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# 2015 LEGISLATIVE UPDATE

## Courts, Court Costs, and Administration of Justice

### **H.B. 7**

**Subject: Reducing the Driver Responsibility Surcharges for Certain Offenses**

**Effective: September 1, 2015**

H.B. 7 modifies fees, eligible uses of funds, procedures, and other provisions governing general revenue dedicated funds and accounts.

The bill amends Section 708.104 of the Transportation Code by reducing the driver responsibility program surcharges for the offenses of driving without a valid license and driving with no insurance if drivers came into compliance with the law within 60 days of their offense.

Both surcharges are halved, reducing the surcharge to \$125 for not having valid insurance and to \$50 for driving with an invalid license. These changes apply to surcharges pending on September 1, 2015, regardless of when the surcharge was assessed.

**TMCEC:** The Driver Responsibility Program survives another Session. Nevertheless, with growing opposition on both sides of the aisle and the changes made by H.B. 7, the 84th Legislature may, in retrospect, mark the beginning of the end of Driver Responsibility surcharges.

### **H.B. 408**

**Subject: Prohibiting Elected Officials from Collecting Pension while in Office**

**Effective: June 19, 2015**

*Court Costs continued on pg. 5*



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## ABOUT THIS ISSUE

### A NOTE TO OUR READERS

Please note that when the bill summaries refer to the "current law," they are referring to the law as it exists at the time of this publication and not as it will be affected after the Effective Date.

TMCEC could not bring this compilation to you and maintain our educational mission without the assistance of the State of Texas, more specifically, the House Research Organization (HRO), the Senate Research Center (SRC), and the Legislative Budget Board (LBB). While in some instances we have made non-substantive edits and/or adaptations, the bill summaries contained in this compilation are derived from the work product of the State of Texas and the forenamed agencies. We are most appreciative for their efforts.

The bills are categorized in the text by subject matter. A numerical listing of the bills may be found on page 4 and on the TMCEC website (www.tmcec.com). Readers are encouraged to read all bill summaries in order to ascertain local applicability.

Full-text versions of the bills may be found on the TMCEC website or on the Texas Legislature Online website (www.capitol.state.tx.us).

Great appreciation is expressed to Robby Chapman, Mark Goodner, Regan Metteauer, and Ryan Kellus Turner for their work in preparing the bill summaries, as well as to the entire TMCEC staff and our Municipal Court Fellows, Benjamin Gibbs and Breann Hunter, for their outstanding work in offering the FY15 TMCEC Legislative Update.

### ACRONYMS USED IN *THE RECORDER*

CDL	Commercial Driver's License
CLP	Commercial Learner's Permit
CMV	Commercial Motor Vehicle
DSHS	Department of State Health Services
DPS	Department of Public Safety
OCA	Office of Court Administration
ODL	Occupational Driver's License
TEA	Texas Education Agency
TxDMV	Texas Department of Motor Vehicles
TxDOT	Texas Department of Transportation
TJJJD	Texas Juvenile Justice Department
TMCA	Texas Municipal Courts Association
TMCEC	Texas Municipal Courts Education Center
TSLAC	Texas State Library and Archives Commission

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### Interested in Starting a Teen Court?

With a grant from TxDOT, TMCEC, in cooperation with the Georgetown Teen Court and Teen Court

Association of Texas, will be offering a planning meeting for those courts hoping to start a teen court. The meeting will be held in Georgetown on April 4-5, 2016.

If you would like to participate, please contact Ned Minevitz, [ned@tmcec.com](mailto:ned@tmcec.com) or 800.252.3718.

Some travel reimbursement provided.

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Section 813.503 of the Government Code allows a member of the elected class to transfer service credit to the employee class under certain conditions. Under current law, if these members meet specific criteria they may retire from the employee class and receive a service retirement annuity, according to Section 814.104. There is a concern that since elected state officials are stewards of the public trust and taxpayer money, they should not be paid twice by Texas taxpayers.

H.B. 408 amends Section 814.104 of the Government Code to prevent members of the elected class, except a district attorney or criminal district attorney, from transferring their service credited in the elected class to the employee class until they left office. The bill also prevents members of the elected class from retiring and receiving a service retirement annuity that was based on service credit transferred to the employee class from the elected class until they left office.

### **H.B. 445**

**Subject: Providing Notice of the Availability of Paid Leave for Military Service to Public Officers and Employees**

**Effective: September 1, 2015**

Certain public officers and employees who are also members of the Texas military forces, a reserve component of the armed forces, or members of a state or federally authorized urban search and rescue team are given paid leave each fiscal year to fulfill annual training requirements or to engage in certain duties. In some instances unused days of such paid leave are available for use by the officer or employee. Confusion relating to such paid leave is common because an employer is not expressly required to provide written notice of accumulated paid leave days to an eligible employee.

H.B. 445 amends Section 437.202 of the Government Code by adding Subsections (e) and (f), requiring that these employees receive written notice regarding available paid leave. The bill requires the state, a municipality, a county, or another political subdivision of the state to provide to a person who is an officer or employee of such an entity and who

is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team a statement upon employment that contains the number of workdays for which the officer or employee may claim paid leave for certain authorized or ordered training or duty in that fiscal year. Additionally, if the statement is provided to an officer or employee of the state, the net balance of unused accumulated leave designated for such training or duty for that fiscal year that the officer or employee is entitled to carry forward to the next fiscal year and the net balance of all unused accumulated leave designated for such training or duty to which the officer or employee is entitled must be provided.

### **H.B. 685**

**Subject: Production of Public Information via the Internet**

**Effective: September 1, 2015**

H.B. 685 amends Section 552.221 of the Government Code to allow a political subdivision of the state to refer open records requestors to the political subdivision's website in response to the request when appropriate. The bill further outlines the parameters for the referral to a website, including that the referral must be made to a specific internet address, or uniform resource locator (URL), and that the information is identifiable and readily available on the website.

**TMCEC:** Keep in mind that this is an amendment to Chapter 552 (the Texas Public Information Act) which governs records in the possession of municipalities but does not govern information records in the possession of municipal courts. (See, Section 552.0035, Government Code). Perhaps a similar change will be made by the Texas Supreme Court for on-line records in possession of the judiciary.

### **H.B. 786**

**Subject: The Right of a Public Employee to Express Breast Milk in the Workplace**

**Effective: September 1, 2015**

The Fair Labor Standards Act (FLSA), a federal law, was amended in 2010 to require employers with 50 or more employees to provide a reasonable break time for employees to express breast milk for a year after the child's birth. The employer must provide a

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place, other than a bathroom, that is shielded from view and free of intrusion. These provisions only apply to hourly employees, not employees who are exempt from FLSA.

H.B. 786 amends Subtitle A, Title 6 of the Government Code by adding Chapter 619 to create a right for public employees to express breast milk in the workplace and require public employers to make certain accommodations for those employees. Under Section 619.001 of the Government Code, “public employer” means a county, municipality, or another political subdivision of Texas, including a school district, or a board, commission, office, department, or another agency in the executive, judicial, or legislative branch of state government, including an institution of higher education.

Under Sections 619.003 and 619.004 of the Government Code, a public employer is required to provide a reasonable amount of break time for an employee to express breast milk each time the employee needs to and provide a place for the employee to express breast milk, other than a bathroom, that is shielded from view and free from intrusion from other employees and the public. The public employer would be required to write a policy stating that the employer supports the practice of expressing breast milk and that it will make reasonable accommodations for the needs of employees who express breast milk.

Section 619.005 of the Government Code prohibits a public employer from discriminating against, or suspending or terminating the employment of an employee because the employee asserted her right to express breast milk in the workplace. Section 619.006 of the Government Code specifies that the chapter does not create a cause of action against a public employer.

### ***H.B. 866***

**Subject: Exemption from Jury Service of a Person who is the Primary Caretaker of Another Person**

**Effective: September 1, 2015**

Section 62.106(a) of the Government Code outlines the statutory exemptions from serving on a jury. One of these exemptions is for a person who “is the primary caretaker of a person who is an invalid unable to care for himself.” The term “invalid,” while commonly used in the past to refer to a person with a

serious illness or disability, is no longer in common usage. H.B. 866 removes this outdated term from this section of the Government Code.

### ***H.B. 1542***

**Subject: Use of Digital Message Display Systems in Certain Public Facilities**

**Effective: June 16, 2015**

H.B. 1542 amends Subchapter A, Chapter 521 of the Transportation Code, by adding Section 521.0061 and Chapter 1001 of the Transportation Code by adding Section 1001.014. The bill authorizes the Department of Public Safety or the Department of Motor Vehicles to enter into an agreement with a public or private entity for a digital message display system to promote information or news items of general interest in a publicly accessible area of their facilities. A portion of the information displayed on the system, for the purpose of funding the system, may consist of digital advertisements. The department may review and reject any proposed advertising to be displayed on a system.

### ***H.B. 1690***

**Subject: Establishing Procedures for Public Integrity Prosecutions**

**Effective: September 1, 2015**

The Travis County District Attorney established the Public Integrity Unit in 1978 to investigate and prosecute crimes related to state government. Cases include fraud and financial crimes targeting various state programs and public corruption cases against state employees and officials involving offenses in Travis County. The Legislature has funded the unit since the early 1980s. Governor Perry vetoed the unit’s funding for fiscal year 2014-15.

H.B. 1690 amends Chapter 411 of the Government Code by adding Subchapter B-1, creating a public integrity unit. The bill includes the following as offenses against public administration: offenses listed in Title 8 of the Penal Code, such as bribery and coercion, when committed by a state officer or state employee in connection with the powers and duties of the state office or employment; conduct that violates Government Code requirements for the Legislature, House speaker, and lobbyists, including lobbyist registration, campaign finance, and personal financial disclosure requirements; violations of nepotism laws committed by state officers; and violations

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of Election Code regulations of political funds and campaigns committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment. The bill does not limit the authority of the Texas Attorney General to prosecute election law offenses.

Officers of the Texas Rangers are authorized to establish a public integrity unit to investigate formal or informal complaints alleging an offense against public administration. Investigations that demonstrate a reasonable suspicion that an offense occurred shall be referred to a county prosecutor. A prosecutor may request to be recused from a case for good cause. H.B. 1690 removes the Travis County District Attorney from prosecutions for contempt of the Legislature under Section 301.027 of the Government Code.

The bill requires state agencies and local law enforcement agencies to cooperate with public integrity prosecutions by providing information requested by the prosecutor and exempts disclosed information from state public information laws.

***H.B. 2235***

**Subject: Eligibility Requirements of a Notary Public**

**Effective: September 1, 2015**

H.B. 2235 amends Section 406.004 of the Government Code to codify the Attorney General opinion GA-0733 and clarifies that the Secretary of State has no discretion to commission an individual who does not meet the conditions set forth under Section 406.004. The bill requires the Texas Secretary of State to deny the application or revoke the commission of a notary public, if the applicant does not meet the eligibility requirements defined in that section (age, residence, and no final conviction for a crime of moral turpitude).

***H.B. 2290***

**Subject: Designating January as Human Trafficking Prevention Month**

**Effective: September 1, 2015**

The month of January was recently designated by presidential proclamation as National Slavery and Human Trafficking Prevention Month. This designation aided in spreading public awareness and educating individuals on how to avoid becoming a victim

of human trafficking. H.B. 2290 amends Chapter 662 of the Government Code by adding Section 662.107, designating January as Human Trafficking Prevention Month, to increase awareness of human trafficking in an effort to encourage people to alert authorities to any suspected incidents involving human trafficking.

***H.B. 2747***

**Subject: Citizenship Requirement to Serve as a Petit Juror**

**Effective: September 1, 2015**

Under current law, a person may be summoned for jury service when that person is no longer a resident of the summoning county. H.B. 2747 amends Section 62.102 of the Government Code to remedy this situation by having potential jurors correctly note their county of residence by eliminating the word citizen and instead using the term resident, and by requiring the juror be a United States citizen.

**TMCEC:** Qualifications for eligibility to serve on a jury of a municipal court are not controlled by Section 62.102, but rather Section 62.501 of the Government Code. Notably, H.B. 2747 makes no similar changes to Section 62.501.

***H.R. 1142 & H.R. 1143***

**Subject: Municipal Courts Week**

**November 2-6, 2015 and November 7-11, 2016**

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

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The House of Representatives of the 84th Texas Legislature recognizes each of the weeks of November 2-6, 2015 and November 7-11, 2016, as Municipal Courts Week and take special note of the important work performed by all those associated with the state's municipal courts.

**S.B. 287**

**Subject: Bill of Costs Provided to a Defendant and Elimination of Certain Court Fee**

**Effective: June 19, 2015**

Under current law, a cost is not payable by the person charged with the cost until a written bill is produced or is ready to be produced, containing the items of cost, signed by the officer who charged the cost or the officer who is entitled to receive payment for the cost. S.B. 287 amends Article 103.001 of the Code of Criminal Procedure outlining the requirements for a bill of costs to be produced. The requirements for county and district courts are distinct from requirements in municipal and justice courts. In a court **other** than a justice or municipal court, a cost is not payable by the person charged with the cost until a written bill containing the items of cost is: produced; signed by the officer who charged the cost or the officer who is entitled to receive payment for the cost; and provided to the person charged with the cost. In a municipal or justice court, the payment of costs and law governing production of a written bill of costs is unchanged.

The bill also repeals Section 102.101(8) of the Code of Criminal Procedure authorizing the commissioners court of a county with a population of 3.3 million or more (currently only Harris County) to set court costs not to exceed \$7 for each conviction for persons convicted of a Class C misdemeanor in the justice courts.

**TMCEC:** In the waning days of the 84th Legislature, S.B. 287 became the landing pad for legislation that had died earlier in the Session which sought to substantially change the law governing bill of costs in criminal cases. The bill of costs is hardly a new concept in Texas criminal law. It was passed into law on August 23, 1876. The intent of such law is clear: criminal defendants are entitled to an itemization of court costs, a receipt of sorts, signed by an authorized official. The bill of costs was never intended to be a pawn in criminal appellate litigation. However, it became one in 2013. See, Ryan Kellus Turner,

“Costs Payable? *Johnson v. State* and Its Implications on Local Trial Courts of Limited Jurisdiction in Texas” *The Recorder* (March 2013) at 1. Criminal appellate lawyers who had successfully argued bill of costs related matters were issued an apparent defeat when the Court of Criminal Appeals held that a bill of costs does not need to be presented to the trial court before costs can be imposed on conviction. *Johnson v. State*, 423 S.W.3d 385 (Tex. Crim. App. 2014). Supplementing the record on direct appeal with a bill of costs does not violate due process. *Cardenas v. State*, 423 S.W.3d 396 (Tex. Crim. App. 2014).

Ostensibly, the bill of costs provisions in H.B. 287 are intended, in whole or part, to either diminish or overturn *Johnson* and *Cardenas*. While its proponents initially sought to make presenting the defendant a bill of costs a condition precedent for payment of costs in **all** criminal cases. Opposition from municipal and justice courts was too much. The scope of the amendment was narrowed. H.B. 287 requires that a bill of costs be physically provided to a criminal defendant in either a county or district court, but makes no such requirement for municipal and justice courts. At the most, H.B. 287 clarifies what has long been the practice in municipal courts regarding a bill of costs.

**S.B. 306**

**Subject: Information Included in the Annual Report of the State Commission on Judicial Conduct**

**Effective: September 1, 2015**

The State Commission on Judicial Conduct's Annual Report to the Legislature remains the main instrument for the public and the Legislature to determine the extent of fairness and efficiency in the commission's disciplinary process. While current law requires the report to include annual statistical information, the law lacks specificity in this content requirement with respect to the matters for which the data are to be provided.

S.B. 306 amends Section 33.005(b) of the Government Code to specify that the annual statistical information the State Commission on Judicial Conduct is required to include in its annual legislative report is annual statistical information for the preceding fiscal year. Such information includes, in addition to examples of improper judicial conduct,



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the following: (1) the number of complaints received by the commission alleging judicial misconduct or disability; (2) the number of complaints dismissed without commission action, other than investigation, because the evidence did not support the allegation or appearance of judicial misconduct or disability; (3) the number of complaints dismissed without commission action, other than investigation, because the facts alleged did not constitute judicial misconduct or disability; (4) the number of complaints dismissed without commission action, other than investigation, because the allegation or appearance of judicial misconduct or disability was determined to be unfounded or frivolous; and (5) the number of each type of judicial misconduct or disability that resulted in sanction or censure of a judge.

**S.B. 534**

**Subject: The Oath of a Person Admitted to Practice Law in the State of Texas**  
**Effective: May 15, 2015**

S.B. 534 amends Section 82.037(a) of the Government Code relating to the oath of a person admitted to practice law in the State of Texas. S.B. 534 adds the following phrase to the attorney's oath: "conduct oneself with integrity and civility in dealing and communicating with the court and all parties."

**TMCEC:** Albeit an amendment that debatably is mostly aspirational, it is nice to see the Legislature recognizes the need for greater integrity and civility in the legal profession (particularly when it comes to attorneys communicating with courts). Curiously, the bill is silent as to attorneys who have already taken the oath. Then again, nothing in the bill states that attorneys licensed prior to May 15, 2015 are prohibited from retaking the oath. In fact, S.B. 534 provides a unique opportunity for a renewed dialogue about the importance of integrity and civility in the legal profession.

**S.B. 565**

**Subject: Designating the First Week of May as Jury Appreciation Week**  
**Effective: June 16, 2015**

S.B. 565 seeks to pay the appropriate tribute to the many civic-minded Texans who selflessly respond when called to jury duty. The fundamental importance of a trial by jury in our system of justice is demonstrated by its enshrinement in the constitu-

tions of both the United States and Texas. The work of juries is critical to the function of our democracy and without it many of the liberties and freedoms we have as a society would be in jeopardy. The importance of a jury trial and Texas citizens who serve on juries are worthy of special recognition.

S.B. 565 amends Subchapter E, Chapter 662 of the Government Code by adding Section 662.155 to designate the first seven days in May as Jury Appreciation Week in recognition of the outstanding and important contributions made by Texas citizens who serve as jurors.

**TMCEC:** A person who feels appreciated is more likely to do what is expected. Accordingly, municipal courts are encouraged to celebrate Jury Appreciation Week. It not only seems like the right thing to do, it also provides municipal courts a great opportunity to remind people in your municipality of the important legal obligation if called for jury duty.

**S.B. 631**

**Subject: Authority of Certain Contiguous Municipalities to Agree to Extend Municipal Court Jurisdiction**  
**Effective: June 19, 2015**

A municipality with a population of 1.9 million or more may enter into an agreement with another municipality contiguous to that municipality to extend the geographical jurisdiction of municipal courts over certain fine-only offenses. Currently, only cities contiguous to Houston are able to utilize this law.

S.B. 631 amends Article 4.14(f) of the Code of Criminal Procedure and Section 29.003(h) of the Government Code to lower from 1.9 million to 1.325 million the minimum population threshold of a municipality that is authorized to enter into such an agreement with another contiguous municipality.

**TMCEC:** Using current population estimates, lowering this population threshold will also allow cities that are contiguous to the City of San Antonio to take advantage of this law.

**S.B. 664**

**Subject: Employment Termination for Falsification of Military Record in Obtaining Employment or Employment Benefits**  
**Effective: September 1, 2015**

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S.B. 664 amends Title 3 of the Labor Code by adding Chapter 105 authorizing an employer to discharge an employee, whether or not the employee is under an employment contract with the employer, if the employer determines the employee, in obtaining employment or any benefit, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute a fraudulent or fictitious military record offense under Section 32.54 of the Penal Code. The bill establishes that an employment contract entered into as a result of such a falsification or misrepresentation is void and unenforceable as against public policy.

The bill also authorizes an employee under an employment contract who was terminated for falsification or misrepresentation to bring suit against the employer for wrongful termination in a district court in the county in which the termination occurred. Potential relief could include rehiring or reinstatement, payment of back wages, and reestablishment of employee benefits.

***S.B. 740***

**Subject: Assessment of Court Costs and Fees on Conviction of Multiple Offenses or of Multiple Counts of the Same Offense**  
**Effective: September 1, 2015**

Some defendants are convicted of multiple counts of an offense or offenses in a single criminal action. Since criminal court costs are a non-punitive recoupment of the costs of judicial resources expended in connection with the trial of a case, the assessment of court costs on each count may be unnecessary to recoup the costs of judicial resources expended in connection with the trial of the case.

