comptroller. Of the city’s portion, \$2.50 is retained in the general fund for the purpose of improving judicial efficiency and the rest—\$10—may be budgeted for general use by the city.

Both Articles 45.049 and 45.058, Code of Criminal Procedure, are amended. Article 45.049, Code of Criminal Procedure, is amended changing community service credit for discharging a fine from \$100 to not less than a minimum of \$50 for every eight hours of community service performed. Article 45.058, Code of Criminal Procedure, is amended changing jail credit from not less than a minimum of \$100 to not less than a minimum of \$50 for the period of time specified in the judgment, which is defined as from eight to 24 hours as determined by the judge.

The other sections of the Act amend numerous and lengthy portions of Texas law aimed primarily at facilitating the execution of the Office of the Comptroller’s duties. The Act also includes two new Class C misdemeanors.

- Section 152.106 is added to the Tax Code. This Section specifically prohibits any car dealer, as defined under Chapter 503, Transportation Code, from directly or indirectly advertising, holding out, or stating to a customer that the car dealer will assume, absorb, or refund the sales tax, or not add in the sales tax to the sales price of vehicle sold, leased, or rented. A violation of either of these provisions is a Class C misdemeanor.
- An offense under Subsections (1),

(2), (3), (4), (5), (6), or (8) of Section 162.403, Tax Code, is a Class C misdemeanor. A person commits an offense if the person:

- refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the Comptroller [Subsection (1)];
- is required to hold a valid trip permit or interstate trucker’s license, but operates a motor vehicle in Texas without a valid trip permit or interstate trucker’s license [Subsection (2)];
- operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal [Subsection (3)];
- transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product [Subsection (4)];
- sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle [Subsection (5)];
- owns or operates a motor vehicle for which reports or mileage records are required by Chapter 162 without an operating odometer or other

device in good working condition to record accurately the miles traveled [Subsection (6)]; and

- uses dyed diesel fuel for the operation of a motor vehicle on a public highway except as allowed under Section 162.235, Tax Code [Subsection (8)].

- Section 161.122, Health and Safety Code, relating to the prohibition to certain signs containing an advertisement for cigarettes or tobacco products not being located closer than 1,000 feet to a church or school is now a Class C misdemeanor. The statute passed by the Legislature in 1997 did not contain a penalty provision.

On January 1, 2004, the following statutes are repealed:

- Article 56.55, Code of Criminal Procedure;
- Article 56.56, Code of Criminal Procedure;
- Article 56.57, Code of Criminal Procedure;
- Article 56.59, Code of Criminal Procedure;
- Subsection (f), (g), and (h), Article 102.011, Code of Criminal Procedure;
- Article 102.019, Code of Criminal Procedure;
- Article 102.075, Code of Criminal Procedure;
- Section 51.701, Government Code;
- Section 51.921, Government Code; and
- Subsection (b) through (h), Section 56.001, Government Code.

Subject: Safety Belt Fines

HB 418

Effective: September 1, 2003

Act amends Section 545.413(j), Transportation Code, requiring cities to remit, to the State Comptroller, 50 percent of the fines collected on convictions of seat belt and child restraint cases. Cities will continue to remit 50 percent of fines for the offense of operating a motor vehicle without having a child who is at least four years of age (or at least 36 inches in height) but younger than age 17 secured in a safety belt or not having a child under age four in a child passenger safety seat system. Offenses under Section 545.413(a), Transportation Code, will no longer be subject to the 50 percent requirement. Section 545.413(a), Transportation Code, is the offense of failure to wear a seat belt committed by a driver or passenger over 15 years of age. Consequently, cities will no longer have to send the Comptroller 50 percent of the \$25 to \$50 fines on seat belts.

Change applies only to a municipal fiscal year ending on or after September 1, 2003.

Subject: Implementation of Court Costs and Fees

SB 325

Effective Date: June 20, 2003

Act adds Section 51.607, Government Code, which provides procedures for implementing new or amended court costs and fees. Notwithstanding the effective date of a law imposing or changing the amount of a court costs or fee, the imposition or change does not take effect until the next January 1st after the law takes effect. Section 51.607, Government Code, will not apply if the law imposing or changing a court costs expressly provides that Section 51.607 does not apply or the cost or fee takes effect before August 1st or after the next January 1st following the regular session of the

Legislature. (HB 2424 contains these same provisions.) The Texas Comptroller must list court costs in *The Texas Register*.

Act only applies to a law that takes effect on or after September 1, 2003.

Subject: Nonresident Attorney Fee
HB 462

Effective Date: Motions Filed on or after September 1, 2003

Act adds Section 82.0361, Government Code, which provides for the collection of a \$250 fee, payable to the Board of Law Examiners, to be paid by a nonresident attorney wishing to participate in court proceedings in Texas. Proof of payment of the fee is required to be shown to the court at the time the motion to participate is filed.

Act does not affect attorneys representing themselves *pro se*, requires no motion made to do such, and allows for fee waivers or reductions where the nonresident attorney is representing an indigent client. The court or clerk does not have to collect the fee. The attorney must submit proof of payment to the Board of Law Examiners to the court with a written motion to appear. The court should not allow an out-of-state attorney to appear in court until the fee is paid and the motion is granted.

Act applies only to cases in which the written motion to appear is filed on or after September 1, 2003.

Subject: State Comptroller Program to Monitor Collection and Reporting of Court Costs
SB 791

Effective Date: September 1, 2003

The 78th Legislature through this Act ordered the State Comptroller to develop a proposal for a program to monitor remittance and reporting of court costs and fees required to be collected by courts. The program will assess whether the court is providing

complete information on costs and fees collected; that each court is reporting the costs and fees collected as required; and that the Comptroller is properly crediting the funds to the proper accounts.

The Comptroller's response will clearly impact courts and the Act shows the increasing reliance of the Legislature on court costs to fund their enactments.

**Subject: Index of Court Costs
SB 1180**

Effective Date: June 21, 2003

Act adds Chapter 101, Government Code, which indexes court costs, civil and criminal, collected by all levels of courts. If there are any conflicts in the index with another state statute, the other statute prevails. In other words, the Act does not change any current court costs, it just provides a listing of court costs in one statute for easy reference.

**Subject: HOV Lanes and Tolls
HB 1208**

Effective Date: June 20, 2003

Act amends Section 224.153, Transportation Code, to allow the Texas Department of Transportation to enter into an agreement with various entities, including municipalities for the design, construction, operation, or maintenance of a high occupancy vehicle lane. Tolls may be charged for use of a high occupancy vehicle lane.

Act also revises Section 224.1541, Transportation Code, to allow for the designation of a lane as an exclusive lane if there are two or more lanes adjacent to the proposed exclusive lane or a multilane facility adjacent to the proposed exclusive lane. Section 224.151, Transportation Code, defines "exclusive lane" to mean a lane of a highway or segment of a highway restricted for use to one or more designated classifications of motor vehicles. Section 224.1542,

Transportation Code, is amended to provide that a restriction imposed on a restricted lane does not apply to a police vehicle or an authorized emergency vehicle.

Act modifies Section 545.0651, Transportation Code, to provide that if restricted lanes are located within a municipality, the Texas Transportation Commission shall consult with the municipality before adopting an order to restrict by class of vehicles to two or more designated lanes of a highway.

Act amends Section 224.156, Transportation Code, to provide for a collection fee if a person does not pay a toll. Any entity contracted to operate a toll lane by order of its governing body may impose and collect a collection fee, not to exceed \$100 to recover the cost of collecting an unpaid toll. (See, HB 3588 for information on courts collecting the collection fee and paying it to the toll authority or entity.)

The purpose of this Act is to improve safety, conserve fuel, decrease traffic congestion during rush hours, improve air quality, and develop innovative techniques to finance transportation projects.

**Subject: Houston Toll Collection
SB 1464**

Effective Date: September 1, 2003

Act amends Chapter 284, Transportation Code, creating Failure to Pay Toll offenses and administrative fees almost identical to those in HB 3588. The Act applies only to Harris County.

Collections

**Subject: Collection Services
Contracts
SB 782**

Effective Date: June 18, 2003

Act amends Article 103.0031, Code of Criminal Procedure, by adding

additional items that a city may enter into a contract for collection services and by providing for new procedures.

Added to the list of items that a city may contract for collection services are:

- Forfeited bonds (Bonds filed by commercial bail bondsman may not be included in a contract for collection services. Only personal bonds and surety bonds not filed by a commercial bail bondsman may be included in a collection contract.);
- Fines and fees assessed by a hearings officer for administrative parking citations; and
- Amounts in cases in which the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking.

(Note: The Attorney General in Opinion No. JC-0516 (June 24, 2002) opined that under the current statute suggested fine amounts are not debts or accounts receivable. Until there is a judgment against a defendant, the defendant is not liable for a fine and costs.) The Act requires courts to wait 60 days after a judgment has been entered or after a defendant has failed to appear before submitting the cases to the vendor contracted by the city.

Although the Act did not change the 30 percent collection fee charged to a defendant, the collection and distribution of the fee did change. Contracts with a public or private vendor or attorney must specify a 30 percent collection fee or it does not come under the authorization of Article 103.0031. Hence, if the fee is a different amount, it cannot be assessed against a defendant and must be paid by the city. The Act provides that the fee does not apply if a case is

dismissed or to any part of the fine or cost which a defendant discharged by jail credit or community service. However, if a defendant makes any partial payment, the court must calculate the amount of the collection fee due. The allocation to the Comptroller, the city, and the private attorney or vendor must be reduced proportionately.

In addition to assessing a 30 percent collection on a debt, the Act authorizes the 30 percent collection fee to apply to charges that are not adjudicated. These are cases in which a defendant failed to appear. The amount of the collection fee is based upon the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount. If a defendant does not agree to that amount, the 30 percent is based upon the amount ordered paid by the court after plea or trial. The 30 percent paid by a defendant must be used to compensate the private attorney or vendor who earns the fee.

Vendors and attorneys sending a communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case, must include a notice of the person's right to enter a plea or go to trial on any offense charged.

Act provides that municipalities with a population of more than 1.9 million may authorize the addition of the 30 percent collection fee for a collection program performed by employees of the governing body. The only city with that population is the City of Houston.

Article 103.0031(h), Code of Criminal Procedure, allows cities to enter into a contract to collect a debt incurred on an offense that was committed before

the effective date of the Act. The collection fee, however, does not apply to the debt and cannot be collected from a defendant. Therefore, on new contracts entered into after the effective date of the Act, the 30 percent collection fee cannot be collected on debts incurred on offenses that were committed before the effective date of the Act. Arguably, under contracts entered into under the old law for uncollected debts, the collection fee could still be collected.

Section 4 of the Act provides that the changes made by the Act applies to a debt, account receivable, or an amount incurred as a result of the commission of a criminal or civil offense committed before, on, or after the effective date of the Act. The collection fee, however, does not apply to an amount incurred on cases in which a defendant failed to appear if the offense was committed before the effective date of the Act. Hence, for both types of cases, those in which debts are owed (judgments entered) and those in which suggested amounts are owed (defendants failed to appear) that occurred before the effective date of this Act, a city may contract for collection services, but may not include in the contract the 30 percent collection fee. The effective date of this was June 18, 2003.

Section 682.010, Transportation Code, which provides enforcement measures for administrative parking offenses, is amended to include not only orders of a hearings officer, but also fines, costs, or fees imposed following a failure to appear and to allow the filing of an action to collect the fines, costs, or fees in a court of competent jurisdiction. The action must be brought in the name of the municipality and in a county in which all or part of the municipality is located.

Section 706.002, Transportation Code, which provides for municipalities to

contract with the DPS for denial of driver's license renewal, is amended to allow a political subdivision to contract with DPS for any offense that a court has jurisdiction of under Chapter 4, C.C.P. Although this provision does not affect municipalities, counties may contract for collection of higher class offenses, such as Class A and B misdemeanors and felonies.

There are many issues that are not addressed by this legislation. For example, how may a defendant enter a plea? To whom are the fine and fees sent? Who may agree to installment payments? Is the judge or municipality responsible for the vendor's violations of the Judicial Conduct Code or the defendant's civil rights? Must the vendor warn the accused of alternative methods of discharge of the fine? Should the amount communicated by the court include a reduction for jail credit? These questions must be addressed by the contract with the vendor. Courts need to have significant input in the contract process since the vendor's actions will directly affect them.

**Subject: Internet Services
SB 1161**

Effective Date: September 1, 2003

Act amends Section 132.007, Local Government Code, which allows a municipality to provide access to information or collect payments over the Internet and to charge a reasonable fee. The Act expands what municipalities may do on-line, and provides that municipalities may charge a reasonable fee for providing access to information, collecting payments, or providing services over the Internet.

The law retains the restriction that the municipality may set the fee only if a fee is necessary to add the service and only in an amount directly necessary to offset the cost of the program.

New Traffic Offenses

Subject: Prohibition against Persons Occupying Trailers of Tractor-Trailers
HB 2096

Effective Date: September 1, 2003

Act adds Section 545.4191, Transportation Code, which creates a Class B misdemeanor offense for operating a truck, road tractor, or truck tractor while drawing a trailer or semitrailer when another person is occupying the trailer or semitrailer.

The defenses to this new Section are: (1) if the truck/tractor operator was towing the trailer in a parade or in an emergency; (2) if the truck/tractor operator was transporting farm-workers from field to field on a farm-to-market, ranch-to-market, or county road outside of a municipality; (3) if the truck/tractor operator is pulling the trailer in a properly permitted hayride; (4) the truck/tractor operator did not know the person was occupying the trailer; or (5) the person occupying the trailer was in a part of the trailer designed for human habitation. No culpable mental state is required, but lack of knowledge is a defense.

Act also adds Chapter 20A, Penal Code, entitled "Trafficking of Persons," which prohibits transporting persons for forced labor or prostitution. Forced labor includes forcing someone to work by threatening to withhold papers. An offense under this Chapter is generally a second-degree felony. It becomes a first degree if someone dies, or a person transported is under age 14. Additionally, this Act adds this offense to Section 71.02(a), Penal Code, which defines gang activity. A provision in the Act also allows prosecution under this Section or any other penal

provision in spite of the general rule that the specific controls the general.

Act was written to prevent the kinds of illegal immigrant smuggling that have been published in recent news reports.

Subject: Passing Emergency Vehicles
SB 193

Effective Date: September 1, 2003

Act adds Section 545.157, Transportation Code, which creates a misdemeanor offense, punishable by fines ranging from \$1 to no more than \$200, for failing to vacate the lane closest to a stationary emergency vehicle and slow to a speed 20 mph under the posted speed limit. This procedure must be followed when passing a stationary emergency vehicle with its lights flashing on a highway with two or more lanes traveling in the same direction. If property damage results from the violation it is punishable by a fine of \$500—not up to \$500, but \$500. A violation of this Section that results in bodily injury is elevated to a Class B misdemeanor.

Act is aimed at preventing police and paramedic injuries while stopping on the shoulder of highways.