S.B. 740 amends Subchapter C of Chapter 102 of the Code of Criminal Procedure by adding Article 102.073 to authorize a court, in a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, to assess each court cost or fee only once against the defendant. The bill requires in such an action each court cost or fee the amount of which is determined according to the category of offense to be assessed using the highest category of offense that is possible based on the defendant's convictions. The bill establishes that its provisions do not apply to a single criminal action alleging only the commission

of two or more offenses punishable by fine only, effectively excluding courts with jurisdiction of such offenses.

**TMCEC:** This legislation is in direct response to Texas Attorney General Opinion GA-1063. See, commentary, Ryan Kellus Turner and Regan Metteauer, "Case Law and Attorney General Opinion 2015" *The Recorder* (November 2014) at 36. Although GA-1036 did address how courts costs are assessed in county courts when an appeal is from either a municipal court or municipal court of record, it also addressed nine other questions. This bill is in response to part of the opinion addressing assessment of costs in multiple count criminal actions. Although it is possible to have a multiple count criminal action involving a misdemeanor, it is generally believed to exclusively occur in the adjudication of felonies. S.B. 740 was not intended to impact the adjudication of fine-only misdemeanors. However, the language of the bill when introduced (and in subsequent versions) was problematic and alarming to municipal courts' interests. Consequently, a lot of time and energy went into clarifying its inapplicability to fine-only misdemeanors.

***S.B. 1116***

**Subject: A Notice or Document Sent by Mail or Electronic Mail by a Court, Justice, Judge, Magistrate, or Clerk of a Judicial Court**  
**Effective: September 1, 2015**

S.B. 1116 amends Subtitle F, Title 2 of the Government Code by adding Chapter 80, authorizing a court, justice, judge, magistrate, or clerk to send any notice or document using mail or electronic mail. The bill applies to all civil and criminal statutes requiring delivery of a notice or document.

**TMCEC:** This bill lists both authorized and unauthorized methods of communication. Courts will need to take the time to learn them. The exclusion of faxes and facsimiles from the list is possibly the most controversial aspect of this bill. In addition, the bill appears to preclude clerks from searching for alternative email addresses, requiring the use of the email either on file or provided by the defendant. Old problems solved? New problems created? Welcome to the digital age!

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**S.B. 1369****Subject: Reports on Attorney Ad Litem, Guardian Ad Litem, Guardian, Mediator, and Competency Evaluator Appointments Made by Courts in this State****Effective: September 1, 2015**

Courts often appoint an attorney ad litem, guardian, or guardian ad litem to represent or act on behalf of a person who is deemed unable to represent himself or herself, such as a minor, an elderly person, or a person with a disability, and also appoint mediators and competency evaluators in many cases. There is a low compliance rate for an existing Texas Supreme Court order requiring compensation data for judicial appointments to be reported and that this lack of compliance may hamper any investigation into improper activities.

S.B. 1369 amends Subtitle B of Title 2 of the Government Code by adding Chapter 36 to address these issues. Section 36.004 of the Government Code requires the clerk of each court in Texas created by the Texas Constitution, by statute, or as authorized by statute to prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding month. The clerk of a court that does not make an appointment in the preceding month must file a report indicating that no appointment was made by the court in that month. The report on court appointments must include: the name of each person appointed by the court for a case in that month; the name of the judge and the date of the order approving compensation to be paid to a person appointed for a case in that month; the number and style of each case in which a person was appointed for that month; the number of cases for which each person was appointed by the court in that month; the total amount of compensation paid to each person appointed by the court in that month and the source of the compensation; and, if the total amount of compensation paid to a person appointed to serve for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.

**TMCEC:** This bill has become even more relevant

following the passage of H.B. 2398. That bill designates municipal and justice courts as truancy courts and authorizes appointments as contemplated here. This will be new territory to many judges and one more report to be filed by the clerk of the court.

**S.B. 1703****Subject: Deadlines for Certain Processes and Procedures Involving an Election****Effective: September 1, 2015**

The Texas Election Code is hundreds of pages long and has been amended extensively over the years. S.B. 100, which was passed during the 82nd Legislature, Regular Session, 2011, changed the date for transmitting absentee ballots for military and overseas voters. This made the voting process more efficient for military and overseas voters. However, some dates under S.B. 100 were omitted. S.B. 1703 addresses this problem by ensuring consistency in the Election Code.

S.B. 1703 amends current law relating to the deadlines for certain processes and procedures involving a city election. Among other changes, the bill amends Section 143.007(c) of the Election Code and provides that for an election to be held on a uniform election date, the day of the filing deadline is the 78th day before Election Day.

The bill also amends Section 145.092 of the Election Code, to provide that a candidate in a municipal election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 62nd day before election day may not withdraw from the election after 5 p.m. of the 57th day, and to prohibit a candidate in the runoff election from withdrawing from the election after 5p.m. of the third day after the date of the final canvass for the main election.

**S.B. 1876****Subject: Appointment of Attorneys Ad Litem, Guardians Ad Litem, Mediators, and Guardians in Certain Counties****Effective: September 1, 2015**

Under current law, Section 74.092 of the Government Code requires administrative judges in statutory county courts to establish and maintain a list of all attorneys qualified to serve as an attorney ad litem. Judges are required to appoint attorneys ad

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litem on a rotating basis from these lists. There is a broad exception to the appointment requirement for attorneys ad litem appointed under the Family Code, Health and Safety Code, Human Resources Code, Property Code, and Texas Probate Code.

S.B. 1876 amends Subtitle B, Title 2 of the Government Code by adding Chapter 37 to prevent favoritism, cronyism, and nepotism in court appointments. Section 37.003 of the Government Code requires each court in the state to establish and maintain lists of: all attorneys who are qualified to serve as an attorney ad litem and are registered with the court; all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court; all persons who are registered to serve as a mediator; and all attorneys and private professional guardians who are qualified to serve as a guardian. Local administrative judges shall, at the request of a court, establish and maintain these lists for the courts. Multiple lists may be established that are categorized by the type of case and the person's qualifications. The lists shall be posted annually at the courthouse of the county and on any Internet website of the court.

Section 37.004 of the Government Code requires courts to appoint attorneys ad litem, guardians ad litem, guardians and mediators from the lists on a rotating basis, unless the parties agree to the appointment of a different person or the court finds good cause to appoint a different person. The bill establishes that the appointment requirements do not apply to: mediations conducted by an alternative dispute resolution system; appointments of charitable organizations composed of volunteer advocates as guardians ad litem; appointments of attorneys ad litem, guardians ad litem, amicus attorneys, or mediators from a domestic relations office; or a person other than an attorney or professional guardian appointed to serve as a guardian. Presiding judges of statutory probate courts would require local administrative judges to ensure that all statutory probate courts in a county complied with the appointment requirements. The bill also would allow judges of statutory county courts to adopt rules related to the establishment and maintenance of these lists.

**TMCEC:** When introduced, the bill applied to all courts created by the Texas Constitution or by statute. However, after a floor amendment the appli-

cability of the bill to statutory courts (e.g., municipal courts) in counties with a population greater than 25,000 is unclear. (See, Section 37.001(a)). Notably, 60 percent of all counties in Texas have a population of less than 25,000, yet only five percent of the state's population lives in these counties. Ostensibly, municipal courts in these counties are exempt from the new requirement in Chapter 37. Like S.B. 1369, this bill potentially has implications in light of H.B. 2398 which designates all municipal and justice courts as truancy courts. In the event that a municipal or justice court is acting in its capacity as a truancy court, the court may be required to appoint guardians ad litem from a pre-approved list on a rotating basis.

### **S.B. 2065**

**Subject: Rights of Religious Organizations and Individuals Relating to a Marriage that Violates a Sincerely Held Religious Belief**  
**Effective: June 11, 2015**

S.B. 2065 amends Chapter 2 of the Family Code, by adding Subchapter G, Freedom of Religion with Respect to Recognizing or Performing Certain Marriages. Section 2.601 of the Family Code provides that religious organizations, organizations connected to a religious organization, an individual employed by a religious organization while acting in the scope of that employment, or a clergy or minister may not be required to participate in any part of a marriage or celebration of a marriage if it would violate a sincerely held religious belief. Section 2.602 provides that a refusal to provide services, accommodations, facilities, goods, or privileges under Section 2.601 is not the basis for a civil or criminal cause of action or any other action by the state or a political subdivision of this state to penalize or withhold benefits or privileges, including tax exemptions or governmental contracts, grants, or licenses, from any protected organization or individual.

**TMCEC:** Curiously, the Legislature did not define what it meant by "Certain Marriages" in the title of Subchapter G. Clearly, however, the Legislature anticipated that within weeks of the end of Session, the U.S. Supreme Court would issue its opinion in *Obergefell v. Hodges* (decided June 26th, 2015). In *Obergefell*, the Court ruled 5-4 that same-sex couples across the nation have an equal right to marry. What is worth emphasizing about S.B. 2065 is that

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consistent with the Legislature's understanding of separation of church and state, its protections apply only to religious organizations and individuals acting in the scope of their employment with a religious organization. After arduous debate, once again much of it centering on separation of church and state, the Legislature opted not to afford public officials and public employees similar protection under Subchapter G.

## Juvenile Justice and Child-Related Matters

### **H.B. 431**

**Subject: Advisory Committee to Examine and Recommend Revisions to Any State Laws Pertaining to Juvenile Records**  
**Effective: May 28, 2015**

Under Chapter 58 of the Family Code, juvenile records receive the protection of confidentiality. Many juveniles who enter the juvenile justice system go on to lead law-abiding lives as adults with no subsequent criminal history. The confidentiality of their records ensures they have access to work, education, housing, and other opportunities. In addition, the information collected by the juvenile justice system serves an important public safety purpose. However, over time, Chapter 58 has grown more complex, and the confidentiality it was intended to provide has gradually eroded. H.B. 431 directs the Texas Juvenile Justice Department (TJJD) to appoint an advisory body that is instructed to advise the TJJD Board and the 85th Legislature on reforms needed to ensure the continued effectiveness and security of confidential juvenile record-keeping.

### **H.B. 642**

**Subject: Authorizing Minors Charged with Public Intoxication to Attend an Alcohol Awareness or Drug Education Program or Perform Either Alcohol or Drug Related Community Service.**  
**Effective: September 1, 2015**

H.B. 642 amends the Alcoholic Beverage Code and the Code of Criminal Procedure to authorize a judge to require defendants, as a condition of community supervision or deferred disposition for certain alcohol offenses listed in Section 106.071(a) of the Alcoholic Beverage Code, to attend and complete either an alcohol awareness program,

approved under Section 106.115 of the Alcoholic Beverage Code or a drug education program, approved by the Department of State Health Services (DSHS). Two Subsections of Article 45.051 of the Code of Criminal Procedure (Deferred Disposition) are amended. Subsection (b) is amended to authorize a judge, during the deferral period, to require the defendant to participate in an alcohol or drug abuse treatment or education program, such as a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the DSHS in accordance with Section 521.374 of the Transportation Code, or an alcohol awareness program described by Section 106.115 of the Alcoholic Beverage Code. Subsection (g) requires a judge, barring a determination that the defendant is indigent and unable to pay the cost, to require the defendant to pay the cost of attending the program. The judge may however allow a defendant to pay the cost of attending the program in installments during the deferral period.

**TMCEC:** This bill seeks to rectify a dilemma familiar to many judges: state law requires minors accused of Public Intoxication to attend an alcohol awareness course even in instances where the defendant's intoxication was caused by substance other than alcohol (e.g., marijuana, prescription drugs, methamphetamine, etc.). Courts are increasingly aware of the dangerous use of "designer drugs." See, Edward Minevitz, "Designer Drugs: How Drivers Might Be Circumventing Intoxicated Driving Laws" *The Recorder* (January, 2014) at 11. While the amendment to Article 45.051(b)(6) refers to "drug education program" and "alcohol awareness program" it does not refer to "drug and alcohol driving awareness program" (DADAP). Courts should not read too much into the omission. DADAP remains authorized under Section 106.115 as an authorized course for minors placed on deferred disposition despite the omission in Article 45.051(b)(6). Deferred disposition contains a provision that contemplate alternative ways defendants may discharge court costs (Article 45.051(a-1)). However, under current law the statute does not contemplate a defendant's inability to pay for one of the 10 conditions authorized under Article 45.051(b). In the context of alcohol awareness program or drug education program, the possibility is expressly contemplated in the addition of Article 45.051(g). The defendant, if indigent and unable to pay the cost of such programs, may

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pay related costs in installments during the deferral period. What if the defendant is indigent and unable to pay related costs during the deferral period? The language in Subsection (g) provides no answer. In light of *Bearden v. Georgia*, 461 U.S. 660 (1983), and subsequent case law, e.g., *Mathis v. State*, 424 S.W.3d 89 (Tex. Crim. App. 2014), courts are cautioned against ordering conditions that impose additional costs on defendants without consideration of the defendant's ability to pay or providing an alternative means of discharging costs. Ostensibly, alternative means of discharging costs becomes more problematic when it entails third party service providers.

### **H.B. 909**

**Subject: Tasting of Alcoholic Beverages by Students Enrolled in Certain Courses at a Career School or College**

**Effective: September 1, 2015**

Several institutions of higher education in Texas offer programs related to the production of wine, beer, or liquor or culinary programs in which the tasting of alcohol as it relates to food is a part of the instruction. While some states have established an exception to allow students in these courses who are at least 18 years of age, but under 21 years of age, to taste alcohol as it pertains to course work, under current law, Texas has no exception. Without such an exception a student cannot fully participate in the course work, which may result in some students having to delay such course work until they are 21 years of age.

H.B. 909 amends Chapter 106 of the Alcoholic Beverage Code relating to the tasting of alcoholic beverages by students enrolled in certain courses at a public or private institution of higher education or a career school. The crux of the amendment is the addition of Section 106.016 (Exception for Certain Course Work). Corresponding amendments are made to Section 106.05 (Possession of Alcohol by Minor) and Section 106.06 (Purchase of Alcohol for a Minor).

**TMCEC:** Although Section 106.016 creates an "exception for certain course work," H.B. 909 does not contain the "magic words" contained in Section 2.02(b) of the Penal Code ("It is an exception to the

application of"). When such language is used, the prosecution must negate the existence of the exception in the charging instrument and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception. The absence of such language suggests that this exception in H.B. 909 functions like a defense.

### **H.B. 1491**

**Subject: Publication of Confidential Criminal and Juvenile Justice Records of Certain Juveniles; Creating Liability and Civil Penalties**

**Effective: September 1, 2015**

For-profit websites actively collect arrest photos and criminal records in bulk and then post the photos and records online. These photos and records may include personally identifiable information or predisposition arrest information and may never be updated for accuracy or completeness. Photos or records may be displayed along with fallacious or defamatory statements. It is often difficult to remove personal information and some websites charge high fees for removal. A child is unlikely to be able to afford such fees or to have the capacity to pursue court remedies. H.B. 1491 seeks to minimize or eliminate the potential impact of this practice on children by amending Chapter 109 of the Business and Commerce Code (83rd Legislature).

Chapter 109 applies to a business entity that publishes confidential juvenile record information or confidential criminal record information of a child in a manner not permitted by Chapter 58 (Records; Juvenile Justice Information System) of the Family Code, Chapter 45 (Justice and Municipal Courts) of the Code of Criminal Procedure, or other law, regardless of the source of the information or whether the business entity charges a fee for access to or removal or correction of the information. The chapter does not apply to: (1) a statewide juvenile information and case management system authorized by Subchapter E (Statewide Juvenile Information and Case Management System) of Chapter 58 of the Family Code; (2) a publication of general circulation or an Internet website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report; (3) a radio or television station that holds a license issued by the Federal Communications Commission; (4) an entity that provides an

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information service or that is an interactive computer service; or (5) a telecommunications provider.

As amended, Chapter 109 provides that a business entity that publishes information in violation of the chapter is potentially liable to both the person who is the subject of the information and to the State of Texas in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each subsequent day on which the violation occurs. Liability hinges on a business entity receiving written notice and not immediately removing the information. Exceptions to liability are provided in Section 109.0045.

**H.B. 1783**

**Subject: Right of a School Employee to Report a Crime**

**Effective: September 1, 2015**

H.B. 1783 amends Subchapter E-1 of Chapter 37 of the Education Code by adding Section 37.148 which authorizes an employee of a school district or open-enrollment charter school to report a crime witnessed at the school to any peace officer with authority to investigate the crime. A school district or open-enrollment charter school may not adopt a policy requiring a school employee to: refrain from reporting a crime witnessed at the school; or report a crime witnessed at the school only to certain persons or peace officers.

**TMCEC:** Section 37.146(a)(1) of the Education Code requires that a complaint alleging a school offense must, in addition to the requirements of Article 45.019 of the Code of Criminal Procedure, be sworn to by a person with personal knowledge. Ostensibly, this amendment is in response to public schools that have adopted policies that prohibit employees from filing such criminal complaints.

**H.B. 2398**

**Subject: Court Jurisdiction and Procedures Relating to School Attendance and the Authority to Establish a Judicial Donation Trust Fund**  
**Effective: September 1, 2015**

**TMCEC:** The Texas compulsory school attendance law will be 100 years old next year. To understand the significance of H.B. 2398 requires understanding the history surrounding school attendance. “School

attendance was made compulsory in Texas in 1916 and required children between eight and 14 years of age to attend public school for 60 days during the school year, 80 days the following year, and 100 days each year thereafter. Parents (or persons acting in the parental role) were responsible for ensuring that children complied, and children who declined to attend school could be adjudicated by a juvenile court as habitual truants.” Elizabeth A. Angelone, *The Texas Two Step: The Criminalization of Truancy Under the “Failure to Attend” Statute*, 13 SCHOLAR 433, 447-448 (2011). Although Texas in 1993 became one of only two states in the United States to criminalize non-attendance (i.e., Section 25.094, Education Code - Failure to Attend School), truancy remained a civil matter, handled as conduct indicating a need for supervision (CINS) under Section 51.03(b)(2) of the Family Code. Despite the fact that juvenile courts have jurisdiction over CINS petitions alleging truancy, increasingly few CINS cases are actually adjudicated in juvenile court. Due to cost and efficiency, criminal adjudication of Failure to Attend School has all but usurped CINS petitions alleging truancy. The trend favoring criminal prosecution over the last two decades has begged a fundamental question: why should children in Texas be prosecuted for behavior that for most of our state’s history was neither a crime nor something the public believed should consume limited judicial resources?

Eight pieces of legislation aimed at changing the enforcement of Texas’ compulsory school attendance laws were introduced in the 84th Legislative Session. Most of these bills aimed to refine laws on the books. One sought to have municipal and justice courts handle school attendance in the same manner as a juvenile court (i.e., as conduct indicating need for supervision under Title 3 of the Family Code). None of them passed.