Subject: Failure to Pay Fare and Then a Penalty
HB 2500

Effective Date: September 1, 2003

Act adds Sections 452.0611, 452.0612, and 451.0611, Transportation Code, creating a penalty, a new Class C misdemeanor, and a police force to enforce payment of public transportation fees in certain jurisdictions. **This Act was created primarily for the Dallas Mass Transit Authority and applies only to municipalities that have created a Mass Transit Authority under Chapter 452, Transportation Code, or a Metropolitan Rapid Transit Authority under Chapter 451, Transportation Code.**

A person who rides a public transportation system without paying the required fare, or having evidence of paying the fare, may be required to pay the fare and a penalty not to exceed \$100 within 30 days of notification by the Mass Transit Authority—in a city with a Chapter 452 Mass Transit Authority. If the person fails to then pay the fare and penalty in 30 days, he or she commits a Class C misdemeanor. This offense is not an offense of moral turpitude. This offense must be created by a resolution of the Mass Transit Authority Executive Committee.

By resolution, the Mass Transit Authority may also create Fare Enforcement Officers, that have limited police powers and may file complaints for the above offenses in municipal courts.

Section 2 of the Act allows Metropolitan Rapid Transit Authority Executive Committee to create the penalty and offense described above, but not to create the fare enforcement officers.

Everyone else may continue to prosecute a failure to pay a fare as a Class C theft of service.

New Fine-Only Offenses

Subject: Noxious Plants
SB 854

Effective Date: September 1, 2003

Act adds Subchapter D, Agriculture Code, regulating noxious plants. The Act requires the Agricultural Department to create and maintain a list of all noxious plants that may cause harm in Texas. Newly added Section 71.152, Agriculture Code, creates a Class C misdemeanor offense for the sale, distribution, or importation of any plant on that list. The Act further

provides that a separate Class C offense is committed for each noxious plant item sold, distributed, or imported.

Subject: Class C Misdemeanor for Mislabeling Halal Foods
HB 470

Effective Date: September 1, 2003

Act adds Subchapter I, Business and Commerce Code—Labeling, Advertising, and Sale of Halal Foods. “Halal” foods are foods that are deemed prepared and servable according to Islamic religious authority. This Act creates both a civil remedy for falsely advertising and labeling—or not labeling at all—halal foods. Violations are actionable under the Deceptive Trade Practices Act. If committed knowingly or recklessly violations may be prosecuted as a fine-only misdemeanor with a fine not less than \$10 nor more than \$200.

Subject: Abortion Prerequisites and Provision for Criminal Liability for Provider

HB 15

Effective Date: September 1, 2003 and applying to abortions performed on or after January 1, 2004.

Act adds Chapter 171, Health and Safety Code, regulating abortion and abortion providers.

Act requires abortions performed at or after the 16th week of pregnancy to be performed in a licensed hospital or ambulatory surgical center. It also requires certain information and materials—including full-color representation of gestating fetuses and information about pregnancy and adoption agencies and available services—to be supplied and/or offered to a woman seeking an abortion. Act requires a 24-hour waiting period after receiving the information before the abortion procedure can occur, and lowers the number of abortions that can be

performed in a facility without the facility being licensed as an abortion provider.

Act also creates a fine-only misdemeanor offense, punishable by a fine not to exceed \$10,000, for a physician who intentionally violates the Subchapter B: Informed Consent provisions. Intentionally is defined in the Act as “conscious objective or desire to engage in the conduct or cause the result,” by referencing Section 6.03(a), Penal Code.

Subject: Laser Pointing at a Uniformed Safety Officer

HB 831

Effective Date: September 1, 2003

Act amends the Penal Code by adding Section 42.13, which creates the Class C misdemeanor offense of pointing a laser pointer at a safety officer which includes: a peace officer, security guard, firefighter, emergency medical service worker, or other uniformed municipal, state, or federal officer. The offense includes a culpable mental state of “knowingly” and requires proof that the safety officer was in uniform.

Subject: Fowl Offenses

HB 2328

Effective Date: June 20, 2003

Act adds Section 161.0411, Agricultural Code, which creates a system of regulation for poultry sellers, distributors, and transporters not currently recognized by the Texas Animal Health Commission. This Act makes failing to register fowl, or other violations of regulations created under the new provisions, a Class C misdemeanor, with a subsequent fowl offense a Class B misdemeanor.

Not later than January 1, 2004, the Texas Animal Health Commission shall adopt rules to administer the program. Violations will be based on those administrative rules.

Offenses Raised from Class C

Subject: Drag Racing: Fast and Furious No More

HB 1326

Effective Date: September 1, 2003

Act amends Section 545.420, Transportation Code, by raising all racing violations to a Class B misdemeanor. In Subsection (e), the Act elevates the racing offenses to a Class A misdemeanor if the driver has a previous racing conviction, was driving while intoxicated, or was in possession of an open container. In Subsection (f), the Act raises the offense to a state jail felony if the driver has two prior racing convictions. In Subsection (g), the Act elevates an offense to a third degree felony if any individual as a result of the racing offense suffers bodily injury. In Subsection (h), the Act makes the offense a second degree felony if an individual as a result of the racing offense suffered serious bodily injury or death.

Act also amends Section 521.350, Transportation Code, making license suspension mandatory for any racing violation conviction, allows for community service and occupational license opportunities for offenders, and makes license revocation automatic for a second racing offense incurred while on a suspended license for a previous racing violation.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Theft and Fraud Committed against Elderly Persons
HB 420

Effective Date: September 1, 2003

Act modifies several sections of the

Penal Code by providing for enhanced punishment for Theft (Section 31.03(f), Penal Code), Misapplication of Fiduciary Property (Section 32.45(d), Penal Code), or Securing Execution of Document by Deception (Section 32.46(c-1), Penal Code). Proof that the victim of the above offenses was an elderly individual—as defined in violent offenses as a person over 65 years of age—enhances the punishment for the offenses to the next higher category.

Recent changes in the law have provided special protection for the elderly from violent offenses; this change extends that protection to several common property offenses. This legislation was in response to many fraud scams targeting the elderly.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Assaults on Sports Participants Enhanced
HB 716
Effective Date: September 1, 2003

Act amends Sections 22.01(c) and (e), Penal Code, to enhance a Class C Assault committed against a sports participant to a Class B misdemeanor. “Sports participant” is defined to specifically include athletes, referees, umpires, lines-people, coaches, instructors, administrators, or staff members. To be enhanced the assault must take place either while the participant was performing his or her duties or in retaliation for the performance of a participant’s duty.

Further, the Act makes the enhancement for Class C Assaults on elderly or disabled persons applicable only to “contact assaults” under Section 22.01(a)(3), Penal Code, and not “threat assaults” under Section 22.01(a)(2), Penal Code.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Unauthorized Airport Transportation Prohibited
SB 441
Effective Date: September 1, 2003

Act adds Sections 22.027 and 22.0815, Transportation Code, which create a Class B misdemeanor for operating, engaging, or soliciting for a ground transportation business within the boundaries of an airport operated by a municipality or joint board (for which the constituent agencies are populous home-rule municipalities) without their being approved by the Airport Authority. This Act was written to replace a local Class C misdemeanor at DFW.

Subject: Misprision of a Felony and Failure to I.D.
HB 325
Effective Date: September 1, 2003

Act adds Section 38.171, Penal Code, which makes the failure to immediately report an observed felony, where a reasonable person would believe serious bodily injury or death may result, a Class A misdemeanor. This offense is commonly known as “Misprision of a Felony.” In addition, the person must reasonably believe that the commission of the offense had not been reported; and the person could immediately report the commission of the offense without placing himself or herself in danger of suffering serious bodily injury or death.

Act also revises Section 38.02, Penal Code, by amending Subsections (c) and

(d) and adding Subsection (e). Under the previous law, a refusal to give identifying information or giving false information were both Class C misdemeanors. If a person with warrants gave the same refusal or false information, the offense was a Class B misdemeanor. Now, refusal to identify oneself to a peace officer remains a Class C misdemeanor. While providing false information is raised to a Class B misdemeanor. A person with warrants who refuses to give identifying information commits a Class B misdemeanor. A person with warrants who gives false identifying information now commits a Class A misdemeanor. See chart below.

Finally, the Act adds Section 38.02(e), Penal Code, which clarifies that an offense punishable as Failure to Identify and Misrepresentation of Age under Section 106.07, Alcoholic Beverage Code, is prosecutable only under the Alcoholic Beverage Code and not the Penal Code.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Unlawful Release of Voter Results Now Class A
HB 403
Effective Date: September 1, 2003

Act amends the Election Code by revising Section 61.007(b), elevating the offense of Unlawfully Revealing Information before Polls Close from a Class C to a Class A misdemeanor.

| Failure to Identify | Is not a Fugitive (Has no Warrants) | Fugitive from Justice (Has Warrants) |
|--|-------------------------------------|--------------------------------------|
| Fails to Provide Identifying Information | Class C (Previously Class C) | Class B (Previously Class C) |
| Gives False Identifying Information | Class B (Previously Class B) | Class A (Previously Class B) |

This new penalty range only applies to offenses committed on or after September 1, 2003.

Changed Traffic Offenses

Subject: Obscured or Covered License Plates

SB 439

Effective Date: September 1, 2003

Act revises Section 502.409, Transportation Code, to keep pace with the rapid rate of technological development and human stupidity in fraud and car decoration. The offense of Obscured Plates now includes obstruction created by reflective matter, flashy lights, or emblems. Not only must the plate numbers remain unobstructed, but so too must the name of the state, the color of the plate, or another original design feature of the plate.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Window Tinting

SB 345

Effective Date: September 1, 2003

Act revises Sections 547.613(b) and (c), Transportation Code, to change the previous percentage of light transmission, or luminous reflectance to a unified 25 percent. The standard also includes any affect the windshield has on light transmission or luminous reflectance. Also, the color blue was prohibited from being used in such window tinting.

Act also eliminates a previous exception in the statute relating to vehicles manufactured prior to 1988. This exception had proved problematic in at least one Texas

appellate court case, *State v. Exiga*, 71 S.W.3d 429 (Tex. App.—Corpus Christi 2002, no pet.).

Subject: Registration of Vehicles and Issuance of License Plates

HB 2971

Effective Date: September 1, 2003

Act amends Chapter 502 of the Transportation Code to provide that the following vehicles do not have to be registered:

- Golf carts if they are operated in the daytime and driven a distance not to exceed two miles from the point of origin to the golf course (This is a change from the current statute. See, Section 502.284, Transportation Code. See also, Section 504.510, Transportation Code, for more rules on golf cart license plates.);
- Manufactured housing;
- Power sweepers;
- Motorized mobility device (a device designed for transportation of persons with physical disabilities that is not capable of speeds exceeding eight miles per hour);
- Vehicles crossing a highway separating real property under the control of the owner of the motor vehicle; and
- Vehicles operated by non-residents are not required to be registered if:
 - The vehicle is for transporting persons or property for compensation and the person does not exceed two trips in a calendar month and each trip does not exceed four days;
 - The vehicle is privately owned and only makes in any calendar month less than six occasional trips that do not exceed five days for each trip; or

- The vehicle is a privately owned passenger car that is registered in the state or country in which the person resides and that is not operated for compensation may operate the car in Texas for the period in which the car's license plates are valid.

Act also modifies Sections 502.0074 and 502.0078, requiring the following vehicles be registered:

- Parade vehicles owned by nonprofit service organizations; and
- Certain soil conservation equipment.

Last, this Act repeals Chapter 502, Transportation Code, which deals with specialized license plates, and recodifies most provisions in Chapter 504, Transportation Code. Some specialty license plates were discontinued; some new ones were added. The new codification allows for:

- Specialty license plates to be issued for any vehicle;
- Souvenir license plates to be issued for any version of a specialty license plate; and
- Personalized license plates.
- Allocation of the special cost for specialized plates.

Subject: Segway Scooter Now Approved for Texas Sidewalks

HB 1997

Effective Date: September 1, 2003

Act modifies several sections of the Transportation Code to allow for use of the two-wheeled "Segway" scooter. This novel device is now called an "electric personal assistive device." Generally they are to be regulated similarly to bicycles. They do not have to be registered and are not slow moving vehicles under Section 547.001(7), Transportation Code. They

do not have to be insured under the Texas Motor Vehicle Safety Responsibility Act.

Newly created Section 551.201, Transportation Code, regulates the use of “electric personal assistive devices.” They may be used on a road or highway that has no sidewalk and a speed limit less than 30 mph. They can also cross the street. They may be used in bicycle-only lanes and on sidewalks. Watch your toes!

Subject: Peace Officer Exception to All-Terrain Vehicle Ban on Public Roadways
HB 900
Effective Date: September 1, 2003

Act revises the Transportation Code by amending Sections 663.037(e) and (f), and adding Subsection (g), excepting peace officers from the general ban on All-Terrain Vehicle usage on public roadways provided for in Section 663.037.

In order to qualify under this exception, a peace officer must be operating the vehicle: (1) on a public street, road, or highway that is not an interstate or limited-access highway; (2) in connection with the performance of the officer’s official duty; (3) with an eight-foot-long pole and triangular orange flag attached to the back of the vehicle; (4) with the vehicle’s headlights and taillights illuminated; (5) with a valid driver’s license as defined under Section 521.001, Transportation Code; and (6) within 25 miles from the point of origin to the destination.

Subject: Passengers on All-Terrain Vehicles
SB 1635
Effective Date: September 1, 2003

Act revises Section 663.001, Transportation Code, by redefining an all-terrain vehicle (ATV) to include an ATV manufactured with seating for passengers. This Act also amends

Section 663.036, Transportation Code, to now allow the carrying of passengers if the ATV is manufactured with additional seating for transporting passengers. If the ATV is not designed for passengers, they remain prohibited.

Subject: Police Escorts
SB 461
Effective Date: May 16, 2003

Act revises Section 546.002, Transportation Code, by defining “police escort” as facilitating the movement of a funeral, oversized, or hazardous load, or other traffic disruption for public safety purposes by a full-time peace officer described by Articles 2.12(1)-(4), Code of Criminal Procedure. The Act also adds directing or diverting traffic for public safety purposes and conducting a police escort as occasions where operators of authorized emergency vehicles can lawfully engage in conduct that is prohibited under Section 546.001, Transportation Code.

Act eliminates some previous confusion concerning in which particular circumstances a peace officer could disobey traffic laws.

Subject: Video Equipment and Television Receivers in Motor Vehicles
SB 209
Effective Date: Offenses Committed on or after September 1, 2003

Act amends Section 547.611(a), Transportation Code, to allow the equipping of a vehicle with a digital videodisc player, a videocassette player, or similar devices, so long as such devices are not visible from the operator’s seat.

Subsection 547.611(c), Transportation Code, which exempted video equipment used for commercial reception of digital information, for

law enforcement purposes, for remote television trucks, and GPS (global positioning satellite) systems, now exempts equipment used exclusively for monitoring the performance of equipment installed on a vehicle for safety purposes in connection with the operations of a natural gas, water, or electric utility.

Changed Class C Offenses

Subject: Coyotes at Large
HB 151
Effective Date: September 1, 2003

Act amends sections of Chapter 822, Health and Safety Code, by including coyotes to the existing prohibition of allowing dogs to run at large. Obviously, some defendant defended his or her dog at large case by proving their mutt was a coyote, not a dog. The Act also removes the list of livestock protected by the Act and incorporates the much broader definition of “livestock” in Section 161.001, Agriculture Code. Pets are also added to the protected animals.

Act also creates a greater consistency of terms throughout the statute and deletes now surplus provisions. Changes in the law apply only to offenses committed on or after September 1, 2003.

Subject: Purposeful Public Peeping Prohibited Per Se
HB 12
Effective Date: September 1, 2003

Act amends Section 42.01 of the Penal Code by adding Subsection (a)(11), to make intentionally or knowingly looking into an area of a public place designed to provide privacy for a lewd or unlawful purpose a Class C misdemeanor.

Prior to this Act, there was no specific law prohibiting peeping activity in public areas, such as restrooms, changing areas, or shower stalls. Several subsections of Section 42.01, Penal Code (Disorderly Conduct), have been used *ad hoc* in the past to bridge this gap.

Act only applies to offenses committed on or after September 1, 2003.

Subject: Theft of Service for Failure to Pay Rental Fees
HB 275

Effective Date: September 1, 2003

Act amends Section 31.04(b) and (c), Penal Code, which modifies the presumption of an intent to avoid payment in Theft of Service prosecutions. Intent to avoid payment is presumed if a person fails to pay rental charges five days after the person receives the return-receipt requested notice in cases where the rental property is worth less than \$1,500 or within three days if the value is \$1,500 or greater. This Act changes the old statute, which did not allow for the presumption until 10 days had passed after the notice was received. The 10-day period is still in effect for service agreements.

Act does not apply to any offense committed before September 1, 2003.

DWI Offenses

Subject: DWI with a Child Passenger
SB 45

Effective Date: September 1, 2003

Act adds Section 49.045, Penal Code, which creates a new DWI offense. It is now a state jail felony when a person operates a motor vehicle while intoxicated in a public place, and a passenger who is younger than 15 years of age occupies the vehicle.

Act was designed to stiffen the available penalties against DWI drivers when minors are present in the vehicle. Previously, only a child-endangerment charge was available to prosecutors in such situations, but this Act aims to create a new and separate state jail felony for such actions. Further, the Act lists this offense with other DWI offenses for purposes of enhancement and disallowed defenses.

Act applies only to an offense committed on or after September 1, 2003.

Subject: Involuntary Blood Test Allowed for "Serious Bodily Injury"
HB 292

Effective Date: September 1, 2003

Act amends Section 724.012, Transportation Code, by revising Subsection (b) to include involuntary administration of a breath or blood alcohol level test by a responding peace officer when anyone other than the suspect has suffered serious bodily injury. This adds to the previous grounds, which allowed the officer to require samples only where the peace officer reasonably believed any individual had died or would die. The Act also adds Subsection (d) to Section 724.012, Transportation Code, which defines "serious bodily injury" in accordance with Section 1.07, Penal Code.

Act expands the power of peace officers to require blood or breath samples of DWI suspects at the scene of an accident. Now such tests can be given involuntarily when the officer determines, in their laymen capacity, that someone has suffered serious bodily injury, rather than only when they were able to determine there had been or would be a fatality.

Act only applies to the taking of specimens after September 1, 2003.

Subject: Intoxicated Surgery
HB 1592

Effective Date: September 1, 2003

Act creates Section 165.1535, Occupations Code, which creates a state jail felony for performing surgery while intoxicated.

This seems like a simple enough proposition until one looks at the exceptions in the statute. An affirmative defense to such conduct is if the drunken doctor performed the surgery in an emergency. "Emergency" is defined as a situation where the actor would assume that the person on whom the surgery was performed was in "imminent danger of serious bodily injury or death." The logic of encouraging intoxicated operation, surely not far off of causing imminent danger of serious bodily injury of death itself, to prevent an imminent danger of the same occurrence seems tenuous at best.

Secondly, unless the conduct happens to put the patient at a "substantial and unjustifiable risk of harm," merely operating while intoxicated is not an offense. It seems probable that a poll of most patients about to go under the knife might possibly vote that having their doctor throw back enough cold ones to get them inebriated just prior to making their first incision would probably constitute a "substantial and unjustifiable" risk. Anything involving mixing incisions with vodka seems to arguably qualify as a substantial risk, and it is hard to imagine when and how such a lethal cocktail could be justifiable.

Finally, only persons regulated or licensed under the amended Subtitle of the Occupations Code can commit the offense. Barroom drunken knife fights should be prosecutable under other laws.

**Subject: Driving while License
Suspended/Invalid
SB 582**

Effective Date: September 1, 2003

Act amends Section 521.457(a), (b), and (f), Transportation Code, to make conforming changes that expand the categories of previous license suspension or invalidation to include all Texas law (all suspensions, revocations, cancellations, denials, or probations). This Act also modifies Section 601.371 to combine the suspension and invalidation provisions in former Section 601.371 into one catchall provision.

Act applies only to offenses committed on or after September 1, 2003, all other offenses are governed by the law in effect at the time the offense was committed.

**Subject: Out of Jurisdiction Arrest
for Intoxication Offenses
SB 840**

Effective Date: September 1, 2003

Act revises Article 14.03, Code of Criminal Procedure, allowing a peace officer to arrest persons who commit any intoxication or alcoholic beverage offenses under Chapter 49 of the Penal Code without a warrant when outside of their jurisdiction.

Prohibiting any peace officer from stopping any drunk driver rocketing down the street seemed like a bad idea.

Disabled Parking Offenses

**Subject: Counterfeit Disabled
Parking Placards
HB 148**

Effective Date: September 1, 2003

Act adds Section 681.0111, Transportation Code, which prohibits

the manufacture, sale, possession, or use of a counterfeit—a placard that is deceptively similar to a disabled parking placard—disabled parking placard. Prior to the passage of this Act, such an offense was prosecuted under the Penal Code and required a “knowing” act by a defendant. This Act creates a Class A misdemeanor for the manufacture, sale, or possession of such placards, and a Class C misdemeanor for the knowing use of a counterfeit placard while parked in a disabled parking space.

Act applies only to offense on or after September 1, 2003.

**Subject: Blocking Access Aisles for
Disabled Persons
HB 1784**

Effective Date: September 1, 2003

Act amends Section 681.011(c), Transportation Code, which adds an access aisle to the list of architectural improvements designed to aid disabled persons that any person is prohibited from blocking. Engaging in any of the prohibited conduct elucidated under Section 681.011, Transportation Code, results in Class C misdemeanor. This allows prosecution of the jerk that leaves the space accessible, but blocks the access ramp from the space into the building.

These changes apply only to offenses committed on or after September 1, 2003.

**Subject: Recordation of Disabled
Parking Permits
HB 874**

Effective Date: June 20, 2003

Act revises the Transportation Code by amending Section 681.0031(b), which requires the county assessor-collector to record only the first four digits of the applicant’s driver’s license number or personal identification number issued under Chapter 521, Transportation Code, as well as the initials of the applicant on any disabled

parking placard issued to the applicant. This protects cardholders from identity theft, in that the cardholders’ entire driver’s license number will no longer appear on the placard. Disabled parking placards must be left in public view. Parking or peace officers will still be able to confirm that the operator of the vehicle is the individual to whom the card was issued.

Jury Trials

**Subject: Prohibition against
Summoning Prospective Jurors on
an Election Day
HB 146**

Effective Date: September 1, 2003

Act adds Section 62.0125, Government Code, which prohibits the court summoning prospective jurors on the general election day for state and county officers. City elections are not included in the ban, but remain a bad idea.

**Subject: Active Military Personnel
Exemption from Jury Service
SB 737**

Effective Date: September 1, 2003

Act revises Section 62.106(a), Government Code, adding Subdivision (9), which exempts from jury service a member of the U.S. military forces serving on active duty and deployed to a location away from the person’s home station and out of the person’s county of residence. Typically these soldiers were repeatedly given a later date to appear, now they may simply be exempted.

**Subject: Computer or Telephone
Response to Jury Summons
HB 2188**

Effective Date: September 1, 2003

Act adds Section 62.0111, Government Code, which allows a prospective juror to provide

information to the county officer responsible for summoning jurors by computer or automated telephone system. Subsection (c) sets out the conditions under which a county officer responsible for summoning jurors would be required to purge the emails of certain prospective jurors. Subsection (d) mandates that the ratios of prospective jurors assigned to various jury panels should be, to the extent practicable, identical among the computer and automated response prospective jurors and those using more traditional means to reply.

It should be noted that this Act expressly provides for county juries, but it is possible that this same type of jury notification tool **may** be implemented in some municipal jurisdictions as well.

Subject: Banning of Recording Jury Deliberations
SB 164
Effective Date: Trials Commencing on or after September 1, 2003

Act adds Article 36.215, Code of Criminal Procedure, and Chapter 24, Civil Practice and Remedies Code, which prohibit broadcasting, recording, or photographing a jury while the jury is deliberating.

Act codifies and expands upon the ruling handed down by the Court of Criminal Appeals in *State ex re. Rosenthal v. Poe*, 98 S.W.3d 194 (Tex. Crim. App. 2003).

Expunction

Subject: Not-Guilty Expunctions
HB 171
Effective Date: For request for expunction made on or after September 1, 2003

Act amends Section 1, Article 55.02, Code of Criminal Procedure, which provides for expunction of records

after a finding of not guilty. Chapter 55, Code of Criminal Procedure, provides for expunctions in district court. Before amendment, Article 55.02 ordered the trial court presiding over the case in which the defendant was acquitted to order expunction if requested. Now the statute provides that the trial court orders expunction if the trial court is a district court, or a district court in the county in which the trial court is located.

This clears up earlier ambiguity. The amendment makes it clear that a municipal court does not order expunction after the finding of not guilty. The request must be made, heard, and ordered in an appropriate district court. This Act does not affect juvenile expunctions in municipal court.

The law is probably not changed, but only clarified. However, the amendments are only effective for request for expunction made after September 1, 2003.

Subject: Expunction of Deferred Adjudication Dismissals Adjusted
SB 1477
Effective Date: September 1, 2003

Act amends Chapter 55, Code of Criminal Procedure, and Chapter 552, Government Code, clarifying the right to an expunction. Primarily, the Act creates a procedure for limiting the impact of a successfully completed deferred adjudication for a jailable misdemeanor or felony under 42.12, Code of Criminal Procedure. Of importance to municipal courts, the term "arrest" is expanded to include "custodial and non-custodial arrest." This means the individual stopped and issued a citation qualifies for expunction. This issue was often raised in expunction hearings and is now put to rest.

No additional duties are given to municipal courts. See, HB 171 for more significant changes concerning expunction.

Other Municipal Court Procedures

Subject: Granting of Legislative Continuances for Members-Elect
SB 430

Effective Date: Motions Made on or after April 24, 2003

Act revises the Civil Practice and Remedies Code by amending Sections 30.003(b) and (c), and adding Subsection (c-1), providing that the stipulations for a legislative continuance apply to members-elect of the Legislature.

Act also provides that if the attorney for a party to a case is a member or member-elect of the Legislature who was employed on or after the 30th day before the date on which a suit is set for trial, the granting of a legislative continuance is discretionary with the court.

If the attorney for a party to any criminal case is a member or member-elect of the Legislature who was employed on or after the 15th day before the date on which the suit is set for trial, the Act provides that the continuance is also discretionary with the court. This new Section follows the existing rule contained in Article 29.03, Code of Criminal Procedure, which allows the trial court to grant continuances for "sufficient cause shown."

Subject: Retired Municipal Judges May Give Oaths in Municipal Court
SB 322

Effective Date: June 20, 2003

Act modifies Section 602.002, Government Code, allowing retired judges to administer oaths in a matter pertaining to the court. A retired judge

of a municipal court then has the same authority to take oaths as the current judge or clerk.

**Subject: Civil and Criminal Contempt Limited to 18 Months
HB 346**

Effective Date: June 20, 2003

Act amends Section 21.002, Government Code, by revising Subsections (a), (e), and (f) and adding Subsection (h). Subsection (a) authorizes a court to punish for contempt, except as provided for in Subsection (g). Subsection (e) provides that, except as provided by Subsection (h), this Section does not affect a court's power to confine a contemnor to compel the contemnor to obey a court order—this change is largely nonsubstantive.

Subsection (f) now provides that Article 42.033, Code of Criminal Procedure, and Chapter 157, Family Code, which concern confinement imposed for failing to supply child support payments, do not apply to Subsection (h) contemnors. Newly added Subsection (h) also prohibits any person from being confined for civil or criminal contempt of court for a period of time not exceeding 18 months.

Act is written to curtail the amount of time both civil and criminal defendants can be jailed for contempt violations.

It should be noted here that this law does not apply to municipal courts, but instead only to higher courts of law. Section 21.002(c) is the general rule for municipal courts, whereby a contemnor cannot be fined more than \$100 or confined more than three days.

Subject: Civil Unions Not Recognized in Texas

SB 7

Effective Date: September 1, 2003

Act adds Section 6.204, Family Code, which contains two important mandates. First, the Act states that a marriage between persons of the same sex is contrary to public policy. Second, the Act prohibits any court from giving effect to a public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex. The specific implication of this Act on municipal courts is that the marital privileges under the Texas Rules of Evidence may not be applied to civil unions between members of the same sex, even if the union is recognized by another state.

Subject: Victim Impact Statements are Confidential

SB 1015

Effective Date: June 21, 2003

Act adds Section 552.1325, Government Code, and amends Article 56.32, Code of Criminal Procedure, both requiring certain information held by a governmental body or a court used in preparing a victim impact statement and the information in a victim impact statement to be confidential. The information that is confidential includes the name, social security number, address, and telephone number of the victim and any other information that might tend to identify the crime victim.

Although municipal courts are not required to accept victim impact statements, if they do so this statute will control. In addition, this Act creates a clear statement of public policy concerning protecting victim's information from discovery under open court or open records provisions.

**Subject: Identity Theft
SB 566**

Effective Date: September 1, 2003

Act adds Article 2.28, Code of Criminal Procedure, which provides that local law enforcement agencies must notify a person that his or her identifying information was falsely given by a person arrested; that the person may file a declaration with the DPS under Section 411.0421, Government Code, which contains procedures regarding fraudulent use of identification; and that the person is entitled to expunction of information contained in criminal records and files under Chapter 55, Code of Criminal Procedure. The local law enforcement agency must also notify the DPS about the misuse of the identifying information, the actual identity of the person arrested, if known, and whether the agency was able to notify the person whose identifying information was misused.

Act amends Chapter 55, Code of Criminal Procedure, to make the conforming changes. Article 55.02, Code of Criminal Procedure, provides that persons entitled to an expunction because of identity theft may file an application for the expunction with the district attorney in the county where the person resides. The amendment requires certain information in the application and that certain information be verified. On receipt of the request, the district court shall, without holding a hearing, enter a final order directing expunction.