It was not until nearly halfway through Session that preparations began for drafting legislation that would not only end the “criminalization of truancy” but also creates an entirely new and unique type of court and set of procedures to handle school attendance cases involving children. The legislation, S.B. 106, authored by Senator John Whitmire, was drafted by the Office of Court Administration. S.B. 106 passed

(continued on page 19)

**TRANSITIONING TO TITLE 3A OF THE FAMILY CODE:  
BEFORE AND AFTER H.B. 2398  
(84th Regular Legislature 2015)**

Issue	Prior to H.B. 2398	After H.B. 2398	Comments
<b>1. Proceedings</b>	Chapter 25, Education Code (EC), Chapter 45, CCP (Criminal Proceedings)	Title 3A, Chapter 65, Family Code (FC) (Civil Proceedings)	Title 3A is contained in Section 27 of HB 2398.
		<b>SUBCHAPTER A: GENERAL PROVISIONS (Sections 65.001-65.017, FC)</b>	
<b>2. Who is the Accused?</b>	“Individual,” Art. 45.054, CCP; age 12-17, Sec. 25.094(a), EC	“Child” age 12-18; Sec. 65.002, FC	Definitions for 3A are in Sec. 65.002, FC.
<b>3. Prohibited Conduct by Student</b>	Sec. 25.094, EC <i>Failure to Attend School</i>	Sec. 65.003, FC: <i>Truant Conduct</i>	Additionally, <i>Truancy</i> , is no longer defined as CINS in Sec. 51.03, FC.
<b>4. Parent Contributing to Non-Attendance</b>	Sec. 25.093, EC	No Change; Still a Criminal Offense	Range of fine subject to new ladder and subject to “interest of justice” dismissal under Art. 45.0531, CCP.
<b>5. Jurisdiction</b>	Various criminal courts and juvenile court (as truancy) Sec. 51.03, FC; Article 4.14; Sec. 29.003, GC.	Sec. 65.004, FC: Exclusive jurisdiction belongs to truancy courts	Unlike in municipal & justice court, there is no permissive/ mandatory transfer from a truancy court to a juvenile court per Sec. 51.08, FC.
<b>6. Court Sessions</b>	No Equivalent Provision	Sec. 65.005, FC	
<b>7. Venue</b>	Sec. 25.094(b), EC	Sec. 65.006, FC	
<b>8. Right to Jury Trial</b>	Art. 1.12, CCP	Sec. 65.006, FC	
<b>9. Waiver of Rights</b>	Art. 1.14, CCP	Sec. 65.008, FC	
<b>10. Effect of Adjudication</b>	No Equivalent Provision	Sec. 65.009, FC	Truant Conduct is not a Crime.
<b>11. Burden of Proof</b>	Art. 38.03, CCP Beyond a Reasonable Doubt	Sec. 65.010, FC Beyond a Reasonable Doubt	
<b>12. Discovery</b>	Art. 39.14, CCP	Sec. 65.011, FC	Sec. 65.0101, FC refers to Art. 39.14, CCP for applicable rules.
<b>13. Procedural Rulemaking Authority</b>	No Equivalent Provision	Sec. 65.012, FC Texas Supreme Court may make additional rules (procedural and for informal disposition)	
<b>14. Interpreters</b>	Art. 38.30, CCP	Sec. 65.013, FC	
<b>15. Digital or Electronic Signatures</b>	Art. 2.26 & 45.012, CCP	Sec. 65.014, FC	
<b>16. Public Access to Court Hearings</b>	Art. 1.24, CCP	Sec. 65.015, FC Hearings are open to public except for good cause shown	Sec. 65.015(b), FC, is patterned after Art. 36.05, CCP (“The Rule”).



Issue	Prior to H.B. 2398	After H.B. 2398	Comments
<b>17. Recording of Proceedings</b>	Chapter 29 & 30, CCP	Sec. 65.016, FC No authorization for recording unless court of record.	Authorization for recording in courts of record is puzzling. Appeals are de novo (Sec. 65.151(b), FC).
<b>18. Juvenile Case Managers</b>	Art. 45.056, CCP	Sec. 65.017, FC	
		<b>SUBCHAPTER B: INITIAL PROCEDURES (Sections 65.051-65.065, FC)</b>	
<b>19. Referral to Court</b>	Sec. 25.0915, EC	Sec. 65.051, FC Referrals and dismissals remain governed by Sec. 25.0915, EC	The provisions of Sec. 25.0915, EC, are substantively revised in Section 9 of the bill.
<b>20. Truant Conduct Prosecutor</b>	Art. 45.201, CCP	Sec. 65.052, FC	
<b>21. Review by Prosecutor</b>	No Equivalent Provision	Sec. 65.053, FC	Intake and review of Truant Conduct is distinct from the rules governing criminal "school offenses" in Sec. 37.146(b) & Sec. 37.147, EC.
<b>22. Formal Allegation</b>	Art. 45.018-.019, CCP; Sec. 25.0915(b)-(c), EC Sec. 25.0951(d), EC <i>Complaint</i>	Sec. 65.054, FC <i>State's Petition</i>	
<b>23. Limitations Period</b>	Sec. 25.0915, EC Art. 12.02(b), CCP	Sec. 65.055, FC Petitions may not be filed after the 45 <sup>th</sup> date of last date of Truant Conduct	Under Sec. 25.0915(c), EC the judge determines if the limitations period is tolled because of the use of truancy prevention measures (Sec. 25.0915(d), EC.).
<b>24. Hearing Date</b>	No Equivalent Provision	Sec. 65.056, FC	
<b>25. Summons</b>	Art. 45.0215, CCP	Sec. 65.057, FC	
<b>26. Service of Summons</b>	Art. 45.0215, CCP	Sec. 65.058, FC	
<b>27. Representation by Attorney</b>	Art. 1.051, CCP	Sec. 65.059, FC Counsel may be appointed but is not required; Parents, barring indigence, may be order to hire counsel.	
<b>28. Child's Answer</b>	Arts. 1.14, 45.022-.024, 45.0215, CCP	Sec. 65.060, FC	
<b>29. Guardian Ad Litem</b>	No Equivalent Provision	Sec. 65.061, FC	
<b>30. Attendance at Hearing</b>	Art. 45.0215, CCP	Sec. 65.062, FC	
<b>41. Right to Reemployment</b>	No Equivalent Provision	Sec. 65.063, FC	
<b>42. Subpoena of Witness</b>	Chapter 24, CCP	Sec. 65.064, FC	
<b>43. Child Alleged to be Mentally Ill</b>	Sec. 8.08, PC	Sec. 65.065, FC	

CCP = Code of Criminal Procedure  
EC = Education Code  
FC = Family Code

GC = Government Code  
PC = Penal Code

Issue	Prior to H.B. 2398	After H.B. 2398	Comments
		<b>SUBCHAPTER C: ADJUDICATION HEARINGS AND REMEDIES (Sections 65.101-65.109, FC)</b>	
44. Adjudication Hearing, Judgment	No Equivalent Provision	Sec. 65.101, FC	
45. Remedial Actions	No Equivalent Provision	Sec. 65.102, FC	
46. Remedial Order	Art. 45.054, 45.057, CCP	Sec. 65.103, FC	
47. Maximum Time Remedial Order is Effective	No Equivalent Provision	Sec. 65.104, FC	
48. Orders Affecting Parents and Others	Art. 45.054, 45.057, CCP	Sec. 65.105, FC	
49. Liability of Claims Arising from Community Service	Art. 45.0492, CCP	Sec. 65.106, FC	
50. Court Cost	Chapters 102, 103, GC	Sec. 65.107, FC If able to pay, \$50.00 retained locally to defray costs of Truancy Court; May be charged to parent/guardian.	
51. Hearing to Modify Remedy	No Equivalent Provision	Sec. 65.108, FC	
52. Motion for New Trial	Art. 45.037, CCP/Ch. 30, GC	Sec. 65.109, FC	
		<b>SUBCHAPTER D: APPEALS (Sections 65.151- 65.153, FC)</b>	
53. Right to Appeal	Ch. 44, CCP; Art. 45.057, CCP/Ch. 30, GC	Sec. 65.151, FC	
54. Governing Law on Appeal	Ch. 44, CCP; Art. 45.057, CCP/Ch. 30, GC	Sec. 65.152, FC	
55. Counsel on Appeal	Art. 1.051, CCP	Sec. 65.153, FC	
		<b>SUBCHAPTER E: RECORDS (Sections 65.201- 65.203, FC)</b>	
56. Sealing of Records	Art. 44.2811, 45.0217, CCP	Sec. 65.201, FC	
57. Confidentiality of Records	Art. 44.2811, 45.0217, CCP	Sec. 65.202, FC	
58. Destruction of Certain Records	Art. 45.0216, CCP	Sec. 65.203	
		<b>SUBCHAPTER F: ENFORCEMENT (Sections 65.251-65.259, FC)</b>	
59. Failure to Obey Truancy Court Order, Child in Contempt	Art. 45.050, CCP	Sec. 65.251, FC	
60. Proceedings in Juvenile Court	Art. 45.050, CCP	No Equivalent Provision	
61. Parent or Other Person in Contempt	Art. 45.054, 45.057, CCP; Sec. 21.002, GC	Sec. 65.253, FC	
62. Writ of Attachment	Art. 24.011, 45.054, 45.057, CCP	Sec. 65.254, FC	
63. Order against Parent or Other Person	Art. 45.054, 45.057, CCP	Sec. 65.255, FC	
64. Appeal of Enforcement (Parent or Other Person)	Art. 45.042, CCP	Sec. 65.256, FC	
65. Motion for Enforcement	No Equivalent Provision	Sec. 65.257, FC	
66. Notice and Appearance, re: Motion for Enforcement	Art. 45.050, CCP	Sec. 65.258, FC	
67. Conduct of Enforcement Hearing	Art. 45.050, CCP	Sec. 65.259, FC	

the Senate, but failed to survive a vote in the House Juvenile Justice and Family Issues Committee. However, near the end of the session, the text of S.B. 106 was added to H.B. 2398, filed by Representative James White. Identical versions of H.B. 2398 were eventually passed by the House and the Senate. Governor Greg Abbott signed the bill into law on June 18, 2015.

H.B. 2398 is nearly 125 pages long and consists of 44 sections. It is a complicated piece of legislation. The first 26 sections mostly make conforming changes to accommodate Section 27, which is nearly 30 pages long and the heart of the bill. It contains a new Title 3A and Chapter 65 of the Family Code, Truancy Court Proceedings. With the exception of Section 31, Judicial Donation Trust Funds, the remaining sections, for the most part, are additional conforming changes to what may be considered one of the most significant changes in Texas juvenile law since the passage of Title 3, The Juvenile Justice Code in 1973 and its revision in 1995.

### **Section by Section Analysis:**

#### **Sections 1 and 4: Interlocal Agreements**

Under Article 4.14 of the Code of Criminal Procedure, municipalities may enter into interlocal agreements to share jurisdiction between municipal courts for certain offenses. Additionally, some local governments have interlocal agreements for the employment of juvenile case managers (JCMs). Because of the repeal of the criminal nonattendance offense by children, Failure to Attend School (Section 25.094, Education Code), cities may no longer share jurisdiction over Failure to Attend School cases. Municipalities may, however, jointly employ JCMs with “any appropriate governmental entity,” or “jointly contribute to the costs of a [JCM] employed by one government entity” (Article 45.056(a), Code of Criminal Procedure).

#### **Sections 3 and 38: Dismissal of the Offense of Parent Contributing to Nonattendance and Expunction for the Former Offense of Failure to Attend School**

Chapter 45 of the Code of Criminal Procedure is amended by the addition of two articles.

Under Article 45.0531, a county, justice, or municipal court, notwithstanding any other law, may

dismiss a charge alleging Parent Contributing to Nonattendance (Section 25.093, Education Code) if the court finds it would be in the interest of justice because there is a low likelihood of recidivism or sufficient justification exists for the failure to attend school.

Article 45.0541 (Expunction of Failure to Attend School Records) provides that an individual who has been convicted of the former offense of Failure to Attend School, or who has had a complaint dismissed, is entitled to an expunction, regardless whether the person petitions for the expunction. The \$30 fee authorized in 103.021(20-b) of the Government Code to defray the cost of notifying state agencies of orders of expunction is repealed. No new expunction fee is authorized.

**Note:** Section 3 of H.B. 2398 may prove controversial. The dismissal authorized under Article 45.0531 is without statutory precedent and arguably allows for the subjective abuse of discretion by judges. The expunction under Article 45.0541 must be performed regardless of whether the person petitions, and without payment of any fee to defray the cost of notifying state agencies. While it may be the intent of Article 45.0541 to eliminate any proof that Texas once criminally enforced school attendance laws against children, another provision in the bill (Section 42) appears to create a conflict. Section 42 explicitly provides that the changes in law apply only to an offense committed or conduct that occurs after the effective date, September 1, 2015, after which date no further Failure to Attend School charges may be filed. The former expunction provision, Section 45.055 of the Code of Criminal Procedure, is also repealed. However, it is continued in effect for offenses committed and conduct which occurred prior to September 1, 2015, per Section 42 of this bill.

#### **Sections 5 and 37: Court Costs for Child Safety Fund in Municipalities**

Article 102.021 of the Government Code gives courts permission to collect the \$20 Child Safety Fund court cost, currently applicable to “an offense of truancy or contributing to truancy,” as defined under Article 102.014 of the Code of Criminal Procedure, which refers to convictions for offenses under Section 25.093 (Parent Contributing to Nonattendance) and Section 25.094 (Failure to Attend School) of the Education Code. H.B. 2398 removes

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references to the repealed Failure to Attend School offense, and changes the phrase “contributing to truancy” to now read “parent contributing to student nonattendance.”

### **Sections 6 and 15: High School Equivalence Exam, as Ordered by Truancy Court**

Sections 7.111 and 29.087 of the Education Code are amended to reflect the creation of truancy courts and the authority of such a court to order a person, if the person is 16 years of age or older and does not have a high school diploma, to take the high school equivalency exam.

### **Section 7: Compulsory School Attendance**

Section 25.085 of the Education Code requires students to attend school. H.B. 2398 makes several amendments to this section. All persons are required to attend school until their 19th birthdays, rather than 18th. Those who voluntarily enroll in school after their 19th birthdays shall attend, and may not have their enrollments revoked on a day in which they are present in school. Students enrolled after age 19 are not subject to rules regarding truant conduct under new Section 65.003 of the Family Code. After the third unexcused absence of a student older than age 19, the school district shall issue a warning letter, regarding revocation of enrollment after five such absences. As an alternative to revocation of enrollment, a school district may impose a behavior improvement plan.

**Note:** In 2011, the Texas Legislature decided that students age 18 or older could not be criminally prosecuted for failing to attend school. Under the new law, 18 year olds can be petitioned for truant conduct as long as the petition is filed before the individual’s 19th birthday.

### **Section 8: Powers and Duties of Peace Officers Serving as Attendance Officers**

Under the amended Section 25.091 of the Education Code, an attendance officer may refer a student to truancy court for unexcused absences described in Section 65.003(a) of the Family Code. The officer may not take a student into custody, nor contact a peace officer to take a student into custody, regardless of whether the attendance officer is a peace officer.

**Note:** Believe it or not, in some Texas locales, law

enforcement are utilized to get recalcitrant children out of bed, and in others, they pick truant kids up on the street and take them to school. With the repeal of both Failure to Attend School and truancy as a subset of CINS, Texas peace officers are unable to take a child into custody with the permission of the student’s parent or in obedience to a court order. Notably, however, Section 25.091(b-1) of the Education Code still authorizes a peace officer who has probable cause to believe that a child is in violation of the compulsory school attendance law to take the child into custody for purposes of returning the child to school to comply with school attendance requirements.

### **Section 9: Truancy Prevention Measures**

Under current law, Section 25.0915 of the Education Code requires a school district to adopt truancy prevention measures. H.B. 2398 increases the requirements for these measures, and expands the range of measures available to schools. School districts are directed to adopt truancy prevention measures for students, prior to absences constituting truant conduct under Chapter 65 of the Family Code. These measures may include: a behavior improvement plan; school-based services; referral to counseling, mediation, mentoring, a Teen Court program; or community-based, in-school, or out-of-school services. Referrals to truancy court must be accompanied by a statement that the school employed truancy prevention measures. Referrals to truancy court must be dismissed if the court determines that the school did not comply with these requirements, did not timely file the referral, or the referral is otherwise defective. A school district shall employ a truancy prevention facilitator or juvenile case manager to implement truancy prevention measures, and that person shall meet at least annually with a case manager or other individual designated by a truancy court. Instead of a truancy prevention facilitator or juvenile case manager, a school district may designate an existing district employee to perform this function. The Texas Education Agency (TEA) shall adopt rules regarding truancy prevention measures, best practices, and sanctions for noncompliance.

**Note:** Section 25.0915 (Truancy Prevention Measures) is the last remnant of the Truancy/Failure to Attend School era. Data from the Office of Court Administration suggests that they have successfully

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reduced the number of school attendance cases since 2011. Moving forward into the new era of truant conduct and truancy courts, Section 25.0915 will play even more of a pivotal role in school attendance cases. Truancy prevention measures are mandatory when a student fails to attend school without excuse on three or more days (or part of days) within a four-week period. In essence, this is in lieu of what is commonly referred to as discretionary filing under Section 25.094(a)(3) of the Education Code. The list of prevention measures has been expanded to include more concrete measures such as mediation and Teen Court. The requirements of the statute are more substantial and exact. This is intended to further reduce the number of school attendance cases involving children referred to the legal system. As amended, truancy prevention measures will play the role currently played by deferred disposition and school attendance orders imposed by courts. A trip to court and a face-to-face visit with a judge is no longer an immediate option.

### **Section 10: Uniform Truancy Policies**

Under the amended Section 25.0916 of the Education Code, a county with two or more courts hearing truancy cases and two or more school districts must either have adopted a “uniform truancy policy” under this section, or the county judge and the mayor of the municipality with the greatest population (or their designees) must assemble a committee. To assemble the committee, each shall appoint one representative of each of the following: a juvenile court; a municipal court; the office of a justice of the peace; the superintendent of an independent school district; the office of the prosecutor with original truancy jurisdiction in the county; the general public; and an open-enrollment charter school if one exists. In addition to those, the chief juvenile probation officer, the judge, and the mayor, or their appointees, and such other additional members as are necessary shall serve. The committee shall recommend a uniform truancy policy. Compliance with that policy is voluntary.

**Note:** Make sure to share this section of the bill with your mayor regardless of whether you anticipate hearing school attendance cases in your court. While the idea of local governments collaborating to enhance truancy filing procedures is a good idea, Section 25.0916 requires a lot of effort without articulating what exactly is to be gained from the ef-

fort. When Section 25.0916 was created last session (H.B. 1549), it only applied to school districts and municipalities in Bexar County. While it proved to be a beneficial endeavor for Bexar County, its cities, and school districts, as amended, Section 25.0916 is unlikely to be well received by counties, cities, and school districts because of its one size fits all requirement. While there potentially is a lot to be learned by going through the process of developing a uniform truancy plan, the benefits seem limited absent an opportunity for local governments to share, compare, and discuss best practices.

### **Section 11: Parent Contributing to Nonattendance**

The number of absences which constitute the offense of Parent Contributing to Nonattendance (Section 25.093, Education Code) is currently “10 or more days or parts of days within a six-month period in the same school year,” reflecting the definition of truant conduct in Section 65.003 of the Family Code. The offense of Parent Contributing to Nonattendance is recast as a “misdemeanor, punishable by fine only,” rather than a “Class C Misdemeanor.” Punishment for the offense is structured as a maximum-fine ladder. A first offense has a maximum fine of \$100. The maximum fines increase by \$100 for each offense, up to a maximum of \$500 for the fifth and subsequent offenses.

**Note:** One of the greatest public misperceptions likely to come from recent media attention surrounding changes in Texas school attendance laws is that it is “no longer illegal to skip school.” Wrong. It is true that Texas is now one of 48 states that will not criminally prosecute children for nonattendance. However, it is not true that it is legal for children in Texas to “skip school.” Rather, children in Texas will be civilly adjudicated by municipal and justice courts acting in their new designated roles as truancy courts. Adults (i.e., parents and guardians of school age children) subject to the new fine ladder and authority of courts under Article 45.0531 of the Code of Criminal Procedure (See, Section 3 above) will continue to be subject to criminal prosecution for Parent Contributing to Nonattendance. The offense remains a fine-only misdemeanor and will be adjudicated in municipal and justice courts (not truancy courts). What is new is language in Section 25.0951(b) stating that a complaint filed by a school must provide evidence of the parent’s criminal

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negligence. (See, Section 13).

### **Section 12: Warning Notices**

Under Section 25.095 of the Education Code, a school district or open-enrollment charter school must send notices to students who are at risk of engaging in truant conduct. Under the amended law, the notice must be sent when the student is absent on 10 or more days or parts of days within a six-month period in the same school year. The notice must warn that the conduct may result in referral to truancy court, and that the student may be subject to truancy prevention measures.

### **Section 13: School District Referral for Truant Conduct and Complaint for Parent Contributing to Nonattendance**

As amended, when a child fails to attend school, Section 25.0951 of the Education Code no longer allows school districts to either file a criminal complaint in municipal, justice, or county court or refer students to a juvenile court. Rather, if a student fails to attend school without excuse on 10 or more days or parts of days in a six-month period in the same school year, a school district shall, within 10 days of the 10th absence, refer the student to truancy court for truant conduct per Section 65.003 of the Family Code. Under Section 25.0951(d), a school district is not required to refer a student to truancy court if the school district is applying truancy prevention measures and determines that truancy prevention measures are succeeding. The school district, in that case, may choose to delay the referral.

Under the new law, school districts may still file criminal complaints alleging Parent Contributing to Nonattendance (Section 25.093, Education Code) against the person standing in parental relation to the student in municipal, justice, or county court, if the school district “provides evidence of the parent’s criminal negligence.” A court may dismiss a complaint alleging Parent Contributing to Nonattendance on four grounds: (1) noncompliance with Section 25.0951; (2) failure to allege elements of the offense; (3) untimely filing; and, (4) the complaint is otherwise substantively defective.

### **Section 18: Conduct Indicating a Need for Supervision and Delinquent Conduct**

Section 51.03 of the Family Code defines conduct

indicating a need for supervision (CINS) and delinquent conduct. Such conduct may subject juveniles to referral to a juvenile court. Subsection (a) of Section 51.03 lists conduct which constitutes delinquent conduct, including violation of a truancy court order. Subsection (b) lists conduct that may indicate a need for supervision, and under current law, includes (b) (2), “the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school.”

H.B. 2398 removes 51.03(b)(2), excessive absences, from the list of CINS, and renumbers the remaining items on the list, making further nonsubstantive changes to subsections (e) and (g), due to the removal of (b)(2) and of subsections (g), (d), and (e-1).

**Note:** To reiterate, outside of the provisions in Title 3A, juvenile courts in Texas no longer have original jurisdiction of school attendance in Texas. Although it has not received much publicity, it is truly a big deal. Has any other state stripped its juvenile courts of original jurisdiction in such matters? The full implications of this change will likely take some time to be fully appreciated.

### **Section 27: Truancy Courts**

H.B. 2398 provides enforcement procedures for students who do not attend school, defined in the newly created Title 3A of the Family Code. Though it resembles a conglomeration of existing rules, it is important to appreciate that it supersedes provisions in the Code of Criminal Procedure and the Family Code that formerly governed cases involving truant children. The new title consists of a single chapter containing six subchapters: Subchapter A: General Provisions (Sections 65.001 through 65.017); Subchapter B: Initial Procedures (Sections 65.051 through 65.065); Subchapter C: Adjudication Hearings and Remedies (Sections 65.101 through 65.109); Subchapter D: Appeals (Sections 65.151 through 65.153); Subchapter E: Records (Sections 65.201 through 65.203); and Subchapter F: Enforcement (Sections 65.251 through 65.259).

**Note:** All references, unless stated otherwise, in the following analysis of Section 27 are to the Family Code. To assist in transitioning from the familiar criminal law provisions to the new civil law provisions, TMCEC has prepared a chart titled *Transition-*

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ing to Title 3A of the Family Code: Before and After H.B. 2398. It, and other resource material, is available on the TMCEC website and on pages 16-18 of this publication.

**Subchapter A (GENERAL PROVISIONS)** outlines the definitions, jurisdiction, and procedure applicable to truancy courts. Subchapter A consists of 17 new statutes, numbered Sections 65.001 through 65.017. The scope and purpose of Chapter 65 are provided in Section 65.001. Unlike in criminal cases against children, the primary consideration in adjudicating truant conduct is the best interest of the child (Section 65.001(c)).

Although failure to attend school is no longer a criminal offense, the new laws are aimed at addressing truant conduct (Section 65.003). To address this, Title 3A creates a new court and defines the procedures it may use. Justice, municipal, and certain county courts are designated as truancy courts, having original, exclusive jurisdiction over allegations of truant conduct (Section 65.004). Truant conduct can only be prosecuted in truancy court (Section 65.003(b)). In certain instances involving contiguous municipalities, interlocal agreements allowing for jurisdiction are allowed (Section 65.004(c)). A truancy court is in session at all times (Section 65.005). Venue is in the county where the school in which the child is enrolled is located or the county where the child resides (Section 65.006). Per Section 65.007, trials in truancy court are to a six-member jury unless the child waives that right in writing, following the rules outlined in Section 65.008. In a jury trial, each party receives three peremptory challenges (Section 65.007(b)). If the child waives a jury trial, allegations of truant conduct are tried to the bench.

This subchapter defines truant conduct, the only allegation which the truancy court is authorized to hear. Truant conduct, which is clearly stated to be a civil case in truancy court, is defined as failure to attend school on 10 or more days or parts of days within a six-month period in the same school year, for a child (defined as a person between the ages of 12 and 19 in Section 65.002(1)) who is otherwise required to attend school. Truant conduct is not a criminal offense. An adjudication of truant conduct is not a criminal conviction. Proceedings relating to truant conduct are not criminal proceedings. Generally, with the exception of appeals and enforcement, an adjudication of truant conduct cannot be used in

subsequent court proceedings or result in any civil disability (Section 65.009). The standard of proof in cases of truant conduct, although civil, is still proof beyond a reasonable doubt (Section 65.010). Discovery follows procedures applicable in a criminal case (Section 65.011).

Although Chapter 65 tries to cover most aspects of truant conduct proceedings, including provisions pertaining to interpreters (Section 65.013) and use of electronic signatures (Section 65.014), the Legislature recognized that anticipating all issues and creating all necessary rules is an impossible task. Accordingly, additional formal and informal procedural rules may be created by the Texas Supreme Court (Section 65.012).

Generally, proceedings in truancy court are open to the public, unless good cause is shown to exclude the public, or if a person to be excluded is expected to be a witness and the court determines that presence at the hearing would materially affect that person's testimony (Section 65.015). Proceedings may not be recorded by a truancy court which is not also a court of record. If the court is a court of record, proceedings may be recorded only by stenographic notes or "other appropriate means" (Section 65.016). The reason for this is unclear because appeals are de novo (See, Section 65.151(b)).

A truancy court may employ juvenile case managers (JCMs). JCMs may be utilized when a child is in jeopardy of being referred to court or when a child is referred to court (Section 65.017). Notably, though the truancy court may not assess a JCM fee, the truancy court may enter into an interlocal agreement with a municipal court to employ a JCM (See, Section 4).

**Subchapter B** defines initial procedures including referral, prosecutorial intake and review, and the initial hearing. Subchapter B consists of 15 new statutes, Sections 65.051 through 65.065.

A referral to truancy court must be reviewed first by the court for compliance with Section 25.0915 of the Education Code (See, Section 9). If the court is not required to dismiss the referral for noncompliance under Section 25.0915, the court forwards the referral to the truant conduct prosecutor (Section 65.051). The prosecutor of the justice, municipal, or county court acting as the truancy court shall serve as the

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truant conduct prosecutor for that court (Section 65.052). When the truancy court forwards a referral to the prosecutor, that prosecutor must promptly review the referral. The prosecutor is granted discretion to file a petition requesting adjudication, provided the petition is made within 45 days of the last absence, and in compliance with Section 25.0915 of the Education Code. If the prosecutor decides not to file the petition, the court and school district must be notified of the decision (Section 65.053).

**Note:** Although the Legislature was made aware that most municipal prosecutors (unlike prosecutors in justice or county court) are rarely salaried and commonly paid by the hour, no distinction or accommodation is made. Despite the apparent authority of the truancy court to dismiss a referral in Section 65.051, such authority is clearly rooted in Section 25.0915 of the Education Code. Section 25.0915(c) implies that the court has no authority to dismiss referrals prior to prosecutor review and the filing of a petition with the truancy court.

The contents of the State's petition are detailed in Section 65.054. Petitions may not be filed after the 45th day of the last absence giving rise to truant conduct (Section 65.055). Upon the filing of the petition, the court must set a hearing date and time more than 10 days after the date of filing (Section 65.056). After the date is set, the court must summon the child named in the petition; that child's parent, guardian, or custodian; guardian ad litem if any; and any other person whom the court determines to be necessary to the proceeding. If any person summoned, other than the child, fails to appear, the hearing may proceed. The child must be present for the court to hold a hearing (Section 65.057). A person with physical custody or control of a child who disobeys a summons that orders the child be brought to a hearing is subject to a writ of attachment per Section 65.254. Provisions pertaining to service of the summons are stated in Section 65.058. A child may answer the petition orally or in writing, or the court is directed to assume a general denial of the alleged conduct (Section 65.060).

A child may be represented by an attorney, but representation is not required, and a child is not entitled to have an attorney appointed. However, the court may appoint an attorney if it is in the best interest of the child, and may require the child's parent or other

responsible person to pay the costs if the court determines the person has sufficient financial resources (Section 65.059).

Truancy courts may appoint guardians ad litem in cases in which parents do not accompany a child, or if it appears to the court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child. The guardian ad litem may be the attorney, and the court may order that person to reimburse the county or municipality, regardless of whether the court determines that the child's parent or other responsible person has sufficient financial resources, (Section 65.061).

**Note:** With the passage of S.B. 1876, the court must also maintain a list of all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court (Section 37.003(a)(2) of the Government Code). The court must use a rotation system for appointments, as defined by Section 37.004 of the Government Code.

Who is required to be present at a hearing under Title 3A is governed by Section 65.062. Attendance at a hearing may not be used as a reason to terminate the employment of a "permanent employee" required to attend. An employer who wrongfully terminates such a person's employment must reemploy the person, and is liable for damages (Section 65.063).

Subpoena of witnesses occur in the same manner as in a criminal case (Section 65.064). Specific provisions in Section 65.055 govern allegations that a child alleged to have engaged in truant conduct is mentally ill.

**Subchapter C** specifies the adjudication and remedies available in truant conduct cases. Subchapter C consists of nine new statutes, Sections 65.101 through 65.109.

The only way a child can be found to have engaged in truant conduct is after an adjudication hearing conducted in accord with Chapter 65 (Section 65.101(a)). At the beginning of an adjudication hearing, the judge is required to tell the child and the child's parents, guardian, or guardian ad litem of six enumerated rights, including the right to a jury trial (Section 65.101(b)). In addition to the trial provisions in Sections 65.007 and 65.008, jury verdicts must be unanimous (Section 65.101(c)). The Texas Rules of Evidence do not apply to an adju-



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dication hearing in truancy court, unless the judge determines that a rule must apply to ensure fairness, or as otherwise provided in Chapter 65 (Section 65.101(d)). Section 65.101(e) affords a child a privilege against self-incrimination and restricts the use of extrajudicial statements. A child is presumed to have not engaged in truant conduct and it is the prosecutor's burden to prove beyond a reasonable doubt with competent, admissible evidence that the child engaged in truant conduct (Section 65.101(f)). If the court or a jury finds otherwise, the court shall dismiss the case with prejudice (Section 65.101(g)). If the court or a jury finds that the child did engage in truant conduct, the judge may issue a judgment and remedial order under Section 65.103.

Section 65.102 governs remedial actions. If a child is determined to have engaged in truant conduct, the court shall determine and order appropriate remedial actions, orally and in a written order. The remedial actions available are defined in Section 65.103 and include ordering a child to attend school without absence, attend counseling or special programs, and perform community service or tutoring. The court must notify the child and the child's parent, guardian, or guardian ad litem of the child's right to appeal under Subchapter D and the procedures for sealing truancy court records.

Section 65.103 governs remedial orders. Its contents may look familiar because it is mostly derived from the soon-to-be-repealed provision governing Failure to Attend School proceedings (Article 45.054, Code of Criminal Procedure). The order of the truancy court is effective until the later of the date on the order, which may not be more than 180 days after entry, or the last day of the school year in which the order was entered (Section 65.104).

Section 65.105 is entitled Orders Affecting Parents and Others. Under its provisions, a truancy court may order a parent to accompany the child to a class for students at risk of dropping out of school. The court may also order any other person found to have contributed to the child's truant conduct to do any act or refrain from doing any act that the court determines to be reasonable and necessary for the welfare of the child. Last but not least, because it has great potential to be a powder keg, Section 65.105 allows a court to enjoin all contact between the child and a person who is found to be a contributing cause

of the child's truant conduct (unless the person is related within the 3rd degree of consanguinity, in which case the court may contact the Department of Family and Protective Services).

Section 65.106 addresses the liability of local governments arising from community service. While provisions in Chapter 65 are "cut and paste" from Chapter 45, regrettably that did not occur in Section 65.106. Inexplicably, counties and cities operating courts under the guise of truancy courts will have less protection afforded to them under Section 65.106 than a municipal or justice court under Article 45.049(f) of the Code of Criminal Procedure.

With the repeal of the criminal offense of Failure to Attend School, comes the repeal of **criminal** court costs. However, per Section 65.107, there is only one court cost applicable to truancy courts: a \$50 court cost which shall be imposed only if the child has been found to have engaged in truant conduct, and only if the child, parent, or other person is financially able to pay it. An order to pay the cost must be reduced to writing and signed by the judge. Note: All costs shall be retained in the local government's treasury in a special account that can only be used to offset the costs of operations of the truancy court (See also, Section 39).

A hearing to modify a remedy is governed by Section 65.108. During the period that the order is effective, the court may hold a hearing to modify a remedial order upon motion by any party to the case or any party affected by an order in the case. There is no right to jury trial at this hearing. At the hearing, the court may consider a written report from the school, JCM, or professional consultant. All written matters must be provided to the child's attorney and the truant conduct prosecutor. The court may order that counsel not reveal the contents to the child if disclosure would materially harm the child's treatment and rehabilitation. If the court modifies the remedy, it must orally pronounce the changes, reduce them to writing, and provide a copy to the child.

Motions for new trial are governed by Section 65.109. Per Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure, a party may file a motion for new trial in a truancy court not later than 14 days after the judgment is signed, and must serve copies on all other parties no later than the next business

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day. The judge may grant the motion upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party. If the judge has not ruled on the motion for new trial by 5:00 p.m. on the 21st day after the judgment was signed, the motion is automatically denied.

**Subchapter D** contains procedures for the appeal of truant conduct cases. Subchapter D consists of three new statutes, Sections 65.151 through 65.153. When it comes to appeals, there are big changes, a number of questions, and likely unanticipated problems ahead.

Any person (child, child's parent, or guardian) subject to an order of the truancy court under Section 65.105 may appeal. Additionally, because this is a civil case, the State may also appeal an order (Section 65.151(a)). All appeals from a truancy court shall be heard by a juvenile court. The case must be tried de novo using the rules set forth in Chapter 65 of the Family Code (Section 65.151(b)). On appeal, the order of the truancy court is **vacated**.

**Note:** Regardless if a municipal court is a court of record, at least for the time being, there is no such thing as a truancy court of record. Could this change? See, Sections 65.012 and 65.016.

The appeal from truancy court to juvenile court is governed by Rule 506 of the Texas Rules of Civil Procedure, except no appeal bond is required (Section 65.152). Under Rule 506, an appeal must be perfected within 21 days after either the judgment is signed or after the motion for new trial, if any, is denied. This raises a question regarding the appeal itself. Under Rule 506.1, normally the appeal bond (or cash deposit or sworn statement of inability) is the method of appeal. Posting the bond perfects the appeal, and no other requirements are listed. What exactly must be filed to perfect the appeal?

Once the appeal is perfected, the truancy court must immediately send a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case to the clerk of the juvenile court. There, the juvenile court will try the case de novo. However, notably, nothing in Chapter 65 specifies how soon a juvenile court must conduct the trial de novo. This could prove problematic. What, if anything, obligates a child to attend school during the pendency of the trial de novo?

The child has the right to counsel on appeal, as in the initial hearing (Section 65.153). An attorney, if there is one, must file notice of appeal to the juvenile court and inform the court whether that attorney will handle the appeal. However, Section 65.153 provides no guidance if there is no attorney or if the attorney chooses not to handle the appeal. Once a child's case is appealed from a city's truancy court to a juvenile court, which government potentially bears the cost of representation?

**Subchapter E** defines procedures related to the records of the truancy court. Subchapter E consists of three new statutes, Sections 65.201 through 65.203.

Section 65.201 governs the sealing of records in a truant conduct case. A child's records in a truancy court are confidential, and may be disclosed only to a particular list of persons and agencies. After the child's 18th birthday, if the child petitions to have the records sealed and the court determines that the child complied with the remedies ordered, the truancy court must seal the records. Index references to sealed records must be deleted no later than the 30th day after the date of the sealing order. Sealed records may be inspected only by persons subject to the records, and only upon petition and order of the court.

The court or the child may move to destroy sealed records on or after the fifth anniversary of the child's 16th birthday, provided the child has not been convicted of a felony (Section 65.201(h)). This limitation on destroying sealed records seems at odds with Section 65.009 (adjudication for truant conduct cannot be used in subsequent court proceedings) and in light of Section 65.201(g).

Confidentiality of records is governed by Section 65.202. With two important exceptions, this section is nearly identical to Article 45.0217 of the Code of Criminal Procedure, which governs confidentiality of criminal records relating to a child in municipal and justice courts. First, unlike Article 45.0217, there are not two different versions of it "on the books." See, commentary to S.B. 108. Second, like provisions in Title 3 of the Family Code, it contains a "leave of court to inspect" provision that is conspicuously and problematically absent in either version of Article 45.0217. See, Ryan Kellus Turner, "Making Sense of GA-1035" *The Recorder* (January, 2015) at 3.

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Referrals for truant conduct which the truant conduct prosecutor decides not to file must be ordered destroyed by the court after the prosecutor has completed the mandatory review (Section 65.203).

**Subchapter F** provides for enforcement of orders of the truancy court. Subchapter F consists of eight new statutes, Sections 65.251 through 65.259.

Enforcement was the most debated aspect of truancy legislation this session. Some people opposed moving away from a criminal adjudication model to a civil adjudication model because they did not believe that the latter would encompass meaningful consequences for noncompliance with school attendance orders. In fact, there is anecdotal evidence that when school attendance-related matters (e.g., habitual offenders, contempt stemming from violation of a school attendance order) are referred to juvenile court from municipal court, as required by law, such referrals are not handled by juvenile judges and are inadequately addressed by juvenile probation. By the end of session, what became apparent was that many of the opponents of what became H.B. 2398 were not as much defending the practice of fining children as they were frustrated by the systemic lack of cooperation and other meaningful statutory options. Such systemic problems are not addressed in H.B. 2398, but may be the subject of study during the interim and future legislation.

Per Section 65.251, a truancy court may not order the confinement of a child for the child's failure to obey a remedial order pertaining to school attendance under Section 65.103(a). However, a truancy court does have remedies, similar to those in Article 45.050 of the Code of Criminal Procedure, for children who either fail to comply with orders under Section 65.103(a) or are in direct contempt of court. The court may order the child to pay a fine not to exceed \$100 or that DPS suspend or deny the issuance of the child's driver's license or permit. If a child has been found in contempt on two or more previous occasions, the court may, after notice and a hearing, refer the child (younger than 17), accompanied by a litany of documentation, to juvenile probation, who may either (1) reinstate truancy prevention measures under Section 25.0916 of the Education Code, or (2) refer to juvenile court for contempt proceedings per Section 65.252. If a juvenile court prosecutor, **not a truancy court prosecutor**, finds that there is probable cause to believe the child engaged in direct

contempt, a juvenile court is required to conduct the contempt hearing not later than the 20th day after receiving a request for an adjudication. Once the juvenile court determines whether probable cause exists that the child was in contempt, the juvenile court shall notify the truancy court of the decision and any remedies, if appropriate, within 5 days.

Section 65.253 contains a complicated itemization of circumstances when a parent or a person other than a parent (excluding a child) may be held in contempt. Depending on the type of violation, a truancy court may enforce its orders for "contempt" or "direct contempt." Both forms of contempt allow imposition of a fine not to exceed \$100. Direct contempt may result in additional punishment, confinement in jail for up to three days, and up to 40 hours community service. Section 65.253 is augmented by a lengthy series of non-sequential dizzying statutes: (1) Section 65.255 (contains notice, due process, and identity protections); (2) Section 65.256 (governs appeals); (3) Section 65.257 (enforcement of a truancy court order may be initiated by the truancy court or on a motion by the State); (4) Section 65.258 (notice and appearance requirements for an enforcement order); and Section 65.259 (procedures for conducting an enforcement hearing).

### **Section 28: At-Risk Child**

Although H.B. 2398 modifies the number of absences which may constitute an "at-risk" youth, another bill, S.B. 206, repealed Section 264.304 of the Family Code in its entirety making Section 28's modification moot.

### **Sections 31 and 40: Judicial Donation Trust Fund**

Under the new Chapter 36 of the Government Code, the governing body of a municipality or county, pursuant to Section 36.001, is authorized to establish a judicial donation trust fund (JDTF). Section 81.032 of the Local Government Code is amended to allow a local governing body to accept a gift, grant, donation, or other consideration from a public or private source, designated for the JDTF, a designated account held outside of the treasury. Money so received shall be awarded by judges in accordance with the local rules adopted pursuant to Section 36.002 of the Government Code. Interest and income from assets shall be credited to and deposited in the JDTF.