Act also revises Article 60.19, Code of Criminal Procedure. Chapter 60, Code of Criminal Procedure, which deals with the criminal history record system, now provides in Article 60.19 that, if the local law enforcement agency is unable to notify the person whose identity was misused, the DPS must provide notice. The Department must also ensure that the computerized criminal history system

reflects the use of the person's identity as a stolen alias and notify the Texas Department of Criminal Justice that an inmate may have falsely used the person's identifying information.

Last, the Act adds Section 493.0155, Government Code, which requires the Texas Department of Criminal Justice to make a reasonable effort to identify the inmate's actual identity.

**Subject: Costs for Public Records
SB 653**

Effective Date: September 1, 2003

Act amends Sections 552.261(a), 552.2615(b), and 552.269, Government Code. Chapter 552 of the Government Code is the codification of the Public Information Act. "Photocopying costs" for public information less than 50 pages is changed. Now the governmental entity may charge only for each page of the paper record that is photocopied and may no longer include the costs of labor, materials, and overhead—some minor exceptions apply. Although the judiciary is not subject to the Public Information Act, the Act requires municipal court clerks to charge as provided by municipal ordinance, which must follow the General Service Commission schedule of costs.

Citizens who feel that they have been overcharged can file a complaint with the Texas Building and Procurement Commission instead of the General Services Commission. Filing a complaint does not mean that the request for information is withdrawn.

**Subject: Bond Forfeitures
SB 1336**

Effective Date: June 20, 2003

Act amends Article 44.04, Code of Criminal Procedure, to provide that pending the determination of a motion for new trial or the appeal of any misdemeanor conviction that a defendant is entitled to be released on reasonable bail. Currently, the statute provides that a defendant on bond for

a misdemeanor who appeals a conviction that the appearance bond in the trial court is not discharged until the conviction is final or in a case in which the appeal trial is *de novo*, a defendant files an appeal bond.

Act also amends Article 22.13, Code of Criminal Procedure, to include in the causes that will exonerate a defendant and his or her sureties in a bond forfeiture proceeding, incarceration of a defendant in any jurisdiction in the United States and in the case of a:

- misdemeanor, at the time of or not later than the 180th day after the date of the principal's failure to appear in court; or
- felony, at the time of or not later than the 270th day after the date of the principal's failure to appear in court.

A surety exonerated under this particular cause is still responsible for reasonable and necessary costs incurred to secure the return of the defendant/principal and interest accrued on the bond amount from the date of the judgment *in rem* to the date of the defendant/principal's incarceration.

Act modifies Article 22.16, Code of Criminal Procedure, to provide that after forfeiture of a bond and before entry of a final judgment, the court shall remit to the surety the amount of the bond after deducting reasonable and necessary costs if the:

- principal is released on new bail in the case; or
- case for which bond was given is dismissed.
- Also provided is that the court may remit to the surety the amount of the bond for other good cause shown.

Act revises Section 1704.207, Occupations Code, to provide

conditions that a person executing a bail bond must follow to surrender the defendant/principal. A defendant/principal may be surrendered if he or she is represented by an attorney; a defendant/principal's attorney is notified of the person's intention to surrender a defendant/principal in a manner provided by Rule 21a, Texas Rules of Civil Procedure; and the person files an affidavit with the court or magistrate before which the prosecution is pending that states:

- the person's intention to surrender the principal;
- the court and cause number of the case;
- the name of the Defendant;
- the date of the bond;
- the reason for the intended surrender; and
- that notice of the person's intention to surrender a defendant/principal has been provided as required by the statute.

Act amends Article 17.19, Code of Criminal Procedure, to provide that the court may now issue a *capias* or a warrant of arrest when the court finds that there is cause to surrender a principal.

Act revises Article 23.05, Code of Criminal Procedure, to provide that the *capias* for a defendant when a bond forfeiture is declared or a *capias* for a defendant/principal when a surety surrenders a defendant/principal under Article 17.19, Code of Criminal Procedure, must be issued not later than the 10th business day after the date of the court's issuance of the order of forfeiture or order permitting the surrender of the bond.

Act modifies Section 1704.204, Occupations Code, as well. The amendment requires that a final judgment on a forfeiture of bail be

paid no later than the 31st day after the date of the final judgment unless a timely motion for a new trial has been filed. If a timely motion for new trial has been filed or a notice of appeal has been filed the person shall:

- pay the judgment not later than the 31st day after the date the motion is overruled, if it is overruled; or
- deposit with the court cash or a *supersedeas* bond in the amount of the final judgment, if an appeal is filed.

Act amends Section 1704.001, Occupations Code, to add the definition of a final judgment in a bond forfeiture case to mean a judgment that disposes of all issues and parties in the case. “Bonding business” is now defined as the solicitation, negotiation, or execution of a bail bond by a bail bond surety.

Act adds Section 1704.2535, Occupations Code. The Section requires bail bond boards to notify the sheriff if a surety fails to pay a final judgment of forfeiture. The sheriff may not reinstate a bail bond surety’s privilege until the judgment is paid.

Other Sections revised by this Act include: 1704.053, 1704.0535, 1704.105, 1704.108, 1704.109, 1704.151, 1704.154, 1704.155, 1704.159, 1704.202, 1704.255, 1704.301, and 1704.303, Occupations Code. The Act adds Section 1704.2535, Occupations Code, as well. These provisions change the composition of bail bond boards, election of bail bond surety members, licensed bail bond surety lists, notification of default by a corporation, solicitation and advertisement by bail bond sureties, requirements of a bail bond license, and deposits for each license.

Changes made by the Act apply only to a bail bond executed on or after

June 20, 2003. A bail bond executed before June 20, 2003, is governed by the law in effect when the bail bond was executed.

Ordinances

Subject: Limitation on Municipal Sign Ordinances

HB 212

Effective Date: September 1, 2003

Act creates Section 216.903, Local Government Code, which limits municipal authority to prohibit, approve, limit, or charge a special fee for removal of political signs on private real property. To be protected from ordinance or municipal charter, the sign must contain “primarily a political message”; and not be temporary and generally available for rent or purchase to carry commercial advertising or other messages that are not primarily political. The municipality may also limit a sign that has an effective area greater than 36 feet; is more than eight feet high; is illuminated; or has any moving elements. The new law does not limit the municipality’s ability to control the use of real property to which it holds an easement or other encumbrance for a public purpose.

Subject: Municipality May Define Junk Vehicles

HB 1773

Effective Date: September 1, 2003

Act adds Section 683.0711, Transportation Code, which allows a municipality to provide for a more inclusive definition of a junked vehicle subject to regulation under Chapter 683, Abandoned Motor Vehicles. The Act also provides that a junked vehicle may be declared a public nuisance if it is visible “at any time of the year” from a public place or public right-of-way.

Subject: County Pool Permitting and Inspection Now Regulated

HB 1952

Effective Date: June 20, 2003

Act amends the Health and Safety Code by creating a system of regulation for public swimming pools by a county or municipality. The ordinance may require registration, inspection, a registration fee—sufficient to cover cost of the regulation—and a closure order on non-compliance. Civil and criminal sanctions are set for violations of the local regulation. Specifically, Section 341.091(a), Health and Safety Code, is amended to include violations of the inspection requirements imposed under Section 341.064(n), Health and Safety Code, or of a closure order issued under Section 341.064(o), Health and Safety Code, are punishable by a fine of more than \$10 and less than \$200.

Act applies only to an offense committed on or after June 20, 2003.

Subject: Limitation on Burning and Nuisance Ordinances for Veterinarians

SB 216

Effective Date: September 1, 2003

Act amends Section 801.361, Occupations Code, creating rules for the destruction of animals and related animal medical waste. This law covers only veterinarian facilities outside of the corporate boundaries or in municipal areas annexed after September 1, 2003. The vet may destroy animals and related medical waste by burying or burning. If the location limitations are met, this law prevails over municipal ordinance.

Subject: Statewide Standards on Pyrotechnic and Flame Effects

SB 693

Effective Date: September 1, 2003

Act creates new sections of the Occupations Code, creating a system

of licensure and statewide standards to be adhered to by pyrotechnic and flame effects operators and entertainers. A criminal violation is added in Section 2154.253, Occupations Code, which mandates that violations of the new system of regulation are deemed to be Class A misdemeanors. Each day of violation constitutes a separate offense. This Act makes the venue for such violations the county in which the offense is committed or in Travis County.

Act also creates 2154.253(f) and (g), Occupations Code, which specifically allows municipalities to pass ordinances concerning pyrotechnic and flame effects, and provides that existing ordinances are not preempted or invalidated by the Act.

Nuisance

Subject: Municipality Powers Expanded to Govern Nuisances
SB 1010

Effective Date: September 1, 2003

Act modifies and updates several sections of Chapter 125, Civil Practice and Remedies Code, concerning common and public nuisances. Many of the changes are meant to make the existing law more manageable. What constitutes gambling and prostitution is defined in terms of violations of those offenses in the Penal Code. Commercial manufacture, distribution, and exhibition of obscene materials is added to the list of common nuisances. Section 125.002, Civil Practice and Remedies Code, is amended to allow suits against owners and users of common nuisances, as well as suits *in rem*. *In rem* suits are filed against the property itself, instead of the owner. Expanded rules of service and powers of contempt are added by the Act.

Finally, the Act requires that a Nuisance Abatement Fund that must be created in cities of 1.5 million or more. Proceeds collected under civil judgment under Chapter 125, Civil Practice and Remedies Code, nuisance abatement grants, donations, and fines for code enforcement citations must all be placed in these funds. The fund may then only be used for further nuisance abatement.

Subject: Two-Year Grace Period for Approved Residential Subdivision Plats

HB 1207

Effective Date: September 1, 2003

Act adds Section 211.016, Local Government Code, which exempts homes in an approved subdivision plat from appearance and landscaping zoning regulation for a period of two years. The grace period does not apply to zoning ordinances dealing with unsafe materials.

Magistrates

Subject: Magistrate's Orders of Emergency Protection: Conflict, Modification, and Transfer

HB 297

Effective Date: September 1, 2003

Act amends Article 17.292, Code of Criminal Procedure, by adding two new sections and amending a third. The addition of Subsections (f-1) and (f-2) clarify that a protective order subsequently issued by a family law court after a hearing (Chapter 85, Subtitle B, Title 4, Family Code, or under Title 1 or Title 5, Family Code) controls over the Magistrate's Order of Emergency Protection (MOEP). A temporary *ex-parte* order issued by the family court (Chapter 83, Subtitle B, Title 4, Family Code) does not control over the magistrate's order, unless the judge making such an order is informed of the existence of the

MOEP and specifically dictates that the new order supercedes the MOEP.

Perhaps more importantly, amendments to Article 17.292 (j), Code of Criminal Procedure, allow the issuing magistrate to modify the MOEP after notice and a hearing. To make the modification, the magistrate must find: (1) the order as originally issued is unworkable; (2) the modification will not place the victim of the offense at greater risk than did the original order; and (3) the modification will not in any way endanger a person protected under the order. All three findings must be established at a hearing after notification of every affected party. This would include both the protected parties and the prosecutor.

Finally, the Act goes on to allow transfer of the MOEP to the trial court with jurisdiction of the offense that gave rise to the MOEP. The transfer can only take place upon agreement of the parties—presumptively the Defendant and the State—or upon a motion, notice, and a hearing. Since the action is a transfer to the trial court, the motion and the hearing should be before the magistrate.

Change in law applies only to a MOEP issued after September 1, 2003.

Subject: Magistrate's Clerks Now Custodian of Arrest Warrants and Affidavits

HB 13

Effective Date: September 1, 2003

Act revises Article 15.26, Code of Criminal Procedure, making it the official duty of the magistrate's clerk to be the custodian of any arrest warrants or affidavits made in support of the warrant. Further, the Act provides that such warrants and affidavits are public information and that the clerk has an affirmative duty to make a copy of the warrant and supporting affidavits available for

public inspection. The warrants and affidavits automatically become open to public inspection on execution of the warrant.

This provision clarifies the prior law, which was somewhat ambiguous as to who was mandated to keep custody of such records. Now it is clear that the clerk of the court is responsible for keeping and providing copies of arrest warrants and affidavits acted on by any judge of the court acting as the judge or acting as a magistrate.

Subject: Time Limits to Take before Magistrate
HB 2795
Effective Date: June 18, 2003

Act amends Article 17.033, Code of Criminal Procedure, which requires persons arrested without a warrant be released if they are not brought before a magistrate in less than 24, 48, or 72 hours. The changes affect defendants who are taken to any medical facility on arrest. In such cases, the clock starts on the statutory period only when a defendant is discharged from the medical facility to the jail or detention facility.

Changes apply to any arrest made after June 18, 2003, regardless of the date of offense.

Subject: Magistrate's Disposition of Obscene Material and Devices
HB 559
Effective Date: Property Seized on or after September 1, 2003

Act amends Article 18.18, Code of Criminal Procedure, which provides for a magistrate to dispose of property seized by police after notice and a hearing. The Act adds obscene material and obscene devices to the list of contraband that can be disposed of under the Article. None of the procedures are changed. The earlier inclusion of a definition of obscene devices still left these types of contraband off of the list. This Act

was an uncontroversial clean-up measure.

Act is only effective to contraband seized by police on or after September 1, 2003.

Subject: Animal Seizure Clean-up and Clarification
HB 1119
Effective Date: September 1, 2003

Act amends several sections of Chapter 821, Health and Safety Code, concerning disposition of cruelly treated animals. The first clarification is that a magistrate—with some limitations on higher courts—may issue an order to seize the animal as well as a municipal judge or justice of the peace. Second, the hearing must be held in municipal or justice court within 10 calendar days. The previous law specified only “days.” Third, the term “court cost,” used to describe the cost the judge may order the owner to pay, is modified to include cost of: investigation, experts, storage, sale, or destruction. These costs may be deducted from the proceeds of the sale of the animal. Finally, several issues concerning appeal are clarified. Appeal is to the county court in the county in which the municipal court or justice court is located. The appeal is also conditioned on posting a bond that the judge or justice determines will cover the cost of storage during the period of appeal. Orders to give the animals to shelters and non-profit societies and orders to humanely destroy the animal may not be appealed. County court decisions cannot be appealed. During appeal the animal may not be sold and may not be destroyed, except when required to end undue pain or suffering of the animal.

Subject: Funding for Longevity Pay for County and District Attorneys
HB 1940
Effective Date: September 1, 2003

Act amends Sections 41.252, 41.253,

41.255, and 41.258, Government Code, to provide for longevity pay for county and district attorneys. The money to fund the pay increase will come from a fee imposed on bail bondsman. Courts, judges, magistrates, peace officers, or other officers taking a bail bond for an offense, other than a fine-only offense, must collect \$15 from each surety posting a bail bond. The costs, however, cannot exceed \$30 for all bail bonds posted at a time for an individual. The cost is not required on the posting of a personal or cash bond.

The officer collecting the cost must deposit it in the county treasury, keep separate records of the funds collected, and file a report with the county commissioners. The money collected is to be used for a felony prosecutor supplement fund and the fair defense account.