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Section 36.002 requires the governing body to adopt procedures necessary to receive and disburse money from the JDTF. It must establish eligibility requirements for disbursement to assist needy children or families who appear before a county, justice, or municipal court for a criminal offense or truant conduct, as applicable, by providing money for resources and services that eliminate barriers to school attendance or that seek to prevent criminal behavior.

In accordance with those rules, per Section 36.003(a), the judge of a county, justice, or municipal court may award money from the JDTF, but only “to eligible children or families who appear before the court for a truancy or curfew violation or in another misdemeanor offense proceeding before the court.” Under Section 36.003(b), the judge then orders the local government’s treasurer to issue payment from the JDTF.

**Note:** Despite the best of intentions, before any local government establishes a JDTF, consider the following question: Do the provisions in Chapter 36 place a judge directly in conflict with provisions in the Code of Judicial Conduct?

The interests of the local judiciary would benefit from the State Commission on Judicial Conduct issuing a public statement regarding the ethical propriety of the statutory role of a judge in regard to the operation of a judicial donation trust fund.

### **Section 33, 34, and 35: Magistrates in Fort Bend County**

Subchapter JJ in Chapter 54 of the Government Code applies only to a county with a population of more than 585,000 and that is contiguous with a population of at least four million. At this time, the only county to which this applies is Fort Bend County. A county judge there may appoint one or more part-time or full-time magistrates to hear particular matters. Those matters no longer include the repealed Failure to Attend School offense. These sections remove references to that offense, and add references to truant conduct under 65.003 of the Family Code.

### **Section 36: Requirements for Courts Reporting to the Office of Court Administration**

Section 71.0352 of the Government Code is amended to modify OCA reporting requirements for

justice courts, municipal courts, and truancy courts. The amendments remove filings of failure to attend school under 25.094 of the Education Code, add truant conduct under 65.003 of the Family Code, and require, in addition to other contempt referrals, reporting of contempt referrals to juvenile court under Section 65.251 of the Family Code.

### **Section 39: Costs in Truancy Cases**

The bill amends Chapter 103 of the Government Code to add Section 103.035. This new section defines a court cost of \$50 for a party to a truancy case, if ordered by the truancy court under Chapter 65 of the Family Code.

### **Section 41: Repealers**

The following code sections are repealed: Article 45.054 of the Code of Criminal Procedure (Failure to Attend School Proceedings); Article 45.055 of the Code of Criminal Procedure (Expunction of Conviction and Records in Failure to Attend School Cases); Section 25.094 of the Education Code (Failure to Attend School); Section 25.0916(d) of the Education Code; Sections 51.03(d), (e-1), and (g) of the Family Code; Section 51.04(h) of the Family Code; Section 51.08(e) of the Family Code; Section 54.021 of the Family Code (County, Justice, or Municipal Court: Truancy); Section 54.0402 of the Family Code (Dispositional Order for Failure to Attend School); Sections 54.041(f) and (g) of the Family Code; and Section 54.05(a-1) of the Family Code.

### **Sections 2, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, and 32: Conforming Changes due to Repeal of CINS (Truancy) and Failure to Attend School**

With the removal of 51.03(b)(2) of the Family Code in Section 18, numerous conforming changes are required. Similar conforming changes are required by the repeal of Section 25.094 of the Education Code (Failure to Attend School). As amended, former references to CINS (Truancy) and failure to attend school now refer to truant conduct in Section 65.003. This includes, among others, changing the definition of a “status offender,” to exclude attendance-based offenses. References to the remaining repealed statutes are also removed.

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## **Sections 42, 43, and 44: Applicability of H.B. 2398**

The changes in law apply prospectively. Offenses committed, and conduct occurring prior to September 1, 2015, are governed by the former law. An offense is committed or conduct occurs before the effective date of the act if any element of the offense or conduct occurs before that date. To the extent of any conflict, this act prevails over other acts of the 84th Legislature, Regular Session, relating to non-substantive additions and corrections.

**Note:** The primacy clause, Section 43, only applies to bills making nonsubstantive additions and corrections. The conflict between this section and the newly created Article 45.0541 of the Code of Criminal Procedure is addressed in Section 3 and 38.

### ***H.B. 2684***

**Subject: Creation of a Model Training Curriculum and Required Training for Certain School District Peace Officers and School Resource Officers**  
**Effective: June 20, 2015**

H.B. 2684 amends Subchapter C, Chapter 37 of the Education Code and Subchapter F, Chapter 1701 of the Occupations Code, creating a model training curriculum and requiring training for certain school district peace officers and school resource officers.

Subchapter C, Chapter 37 of the Education Code, is amended by adding Section 37.0812. This section requires a school district with an enrollment of 5,000 or more students that commissions a school district peace officer or at which a school resource officer provides law enforcement to adopt a policy requiring the officer to complete the education and training program required by Section 1701.263 of the Occupations Code.

Subchapter F, Chapter 1701 of the Occupations Code is amended by adding Sections 1701.262 and 1701.263. These sections require Texas Commission on Law Enforcement (TCOLE), in consultation with an institute or the Texas School Safety Center at Texas State University, to create, adopt, and distribute a model training curriculum for school district peace officers and school resource officers. TCOLE must require a school district peace officer or a school resource officer to successfully complete an education and training program described by this

section before or within 120 days of the officer's commission by or placement in the district or a campus of the district.

**TMCEC:** TCOLE must create the model training and curriculum not later than December 1, 2015, and make the training available to school district peace officers and SROs not later than February 1, 2016. If such an officer were already employed before February 1, the training must be complete not later than June 1, 2016. School districts must adopt these training requirements not later than February 1, 2016.

### ***H.B. 2945***

**Subject: Use of the Juvenile Case Manager Fund**  
**Effective: June 17, 2015**

Under current law a juvenile case manager fund may only be used to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager. In some localities a balance remains after the restricted expenditures are paid.

H.B. 2945 amends Article 102.0174(g) of the Code of Criminal Procedure to state that if there is money in the fund after those costs are paid, on approval by the employing court, a juvenile case manager may direct the remaining money to be used to implement programs directly related to the duties of the juvenile case manager, including juvenile alcohol and substance abuse programs, educational and leadership programs, and any other projects designed to prevent or reduce the number of juvenile referrals to the court.

### ***H.B. 4003***

**Subject: Redaction of Personally Identifiable Information of Victims from Juvenile Court Records**  
**Effective: September 1, 2015**

The Juvenile Justice Information System (JJIS) consists of information relating to delinquent conduct committed by juvenile offenders. Records required to be retained include information relating to the prosecution of the juvenile offender and the conduct for which the juvenile offender was taken into custody, detained, or referred, including level and degree of the alleged offense. Often, in the prosecution or description of the offense, information about the victim of the juvenile's delinquent

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conduct is disclosed. H.B. 4003 amends Subchapter A, Chapter 58 of the Family Code by adding Section 58.004 requiring that the custodian of any juvenile court record or other file within the juvenile justice system redact any personally identifiable information about a victim who was a legal minor at the time of the offense. This change ensures that the names of juvenile victims, and not just the names of juvenile offenders, are not disclosed to the public.

**H.B. 4046**

**Subject: Confidentiality of Student Records**

**Effective: September 1, 2015**

Generally, state public information law provides access to public information, with the exception of information considered confidential. While one type of excepted information is student records at an educational institution funded wholly or partly by state revenue, the law does not define what constitutes a student record. A gap in coverage may exist under certain federal privacy law with regard to an individual who applies for enrollment at an institution but does not enroll and attend. This gap may create a serious privacy concern for many prospective students who are deserving of well-defined laws that protect their constitutional right to privacy. H.B. 4046 amends Section 552.114 of the Government Code relating to the confidentiality of student records. Under H.B. 4046, information is confidential and excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue. This subsection does not prohibit the disclosure or provision of information included in an education record if the disclosure or provision is authorized by Section 1232g of Title 20 of the United States Code or other federal law.

**S.B. 107**

**Subject: Designation of Campus Behavior Coordinators to Serve at Public School Campuses**  
**Effective: June 20, 2015**

Subchapter A, Chapter 37 of the Education Code is amended by adding Section 37.0012 to require a person at each school campus be designated to serve as the campus behavior coordinator. The designated person may be the campus principal or any other campus administrator selected by the principal. The campus behavior coordinator is primarily responsible for maintaining student discipline and

implementation of statutory provisions relating to alternative settings for behavior management. A duty imposed on or a power granted to a campus principal or other campus administrator under Subchapter A shall be performed by the campus behavior coordinator. The bill requires the campus behavior coordinator to promptly notify a student's parent or guardian if the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program, or is taken into custody by a law enforcement officer. The campus behavior coordinator must promptly contact the parent or guardian by telephone or in person and by make a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian. If a parent or guardian has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a campus behavior coordinator shall mail written notice of the action to the parent's or guardian's last known address. The principal or other designee must provide the notice if a campus behavior coordinator is unable or not available to promptly provide the notice.

S.B. 107 amends Section 37.002 of the Education Code to require that the discipline management techniques employed by the campus behavior coordinator be techniques that can reasonably be expected to improve the student's behavior before returning the student to the classroom. It also requires the campus behavior coordinator to employ alternative discipline management techniques if the student's behavior does not improve.

S.B. 107 amends Section 37.009 of the Education Code and the factors a campus behavior coordinator (or a school district board of trustees) must consider before ordering a student's suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program. The parties charged must consider: (1) whether the student acted in self-defense; (2) the intent or lack of intent at the time the student engaged in the conduct; (3) the student's disciplinary history; and (4) whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct.

This Act applies beginning with the 2015-2016 school year.

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**S.B. 108****Subject: Certain Criminal Procedures for Misdemeanor Offenses Committed by Children Effective: September 1, 2015**

The Code of Criminal Procedure currently allows a municipal or justice court to expunge criminal records of children accused of certain Class C misdemeanors (notably, traffic offenses are excluded) if the complaint is dismissed pursuant to Deferred Disposition (Article 45.051) or completion of a Teen Court Program (Article 45.052). This bill amends Article 45.0216(h) to allow such records to also be expunged if a complaint is dismissed under “other law” or if the child is acquitted of the offense.

Article 45.058 of the Code of Criminal Procedure pertains to taking children into custody for Class C misdemeanors. The 83rd Regular Session (S.B. 1114) made changes to provisions governing the issuance of citations to children. The provisions, however, were inconsistent with a more specific provision contained in Chapter 37 of the Education Code (Subchapter E-1, Criminal Procedure) (S.B. 393). To reconcile this inconsistency, Article 45.058(g) is amended to reference the more specific provision (Section 37.143(a) of the Education Code).

Under current law, Chapter 37 of the Education Code utilizes the definition of “child” contained in Article 45.058(h) of the Code of Criminal Procedure (ages 10-16). As amended by H.B. 108, a “child” is redefined to be a person at least 10 years of age and younger than 18.

Currently, Section 37.146 of the Education Code contains requisites for filing complaints for school offenses that build upon the standard requirements in Article 45.019 of the Code of Criminal Procedure. As amended, Section 37.146(c) allows a school employee to recommend in the complaint, if the employee believes that it is in the best interest of the child, that the child attends a teen court program (Article 45.052 of the Code of Criminal Procedure). As amended, a child may participate in a teen court program if the child has not successfully completed a teen court program in the year preceding the date that the alleged offense occurred. Under current law, it is the two years preceding the date of the alleged offense.

**TMCEC:** The bill analysis from the Juvenile Justice & Family Issues Committee states that S.B. 108 seeks to address issues brought to light in a series of meetings held during the interim aimed at overseeing the implementation of S.B. 393 and S.B. 1114. However, of the changes made in the bill, only the reconciliation between Article 45.058 and Chapter 37, E-1 of the Education Code, was discussed in the meetings. Despite consensus at the interim meetings that certain parts of S.B. 393 needed revision, they did not happen this Session. Perceived problems with the lack of procedure for Section 8.07(e) of the Penal Code (Age Affecting Criminal Responsibility) and other issues pertaining to Chapter 37 of the Education Code (Subchapter E-1) were included in S.B. 741, a bill that did not get a hearing.

It is surprising that the conflict between “conditional” confidentiality of criminal records (S.B. 393) and “absolute” confidentiality of criminal records (H.B. 528) was not included in S.B. 108 (or any other bill during the 84th Regular Session). For at least another two years municipal and justice courts will have to deal with two different versions of Article 45.0217 of the Code of Criminal Procedure remaining on the books, the potential for related litigation, and the Attorney General opining that the two bills were not irreconcilable. See, Ryan Kellus Turner, “Making Sense of GA-1035” *The Recorder* (January, 2015) at 3.

**S.B. 507****Subject: Placement and Use of Video Cameras in Settings Providing Special Education Services Effective: June 19, 2015**

When the victim of abuse or bullying in school is a non-verbal special needs student, the abuse or bullying may go unreported. With their victims unable to speak for themselves and with no way to prove the abuse, those who prey on these vulnerable children may be free to continue their abusive behavior with no fear of repercussion. In these instances, video footage of misconduct may serve as a child’s only cry for help.

S.B. 507 amends Subchapter A of Chapter 29 of the Education Code by adding Section 29.022 to require a school district or open-enrollment charter school to provide equipment, including a video camera,

to each school in the district or each charter school campus in which a student receiving special education services in a self-contained classroom is enrolled, in order to promote student safety on request by a parent, trustee, or staff member. Each school or campus that receives such equipment must place, operate, and maintain one or more video cameras in each self-contained classroom in which a majority of the students in regular attendance are provided special education and related services and assigned to a self-contained classroom for at least 50 percent of the instructional day. A school district or open-enrollment charter school must retain video recorded from a camera placed in a classroom for at least six months after the date the video was recorded and may solicit and accept gifts, grants, and donations from any person for use in placing video cameras in classrooms.

A school district or open-enrollment charter school may not allow regular or continual monitoring of video recorded in a classroom or use the video for teacher evaluation or for any purpose other than the promotion of safety of students receiving special education services in a self-contained classroom. A school district or open-enrollment charter school may release a recording for viewing by appropriate personnel of the Department of Family and Protective Services personnel as part of an investigation of abuse, neglect, or exploitation in schools, or by a peace officer, a school nurse, or a human resources staff member designated by the board of trustees of the school district or the governing body of the open-enrollment charter school in response to a complaint or an investigation of district or school personnel or a complaint of abuse committed by a student.

These changes apply beginning with the 2016–2017 school year.

## TMCEC Website on Truancy

<http://tmcec.com/resources/texas-truancy-transition/>



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### Texas Truancy Transition

H.B. 2398 (84th Legislative Session) marks the end of the "criminalization of truancy" and creates an entirely new and unique type of court and set of procedures to handle school attendance cases involving children. Outside of the provisions in newly created Title 3A of the Family Code, juvenile courts in Texas no longer have original jurisdiction of school attendance in Texas. Justice, municipal, and certain county courts are designated as truancy courts, having original, exclusive jurisdiction over allegations of truant conduct. This page contains helpful links to explain H.B. 2398 and its new procedures governing civil cases in truancy courts.

- [Truancy Court Procedures Flowchart and Commentary](#)
- [School Responsibilities Regarding Truancy Flowchart and Commentary](#)
- [H.B. 2398 Section by Section Analysis \(TMCEC\)](#)
- [H.B. 2398 Section by Section Analysis \(Ted Wood\)](#)
- [Texas Truancy Transition Chart](#)
- [The 2015 Truancy Reform Bill - House Bill 2398 \(Ted Wood, \*The Recorder\*, July 2015\)](#)
- [Texas Truancy Transition Frequently Asked Questions \(FAQs\)](#)

A special thank you to Ted Wood, Assistant General Counsel, Office of Court Administration

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**Note:** This page will be updated as TMCEC develops related forms and brochures.



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# EIGHTY-FOURTH TEXAS LEGISLATURE ADJOURNS

## Local Control Took Some Hits but Mostly Survived

Somewhere in the files of a corporate-funded think tank, there is no doubt a memo from a public relations firm outlining a lobbying campaign to overturn city ordinances by state laws. The age-old battle to undermine local control traditionally has been waged every session behind closed doors in the Capitol. But this year, some groups unveiled new rhetoric from their spin doctors and wrapped themselves in the banner of “liberty!”

Armed with a shiny new populist slogan, the assault on local control came out of the shadows and unleashed a tidal wave of bills to limit the ability of citizens to influence the laws governing their neighborhoods and their cities.

Fortunately, reason and good judgment prevailed over the new sound bite. A majority of legislators in both chambers continue to understand that local control builds prosperity rather than hinders it. A majority still understands that the so-called “patchwork” of local regulations is actually good because it recognizes that Texans don’t like being told there’s only one way of thinking or one way of living. In fact, people who live in Fort Stockton may be proud that their city ordinances are different than those in Fort Worth, and vice versa. That diversity is what gives us identity and makes this state great.

Considering the onslaught of detrimental bills, cities emerged from this regular session relatively intact. We took some body blows, but we remain standing. Case in point? City officials were not able to overcome the power and influence of the state’s oil and gas industry, which succeeded in limiting – but not eliminating – local rules governing oil and gas development.

Political reality made it clear from the very beginning of the session that more than two-thirds of legislators would vote to prohibit cities from banning fracking. However, legislative leaders made it clear they support long-standing city regulations designed to protect health and safety in residential neighborhoods. Accordingly, H.B. 40 by Rep. Drew Darby

(R – San Angelo) contains a clear list of permissible surface regulations, including commercially reasonable setbacks. Oil and gas companies that attempt to misuse the legislation to challenge those regulations will meet strong resistance from the League. (The League will create a clearinghouse to monitor legal challenges to existing drilling ordinances.)

On most other issues, cities completely fended off the assault on local control:

- Harmful revenue caps were proposed in both the House and Senate, but did not pass. These caps, which got more traction than in recent sessions, would have put a hard four percent cap on property tax increases by requiring a mandatory citizen election to raise taxes.

In lieu of revenue caps, S.B. 1760 by Sen. Brandon Creighton (R – Conroe) requires a 60 percent vote of any governing body, including a city council, to adopt a tax rate that exceeds the effective tax rate. The bill will affect cities with councils of seven, nine, or eleven-plus voting members by requiring one additional “aye” vote to pass a tax increase. But the bill also gives cities extra time to publish notice of such tax rates when the appraisal district is late in providing the appraisal role. (A separate bill, H.B. 1953 by Rep. Dennis Bonnen (R – Angleton), did the same thing). This extension of time was one of the League’s legislative priorities.

- Harmful legislation that would have limited city debt also failed to pass. Instead, H.B. 1378 by Rep. Dan Flynn (R – Van) will require cities to file a financial report annually containing, among other things, information about city debt loads. The League’s legal department will educate city officials about the bill’s requirements in the coming months.
- Legislation that would have ended home rule annexation authority progressed further than it has in over a decade, dying on a point of order in the House and passing the Senate too late in the process to meet House deadlines. In the in-

terim, the League will be busy reemphasizing the importance of annexation to the success of the Texas economy in preparation for what's sure to be continued assault in 2017.

- Meanwhile, beneficial transportation legislation passed in the form of S.J.R. 5 by Sen. Robert Nichols (R – Lake Jackson). The bill initially dedicates \$2.5 billion in sales tax revenue to highway construction, and possibly additional motor vehicle sales taxes in future years. It requires an amendment to the Texas Constitution that must be passed by voters this November.
- The state budget, H.B. 1, restored local parks funding to previous historic funding levels of approximately \$15 million per year and includes an additional \$12 million to fund parks in certain cities. Cities can also expect additional mixed beverage tax reimbursements over the next biennium due to a new tax calculation formula.
- One of the League's priorities was passing legislation that would permit Internet publication of certain notices in lieu of newspaper publication, but once again the newspaper lobby killed the idea. On a positive note, however, H.C.R. 96 directs the Speaker of the House of Representatives and the Lieutenant Governor to create a joint interim committee to study the issue of advertising public notices on the Internet.

## The Important Numbers

Over 400 more bills were filed in 2015 than in 2013, 6,476 compared to 6,061. At one point in the session, the League was tracking 1,600 of those bills, each of which would have affected city authority.

In 2013, lawmakers passed 23.7 percent of bills filed. This year, only 20.5 percent made the cut. This was ultimately a relatively “quiet” session, which is surprising in light of the “liberty vs. local control” dynamic.