Subject: Emergency Protection Order – Sexual Assault
SB 433
Effective Date: September 1, 2003

Act creates Chapter 7a, Code of Criminal Procedure, which creates a procedure for the trial court to issue an *ex-parte* EPO for victims of sexual assaults. This order must be made upon an application to the trial court with jurisdiction of the criminal trial or juvenile proceeding based on the sexual assault. **Magistrates do not have the power or responsibility to issue orders under this Subchapter.**

The protective order is akin to the MOEP provided for in Chapter 7, Code of Criminal Procedure, except it applies only to sexual assault victims and no relationship must be established between the victim and the defendant. Other sections of the Code of Criminal Procedure are conformed to allow this protective order to be enforced like the MOEP.

Subject: MHMR Prioritize Funds to Provide Services to Persons in Jail

SB 1145

Effective Date: September 1, 2003

Act amends Chapter 533, Health and Safety Code, requiring that MHMR pass rules dealing with providing services to and diversion of persons receiving MHMR services who are incarcerated. Model plans and increased funding are required. The Act is not very specific and requires nothing of magistrates, but may provide incentive and funding for model plans to deal with MHMR patients when they wind up in jail.

Towing

Subject: Tow Trucks and Towing Regulation

HB 849

Effective Date: September 1, 2003

Act amends several sections of the Transportation Code and the Occupations Code to resolve many issues that have arisen concerning the authority of the federal government, the state, and municipal authority to regulate tow trucks and towing procedures and involuntary towing fees. All of the changes are not reviewed here, in that they number in the hundreds. This Act is a must-read for municipalities engaged in significant regulation of tow trucks and towing.

Municipalities are prohibited from regulating tow truck's lighting equipment in excess of state and federal standards. Preemption most likely already prohibited these restrictions.

Authority for municipalities to set non-consent tow fees is provided by newly created Sections 643.203-643.208, Transportation Code, however, extensive limitation is placed

on this authority. New provisions also create a fine-only offense, punishable by a fine of not less than \$200 or more than \$1,000 per violation, for charging an excessive non-consent tow fee—as determined in the Transportation Code or municipal regulation. The same fine applies to violations of Department of Transportation regulation of non-consent tows.

Finally, the magistrate conducting a tow hearing shall also resolve the issue of excessive tow fees and storage fees and may order remittance of excessive fees.

Subject: Limitation on Apartment Complexes under Towing Laws

HB 560

Effective Date: January 1, 2004

Act amends Chapter 684, Transportation Code, the provisions that allow towing of vehicles at owner's expense. First, the Act grants apartment complexes the ability to tow vehicles parked in such a way as to block entrances, dumpsters, employee spots, or disabled parking spaces. It also allows towing semi-trailers and vehicles leaking fluids that pose personal or property damage. Secondly, the Act limits the apartment complex from towing vehicles simply because they do not have a valid registration or inspection sticker without following the procedures contained in the rest of Chapter 684, Transportation Code. Lease agreements that give this right are deemed void. The apartment complex must give the owner notice and 10 days to remove the vehicle before it can be towed.

This new Section does not limit the right to remove vehicles under the "junked vehicle" nuisance laws in Chapter 683, Transportation Code.

Courts of Record

Subject: Uniform Municipal Courts of Record Act Clarified

HB 2799

Effective Date: September 1, 2003

Act amends Section 30.00001, Government Code, and clarifies that the Uniform Municipal Court of Record Act applies to both those cities listed in Chapter 30 and to any cities that create municipal courts of record under the Act. This was the obvious intent of the original Act, but awkward language had caused much concern.

Subject: City of Longview Municipal Court of Record

HB 1729

Effective Date: June 21, 2003

Act amends Section 30.00536, Government Code, by eliminating Subsection (c), thereby making Section 30.00010(d) apply to the City of Longview Municipal Court of Record, and allowing it to use electronic recording devices in lieu of court reporters.

Subject: Bedford Municipal Court of Record

HB 3603

Effective Date: June 20, 2003

Act adds Section 30.01881, Government Code, making the Uniform Courts of Record Act apply to the City of Bedford. The Act also adds Section 30.01882, Government Code, which allows for Bedford to determine by ordinance whether the municipal judge, serving a three-year term, is elected by the voters or appointed by the City's governing body.

**Subject: El Paso Municipal Court of Record
HB 3624
Effective Date: September 1, 2003**

Act repeals Section 30.00130(d) of the Government Code, thereby making Section 30.00010(d) apply to the City of El Paso Municipal Court of Record, and allowing it to use electronic recording devices in lieu of court reporters.

Other Acts Important to Municipal Court

**Subject: Concealed Handgun Law
SB 501
Effective Date: September 1, 2003**

Act amends Sections 30.05, 30.06, and 46.03(a), Penal Code, expanding the right of a concealed carry permit holder to carry guns on government property, but extending the limits on carrying weapons in court. Section 30.05(f), Penal Code, was added creating a defense to Criminal Trespass if the trespass was due to the person's carrying a weapon and the person had concealed carry permit. The offense of Criminal Trespass by a concealed carry permit holder was also changed to create an exception to Section 30.06, Penal Code, if the property trespassed on was owned or leased by a governmental agency and not covered by Sections 46.03 or 46.035, Penal Code. Finally, Sections 46.03(e), Penal Code, is altered to expand the prohibition of carrying even permitted firearms in court. The term "court" is expanded to "on the premises of" a court or court offices.

Municipalities are directly impacted by these changes, however the prohibition of weapons in court are clarified and expanded.

**Subject: Judge Accepting a Referral Fee
SB 532
Effective Date: September 1, 2003**

Act revises the Government Code by adding Subchapter C concerning judicial conduct. Section 33.051, Government Code, as created, makes it a Class B misdemeanor for a judge to solicit or accept a gift or referral fee in exchange for referring any kind of legal business to an attorney or law firm. This Section does not prohibit a judge from the following: (1) soliciting funds for campaign or officeholder expenses as permitted by Canon 4D, Code of Judicial Conduct (CJC), and state law; or (2) accepting a gift in accordance with the provisions of Canon 4D of the CJC. Several affirmative defenses are provided for in the Act, among them are: (1) that the judge solicited the gift or referral fee before taking the oath of office, but accepted the gift or fee after taking the oath of office; or (2) that the judge solicited or accepted the gift or referral fee after taking the oath of office in exchange for referring to an attorney or law firm legal business that the judge was engaged in but was unable to complete before taking the oath of office.

Of special relevance to municipal judges, is the specific definition of "Judge" in the statute. Constitutional county court judges, justices of the peace, municipal judges, and statutory county court judges authorized to engage in the private practice of law are excluded, if the judge solicits or accepts a gift or referral fee in exchange for referring legal business that involves a matter over which the judge will not preside.

**Subject: Electronically Printed Receipts
SB 235
Effective Date: September 1, 2003**

Act adds Section 35.58, Business & Commerce Code. The new statute provides that machines that print an electronic receipt may not print more than the last four digits of the credit card or debit card account number or print the month and year of the expiration date on the receipt or other document provided to the cardholder. Persons who sell machines that print receipts must provide notice of these requirements to the person buying or renting the machines. Violations of this law are punishable by a civil penalty not to exceed \$500 per month for the period during which violations occurred. Courts issuing credit card receipts need to make sure they comply.

Act applies to electronically printed receipts issued by machines installed and in operation after August 31, 2004. For machines that are in operation before September 1, 2003, the Act applies only to a receipt that is electronically printed after December 31, 2005.

**Subject: Funding for Teen Court and Other Programs for Juveniles
HB 1828
Effective Date: September 1, 2003**

Act amends Article 102.0171, Code of Criminal Procedure, which provides for a court cost for juvenile delinquency prevention collected by county and district courts. The Article is amended to include funding for teen recognition and teen recreation programs; local teen court programs; local juvenile probation departments; and educational and intervention programs designed to prevent juveniles from engaging in delinquent conduct. This fund is administered by the commissioner's court in each county. This fund may be another source to finance teen court.

Email

Subject: Political Advertising Banned from State and Political Subdivisions Email and Mail Systems
HB 736
Effective Date: September 1, 2003

Act adds Section 255.0031, Election Code, which makes knowingly using or authorizing a state agency or political subdivision internal email or mail system to distribute political advertising a Class A misdemeanor offense. The Act goes on to define a state agency to include any “department, commission, board, office, or other agency that is in the legislative, executive, or judicial branch of state government” An exception is made for political email that is related to a matter before the court.

All judges and court support personnel in municipal court need to be very careful about sending or forwarding political email that is not related to a case or function of the court.

Subject: Commercial Electronic Mail
HB 1282
Effective Date: September 1, 2003

Act adds Chapter 46, Business & Commerce Code (*Electronic Mail Solicitation*). The new Chapter prohibits the transmission of certain commercial electronic mail messages and establishes criminal penalties, civil penalties, and civil liabilities for violators.

In response to the waves of “SPAM” email, the Legislature passed a comprehensive email law. The Act creates civil penalties for those who send an unsolicited commercial electronic mail message without including “ADV:” as the first four characters in the subject line. If the message contains any obscene material or material depicting sexual conduct, “ADV: ADULT ADVERTISEMENT”

must be used as the first words in the subject line, and violation of this Section is a Class B misdemeanor.

Civil penalties were also created for senders who do not have a functioning electronic mail address to which a recipient may reply, at no charge, requesting removal from the sender’s mail list. Once a recipient has requested removal, the sender may not sell the recipients electronic mail address.

Police Powers/ Search and Seizure

Subject: Felony Arrest without Warrant after Confessions
SB 1896
Effective Date: September 1, 2003

Act modifies Article 14.03, Code of Criminal Procedure, by permitting the arrest of a person making a confession admissible under Article 38.21, Code of Criminal Procedure, which provides probable cause to believe that the person has committed a felony.

Under the previous law, the officer could only make a warrantless arrest of a felon if the officer viewed the offense or reasonably believed the offender would escape. This led to complicated situations where a suspect confessed to a serious offense, but was then released hoping they could be found later to execute a warrant, or held in police stations while a warrant was procured.

Subject: Law Enforcement Clearing Roadways
SB 165
Effective Date: June 20, 2003

Act adds Section 545.3051,

Transportation Code, which provides peace officers authority to seize, move, or dispose of a number of types of personal property on a roadway or right-of-way. The property includes, hazardous materials and unlawfully stopped vehicles under Section 545.305, Transportation Code. Officers and transportation authorities may recover the cost of removal or disposal from the owner. The officer or authority is immune from suit for damages for the property’s loss or for failing to remove the property. Both may still be sued for reckless or grossly negligent conduct.

Subject: Immunity Provision for Peace Officers in Child Custody Possession Orders
HB 227
Effective Date: September 1, 2003

Act revises Section 105.006, Family Code, by adding Subsection (e-1), which requires an order in a suit that provides for the possession of, or access to, a child to contain a certain prominently displayed statement in boldfaced type, in capital letters, or underlined. This statement provides that a peace officer (and his or her agency) who relies on the terms set forth in what appears to be a valid court order shall be entitled to the applicable immunity against any subsequent claims. The statement required in the order also must warn that presentment of an invalid court order to a peace officer is subject to a criminal penalty of confinement in jail for up to two years and a fine of up to \$10,000 (presumptively under existing statutes).

Act creates neither a new offense nor new grounds of immunity, but is an effort to encourage law enforcement assistance in enforcing visitation orders.

Provisions of this Act only apply to an order rendered on or after September 1, 2003. Any order rendered prior to

this date is governed by the law in effect at the time the offense was committed.

Penal Law Changes

Subject: Commission of Murder Concurrently with Terroristic Threat Now Capital Offense HB 11

Effective Date: September 1, 2003

Act revises Section 19.03(a), Penal Code, by elevating Murder committed during the course of committing Terroristic Threat, as defined in Section 22.07, Penal Code, to a capital offense. The Act also adds Subsections (5) and (6) to 22.07, Penal Code, adding threats made with the intent to place the public or a substantial group of the public in fear of serious bodily injury; or to influence the conduct or activities of a branch or agency of the federal government, the State, or a political subdivision of the State to the list of ways to commit Terroristic Threat.

This Act only applies to offenses committed on or after September 1, 2003, and all other offenses are governed by the law in effect at the time the offense was committed.

Act is one of a triplet of legislative changes passed this session that address terroristic threats. See, HB 616 and SB 408 for the other two Acts dealing with this topic.

Subject: Terroristic Threats HB 616

Effective Date: September 1, 2003

Act revises Section 22.07, Penal Code, amending Subsection (b) and adding Subsection (c). Newly amended Subsection (b) elevates to a state jail felony any Terroristic Threat resulting in \$1,500 or more in losses to the

victim. Subsection (c) very broadly defines the losses that can be used to reach the \$1,500 pecuniary loss necessary to make Subsection (b) applicable.

Act only applies to offenses committed on or after September 1, 2003.

Subject: Terroristic Threats against Family Members and Public Servants SB 408

Effective Date: September 1, 2003

Act amends Section 22.07, Penal Code, elevating an offense committed under (a)(2) from a Class B to a Class A misdemeanor if it is committed against a family or household member or against a public servant. Definitions of these terms are pulled from existing statutes. This Act is designed to discourage terroristic threats by elevating the punitive consequences attached to them.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Civil and Criminal Penalties for Causing Death of Unborn SB 319

Effective Date: September 1, 2003

Act modifies several sections of the Penal Code, Code of Criminal Procedure, and Civil Practice and Remedy Code. It redefines an "individual" for purposes of civil suits and criminal prosecution to include an "unborn child at every stage of gestation." Specifically, it amends the definition of "individual" in Section 1.07(26), Penal Code. The term "death" in Section 1.07(49), Penal Code, is also amended to include "failure to be born alive." The homicide and assault chapters are amended by adding an "abortion exception." The new definition is specifically not applied to kidnapping,

and a mother cannot be charged with Intoxicated Manslaughter or Intoxicated Assault for the death or injury to her unborn child. A civil cause of action for the death or injury of an unborn child is also created—as is an abortion exception.

This Act is fairly controversial and constitutional attack is promised.

Subject: Teacher-Student Sexual Relations HB 532

Effective Date: September 1, 2003

Act amends the Penal Code by adding Section 21.12, which makes sexual contact, sexual intercourse, or deviate sexual intercourse (as previously defined in Section 21.01, Penal Code) between an employee of a public or private primary or secondary school and a student enrolled at the school a second degree felony. It is a defense if the teacher happens to be married to a student in primary or secondary school (generally consisting of students ranging in age from five to 18).

Subsection (c) reverses the general rule of statutory construction that a specific statute controls over a general one, by specifically allowing prosecution under this statute or any other for the same conduct.

Subject: Security Officers Treated as Peace Officers in Assaults HB 565

Effective Date: September 1, 2003

Act amends several provisions in the Penal Code, adding enhancements for assaults on a security officer. Security officers are added to the class of specially protected people, such as peace officers, public servants, and witnesses. Specifically, this Act amends Sections 22.01(b) and (d), Penal Code, making a Class A Assault on a uniformed security officer a third degree felony. The Act also revises Section 22.01(e), Penal Code, by adding Subdivision (3), defining

“security officer” for purposes of the assault statutes. The Act modifies Section 22.02, Penal Code, making a second degree Aggravated Assault on a security officer a first degree felony.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Non-Peace Officer Jailers Treated as Peace Officers in Assaults
HB 2525

Effective Date: September 1, 2003

Act amends Section 22.01(b), Penal Code, making a Class A assault committed against a person who contracts with the government to perform a service in a facility as defined in Section 1.07(a)(14), Penal Code (“correctional facility”), and Sections 51.02(13) and (14), Family Code (“secure correctional facility” and “secure detention facility”) while working in the facility or in retaliation for the person’s service under the contract a third degree felony. This enhancement already applied to public servants, but excluded workers in private correctional facilities from the same protections.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Aggravated Sexual Assault of Elderly and Disabled Persons
SB 837

Effective Date: September 1, 2003

Act amends Section 22.021(a) and (b), Penal Code, taking out the 65-year-old age requirement, replacing it with the more inclusive “elderly,” and adds “disabled individuals” to the list of protected persons under the aggravated sexual assault statute. The “elderly individual” and “disabled individual” are defined by Section 22.011(c), Penal Code (the assault statute).

Act complements SB 825 and 827, both addressing elderly and disabled individuals.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Sex between Long-Term Care Facility Patients and Employees
SB 825

Effective Date: September 1, 2003

Act revises Section 22.11(b), Penal Code, by adding Subdivision (11), which prohibits any sexual contact between employees and patients of a long-term care facility unless the employee and patient are married to each other, as defined under the Family Code. The Act also amends Subsection (c) by adding Subdivision (5), defining “employee of a facility” as a person who is employed by a facility as defined in Section 250.001, Health & Safety Code.

Act was written to specifically address several recent incidences of “consensual” sexual activity engaged in by facility staff and patients.

Subject: Gender and Age Bias Eliminated in Prohibited Bodily Fluid Contact
HB 274

Effective Date: September 1, 2003

Act revises Section 22.11, Penal Code -- the “chucking” statute -- by amending Subsection (a) and adding Subsection (d). Whereas, under the previous law, only blood, seminal fluid, urine, or feces were prohibited from being maliciously caused to contact another person in a penal institution. Under this Act, however, vaginal fluid and saliva “chucking” are now prohibited as well. The Act also amends Subsection (d), making the prohibited conduct apply in juvenile detention facilities -- as defined in Section 51.02 of the Family Code -- as well, thereby applying to juveniles as well as adults.

Act only applies to offenses committed on or after September 1, 2003.

Subject: More “Chucking” – Treat Them like Animals...
SB 729

Effective Date: September 1, 2003

Act amends Section 22.11(a), Penal Code, which originally prohibited an inmate from throwing his, her, or another’s blood, seminal fluid, urine, or feces at any other person. It is now officially against Texas law to throw such items originating from animals at other people as well.

Please refer to HB 274 for another Act dealing with this topic.

Subject: Deadly Weapons while on Prison Grounds
HB 864

Effective Date: September 1, 2003

Act amends Section 38.11, Penal Code, adding deadly weapons, cellular telephones, cigarettes, tobacco products, and money to the list of items that cannot be provided to an inmate of a correctional facility. The list previously included controlled substances, drugs (without prescription), and alcoholic beverages. Violation of the provision remains a third degree felony. The Act further makes it a third degree felony for any person to possess a deadly weapon while in a correctional facility. There is an affirmative defense for a peace officer or officer/employee of the correctional facility if they are authorized to possess the deadly weapon while on duty or traveling to or from an assignment. An inmate commits a third degree felony for possession of a cell phone in a prison facility. Double check your gift list for your cousin in the pen.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Violation of Protective Order Clarification

SB 317

Effective Date: September 1, 2003

Act amends Section 25.07(a)(2), Penal Code (concerning communications with protected individuals under an emergency protective order that are directly conducted in a threatening or harassing manner, that are conducted through another person to a protected individual, **and** that are conducted through any other manner other than through the protected individual's attorney or court-appointed advocate), by interchanging the "and" previously in the statute—making a violation of the Section prosecutable only if all three subdivisions were completed—with "or"—making a prosecutable violation of any one of the subdivisions.

This change helps to facilitate prosecution under this Section. Proving a defendant was pursuing all three prohibited kinds of conduct simultaneously was nearly impossible.

Act applies only to an offense committed on or after September 1, 2003.

Subject: Interference with Emergency Telephone Call Clean-up

HB 778

Effective Date: September 1, 2003

Act amends Section 42.062(d), Penal Code, and revises Article 14.03(a), Code of Criminal Procedure. The criminal offense of Interference with Emergency Phone Call is modified to decrease the elements that must be proven to obtain conviction. To violate the statute, the actor must terminate an emergency telephone call while the caller had a reasonable fear of certain types of injury or property loss.

Under the previous law, the caller must have reasonably believed they were in danger of "serious bodily injury" or

"damage or destruction of property." This created a bizarre situation that if the victim believed that they would be assaulted and beaten, but not to the point of serious bodily injury—defined elsewhere in the Penal Code as causing a substantial risk of death, serious permanent disfigurement, or protracted loss of a bodily member or organ—no offense was committed. For example, reasonable fear that a teacup would be broken would have met the legal elements. Reasonable fear that you would be beaten, but not killed or have anything broken, did not. The elements have been reduced to require only the reasonable "fear of imminent assault."

Changes to the Code of Criminal Procedure allow an officer to make an arrest if he or she has probable cause to believe this offense was committed, even if they did not observe the violation. The first violation of this statute remains a Class A misdemeanor. These clarifications provide a useful tool in preventing and prosecuting domestic violence.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Interfering with Emergency Telephone Call

SB 176

Effective Date: September 1, 2003

Act amends Section 42.062(d), Penal Code, and Article 14.03(a), Code of Criminal Procedure. It is exactly the same as HB 778.

Subject: Agricultural Bio-Terrorism

HB 240

Effective Date: September 1, 2003

Act modifies Section 28.03 of the Penal Code, Criminal Mischief, by adding Subsection (i), which makes the introduction of any disease common to livestock, such as mad cow and hoof-and-mouth disease, a first-degree felony. The Act incorporates the list of diseases found in Section

161.041(a) of the Agricultural Code.

Act only applies to offenses committed on or after September 1, 2003.

Subject: Criminal Trespass Applies to Vehicles

HB 1872

Effective Date: September 1, 2003

Act modifies Section 30.05(a), Penal Code, by including vehicles in the list of areas qualifying for criminal trespass protection. Trespass to a vehicle is now a Class B misdemeanor.

Act applies only to an offense committed on or after September 1, 2003.

Subject: Retired Peace Officers Now Protected Same as Active-Duty Ones

HB 1458

Effective Date: September 1, 2003

Act amends Section 36.06, Penal Code. Until now, retired peace officers were not protected under the Obstruction or Retaliation Act, set forth in Penal Code 36.06. This Section prohibited causing harm to or making threats to harm to prevent the action of or retaliate against certain protected persons. When directed against a peace officer, obstruction or retaliation was a third-degree felony. If an officer retired—thus no longer qualifying as a peace officer—they were no longer protected by the statute. HB 1458 remedies this oversight by including retired peace officers in the protected list found in Section 36.06(b).

Act applies only to offenses committed on or after September 1, 2003.

Subject: Attack on an Assistance Animal

HB 2881

Effective Date: September 1, 2003

Act adds Section 42.091, Penal Code, creating an offense for attacking an assistance animal and for provoking or allowing an animal in one's custody to attack an assistance animal. A

personal attack or an attack the person allows another animal to make is a Class A misdemeanor. The offense is a state jail felony if the assistance animal is injured. The offense is a third degree felony if the assistance animal is killed. Very broad mandates for restitution for the victim are also included.

Subject: Child Pornography Promotion

HB 236

Effective Date: September 1, 2003

Act amends several sections of the Penal Code and the Code of Criminal Procedure. Section 43.23 of the Penal Code is revised to make the wholesale promotion of child obscenity a third degree felony offense and the promotion, possession, production, or presentment of child obscenity a state jail felony. This Act also modifies Section 12.42(c)(2) of the Penal Code to require repeat offenders under the Obscenity, Sexual Performance by a Child, or Possession or Promotion of Child Pornography be incarcerated for life. Section 25.08(c), Penal Code, is amended to make the sale or purchase of a child, with the intent to make the child perform sexually, a second-degree felony. This Act also revises the Penal Code by adding Section 43.27, which creates a duty on film developers to report visual material believed to be child obscenity to law enforcement. Several other sections of the Penal Code and Code of Criminal Procedure are amended with conforming changes as well.

Act applies only to offenses committed on or after September 1, 2003.

Subject: Possession of Weapons in RVs

HB 284

Effective Date: September 1, 2003

Act amends Section 46.15(g), Penal Code, making a recreational vehicle (RV) being used as living quarters, regardless if the use if temporary or

permanent, a "premises" under Subsection (b)(2). This Act now clarifies previous confusion over whether an RV had to be used is temporary or permanent living quarters in order to qualify as a "premises," and thereby allow the owner to possess a handgun, club, or illegal knife therein. Now an RV, used as living quarters, is treated the same as a home for purposes of the weapons statute.

Act does not apply to any offense committed before September 1, 2003.

Subject: Euthanasia of Animals SB 572

Effective Date: September 1, 2003

Act modifies the Health and Safety Code by adding Subchapter C, which creates a system of regulation, licensing, and attendant criminal penalties for the euthanasia of animals. Newly added Section 821.056, Health and Safety Code, mandates that any violation of Subchapter C, or a board rule adopted under Subchapter C, will be a Class B misdemeanor. The primary aspects of the Subchapter require that euthanasia be done with sodium pentobarbital or commercially compressed carbon monoxide by a licensed professional under established procedures.

Act only applies to acts committed on or after September 1, 2003.

Subject: Texas Controlled Substance Act Revised HB 2192

Effective Date: September 1, 2003

Act modifies several sections of the Health and Safety Code and Code of Criminal Procedure. The great majority of provisions are highly technical or a clean-up. The only relevant change for magistrates is amendment to Article 18.02(7), Code of Criminal Procedure, which expands the ability to issue a search warrant for "drugs" to a much broader, inclusive, and specific definition of "drugs" that includes

drug paraphernalia. Several other provisions are renamed or moved without substantive change.

Subject: Illegal Credit Card Skimming

HB 2138

Effective Date: September 1, 2003

Act adds Section 35.58, Business & Commerce Code, which creates the Class B misdemeanor of Identity Theft by Electronic Device. The offense is committed by using a scanning device to access, read, scan, store, or transfer any information encoded on the magnetic strip of a payment card without consent of the owner. A defendant must also act with intent to defraud. The Act also amends Articles 18.18(a), (b), (e), (f), and (g), Code of Criminal Procedure, to require the forfeiture of the device used to violate Section 35.58 to the State upon final conviction. Finally, this Act amends Article 59.01(2), Code of Criminal Procedure, to redefine "contraband" in light of the new terminology introduced by this Act.

Subject: Medicaid Fraud Offenses HB 1743

Effective Date: September 1, 2003

Act updates Health and Safety Code provisions related to Medicaid fraud. Criminal violations for false claims and kickbacks are made state jail felonies and may be prosecuted in local criminal courts by the Texas Attorney General with the consent of the local prosecutor. Changes are made to both the Penal Code and Code of Criminal Procedure to provide the Attorney General authority to prosecute Medicaid fraud.

Subject: Security Fraud HB 1060

Effective Date: May 20, 2003

Act modifies several articles of the Civil Statutes, all aimed at strengthening the enforcement and prevention of future corporate bad acts. In response to the Enron, Tyco,

and WorldCom scandals, the 78th Legislature got tough on security fraud. Section 1 of the Act amends Article 581-4 of the Securities Act to make the term “security” apply to both written and non-written instruments. Section 2 of the Act revises Article 581-28 of the Securities Act so that the State Securities Board is permitted to issue and enforce a subpoena in Texas at the request of a securities agency of another state or foreign jurisdiction. Section 3 of the Act modifies Article 581-29 of the Securities Act to require persons who render services as an investment advisor to register with the State Securities Board. The Act further makes the failure to do so while providing such services a felony punishable by a fine of not more than \$5,000 and by imprisonment from two to 10 years. Section 4 of the Act revises Article 581-32 of the Securities Act to allow equitable relief for victims of fraudulent practices.

Venue

Subject: Venue in Prosecution of Identity Theft
HB 254
Effective Date: September 1, 2003

Act creates Article 13.28, Code of Criminal Procedure, which allows prosecution for identity theft to be brought in either the county in which the offense was committed—as provided under previous law—or the county of residence of the victim.

Act only applies to offenses committed on or after September 1, 2003.

Subject: Venue for Offense of Escape
HB 42
Effective Date: September 1, 2003

Act adds Article 13.28, Code of Criminal Procedure, which allows

prosecution for the offense of Escape either in the county of the escape or in the county of the original prosecution for which the escapee was placed in custody.

Before this Act’s passage, the only county to have jurisdiction over the offense of Escape would be the county the escape occurred in. This created a burden on counties with prisons and prevented counties that originally prosecuted the offender—thus having the greater amount of knowledge of the offender—from having an opportunity to handle the escape prosecution. This Act provides that the original sentencing county or the county in which the escape occurred can prosecute the escape.

Act only applies to offenses committed on or after September 1, 2003.

Etc.

Subject: Readable Information on a Driver’s License
SB 1445
Effective Date: September 1, 2003

Act amends Section 521.126, Transportation Code, which governs the electronically readable information included on a driver’s license, commercial driver’s license, or personal identification certificate. The Act makes it a Class A misdemeanor to access, use, compile, or maintain a database of the electronically readable information. The exempted parties to the above are DPS employees and officers, peace officers as defined by Article 2.12, Code of Criminal Procedure, deputies of the Parks and Wildlife, persons authorized by Section 109.61, Alcoholic Beverage Code, and financial institutions who are verifying identification.

Transferring data from a peace officer that has issued a citation and scanned the data arguably would not be in violation of this Act. But, the Act may create a Class A misdemeanor for non-peace officer municipal court employees to scan driver’s licenses for walk-up defendants.

Subject: Sign Removal Mandated to Be Completed within a Year
SB 656
Effective Date: September 1, 2003

Act revises Sections 216.003 and 216.010, Local Government Code. It simplifies the procedure for municipalities requiring businesses to remove signs in cases where the sign owner is no longer in residence or business at the sign’s location.

Subject: Registered Sex Offenders and Sexually-Oriented Businesses
HB 155
Effective Date: September 1, 2003

Act adds Chapter 46, Business and Commerce Code, which, through several provisions, makes employing a registered sex offender at a sexually-oriented business a Class A misdemeanor. Specifically, the Act prohibits a sex offender from owning such a business in whole or in part, from serving as a director, officer, operator, manager, or employee of such a business. Further, the Act provides that such a business may not contract with a sex offender in the capacity of an independent contractor to perform any of the functions prohibited.