## Looking Ahead

City officials will need to think deeply during the interim about what this year's philosophical attack on local control really means. If local control were no longer a good thing (we're still a ways from that being so), what would happen to the “Texas Miracle?” Stay tuned.

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Year	Total Bills Introduced*	Total Bills Passed	City-Related Bills Introduced	City-Related Bills Passed
2001	5,712	1,621	1,200+	150+
2003	5,754	1,403	1,200+	110+
2005	5,369	1,397	1,200+	105+
2007	6,374	1,495	1,200+	120+
2009	7,609	1,468	1,500+	120+
2011	6,303	1,410	1,500+	160+
2013	6,061	1,437	1,700+	220+
2015	6,476	1,329	1,600+	220+

\*Includes bills and proposed Constitutional amendments; regular session only.

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**S.B. 996****Subject: Notifying a Parent or Guardian Whether an Employee of a School is Appointed School Marshal****Effective: June 19, 2015**

Section 37.0811 of the Education Code is amended to require a school district or open-enrollment charter school, upon written request of a parent or guardian of a student, to provide the parent or guardian written notice indicating whether any employee of the school is currently appointed a school marshal. The school, however, is prohibited from disclosing the identity of the marshal. Similarly, Section 1701.260(l) of the Occupations Code, is amended to extend the confidentiality of information collected or submitted for purposes of training and licensing of a school marshal.

## Local Government

**H.B. 23****Subject: Disclosure of Relationships with Local Government Officers and Vendors****Effective: September 1, 2015**

Current law requires disclosure of information concerning certain local government officers and vendors when engaged in procurement activities. During the 83rd Session, legislation established a select interim committee to study and review statutes and regulations related to ethics, including campaign finance laws, lobby laws, and personal financial disclosure laws. Disclosure laws for local government officers were part of this general charge.

H.B. 23 amends Section 176.002 of the Local Government Code to make changes to local government officer conflict disclosure statements and vendor conflict of interest questionnaires that are filed with the records administrator of the local governmental entity. The bill extends disclosure requirements to certain employees involved in the procurement process and requires disclosure of familial relationships between vendors and government officers.

H.B. 23 amends Section 176.003 of the Local Government Code to lower the monetary threshold for reporting gifts from a vendor. A local government must report gifts of more than \$100 in aggregate value (previously \$250) received in the 12-month

period preceding the date the officer becomes aware that: a contract had been executed; the local entity was considering entering into a contract; or the vendor had a family relationship with the local government officer. A local government officer would not be required to file a statement if the local entity or vendor was an administrative agency created to supervise performance of an interlocal contract.

H.B. 23 redesignates Section 176.011 of the Local Government Code as Section 165.0065 of the Local Government Code. The bill amends Section 176.0065 requiring a records administrator to maintain a list of local government officers of the local entity and make the list available to the public and any vendor who could be required to file a conflict of interest questionnaire under Section 176.006 of the Local Government Code.

H.B. 23 adds Section 176.013 of the Local Government Code creating an offense for a local government officer who knowingly fails to file a required conflict disclosure statement by 5 p.m. on the seventh business day after the date on which the officer became aware of facts that required the filing. An offense is: a Class C misdemeanor with a maximum fine of \$500 if the contract amount was less than \$1 million or if there was no contract amount; a Class B misdemeanor punishable by up to 180 days in jail and/or a maximum fine of \$2,000 if the contract was at least \$1 million but less than \$5 million; or a Class A misdemeanor punishable by up to one year in jail and/or a maximum fine of \$4,000 if the contract amount was at least \$5 million.

**H.B. 40****Subject: Preemption of Municipal Regulations on Oil and Gas Operations****Effective: May 18, 2015**

House Bill 40 amends the Natural Resources Code to subject an oil and gas operation to the exclusive jurisdiction of the state. The bill expressly preempts the authority of a municipality or other political subdivision to regulate an oil and gas operation but authorizes a municipality to enact, amend, or enforce certain measures that regulate aboveground activity.

**TMCEC:** The so-called “Denton Fracking Bill” is in response to the City of Denton’s ban on fracking within the city. This bill expressly preempts an ordinance that attempts to regulate oil and gas ex-

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ploration below ground. Regulation is still possible aboveground on the surface; however, municipal restrictions must be commercially reasonable and cannot effectively prohibit the operation.

**H.B. 239**

**Subject: Storage of Flammable Liquids at Retail Service Stations in Unincorporated Areas and Certain Municipalities**

**Effective: September 1, 2015**

H.B. 239 amends Section 753.004 of the Health and Safety Code relating to storage of flammable liquids at retail service stations in unincorporated areas and certain municipalities. The bill removes the limitation on capacity of an aboveground tank at a retail service station located in an unincorporated area or in a municipality with a population of less than 5,000. Section 753.004(d-1) authorizes a commissioner's court of a county with a population of 3.3 million or more to limit by order the maximum volume of an aboveground storage tank in an unincorporated area of the county in accordance with the county fire code.

**TMCEC:** Section 753.004(d-1) currently only applies to Harris County.

**H.B. 274**

**Subject: Enforcement of Municipal Rules, Ordinances, or Police Regulations Prohibiting Illegal Dumping**

**Effective: September 1, 2015**

Illegal dumping has become an increasingly prevalent crime in many parts of Texas. In addition to the danger associated with discarded items, the piles formed by the items are unsightly and attract pests such as mosquitos, rats, and snakes. This persists until residents report the site to the political subdivision responsible for trash collection. Illegal dumping is especially problematic in residential neighborhoods with increased traffic flow, pedestrian activity, and children playing. H.B. 274 aims to serve as a deterrent against illegal dumping by increasing maximum applicable fines.

H.B. 274 amends Section 54.001 of the Local Government Code relating to the enforcement of municipal rules, ordinances, or police regulations prohibiting illegal dumping, and increases the penalty for illegal dumping to \$4,000. The bill amends Section

29.003 of the Government Code and Article 4.14 of the Code of Criminal Procedure granting jurisdiction of these cases to municipal courts.

**H.B. 593**

**Subject: Canine Encounter Training for Peace Officers**

**Effective: September 1, 2015**

H.B. 593 amends the Occupations Code by creating Section 1701.261 requiring the Texas Commission on Law Enforcement (TCOLE), not later than January 1, 2016, to establish a statewide comprehensive education and training program on canine encounters and canine behavior for peace officers. The training must consist of at least four hours of classroom instruction and practical training that addresses the following: handling canine-related calls; anticipating unplanned encounters with canines; using humane methods and tools in handling canine encounters; recognizing and understanding canine behavior; state laws related to canines; canine conflict avoidance and de-escalation; use of force continuum principles in relation to canines; using nonlethal methods, tools, and resources to avoid and defend against a canine attack; and a general overview of encounters with other animals. TCOLE must review the training program's content at least once every four years and update the program as necessary.

The bill also amends Section 1701.253 of the Occupations Code requiring an officer licensed by TCOLE on or after January 1, 2016 to complete the canine encounter training program as part of the minimum curriculum requirements for law enforcement training programs and schools not later than the second anniversary of the date the officer is licensed, unless the officer completes the program as part of the officer's basic training course. Completion of the canine encounter training program is a requirement for an intermediate or advanced proficiency certificate issued by TCOLE on or after January 1, 2016. An officer who has completed at least four hours of a canine encounter training program is not required to complete the program established under the bill's provisions.

**H.B. 819**

**Subject: Mosquitos as a Public Health Nuisance**

**Effective: June 9, 2015**

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H.B. 819 amends Section 341.011(7) of the Health and Safety Code striking *Culex quinquefasciatus* as the only mosquito species to be considered a public health nuisance in any collection of water in any location, other than certain agricultural locations, that is a breeding area for mosquitoes. The bill allows local public health departments to remove all mosquito species that threaten public health, not just *Culex quinquefasciatus*.

**TMCEC:** In Texas, 85 mosquito species have been identified. The *Culex quinquefasciatus*, or southern house mosquito, is the vector for several diseases, and is found in more than 100 Texas counties. This bill essentially broadens the public health nuisance to include additional mosquito species.

### **H.B. 905**

**Subject: Regulation of Knives by a Municipality or County**

**Effective: September 1, 2015**

Under current law, Subchapter A, Chapter 229 of the Local Government Code prohibits municipalities from regulating firearms, air guns, and explosives, except in limited circumstances. H.B. 905 amends Section 229.001 adding knives to that list. H.B. 905 also adds knives to the list of weapons in Section 236.002 of the Local Government Code which counties may not regulate, except in certain circumstances.

**TMCEC:** This bill follows a trend this Session of increased restrictions on local control. Here, municipalities and counties are further restricted in weapons they may seek to regulate. In related news, while last Session it became legal under state law to possess a switchblade knife, efforts to similarly legalize possession of a Bowie knife this Session failed. Thus the Bowie knife, a symbol of the Texas Revolution, remains a knife prohibited by state law. Remember the Alamo.

### **H.B. 942**

**Subject: Storage of Certain Hazardous Chemicals**  
**Effective: September 1, 2015, except as noted**

H.B. 942 amends Subchapter I, Chapter 63 of the Agriculture Code, Chapters 505, 506, and 507 of the Health and Safety Code, and Chapter 7 of the Water Code relating to the storage of certain hazardous chemicals. The bill transfers enforcement of certain

reporting requirements, including the imposition of criminal, civil, and administrative penalties, from the Department of State Health Services (DSHS) to the Texas Commission on Environmental Quality (TCEQ), amends provisions subject to a criminal penalty, and reenacts a criminal offense. Recent emergency events in Texas have caused the laws relating to oversight and regulation of certain hazardous chemicals to come under public scrutiny. Such laws are potentially confusing because of the patchwork of various agencies and regulatory bodies to which the laws apply. H.B. 942 clarifies the law in this regard to reduce the possibility of the reoccurrence of a disastrous hazardous chemical event. In order to clarify the law, H.B. 942 authorizes certified fire marshals to inspect ammonium nitrate facilities to look for common life or safety hazards, authorizes local fire departments to undertake pre-fire planning assessments, transfers the Tier II chemical reporting process from the DSHS to the more aptly suited TCEQ, and codifies the rules that were created by the State Chemist's Office to ensure safety and proper storage at ammonium nitrate facilities.

H.B. 942 amends Subchapter E, Chapter 7 of the Water Code by adding Section 7.1851 creating an offense punishable by a fine not to exceed \$25,000. Under this section, a person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by Chapter 505 or 506 of the Health and Safety Code, commits an offense.

On September 1, 2015, the powers, duties, obligations, and liabilities, of DSHS relating to Chapters 505, 506, and 507 of the Health and Safety Code are transfer to TCEQ, along with the funds and staff designated for enforcement of those chapters.

Sections 63.151 (amendments to definitions) and 63.158 (inspection by fire marshal) of the Agriculture Code are effective June 16, 2015. The other provisions of the bill are effective September 1, 2015.

**TMCEC:** This bill is in response to the explosion in West, Texas that killed 15 people in 2013. Many believe that the West disaster could have been prevented with proper oversight and regulation of the ammonium nitrate facility. The bill provides, among other things, for regular inspections of ammonium nitrate facilities.

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**H.B. 1036****Subject: Reporting Requirements for Certain Injuries or Deaths Caused by Peace Officers and for Certain Injuries or Deaths of Peace Officers Effective: September 1, 2015**

Under current law, there is no way to know how many police-involved shootings occur each year because current law does not require police shootings to be reported. This lack of information may prevent policymakers and researchers from adequately studying this issue. H.B. 1036 amends Chapter 2 of the Code of Criminal Procedure by adding Articles 2.139 and 2.1395 creating reporting requirements for law enforcement agencies employing peace officers, for certain injuries or deaths caused by peace officers and for certain injuries or deaths of peace officers.

The Attorney General must create written and electronic forms for law enforcement agencies to report an officer-involved injury or death and incidents where a person who is not a peace officer discharges a firearm and causes injury or death to an officer while performing an official duty. The law enforcement agency employing an officer involved in the incident, not later than the 30th day after the date of an officer-involved injury or death, must complete and submit a written or electronic report, using the appropriate form created by the Attorney General, to the Office of the Attorney General and, if the agency maintains an Internet website, post a copy of the report on the agency's website.

**TMCEC:** This bill creates two reporting requirements, one for an incident in which an officer discharges a firearm and another person is injured or dies, and another for an incident in which another person discharges a firearm and an officer is injured or dies. Only law enforcement agencies employing a peace officer are required to submit reports under this bill.

**H.B. 1150****Subject: Sale of Fireworks on and before Certain Holidays Effective: September 1, 2015**

H.B. 1150 amends Section 2154.202 of the Occupations Code to authorize the commissioners court of a county to allow by order a retail fireworks permit

holder to sell fireworks in that county only to the public and only during one or more of the following periods: beginning February 25 and ending at midnight on March 2; beginning April 16 and ending at midnight on April 21; and beginning the Wednesday before the last Monday in May and ending at midnight on the last Monday in May. This is in addition to the periods during which the sale of fireworks is authorized under current law.

The bill amends Section 352.051 of the Local Government Code to require the Texas Forest Service to make its services available each day during the Texas Independence Day, San Jacinto Day, Memorial Day, Fourth of July, and December fireworks seasons to respond to the request of any county for a determination whether drought conditions exist on average in the county. The bill requires that the order be adopted before: February 15 of each year for the Texas Independence Day fireworks season; April 1 of each year for the San Jacinto Day fireworks season; and May 15 of each year for the Memorial Day fireworks season, in addition to requirements for adoption dates under current law.

**TMCEC:** Fireworks have long been a heated source of controversy between neighbors and have occasionally caused sparks to fly between city and county governments. How does your municipality feel about fireworks? Hopefully, with a brightly glowing, radiant sense optimism because under H.B. 1150 there are going to be more opportunities than ever for counties to authorize fireworks sales as part of local celebrations.

**H.B. 1246****Subject: Methods of Delivery for Required Financial Statement Forms Effective: September 1, 2015**

H.B. 1246 amends Chapter 145 of the Local Government Code relating to the methods of delivery for required financial statement forms sent to certain municipal officeholders and candidates for municipal office. The bill adds a definition of "deliver" to Section 145.002, defining it as transmitting by mail, personal delivery, or e-mail or any other means of electronic transfer. H.B. 1246 amends Sections 145.005 and 145.009 of the Government Code to require the clerk or secretary of a municipality to deliver at least one copy, rather than mail two copies, of the required form.

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**H.B. 1277****Subject: Requirements for Annexation of Certain Commercial or Industrial Areas by a General-Law Municipality****Effective: June 17, 2016**

Current law allows a general-law municipality to annex adjacent territory without consent of any of the residents or voters of an area under certain circumstances. The landowners affected by the annexation and who are registered voters may petition for disannexation, but the process is cumbersome.

H.B. 1277 amends Subchapter B of Chapter 43 of the Local Government Code by adding Section 43.0235 requiring written consent of property owners prior to annexation by a general-law municipality if a majority of the territory in question is used for commercial or industrial purposes. Specifically, the bill authorizes a general-law municipality to annex an area, provided 50 percent or more of the property in the area to be annexed is primarily used for a commercial or industrial purpose, only if the municipality is otherwise authorized by this subchapter to annex the area and complies with the requirements prescribed under that authority; and obtains the written consent of the owners of a majority of the property in the area to be annexed. The consent must be signed by the owners of the property and include a description of the area to be annexed.

**H.B. 1558****Subject: Churches that Provide Overnight Shelter for Children****Effective: September 1, 2015**

In many communities, homeless shelters will not accept a homeless child. Because a church is a place of worship, zoning restrictions in municipalities can prohibit churches from providing overnight shelter to children. H.B. 1558 amends Subchapter A of Chapter 215 of the Government Code to prohibit a municipality from adopting or enforcing ordinances that prohibit a church from providing overnight shelter to children 17 and under. H.B. 1558 defines “church” as a facility that is owned by a religious organization and that is used primarily for religious services. A municipality may adopt or enforce an ordinance that relates to the safe and sanitary operations of an overnight shelter and may establish limits on the number of nights a child may use an overnight shelter.

**TMCEC:** Although a municipality may not outright prohibit churches from providing shelter to children, the municipality may still enforce regulations governing the operation of shelters.

**H.B. 1794****Subject: Suits Brought by Local Governments for Violations of Laws under the Texas Commission on Environmental Quality****Effective: September 1, 2015**

H.B. 1794 amends Section 7.107 of the Water Code to require a civil penalty recovered in a suit brought under this subchapter by a local government, except in a suit brought for a violation of Chapter 28 of the Water Code or Chapter 401 of the Health and Safety Code, to be divided as follows: the first \$4.3 million of the amount recovered shall be divided equally between the state and either the municipal or county government that brought the suit; and any amount recovered in excess of \$4.3 million shall be awarded to the state.

**H.B. 1853****Subject: Removal of a Tenant’s Personal Property after a Writ of Possession in an Eviction Suit**  
**Effective: September 1, 2015**

Currently, an evicted person’s possessions may be placed at a location near the residence from which the person is being evicted by an officer executing the related writ of possession or by another authorized person. Some municipalities have experienced problems with the person’s possessions in such cases being spread throughout the streets and neighborhoods near the location of the residence. H.B. 1853 amends Section 24.0061 of the Property Code relating to the removal of a tenant’s personal property after a writ of possession has been issued in an eviction suit. The bill authorizes a municipality to provide, without charge to the landlord or to the owner of personal property removed from a rental unit, a portable, closed container into which the removed personal property may be placed by the officer executing the writ or another authorized person. The municipality may remove the container from the location near the rental unit and dispose of the contents by any lawful means if the owner of the removed personal property does not recover the property from the container within a reasonable time.

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**H.B. 2162****Subject: Municipal Regulation of the Use of Alarm Systems****Effective: September 1, 2015**

As alarm system products have proliferated and grown in sophistication, Texas alarm system regulations have become outdated. H.B. 2162 amends the alarm regulation statutes in Chapter 214 of the Local Government Code.

The bill adds Section 214.1915 to limit the applicability of the current regulations in Subchapter F of Chapter 214 to a municipality with a population of less than 100,000, located wholly in a county with a population of less than 500,000.

H.B. 2162 also creates a new subchapter, designated F-1, titled "Burglar Alarm Systems in Large Municipalities and Municipalities Wholly or Partly Located in Large Counties." Subchapter F-1 comprises Sections 214.201 through 214.2105. Section 215.204 authorizes a fee of not more than \$50 per year for residential alarm system users, and not more than \$250 per year for commercial alarm system users. Added Section 214.207 provides penalties which the city may impose for false alarms. Subchapter F-1 applies to a municipality not governed by Subchapter F.

**TMCEC:** H.B. 2162 is no pantheon of clarity. Certain provisions, in an effort to be general are vague (e.g., it is not clear whether the "penalties" authorized in Section 214.207 are criminal, civil, or both).

**H.B. 2296****Subject: Municipal Regulation of Possession of an Open Container or Public Consumption of Alcoholic Beverages****Effective: September 1, 2015**

Governing bodies of municipalities regularly adopt local ordinances that are in the best interests of the municipalities' residents. However, a current statutory requirement requires that a municipality petition for the adoption of an order by the Texas Alcoholic Beverage Commission (TABC) to prohibit the possession of an open container or the public consumption of alcoholic beverages in the municipality's central business district.

H.B. 2296 amends Section 109.35 of the Alcoholic Beverage Code relating to regulation by a municipality of the possession of an open container or the

public consumption of alcoholic beverages. The bill authorizes the governing body, if it determines the behavior is a risk to the health and safety of the citizens of the municipality, to prohibit the possession of an open container or the public consumption of alcoholic beverages in that central business district. The municipality is no longer required to petition TABC to order such a prohibition. If a municipality prohibits the possession of an open container or the public consumption of alcoholic beverages in the central business district of the city, it must adopt a map, plat, or diagram showing the central business district that is covered by the prohibition. The municipality's charter or ordinance may not prohibit the possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the municipality, residential structures, or licensed premises located in the area of prohibition.

In accordance with Section 1.06 of the Alcoholic Beverage Code, Section 109.35 does not authorize municipal regulation except as expressly provided by that section.

**TMCEC:** This bill streamlines the process for municipalities to regulate alcoholic beverages in a designated central business district. It removes the middleman, the Texas Alcoholic Beverage Commission, essentially giving the municipality's governing body increased control of regulation. This is a rare example this Session of increased local control.