Subject: Authorization of Background Checks for Information Technology Personnel in State Government
HB 1075
Effective Date: September 1, 2003

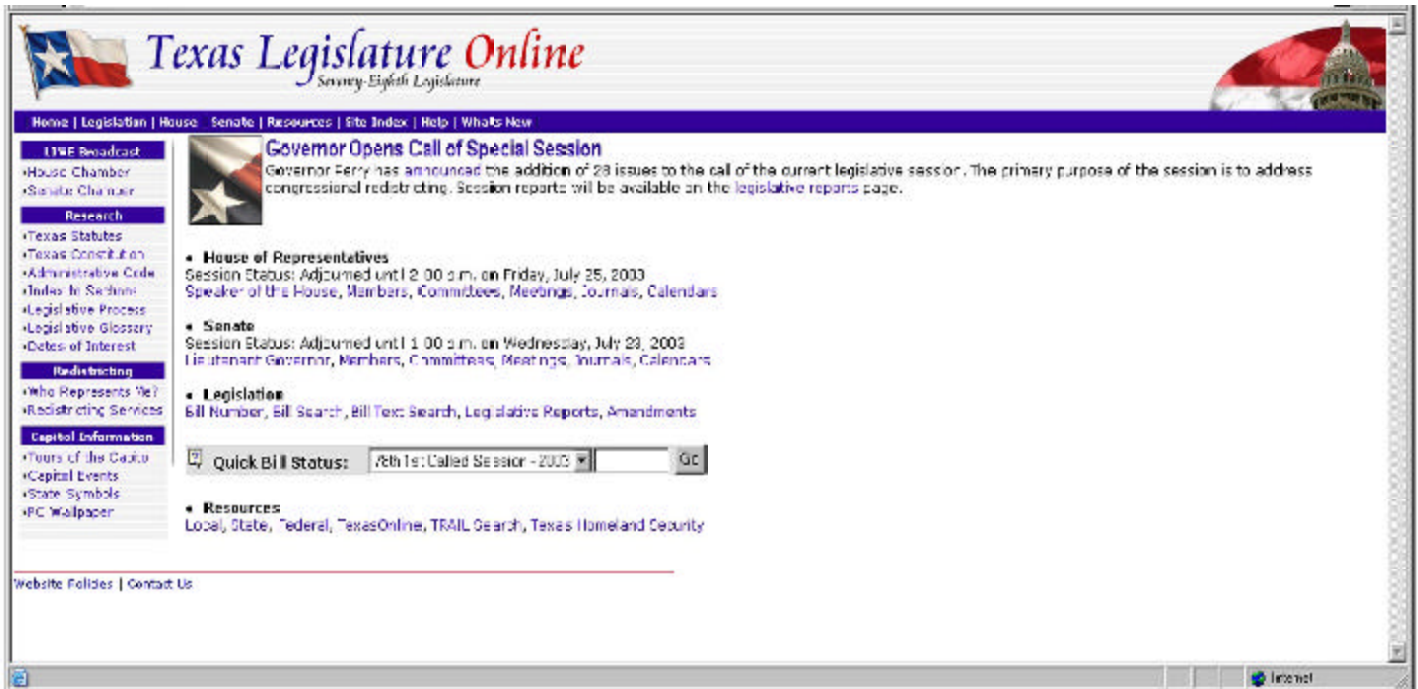
Act adds Section 411.1405, Government Code, which provides for background checks of state personnel in information technology positions in state government.

“State agencies” are defined in the Act to include state courts created by the Constitution or statute. This should include municipal courts. This Act applies to any employee, applicant for employment, contractor, subcontractor, intern, or other volunteer with the State. The employee must have access to information resources or technologies. Anything more than a telephone or “stand

alone” computer would be included.

Any criminal background information obtained under this provision may not be released except by court order, by consent of the person who is the subject of the information, or unless the information was obtained from the FBI. Any criminal background information obtained under this Act must be destroyed after the information is used.

No agency may obtain information under this Section, unless it has formulated policies and procedures that ensure that such information does not automatically disqualify an applicant from consideration. The use policy must also comply with other policies in the Act. The Texas Attorney General, who may charge a fee for the review, must review these policies. 



This is the home page for Texas Legislature Online. This site has an enormous amount of information about the Texas Legislature, the legislative process, and pending and passed legislation. You can use the “Quick Bill Status” feature to view the bill text and information on any bill in the regular or special sessions.

Juvenile Legislation Affecting Justice, Municipal Courts, and School Attendance Issues

Ryan Kellus Turner, Program Attorney & Deputy Counsel, TMCEC

During FY 2002, Texas municipal courts alone adjudicated more than 270,000 juvenile cases.¹ While municipal courts are commonly associated with traffic violations, in FY 2002 such violations constituted only 38 percent of the total number of juvenile cases adjudicated by Texas municipal courts.²

While juvenile activity in municipal courts actually fell by three percent in FY 2002, the total volume of juvenile cases adjudicated by municipal and justice courts (collectively known as local trial courts of limited jurisdiction) frequently dominates dockets and often depletes the insufficient resources allocated by local governments. The considerable task of adjudicating juveniles in local trial courts is frequently hindered by either the inadequate support or involvement of juvenile courts in enforcing local trial court orders.

While SB 1432 and HB 1118, passed during the 77th Legislature, improved the status quo, additional legislation was needed to resolve conflicts between the two bills and to further clarify the differences between criminal and civil school attendance laws. Furthermore, a growing number of judges, attorneys, and policymakers believed it was time for the Legislature to consider how the State should handle young offenders who enter adulthood with outstanding judgments in municipal and justice courts.

In terms of addressing these and other local trial court issues, HB 2319 (effective September 1, 2003) is one of the most significant pieces of legislation to be passed by the Texas

Legislature. The following section-by-section analysis summarizes HB 2319's content with particular emphasis on how it affects municipal and justice courts. Unless specifically noted otherwise, all references are to HB 2319.

I. Chapter 45 of the Code of Criminal Procedure

A. Capias Pro Fines (Section 31)

This amendment to Article 45.045, Code of Criminal Procedure provides that municipal and justice courts may, subject to conditions, use *capias pro fine* warrants to enforce their judgments upon adults who have outstanding judgments incurred prior to reaching the age of majority.

In recent years, local trial court judges have been inundated with increasing numbers of juveniles in their courts. State law has provided limited enforcement options for such judges and even fewer procedural guidelines. In response, some courts have hesitated to compel enforcement of their orders upon juveniles. A limited number of courts have waited for the juvenile to reach adulthood before making any effort to bring about compliance. Consequently, years could pass before the court took action to enforce its orders. While debatably unethical, this practice, known as a "birthday party," has neither been prohibited nor authorized under Texas law.

Notably, this amendment prohibits "surprise birthday parties." At the same time, however, it puts into place a new framework of procedures for ensuring that individuals cannot avoid

the rule of law merely by becoming adults. For the first time, municipal judges and justices of the peace are expressly authorized to use *capias pro fines* for misdemeanants who are JNA (juveniles now adults). To legally use such enforcement measures, however, judges may not simply wait for the child to become an adult. Rather, the amendment mandates that municipal and justice courts make specific determinations and utilize their juvenile contempt authority prior to enforcing their judgments via *capias pro fines*.

B. Juvenile Contempt (Section 32)

This change, which amends Article 45.050, Code of Criminal Procedure, is part of a consolidation effort to move all juvenile contempt provisions into Chapter 45 of the Code of Criminal Procedure. In conjunction with changes made to the Family Code and Education Code, this amendment clarifies that school attendance-related contempt and all other offense within the jurisdiction of the courts, are to be handled under the same Code of Criminal Procedure provisions as other cases involving contemptuous conduct in municipal and justice court.

Enforcement-related provisions, previously contained only in the Family Code, are now incorporated into Article 45.050, Code of Criminal Procedure. With the consolidation of the two statutes, enforcement provisions are removed from the Family Code. These changes make it clear that cases in which the person was arrested before becoming 17 but was convicted after 17 are subject to the contempt of court protections that

apply when the conviction occurred before age 17. Finally, this amendment codifies years of Texas case law holding that contemnors must be given a meaningful opportunity to be heard.

Notably, as amended, if the municipal or justice court opts not to refer the case to juvenile court for delinquent conduct, juvenile contemnors may face the imposition of either a fine, the loss of driving privileges, or both. Former law only allowed for one of the two sanctions.

See also, Part IV. (A) Suspension or Denial of Driver's License on Order of Municipal or Justice Court for Contempt of Court; Reinstatement.

C. Juvenile Case Managers (Sections 3, 61, and 33)

These amendments resolve the conflict, created during the 77th Legislature, of having two articles numbered 45.054 in the Code of Criminal Procedure. Section 61(4) repeals Article 45.054 added in 2001 by HB 1118. Section 33 amends Article 45.056 of the Code of Criminal Procedure to authorize the employment of juvenile case managers to provide services in all cases involving children in justice and municipal court, not just school attendance-related violations. Section 3 makes a conforming change to Section 51.08(d), Family Code (pertaining to mandatory transfer to juvenile court).

Related Legislation:

Failure to Attend School in Certain Rural County Juvenile Courts HB 829 Effective Date: September 1, 2003

This amendment allows juvenile courts in counties with a population of less than 100,000 to utilize juvenile case managers in the same manner as municipal and justice courts. Notably, for the first time, other Texas courts will potentially utilize Chapter 45 (containing procedures expressly

written for municipal and justice courts).

D. Procedures Pertaining to "Offenses Committed by Juveniles" (Section 34)

This amendment of Article 45.057, Code of Criminal Procedure, is designed to address various juvenile-related problems experienced by municipal and justice courts. First, it holds parents of children accused of traffic offenses responsible for appearing with their child in the same manner as in the adjudication of all other fine-only offenses. As revised, the parents' failure to appear with their child, when their child is accused of a traffic offense, is also a Class C misdemeanor. This amendment incorporates the definition of "parent" from the Education Code that includes anyone standing in parental relation. It also eliminates the requirement that the court first find that the parent actually contributed to or encouraged the child's misconduct before ordering the parent to do something to help the child comply with court orders.

A major problem in municipal and justice courts is that neither youthful offenders nor their parents or guardians are under any obligation to keep the court advised of their current residency and place of address. This amendment makes it the responsibility of both the youth and their parent or guardian to keep the court advised of the place of residence. Violation of this obligation is a Class C misdemeanor.

E. Unadjudicated Children, Now Adults; Notice on Reaching Age of Majority; Offense (Section 35)

This amendment adding Article 45.060 of the Code of Criminal Procedure, in conjunction with changes to Article 45.045, addresses the problems associated with youthful offenders who, despite the courts best efforts, either cannot be located or who refuse to appear as ordered by the court.

This new provision expressly prohibits young adults accused of fine-only offenses while children from being subjected to arrest and detention in secured custody upon reaching the age of majority. If, however, upon reaching the individual's 17th birthday, the court has made efforts to secure the child's appearance to no avail, a notice of continuing obligation to appear may be issued to the misdemeanor via personal service or mail. Failure to appear as required by the notice would constitute an additional offense (a Class C misdemeanor). Since the individual failing to appear as ordered is now an adult, the court would have the authority to issue a warrant for the individual to be taken into secured custody.

II. Education Code: School Attendance (Sections 38 and 40)

Although the Code Construction Act suggests that section names are not to be used in interpreting the law, the fact remains that both law trained and non-law trained users give weight to the name of such sections. These changes clarify the intent of the Legislature in the last session, specifically, that "school attendance" offenses as defined in the Education Code are criminal subject matter. Such offenses are legally distinguishable from truancy, which is a civil subject matter. Accordingly, the amendments made in these sections change all references to "truancy" or "truancy-related" to either "non-attendance" or "school attendance-related."

Related Legislation:

Failure to Attend School in Certain Rural County Juvenile Courts HB 829 Effective Date: September 1, 2003

Failure to Attend School Procedures in Certain Rural-County Juvenile Courts - During the 77th Texas Legislature, changes were made with regard to jurisdiction of criminal school

attendance cases. The intent of the 77th Legislature was to give the juvenile courts in counties with populations of less than 100,000 the necessary jurisdiction and sentencing authority for school attendance cases and the authority to utilize applicable provisions from Chapter 45 of the Code of Criminal Procedure. Article 45.054 is amended to further clarify the Legislature's intent. It also adds juvenile courts to the list of courts authorized to force the parent of an individual to attend a class for students at risk of dropping out of school.

Creation of Magistrate Courts to Adjudicate School Attendance Violations in Certain Counties SB 358

Effective Date: September 21, 2003

Currently, only municipal courts, justice courts, and juvenile courts with a county population of less 100,000 have concurrent original jurisdiction of criminal school attendance violations. Such criminal violations are legally different from truancy, which is a civil matter. SB 358 modifies the Education Code, Family Code, Government Code, and Code of Criminal Procedure to allow the county judge of a county with a population of two million or more to appoint magistrates to hear criminal school attendance cases, with the county judge retaining final authority over the decision rendered by the magistrate. Additionally, this bill adds such magistrate courts to the list of courts with concurrent, original jurisdiction of criminal school attendance and related violations.

III. Government Code: Juvenile Data: Justice, Municipal, and Juvenile Courts (Section 43)

In order to assist policy makers and the judiciary in more effectively analyzing and addressing school attendance issues, uniform and comprehensive data is needed. Such

data does not currently exist. This section amends Subchapter C, Chapter 71, Government Code, by adding Section 71.0352, authorizing the Office of Court Administration to collect additional juvenile-related data in order to better ascertain: (1) the volume of school attendance and truancy cases throughout the state; (2) the number of justice, municipal, and juvenile courts adjudicating such cases; (3) what measures are most frequently being used by the local trial courts to adjudicate "chronic truants"; and (4) the number of school attendance cases being referred to juvenile court.

IV. Transportation Code

A. Suspension or Denial of Driver's License on Order of Municipal or Justice Court for Contempt of Court; Reinstatement (Sections 54, 55, 56)

During the 77th Legislature, municipal and justice courts were authorized to impose an indefinite lien on the driving privileges of contemptuous juveniles. Legislation, however, was not passed specifically authorizing DPS to impose such a sanction. Accordingly, Subchapter O, Chapter 521, Transportation Code, is amended by adding Section 521.3451, specifically giving DPS such statutory authority and clarifying that such orders remain in effect until the contemnor complies with the courts order, regardless of the contemnor's age. These changes also specifically require DPS to reinstate a suspended license or permit or remove a denial of a license or permit when notified by the court that ordered the suspension or denial that the contemnor has fully complied with its orders.

In light of Section 521.3451 of the Transportation Code, amendment to Article 45.050 of the Code of Criminal Procedure, and the streamlining of Chapter 729 of the Transportation Code, a conforming

change is made to Sections 521.201 and 521.294 of the Transportation Code. Presumably, rather than reporting the defendant's default, municipal and justice courts must now proceed to revoke the juvenile's driving privileges via contempt.

See also, Part I (B) Juvenile Contempt.