**H.B. 2430****Subject: Food and Beverage Consumption in Public Swimming Pools****Effective: June 16, 2015**

In 2004, the Department of State Health Services (DSHS) adopted rules to regulate public swimming pools and spas. The majority of these rules were directed at construction and equipment requirements, but DSHS also included a rule that prohibits the consumption of food or beverages in a swimming pool altogether. Despite being codified, this rule is not being enforced. In fact, many establishments in Texas currently operate swim-up bars that serve beverages and or food to guests in the water. H.B. 2430 amends Section 341.064 of the Health and Safety Code by adding Subsection (1-1) to clean up the unenforced rule. The bill establishes that rules adopted under Chapter 341 may not prohibit the consumption of



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food or beverages in a public swimming pool that is privately owned and operated.

**H.B. 2590**

**Subject: Remedy for Fraud Committed in Certain Real Estate Transactions**  
**Effective: September 1, 2015**

H.B. 2590 amends Chapter 27 of the Business & Commerce Code by creating Section 27.015 to deter and lessen the impact of fraudulent real estate transactions. Under that section, a violation of statutory provisions governing fraud committed in a transaction involving the transfer of title to real estate is a false, misleading, or deceptive act or practice under the Deceptive Trade Practices-Consumer Protection Act, and any public remedy under that act is available for a violation of those statutory provisions. The bill establishes that it is the duty of city attorneys to provide the consumer protection division of the Attorney General's Office any reasonable assistance requested in the commencement and prosecution of actions under the bill's provisions. The bill authorizes a city attorney to institute or prosecute such an action to the same extent and in the same manner as a district or county attorney is authorized to institute or prosecute such an action. The bill requires 75 percent of any penalty recovered in an action brought by a district, county, or city attorney be deposited in the general fund of the county or municipality in which the violation occurred.

**H.B. 2735**

**Subject: Sale of Alcoholic Beverages in Certain Areas Annexed by a Municipality**  
**Effective: June 15, 2015**

A number of municipalities face the issue of having annexed small portions of land many years after an initial local beer and wine sales election. The municipality may need to go through the expensive process of holding another local option election if a developer wants to develop the land and include a box store to sell beer and wine.

H.B. 2735 amends Section 251.72 and creates Section 251.725 of the Alcoholic Beverage Code, relating to the sale of alcoholic beverages in certain areas annexed by a municipality. Section 251.725 authorizes the governing body of a municipality to adopt an ordinance authorizing the sale of beer and wine for off-premise consumption in an area an-

nexed after the local option election, if at the time the ordinance is adopted: the annexed area is not more than one percent of the total area covered by the municipality; all of the land in the annexed area is zoned for commercial use only; and the annexed area is not adjacent to residential, church, or school property. The bill provides that Section 251.72 only applies to a municipality whose local option status allows for the legal sale of beer and wine for off-premise consumption.

**H.B. 3089**

**Subject: Fire Protection Sprinkler Systems in Residential High-Rise Buildings in Certain Counties**  
**Effective: September 1, 2015**

H.B. 3089 amends Chapter 766 of the Health and Safety Code requiring certain buildings (only in Bexar County) to install a complete fire protection sprinkler system and comply with certain fire safety standards within a 12-year time frame. The bill applies to residential high-rise buildings: that are located in a county with a population of more than 1.5 million in which more than 75 percent of the population resides in a single municipality; in which at least 50 percent of residents are individuals who are elderly, have a disability, or have impaired mobility; and that are not designated as historically or archaeologically significant by the Texas Historical Commission or the governing body of the county or city in which the building is located. The bill adds Section 766.056 creating an offense punishable by a fine of not more than \$10,000 for an owner not in compliance with the requirements. It also adds Section 766.055 authorizing the Attorney General and the county and district attorney in the county in which the building is located to bring an action in the name of the State for an injunction to enforce Subchapter B of Chapter 766 of the Health and Safety Code.

**H.B. 3439**

**Subject: Donation of Property from a State Agency to a Local Governmental Entity**  
**Effective: September 1, 2015**

H.B. 3439 amends current law relating to the donation of property from a state agency to an assistance organization or a local governmental entity by amending Section 2175.241 of the Government

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Code. The bill establishes a process for donating state surplus property to local governmental entities in cases in which the state will benefit, and in which the state cannot otherwise sell the property. This is an alternative to destroying the property as worthless salvage or donating it to an assistance organization.

**S.B. 158**

**Subject: Body Worn Camera Program for Law Enforcement Agencies**

**Effective: September 1, 2015**

S.B. 158 creates statewide standards on the use of body worn cameras by law enforcement and assists in the procurement and operation of a body worn camera program. The bill amends Chapter 1701 of the Occupations Code establishing a grant program through the Governor's Office for local law enforcement agencies to help defray the cost of body worn cameras for law enforcement officers and establishes requirements for law enforcement agency policies for the cameras. Municipal police departments, sheriffs, and DPS are eligible for such grants if the agency employs officers who engage in traffic or highway patrol, regularly detain or stop motor vehicles, or are primary responders.

S.B. 158 adds Section 1701.655 requiring law enforcement agencies that receive a grant for body worn cameras or that operate a body worn camera program to adopt a policy on the use of such cameras with specific guidelines and provisions listed in the statute. The bill adds Section 1701.656 requiring training before an agency may operate a body worn camera program.

Under added Section 1701.659, it is a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000, for a peace officer or other law enforcement agency employee to release a recording from a camera without the permission of the law enforcement agency. Sections 1701.660 and 1701.661 govern the release of recordings to the public and confidentiality. Recordings involving fine-only misdemeanors that do not result in arrests are prohibited from release without written authorization from the person who is the subject of that portion of the recording. Section 1701.663 addresses voluminous public information requests for body camera recordings.

**TMCEC:** In the wake of recent police-involved

deaths in Ferguson, Baltimore, and Charleston, body worn cameras are increasingly becoming adopted policy among law enforcement agencies. Body worn cameras can provide valuable evidence (how valuable depends, for example, on what is in the camera's view and how much context is captured), but also pose privacy concerns when recordings are made in settings like the home. S.B. 158 seems to attempt to facilitate strong policies to protect both law enforcement and the public. Courts can expect to see an increase in body camera-related evidence, discovery requests, and record requests.

**S.B. 267**

**Subject: Regulation by a Municipality or County of Rental or Leasing of Housing Accommodations**  
**Effective: September 1, 2015**

S.B. 267 adds Section 250.007 of the Local Government Code prohibiting a municipality or county from adopting or enforcing an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because of their lawful source of income to pay rent, including a federal housing choice voucher. Some municipal ordinances have passed or were proposed for passage that would require private property owners to participate in the federal housing choice voucher program, commonly referred to as the Section 8 program. The federal program itself is voluntary and does not mandate participation by private property owners. Under S.B. 267, local governments may not require private property owners to participate in a federal housing assistance program.

S.B. 267 does not affect an ordinance or regulation that prohibits the refusal to lease or rent a housing accommodation to a military veteran because of the veteran's lawful source of income to pay rent. The bill does not affect any authority of a municipality or county or decree to create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to encourage the acceptance of a housing voucher directly or indirectly funded by the federal government, including a federal housing choice voucher.

**TMCEC:** Many believe that this bill was aimed at the City of Austin, which had recently passed an ordinance prohibiting discrimination against low

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income individuals paying through the Section 8 program. The bill allows for incentives encouraging owners to accept vouchers, but municipalities may not entirely prohibit consideration of a resident's source of income.

**S.B. 273**

**Subject: Offenses Relating to Carrying Concealed Handguns on Property Owned or Leased by a Governmental Entity**

**Effective: September 1, 2015**

S.B. 273 adds Section 411.209 of the Government Code, which allows citizens to file complaints, and the Attorney General to enforce, fines against political subdivisions that unlawfully post signs that prohibit concealed weapons on property where holders of a permit under Subchapter H, Chapter 411 of the Government Code are legally permitted to carry handguns. These fines range between \$1,000 and \$1,500 for a first offense and between \$10,000 and \$10,500 for subsequent offenses. Civil penalties collected by the Office of the Attorney General will be deposited in an existing fund to compensate victims of crime.

S.B. 273 does not expand the types of places under Sections 46.03 or 46.035 of the Penal Code where a concealed handgun license holder is prohibited or not prohibited from legally carrying a handgun.

**TMCEC:** This bill prohibits municipalities from posting signage excluding concealed handgun license holders from carrying handguns on property owned or leased by the municipality unless otherwise allowed by law. It also provides for civil liability against the municipality. For the first time, there is a mechanism for citizens to file complaints against the municipality. Municipalities should be aware of the types of places that signage is allowed under current law.

**S.B. 536**

**Subject: Designation of Prostitution Prevention Programs as Commercially Sexually Exploited Persons Court Programs**

**Effective: June 16, 2015**

S.B. 536 amends Chapter 169A of the Health and Safety Code transferring the prostitution prevention program, re-named the commercially sexually exploited persons court program, to Chapter 126 of

the Government Code, subjecting the program to the statutory authorities and requirements in that code generally applicable to specialty courts. S.B. 536 revises and updates applicable statutory provisions to reflect the transfer and renaming of the program. The bill authorizes a county to apply to the Criminal Justice Division of the Governor's Office for a grant for the establishment or operation of a commercially sexually exploited persons court program.

**S.B. 570**

**Subject: Use of Fireworks at Texas Department of Transportation Rest Areas**

**Effective: September 1, 2015**

S.B. 570 amends Section 203.112 of the Transportation Code to require the Texas Transportation Commission, by order, to prohibit or restrict the use of fireworks at a state highway rest area in the unincorporated area of a county if the commissioners court of the county petitions the commission to adopt the order, and the county pays the Texas Department of Transportation (TxDOT) for the costs of designing, constructing, and erecting signs at the rest area giving notice of the order. Currently, law enforcement does not have statutory authority to enforce the use of fireworks in these areas, even if a sign prohibiting the use of fireworks is posted or if a county commissioners court desired to prohibit the use of fireworks in those areas.

**TMCEC:** This amendment allows for the creation of a Class C misdemeanor but not one within the jurisdiction of a municipal court.

**S.B. 1264**

**Subject: Regulation of Industrialized Housing and Industrialized Buildings**

**Effective: September 1, 2015**

S.B. 1264 amends Sections 1202.002 and 1202.003 of the Occupations Code to increase the maximum height allowed for industrialized housing and industrialized buildings to four stories or 60 feet in height. Previously, the maximum number of stories and height an industrialized home or building could be built was three stories or 49 feet.

**TMCEC:** The implication of this change on a municipal court depends on your location and local focus on code enforcement and building standards. This change is unlikely to be welcomed news to cit-

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ies whose building codes reflect the current standard. Some cities may need to revise their ordinances to reflect the change in law.

***S.B. 1281***

**Subject: Authority of a Local Government to Participate in a Cooperative Purchasing Program**  
**Effective: May 29, 2015**

In 1995, the 74th Legislature created the Local Government Cooperative Purchasing Program to allow local governments to organize to increase efficiencies and purchasing power and thereby access favorable contracts with vendors for the purchase of materials, supplies, services, or equipment. Section 271.102 of the Local Government Code is interpreted to restrict participation in the program to Texas local government participants and cooperative organizations. Other states, however, could secure a better price for a contract for goods or services.

S.B. 1281 amends Section 271.102 of the Local Government Code authorizing a local government to participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state.

***S.B. 1593***

**Subject: Regulation of the Sale of Fireworks by Municipalities**  
**Effective: September 1, 2015**

Under current law, a home-rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside those limits. This allows the municipality to enforce all ordinances necessary to prevent, summarize, abate, and remove such nuisances. Many municipalities ban the sale or use of fireworks under this authority. S.B. 1593 amends Section 217.042 of the Local Government Code to specifically prohibit home-rule municipalities from regulating the sale of fireworks outside the limits of the municipality.

**TMCEC:** This bill is noteworthy as it chips away at the broad authority of a home-rule municipality to regulate nuisances outside city limits. Considering the numerous bills filed this Session seeking to limit local control and home-rule cities in particular, this bill is narrow in scope, applying only to the sale of fireworks. Municipalities should note, however, that

there is now an exception to their authority to prohibit some nuisances outside territorial boundaries.

***S.B. 1766***

**Subject: Exemptions from Certain Regulation for Small Honey Production Operations**  
**Effective: September 1, 2015**

Senate Bill 1766 amends Chapter 437 of the Health and Safety Code exempting a small honey production operation from regulated food service establishments, prohibiting a local government authority from regulating the production of honey or honeycomb at a small honey production operation, and requiring honey or honeycomb sold or distributed by a small honey production operation to include specific information on the label.

**TMCEC:** Texas cities, who put a bee in your bonnet? In recent years, Texas has seen a tremendous growth in small scale and hobby beekeepers. Many local government authorities have sought to regulate the production of honey by these small organizations. Within certain parameters, this bill prohibits local authorities from regulating these small organizations.

## **Magistrate Duties, Domestic Violence, and Mental Health**

***H.B. 324***

**Subject: Search Warrant Prior to Body Cavity Search During Traffic Stop**  
**Effective: September 1, 2015**

The 4th Amendment to the United States Constitution establishes the right to be free from unreasonable searches and seizures. A law enforcement officer is generally prohibited from conducting a search without a search warrant, with certain exceptions. Recent Texas incidents involving body cavity searches of individuals during traffic stops without a warrant have prompted concerns regarding the lack of policies among law enforcement agencies prohibiting such warrantless searches.

H.B. 324 adds Article 18.24 to the Code of Criminal Procedure prohibiting a peace officer from conducting a body cavity search, defined in the bill as an inspection that is conducted of a person's anal or vaginal cavity in any manner, of a person during a

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traffic stop unless the officer first obtains a search warrant authorizing the body cavity search.

**TMCEC:** A Senate amendment clarified that a pat-down is not included in the definition of a body cavity search. It is important to note that this amendment is expressly limited in scope to traffic stops. It does not include post-arrest body cavity searches which were recent addressed in *Florence v. Board of Chosen Freeholders of the County of Burlington, et al.*, 132 S. Ct. 1510 (2012). See, Ryan Kellus Turner and Regan Metteauer, “Case Law and Attorney General Opinion Update” *The Recorder* (December 2012) at 1.

### **H.B. 326**

**Subject: Information in Support of a Search Warrant Provided by Electronic Means**  
**Effective: September 1, 2015**

Currently, a law enforcement officer presents certain information to support the issuance of a search warrant to a magistrate by physically walking to the magistrate and presenting the information or by sending a fax of the information to the magistrate. However, this traditional practice presents logistical difficulties for large counties and jurisdictions. Federal rules allow an officer to provide information in person, by fax, by e-mail, or by phone. Texas would benefit from modernizing its warrant process to reflect advances in technology.

H.B. 326 adds Subsection (b-1) to Article 18.01 of the Code of Criminal Procedure authorizing communication of information supporting the issuance of a search warrant by telephone or any other reliable electronic means. Additionally, a magistrate may examine, under oath, an applicant or another person and ensure that any testimony is recorded verbatim. The magistrate must sign, certify the accuracy of, and preserve any written record.

An applicant for a search warrant who submits information as authorized by Subsection (b-1) must prepare a proposed duplicate original of the warrant. If the contents of the proposed duplicate are read to the magistrate, the magistrate must enter the contents of a proposed duplicate into the original, and then either transmit the modified version back to the applicant or file the modified version and instruct the applicant to modify their proposed duplicate accord-

ingly. A duplicate original transmitted by reliable electronic means, however, may serve as the original search warrant.

Any evidence obtained pursuant to a search warrant relying on information submitted under the new Subsection (b-1) is not subject to suppression on the ground that issuing the warrant was unreasonable under the circumstances, absent a finding of bad faith.

**TMCEC:** During the interim, it appears, that the Legislature read Judge Meyers lone dissent in *Clay v. State*, 391 S.W.3d 94 (Tex. Crim. App 2013). In *Clay*, the Court held, in light of the specific facts of the case, that the telephonic administration of an oath for a search warrant did not run afoul of Article 18.01. Judge Meyers stated that only the Legislature could expand the statute. See, commentary, Ryan Kellus Turner and Regan Metteauer, “Case Law and Attorney General Opinion Update” *The Recorder* (November 2013) at 5. In terms of search warrants, H.B. 326 marks a major departure from the “four-corners rule.” While the warrant that is ultimately issued may contain all of the required and relevant information to establish probable cause, the content within its four corners may look nothing like the initial proposed warrant. It may contain scribbled additions, subtractions, and edits written in by a magistrate after questioning an applicant or witness under oath over the phone. For traditionalists, using this new procedure will be a sea change. Many have seen this coming since the passage of H.B. 976 in the 82nd Legislature in 2011. See, Mark Goodner, “Rounding the Corners: Criminal Application of the Four-Corners Rule” *The Recorder* (June 2012) at 16.

### **H.B. 388**

**Subject: Duration of Protective Orders Issued in Cases of Family Violence Against Persons Subsequently Confined or Imprisoned**  
**Effective: June 9, 2015**

Current law only extends protective orders in cases of family violence if the aggressor is still imprisoned at the time the order is set to expire. Protective orders fail to serve their purpose if they expire while the person still poses a threat to his or her family.

H.B. 388 amends Section 85.025(c) of the Family

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Code to extend all protective orders issued against a person who was subsequently imprisoned if the order expires while the person is incarcerated or within a year of release. If the subject of a protective order is sentenced to serve five years or less, and the order expires while the person is incarcerated or within a year of release, the order is extended to expire on the second anniversary of release. If the subject of a protective order is sentenced to more than five years, and the order expires while the person is incarcerated or within a year of release, the order is extended to expire on the first anniversary of release.

**H.B. 643**

**Subject: Procedures for Discharging Bail in Certain Criminal Proceedings**  
**Effective: September 1, 2015**

Under current law, even though an information or indictment in a court case is sometimes never pursued, a surety's liability remains committed with the prosecutor or defense attorney authorized to file a motion to discharge the case and bond.

H.B. 643 adds Subsection (b) to Article 32.01 of the Code of Criminal Procedure authorizing a surety to file a motion only for the purpose of discharging a defendant's bond when the defendant has been detained in custody or held to bail to answer any criminal accusation and no indictment or information has been presented in the required time frame. This frees up the surety's liability for future bond business.

**H.B. 644**

**Subject: Contents of Search Warrant and Tampering with a Governmental Record**  
**Effective: September 1, 2015**

Current law requires a search warrant to include a magistrate's signature but does not require the magistrate's name to be printed on the warrant. There have been reports of local law enforcement agencies illegally seizing money, drugs, jewelry, and other valuable items by signing illegible signatures on search warrants. H.B. 644 seeks to prevent such abuses.

H.B. 644 adds Subsection (5) to Article 18.04 of the Code of Criminal Procedure requiring a warrant to contain the magistrate's name in typewritten form or clearly legible handwriting. Tampering with a search

warrant issued by a magistrate is now punishable as a felony of the third degree under amended Section 37.10(c)(2) of the Penal Code.

**H.B. 885**

**Subject: Certain County Bail Bond Boards**  
**Effective: September 1, 2015**

Current law requires a bail bond board of a county with fewer than 50,000 residents to meet at least four times a year during the months of January, April, July, and October, and at the call of the presiding officer. Additionally, a bail bond board of a county with 50,000 or more residents must meet once a month and at the call of the presiding officer.

H.B. 885 amends Section 1704.055(c) of the Occupations Code to expand the requirement in current law that bail bond boards meet four times per year or at other times at the call of the presiding officer to include counties with fewer than 150,000 people. H.B. 885 amends Section 1704.162 of the Occupations Code to specify that if the board tables or does not take action on a license renewal, the applicant's license continues in effect until the next meeting of the board.

**TMCEC:** H.B. 885 allows counties with between 50,000 and 150,000 residents to avoid monthly bail board meetings if unnecessary.

**H.B. 1293**

**Subject: Confidentiality of Identifying Information of Stalking Victims**  
**Effective: September 1, 2015**

H.B. 1293 adds Chapter 57A to the Code of Criminal Procedure to protect the identity of victims of stalking. The bill authorizes a victim to choose a pseudonym to be used instead of the victim's name in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim electing to use a pseudonym who properly completes and returns a pseudonym form may not be required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense. A completed and returned pseudonym form is confidential and may not be disclosed to any person other than the victim identi-

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fied by the pseudonym form, a defendant in the case, or the defendant's attorney, except on an order of a court of competent jurisdiction.

A law enforcement agency receiving a pseudonym form must remove the victim's name and substitute the pseudonym for the name on all reports, files, and records and notify the State's attorney of the victim's election to be designated by the pseudonym.