B. Chapter 729, Operation of a Motor Vehicle by a Minor (Sections 1, 54, 55, 57, 58, 59, 60)

Much of Chapter 729 of the Transportation Code, operation of a motor vehicle by a minor, in light of more recent legislation, is redundant, antiquated, and unnecessary. With few exceptions, most of the amendments to this chapter repeal provisions that are addressed elsewhere in Texas law. The consolidation effort resulted in the following notable changes:

Section 729.001(a), Transportation Code, as amended clarifies that juvenile court have jurisdiction over two new traffic offenses that are punishable by confinement in jail if committed by an adult (Driving while License Invalid and Duty on Striking Fixture or Highway Landscaping). Corresponding conforming changes are made to Section 51.02(16), Family Code and Penal Code, Section 8.07(a).

Section 729.003, Transportation Code, as amended deletes "AND JURISDICTION" from the heading related to procedure in cases involving minors.

Section 729.003(d), Transportation Code, as amended deletes the number from this provision related to reports to the Department of Public Safety of persons charged with traffic offenses who do not appear in court and to denial of their driver's license renewal. Other provisions in this section are repealed.

Section 543.117, Transportation Code, is amended to delete a reference to repealed Section 729.004.

C. Juvenile Driver's Permit

HB 1032

Effective Date: September 1, 2003

Section 521.271(a), Transportation Code, is amended to provide that an instruction permit expires on the second, rather than the first, birthday of the license holder occurring after the date of the application. Under current law, an instruction permit expires on the driver's license applicant's next birthday after being issued the permit. However, applicants are required by law to hold the instruction permit for six months and some applicants' next birthdays will fall within that six-month period. While these individuals are compelled by current law to return to the DPS to renew their instruction permits by their birthday, many applicants believe that their instruction permit expires at the end of the mandatory six-month holding period and, based on this belief, fail to renew the permit and operate with an expired permit after their birthday. This amendment provides that an instruction permit expires on the second, rather than the first, birthday of the license holder occurring after the date of the application.

V. Family Code: Juvenile Custodial Issues (Sections 8 and 9)

Section 52.01(a), (c) & 52.02(a), Family Code, as amended authorizes a law enforcement officer to take a child into custody if the officer has

probable cause to believe the child has violated a probation condition and to bring the child to juvenile court intake.

Section 54.011, Family Code, "Detention Hearings for Status Offenders and Nonoffenders; Penalty," is amended by adding Subsection (f). The amendment provides that except as provided by Subsection (a), a nonoffender, including a person who has been taken into custody and is being held solely for deportation out of the United States, may not be detained for any period of time in a secure detention facility or secure correctional facility, regardless of whether the facility is publicly or privately operated. A nonoffender who is detained in violation of this subsection is entitled to immediate release from the facility and may bring a civil action for compensation for the illegal detention against any person responsible for the detention. A person commits an offense if the person knowingly detains or assists in detaining a nonoffender in a secure detention facility or secures correctional facility in violation of this subsection. An offense under this subsection is a Class B misdemeanor. Section 54.011(f), Family Code, as added by this Act, applies only to a nonoffender who is detained in a secure detention facility or secure correctional facility on or after the effective date of the amendment. A nonoffender who is detained in a secure detention facility

or secure correctional facility before the effective date of this Act is not entitled to bring a civil action under Section 54.011(f), Family Code.

VI. Repeals (Sections 61)

The following laws are repealed:

Family Code, Section 52.027, repeals provision related to children taken into custody for traffic offenses because it overlaps Article 45.058, Code of Criminal Procedure, enacted in 2001.

Family Code, Section 54.023, repeals provision related to enforcement in justice and municipal court because its content was moved to Chapter 45 of the Code of Criminal Procedure in 2001.

Transportation Code, Section 729.003(a), (b), (c), (e), and (g) and Section 729.004, repeals redundant and unnecessary provisions that are addressed elsewhere in Texas law.

Code of Criminal Procedure, Section 45.054, repeals redundant provision related to the employment of case managers to juvenile cases in justice and municipal court. (See earlier, Part I(c).)

¹ *Annual Report of the Texas Judicial System, Fiscal Year 2002*, Office of Court Administration, Austin, Texas at 366.

² *Id.* During the same period of time juvenile courts adjudicated a total of 69,125 cases. ✍

CORRECTION

The following page is a corrected page of the MOEP printed in the July 2003 issue of *The Recorder*. Please copy it and insert this page in the earlier version.

Duration of Order:

This Order is effective upon issuance and shall remain in full force and effect until midnight on _____, _____ (this date should be no less than 31 and up to 61 days from the date of issuance).

Signed at _____ a.m./p.m. on this day of _____, 20_____.

Judge Presiding, _____

WARNING

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

WARNING UNDER FEDERAL LAW

THIS ORDER IS ENFORCEABLE IN ALL FIFTY STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS AND U.S. TERRITORIES. 18 U.S.C. §2265

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES. 18 U.S.C. §§ 2261, 2262

POSSESSION, TRANSPORTATION OR RECEIPT OF A FIREARM WHILE THIS ORDER REMAINS IN EFFECT MAY BE A FELONY UNDER FEDERAL LAW PUNISHABLE BY UP TO TEN YEARS IN PRISON AND/OR A FINE.

Duración de la Orden:

Esta orden toma efecto en el momento que es emitida y se mantendrá válida hasta la media noche del día _____, 20_____ (no menos de 31 y no más de 61 días de la fecha que fue emitida).

Firmada a la(s) _____ a.m./p.m. en este día de _____, 20_____.

Juez Presidiendo, _____

ADVERTENCIA

ES UNA VIOLACIÓN DE ESTA ORDEN COMETER UN ACTO PROHIBIDO POR LA ORDEN, Y PUEDE SER CASTIGADO CON UNA MULTA DE NO MÁS DE \$4,000 O SIENDO ENCARCELADO POR UN PERIODO DE NO MÁS DE UN AÑO O AMBOS. UN ACTO QUE RESULTA EN VIOLENCIA FAMILIAR O UNA OFENSA DE ACECHAMIENTO, PUEDE SER ENJUICIADO POR SEPARADO COMO UN DELITO MENOR O UN DELITO GRAVE. SI UN ACTO ES ENJUICIADO COMO UN DELITO GRAVE POR SEPARADO, SERÁ CASTIGADO CON ENCARCELAMIENTO EN UNA PRISIÓN POR UN PERIODO DE NO MENOS DE DOS AÑOS. POSESIÓN DE UN ARMA DE FUEGO POR UNA PERSONA QUE NO SEA UN OFICIAL DE LA PAZ, COMO ES DEFINIDO EN LA SECCIÓN 1.07, DEL CÓDIGO PENAL, QUE ESTÁ PARTICIPANDO DE MANERA ACTIVA COMO EMPLEADO DE TIEMPO COMPLETO DE UNA AGENCIA ESTATAL O UNA SUBDIVISIÓN POLÍTICA, QUE HAYA SIDO JURADO BAJO LA LEY, QUE ES SUJETO A ESTA ORDEN, PUEDE SER ENJUICIADO CON UNA OFENSA POR SEPARADO Y CASTIGADA CON ENCARCELAMIENTO.

NINGUNA PERSONA, INCLUYENDO A LA PERSONA QUE ES PROTEGIDA BAJO ESTA ORDEN, PUEDE DAR PERMISO QUE ALGUIEN IGNORE O VIOLE CUALQUIER PROVISIÓN DE ESTA ORDEN. DURANTE EL PERIODO QUE ESTA ORDEN ES VÁLIDA, TODAS LAS PROVISIONES DE ESTA ORDEN SERÁN TOTALMENTE ENFORZADAS A MENOS QUE LA CORTE CAMBIE LA ORDEN.

ADVERTENCIA BAJO LA LEY FEDERAL

ESTA ORDEN ES ENFORZADA EN LOS CINCUENTA ESTADOS, EL DISTRITO DE COLUMBIA, TIERRAS TRIBALES Y TERRITORIOS DE LOS ESTADOS UNIDOS. 18 U.S.C. §2265

VIOLACIÓN ENTRE-ESTATAL DE ESTA ORDEN PUEDE SOMETER AL ACUSADO A CRIMENES PENALES EN EL ÁMBITO FEDERAL. 18 U.S.C. §§ 2261, 2262

TMCEC FY04 Academic Calendar

| Seminar Dates | School | Hotel/City | Address & Telephone |
|---------------|--|--|--|
| 9/22-26/03 | 32-Hour New Clerks | Lakeway Inn Austin | 101 Lakeway Drive 78734 512/261-6600 |
| 10/28-29/03 | 12-Hour Regional Clerks | Holiday Inn Select Tyler | 5701 S. Broadway 75703 903/561-5800 |
| 10/30-31/03 | 12-Hour Regional Judges | Holiday Inn Select Tyler | 5701 S. Broadway 75703 903/561-5800 |
| 11/13-14/03 | 12-Hour Regional Judges/Clerks | Lakeway Inn Austin | 101 Lakeway Drive 78734 512/261-6600 |
| 11/20-21/03 | 12-Hour Low Volume Judges/Clerks | Days Inn Brownwood | 515 East Comemrce Street 76801 325/646-2551 |
| 12/15-19/03 | 32-Hour New Judges/Clerks | Omni Austin Hotel Downtown Austin | 700 San Jacinto @ 8th Street 78701 512/476-3700 |
| 1/6-7/04 | 12-Hour Regional Judges/Clerks | Adam's Mark San Antonio | 111 Pecan Street East 78205 210/354-2800 |
| 1/15-16/04 | 12-Hour Special Topics Judges (<i>Evidence</i>)/ Prosecutors | Omni Dallas Parkwest | 1590 LBJ Freeway 75234 972/869-4300 |
| 1/27-28/04 | 12-Hour Low Volume Judges/Clerks | La Posada Laredo | 1000 Zaragoza Street 78040 956/722-1701 |
| 2/3-4/04 | Court Administrators/ Bailiffs and Warrant Officers | San Luis Resort & Conference Center Galveston | 5222 Seawall Boulevard 77551 409/744-1500 |
| 2/19-20/04 | 12-Hour Regional Judges/Clerks | Doubletree Lincoln Centre Dallas | 5410 LBJ Freeway 75240 972/934-8400 |
| 2/25-27/04 | Level III Clerk Certification Assessment Clinic | San Marcos (Venue TBD) | |
| 3/10-11/04 | 12-Hour Low Volume Judges/Clerks | The Fredonia Hotel Nacogdoches | 200 N. Fredonia Street Nacogdoches 75961 936/564-1234 |
| 3/24-25/04 | 12-Hour Regional Judges/Clerks | Sofitel Houston | 425 N. Sam Houston Pkwy 77060 281/445-9000 |
| 4/7-8/04 | 12-Hour Regional Judges/Clerks | Ambassador Hotel Amarillo | 3100 I-40 West 79102 806/358-6161 |
| 5/4-5/04 | 12-Hour Prosecutors | Radisson Resort South Padre Island | 500 Padre Blvd. 78597 956/761-6511 |
| 5/6-7/04 | 12-Hour Clerks | Radisson Resort South Padre Island | 500 Padre Blvd. 78597 956/761-6511 |
| 5/10-11/04 | 12-Hour Attorney Judges | Radisson Resort South Padre Island | 500 Padre Blvd. 78597 956/761-6511 |
| 5/12-13/04 | 12-Hour Non-Attorney Judges | Radisson Resort South Padre Island | 500 Padre Blvd. 78597 956/761-6511 |
| 6/15-16/04 | Special Topics Judges (<i>Magistrate</i>)/ Court Administrators | Hyatt Regency Austin | 208 Barton Springs 78704 512/477-1234 |
| 6/24-25/04 | Bailiffs and Warrant Officers | Inn of the Hills Kerrville | 1001 Junction Highway 78028 830/895-5000 |
| 7/6-7/04 | 12-Hour Regional Judges/Clerks | Camino Real El Paso | 101 S. El Paso Street 79901 915/534-3000 |
| 7/19-23/04 | 32-Hour New Judges/Clerks | Lakeway Inn Austin | 101 Lakeway Drive 78734 512/261-6600 |
| 7/30-1/04 | Level III Clerk Certification Assessment Clinic | Doubletree Dallas | 8250 North Central Expressway 75206 214/691-8700 |

TMCEC 2003-2004 REGISTRATION FORM

Program Attending: _____ Program Dates: _____
[city]

- I will attend the pre-conference class on *Bond Forfeitures*. I will attend the *New Prosecutor Trial Advocacy* track at the Prosecutor Skills Seminar.
 Judge Clerk Court Administrator Bailiff/Warrant Officer* Prosecutor

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

Last Name: _____ First Name: _____ MI: _____
Names also known by: _____ Male/Female: _____
Position held: _____
Date Appointed/Elected/Hired: _____ Years Experience: _____
Emergency Contact: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.
 I need a room shared with a seminar participant. Please indicate roommate by entering seminar participant's name:
_____ (Room will have 2 double beds.)
 I need a private double-occupancy room, but I'll be sharing with a guest. (I will pay additional cost, if any, per night.)
I will require: 1 king bed 2 double beds
 I do not need a room at the seminar.

Date arriving: _____ Arriving by: Car Airplane Smoker Non-Smoker

COURT MAILING ADDRESS

It is TMCEC's policy to mail all correspondence directly to the court address.

Municipal Court of: _____ Mailing Address: _____
City: _____ Zip Code: _____ Email: _____
Office Telephone #: _____ Court #: _____ FAX #: _____
Primary City Served: _____ Other Cities Served: _____

Attorney Non-Attorney Full Time Part Time

Status: Presiding Judge Associate/Alternate Judge Justice of the Peace Mayor
 Court Clerk Deputy Clerk Court Administrator Warrant Officer/Bailiff*
 Prosecutor
 Assessment Clinic (A registration fee of \$100 must accompany registration form.)
 Other: _____

***Warrant Officers/Bailiffs: Municipal judge's signature required to attend Warrant Officers/Bailiffs program:**

Judge's Signature _____ Date: _____
Municipal Court of _____

I certify that I am currently serving as a municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on pages 16-17 in the Academic Schedule. Payment is required ONLY for the assessment clinics; payment is due with registration form. Participants in the assessment clinics must cancel in writing two weeks prior to seminar to receive refund.

Participant Signature _____

Date _____

Introduction continued from page 1

ended before the bill was enrolled and it died. In a second special session, the House has already passed HB 25, which is very similar to SB 21. The law in those areas is subject to change day to day. The special sessions pose a unique situation for the Center, because it is a little hard to update you on legislative events that have not happened yet. Please keep an eye on later publications for information on the special session. Also, keep an eye on the TMCEC web site (www.tmcec.com) and the Texas Legislative Service web site (www.capitol.state.tx.us) for up-to-date information.

No one loves change, especially when someone else imposes the change. Some part of your job probably got harder. With any luck, some part of your job also got easier, or at least clearer. It is my hope that these materials help you through the storm.

Part of the reason I loved West Texas thunderstorms was that the air was always so clean (especially for West Texas) after the big gully washer. I wish you clear skies and smooth transition until the next legislative thunderstorm rolls through. 🌩️

Missed the TMCEC Legislative Updates?

Not so fast! By August 20th, you can access the streaming video, the multimedia presentations, and the course materials via the TMCEC website: www.tmcec.com.

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

TMCEC MISSION STATEMENT

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

Change Service Requested