A court of competent jurisdiction, under the new Chapter 57A, may only order disclosure of identifying information of a victim using a pseudonym if the information is essential in the trial of the defendant for the offense, the identity of the victim is at issue, or the disclosure is in the best interest of the victim.

H.B. 1293 creates a Class C misdemeanor if a public servant knowingly discloses the name, address, or telephone number of a victim 17 years of age or older who has chosen a pseudonym under this chapter to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

H.B. 1293 requires the Office of the Attorney General to develop and distribute a pseudonym form to all Texas law enforcement agencies by October 1, 2015.

### ***H.B. 1329***

**Subject: Payment of Costs Incurred by the Involuntary Commitment of Persons with Mental Illness**

**Effective: September 1, 2015**

Current law is ambiguous as to which county is responsible for court costs for emergency detention proceedings when a governmental entity, other than a county employee, initiates proceedings. A county may initiate mental health proceedings, whether by emergency detention or by filing an application for inpatient commitment, to allow medical and behavioral assessments to protect the health and safety of the person and the public. Some counties have recently argued that when a governmental employee other than a county employee, such as a peace officer in a city within the county, initiates the emergency detention, the county is not responsible for the costs.

H.B. 1329 amends Section 571.018 of the Health and Safety Code to clarify that the county in which a person is originally detained is responsible for the costs, regardless of what governmental entity picks up the person and initiates the commitment process. The bill clarifies that the county may not pay the costs from any fees collected under Section 51.704 of the Government Code (Additional Fees in Statutory Probate Courts).

**TMCEC:** Some cities may now breathe a sigh of relief knowing that even if a city officer commits a person with mental illness, the county must foot the bill.

### ***H.B. 1396***

**Subject: Cell Phone Search Warrants**

**Effective: September 1, 2015**

H.B. 1396 adds Article 18.0215 of the Code of Criminal Procedure prohibiting a peace officer from searching a person's cellular telephone or other wireless communication device, pursuant to a lawful arrest of the person, without obtaining a warrant. A warrant under this article may be issued only by a judge in the same judicial district as either the site of the law enforcement agency that employs the peace officer, if the cellular telephone or other wireless communications device is in the officer's possession, or the likely location of the device.

H.B. 1396 authorizes a peace officer to search a cellular telephone or other wireless communications device without a warrant if the owner or possessor consents to the search; the device is reported stolen by the owner or possessor; or the officer reasonably believes that the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense or there exists an immediate life-threatening situation, as defined by Section 1 of Article 18.20.

**TMCEC:** This is the Legislature's attempt at codifying *Riley v. California*, 134 S. Ct. 2473 (2014) (holding that law enforcement must generally secure a search warrant before conducting a search of a cell phone). As introduced, in another bill, only a district judge could issue a search warrant for a cell phone. This was somewhat puzzling since all magistrates can issue a search warrant for the content

*continued on pg. 47*

## MUNICIPAL COURT THEFT and RELATED OFFENSES JURISDICTION

Offense	Legal Cite	Pecuniary Loss for Class C Misdemeanor Jurisdiction	Penalty (Class C misdemeanor – Sec. 12.23, P.C. – Max fine: \$500)
<b>Criminal Mischief</b>	Sec. 28.03, P.C.	Less than \$100	Sec. 28.03(b)(1), P.C. Class C misdemeanor
<b>Reckless Damage or Destruction</b>	Sec. 28.04, P.C.	No value amount limitation	Sec. 28.04(b), P.C. Class C misdemeanor
<b>Interference with Railroad Property</b>	Sec. 28.07, P.C.	Less than \$100	Sec. 28.07(d), P.C. Class C misdemeanor
<b>Graffiti</b>	Sec. 28.08, P.C.	Less than \$100	Sec. 28.08(b), P.C. Class C misdemeanor
<b>Theft of Property</b>	Sec. 31.03, P.C.	Less than \$100	Sec. 31.03(e)(1)(A), P.C. Class C misdemeanor
<b>Theft of Service</b>	Sec. 31.04, P.C.	Less than \$100	Sec. 31.04(e)(1), P.C. Class C misdemeanor
<b>Organized Retail Theft</b>	Sec. 31.16, P.C.	Less than \$100	Sec. 31.16(c), P.C. Class C misdemeanor
<b>Trademark Counterfeiting</b>	Sec. 32.23, P.C.	Less than \$100	Sec. 32.23(c), P.C. Class C misdemeanor
<b>Theft of Service or Credit</b>	Sec. 32.32, P.C.	Less than \$100	Sec. 32.32(c)(1), P.C. Class C misdemeanor
<b>Hindering Secured Creditors</b>	Sec. 32.33, P.C.	Less than \$100	Sec. 32.33(d)(1), P.C. Class C misdemeanor
<b>Credit Card Transaction Record Laundering</b>	Sec. 32.35, P.C.	Less than \$100	Sec. 32.35(c)(1), P.C. Class C misdemeanor
<b>Issuance of Bad Check</b>	Sec. 32.41, P.C.	No value amount limitation	Sec. 32.41(f), P.C. Class C misdemeanor unless check issued or passed was for child support obligation then it is a Class B misdemeanor
<b>Illegal Recruitment of an Athlete</b>	Sec. 32.441, P.C.	Value of the benefit is less than \$100	Sec. 32.441(e), P.C. Class C misdemeanor
<b>Misapplication of Fiduciary Property or Property of Financial Institution</b>	Sec. 32.45, P.C.	Less than \$100	Sec. 32.45(c)(1), P.C. Class C misdemeanor
<b>Securing Execution of Document by Deception</b>	Sec. 32.46, P.C.	Less than \$100	Sec. 32.46(b)(1), P.C. Class C misdemeanor
<b>Breach of Computer Security</b>	Sec. 33.02, P.C.	Less than \$100	Sec. 33.02(b-2), P.C. Class C misdemeanor
<b>Insurance Fraud</b>	Sec. 35.02, P.C.	Less than \$100	Sec. 35.02(d)(1), P.C. Class C misdemeanor
<b>Medicaid Fraud</b>	Sec. 35A.02, P.C.	Less than \$100	Sec. 35A.02(b), P.C. Class C misdemeanor
<b>Abuse of Official Capacity</b>	Sec. 39.02, P.C.	Less than \$100	Sec. 39.02(c), P.C. Class C misdemeanor



of computer hard drives believed to contain images of child pornography. It is less than clear who all is considered “a judge in the same judicial district.” It is going to be interesting to see how this and other search-related amendments to the Code of Criminal Procedure operate outside of the legislative realm.

H.B. 1396 also made changes pertaining to “value ladder” offenses and trials involving victims who are children. Those amendments are described on pages 73 and 81 of this publication.

**H.B. 1447**

**Subject: Protective Orders for Victims of Sexual Assault or Abuse, Stalking, or Trafficking**  
**Effective: September 1, 2015**

A protective order is not currently required to be issued with respect to a person convicted of sexual assault and other related offenses until after the offender has been released from prison. The parties raise concerns that issuing such an order after an offender’s release from prison is sometimes impossible as law enforcement officers often have a difficult time locating the offender after release. H.B. 1447 provides victims of sexual assault and other related offenses greater peace of mind and eases a victim’s burden of filing an application for a protective order by revising the laws relating to such a protective order.

H.B. 1447 amends Article 7A.01(a) of the Code of Criminal Procedure to authorize a person, or the prosecuting attorney acting on behalf of the person, who is the victim of an offense of Trafficking of Persons, Continuous Trafficking of Persons, or Compelling Prostitution to file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.

H.B. 1447 also amends Article 56.021 of the Code of Criminal Procedure to provide victims of an offense of Continuous Sexual Abuse of Young Child, Indecency with a Child, Sexual Assault, Aggravated Sexual Assault, Stalking, or Compelling Prostitution, or the parents or guardians of victims additional rights related to the filing of applications for protective orders.

**TMCEC:** This bill is identical to S.B. 630, which

also passed this Session. It is important to note that the provisions pertain to a protective order, not a magistrate’s order of emergency protection. Municipal judges may not issue protective orders.

**H.B. 1595**

**Subject: Testing Certain Defendants or Confined Persons for Communicable Diseases**  
**Effective: June 17, 2015**

Current law requires a detainee to be tested for infectious diseases if the detainee’s bodily fluids come into contact with a peace officer, provided the contact was instigated by the detainee, and requires that the notification of the test results be provided to the peace officer. However, current law does not provide the same protection for magistrates or correctional facility employees.

H.B. 1595 amends Article 18.22 of the Code of Criminal Procedure to require defendants or confined persons, both for felonies and misdemeanors, to be tested for communicable diseases if a peace officer, magistrate, or an employee of a correctional facility comes into contact with the person’s bodily fluids during a judicial proceeding or while the defendant is confined after conviction or adjudication resulting from arrest.

**TMCEC:** This is a welcomed addition to the law from the perspective of municipal judges, who issued magistrate warnings over 500,000 times in 2014 and have dealt with illness and lengthy treatment as a result of contact with confined persons’ bodily fluids.

H.B. 1595 is not the only bill related to exposure of bodily fluids. See, S.B. 1574 regarding emergency response employees and volunteers exposed to certain diseases.

**H.B. 1782**

**Subject: Protective Orders Against Persons Convicted or Placed on Deferred Adjudication Family Violence Offenses**  
**Effective: September 1, 2015**

Under current law, Chapter 81 of the Family Code allows protective orders when family violence has occurred and is likely to occur in the future. Adopted children whose parents’ rights have been terminated

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are not automatically extended these same protections, even when a family violence offense has been committed.

H.B. 1782 adds Section 81.0015 to the Family Code creating a presumption that family violence has occurred and is likely to occur again if: the respondent has been convicted of, or placed on, deferred adjudication community supervision for an offense involving family violence or offense under Titles 5 or 6 of the Penal Code; the respondent's parental rights with respect to the child have been terminated; and the respondent is seeking or attempting to seek contact with the child.

**H.B. 2185**

**Subject: Execution of a Search Warrant for Taking a DNA Specimen**  
**Effective: September 1, 2015**

When a suspect is served with a warrant to submit a DNA specimen for the purpose of connecting the suspect to an offense, it can often be laborious and time-consuming for law enforcement personnel to coordinate with the court of proper jurisdiction to obtain the specimen. Critics argue that this inefficient process stymies law enforcement personnel from connecting suspects to crimes committed outside of the respective jurisdictions of those personnel. H.B. 2185 seeks to make the process less burdensome for both law enforcement and the individuals served with DNA specimen warrants.

H.B. 2185 adds Article 18.065 to the Code of Criminal Procedure allowing search warrants to collect DNA specimens for the purpose of connecting an individual to a criminal offense to be executed in any county of the state, if they are issued by the judge of a district court. The article expressly does not apply to warrants issued by a justice of the peace, judge, or other magistrate other than a judge of a district court.

**TMCEC:** It should be noted that this bill does not prevent a municipal judge or justice of the peace from issuing a search warrant for a DNA specimen; it merely gives statewide execution authority to those issued by a district judge.

**H.B. 2455**

**Subject: Establishment of a Task Force to Promote Uniformity in the Collection and Reporting of Information Relating to Family Violence, Sexual Assault, Stalking, and Human Trafficking**  
**Effective: June 16, 2015**

The actual frequency of the crimes of sexual assault, stalking, and human trafficking in Texas is unclear because state and local agencies across Texas conduct data collection and reporting in widely varying ways. Responsibility for capturing this data is split across numerous state agencies. The resulting inconsistency yields inaccurate numbers, making it more difficult for the state to address crime and protect victims efficiently and effectively. H.B. 2455 adds Subchapter F to Chapter 72 of the Government Code to establish a task force to promote uniformity in the collection and reporting of information relating to family violence, sexual assault, stalking, and human trafficking.

**H.B. 2486**

**Subject: Entry of a Former Residence Accompanied by a Peace Officer to Recover Certain Personal Property**  
**Effective: September 1, 2015**

Certain domestic situations are exacerbated when a family member or a roommate refuses to allow a person to return home to retrieve personal belongings. Persons may be locked out and unable to retrieve personal belongings or access prescription medications or necessities for care of their children. Current law does not provide any procedural means for these individuals to seek help in entering the home and retrieving property.

H.B. 2486 amends Title 4 of the Property Code by adding Chapter 24A relating to the right of a person to enter the person's residence or former residence accompanied by a peace officer to recover certain personal property and creates an offense. An individual who is denied access to personal property located in a former residence may apply to the justice of the peace for a court order authorizing entry. The application must: attest to denied entry; specify items needed; certify that no protective order prevents entry; and state the harm that will result if the applica-

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tion is denied. If the application is approved, the justice may issue an order that the applicant can reenter and be accompanied and protected by a peace officer. Before the justice of the peace may issue such an order, the applicant must execute a bond payable to the occupant to be applied to any adjudged damages for wrongful property retrieval.

H.B. 2486 creates a Class B misdemeanor for a person who interferes with the court-ordered entry, and protects law enforcement from any civil or criminal liability. It also includes a defense to prosecution from this offense if a person did not receive a copy of the court order or notice that the entry to the property retrieval was authorized.

**TMCEC:** Family violence advocates have long awaited this sort of legislation. Although most “civil-standbys” are performed by non-municipal law enforcement, should a municipal judge also have the authority to issue the court order authorizing entry? Should this be a magistrate issue?

#### ***H.B. 2499***

**Subject: Electronic Filing of Bail Bonds**

**Effective: September 1, 2015**

Under current law, bail bond boards use a paper filing system that can be burdensome and costly for counties, attorneys, and bail bond agents. Using an electronic filing system, such as the system mandated in civil courts, may ensure savings and reduce paperwork. H.B. 2499 adds Article 17.026 of the Code of Criminal Procedure to authorize a bail bond to be filed electronically in any manner permitted by the county court, judge, magistrate, or other officer taking the bond.

#### ***H.B. 2645***

**Subject: Prosecution of Offenses Involving Family Violence and Violation of Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, or Stalking Case**

**Effective: September 1, 2015**

H.B. 2645 adds Article 38.371 to the Code of Criminal Procedure authorizing each party to the prosecution of certain offenses involving family violence to offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the defendant committed

the offense, including testimony or evidence regarding the nature of the relationship between the actor and the alleged victim. The bill subjects this authorization to the Texas Rules of Evidence and other applicable law. Article 38.371 applies to assaults and aggravated assaults on persons the defendant is related to, in a dating relationship with, or a member of the same household, as those terms are defined in the Family Code. The article also applies to offenses based on a violation of a court order or condition of bond in a case involving family violence.

Proponents claim that current law does not adequately address the arrest of a suspect who has removed or attempted to remove an ankle monitor global positioning monitoring system. Criminalizing the removal or attempt to remove an ankle monitor would deter suspects from tampering with their monitors and protect victims of family violence, sexual assault or abuse, and stalking.

H.B. 2645 amends Section 25.07 of the Penal Code creating an offense if the person knowingly or intentionally removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system, in violation of certain court orders or conditions of bond in a family violence, sexual assault or abuse, or stalking case.

**TMCEC:** Initially, H.B. 2645 only dealt with the ankle monitors. The new Article 38.371 was initially filed as H.B. 2777, but that bill did not make it to the finish line. When introduced, H.B. 2777 permitted certain character evidence notwithstanding Rules 404 and 405 of the Texas Rules of Evidence. The House Committee Substitute removed language referencing those specific rules and subjected Article 38.371 to the Texas Rules of Evidence and other applicable law. The substitute arguably neutralized the intended effect of the bill on admissible evidence in family violence cases and made no change to the type of evidence admissible in these cases. H.B. 2645 includes an additional subsection in Article 38.371 explicitly stating the article does not permit character evidence that is otherwise inadmissible under the Texas Rules of Evidence or other applicable law. This bill may have been a procedural step to ensure an opportunity to give evidence, rather than an effort to loosen evidentiary rules that then returned to status quo.

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**S.B. 112**

**Subject: Prohibiting Certain Communications in a Magistrate's Order for Emergency Protection**  
**Effective: May 23, 2015**

Under current law, judges, in their capacities as magistrates, have the authority to issue a Magistrate's Order of Emergency Protection (MOEP). (Article 17.292, Code of Criminal Procedure). A MOEP may prohibit an arrested person from assaulting or stalking the person protected. A MOEP may also prohibit the arrested person from threatening or communicating directly with the person protected under the order, as well as with the person's family. In situations where there are accusations of domestic violence, a magistrate currently does not have clear authority to issue a gag order. Such an order will provide a "cool down" period, where individuals could communicate only through lawyers. S.B. 112 amends Article 17.292(c) of the Code of Criminal Procedure authorizing a magistrate, when issuing MOEP, to prohibit the arrested party from communicating in any way with the protected person, the person's family or household, except through the party's attorney or a person appointed by a court.

**TMCEC:** With all of the many different modes of communication available, an argument could be made that certain communications such as email, social media, and texting do not constitute direct communication. The clear language of S.B. 112 closes any existing loopholes by prohibiting all manners of communication.

**S.B. 147**

**Subject: Violation of Court Orders or Conditions of Bond in Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Cases**  
**Effective: September 1, 2015**

Currently, two separate provisions of the Penal Code are used to prosecute violations of protective orders. Section 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, or Stalking Case) covers family violence protective orders, and Section 38.112 (Violation of Protective Order Issued on Basis of Sexual Assault or Abuse, Stalking, or Trafficking) covers sexual assault, stalking, and human trafficking protective orders. Section 25.07 provides more protections for victims and more severe penalties for violations, including the possibility of charging

defendants with a felony for repeat violations under Section 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in Family Violence Case), rather than separate misdemeanor charges for each violation.

S.B. 147 amends Section 25.07 of the Penal Code to allow violations of sexual assault protective orders, stalking protective orders, and human trafficking protective orders to be prosecuted under that statute. Additionally, S.B. 147 amends Section 25.072 to allow repeated violations of such orders to be prosecuted under that statute. The bill also amends Section 411.042 of the Government Code requiring the Bureau of Identification and Records of the Department of Public Safety to collect and maintain data concerning human trafficking protective orders.

S.B. 147 also repeals Section 38.112 of the Penal Code, the current statute used to prosecute violations of sexual assault, stalking, and human trafficking protective orders. By repealing Section 38.112 and providing that all violations of protective orders be prosecuted under Section 25.07, S.B. 147 strengthens protections for victims of sexual assault, stalking, and human trafficking and provides more enforcement tools to prosecutors.

**TMCEC:** See also, H.B. 2645, amending Section 25.07 of the Penal Code relating to tampering with ankle monitoring systems.

**S.B. 630**

**Subject: Protective Orders for Certain Victims of Sexual Assault or Abuse, Stalking, or Trafficking**  
**Effective: September 1, 2015**

**TMCEC:** This bill is identical to H.B. 1447. See, H.B. 1447 summary.

**S.B. 737**

**Subject: Protective Orders and Magistrate's Orders for Emergency Protection**  
**Effective: September 1, 2015**

Current law authorizes judges to issue emergency orders to protect the victims of family violence. The issuing court reports these orders to law enforcement, enabling them to keep victims safe from further violence. However, under current law and practice, there are often delays in the execution of the order. Victims are not notified that the order has been is-

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sued, and law enforcement officers may go to the scene of a family violence investigation unaware of an existing order for emergency protection. In some counties, it can take up to a month for the order to be reported. Delays in notification make enforcement more difficult and pose serious risks for victims. In addition, one form of protective order, a magistrate's order for emergency protection (MOEP), is not currently reported to the Texas Crime Information Center (TCIC), which collects offender information for the use of law enforcement across the state and across the country.

S.B. 737 amends Article 17.292 of the Code of Criminal Procedure requiring courts to send protective orders to law enforcement and victims by the end of the next business day and to permit transmission in electronic form. In addition, S.B. 737 shortens the timeline for law enforcement to enter the orders from the 10th day after receiving the order to the third day. Delays sending or entering a copy of the order are permissible only if the magistrate, clerk, or law enforcement agency lacks information necessary to ensure service and enforcement. S.B. 737 amends Article 17.292 including trafficking of persons and continuous trafficking of persons among the offenses for which a MOEP is authorized. Under amended Section 85.042 of the Family Code, a clerk of the court may transmit an order and any related information electronically or in another manner that can be accessed by the recipient.

S.B. 737 amends Section 411.042 of the Government Code requiring reporting of MOEPs to TCIC. These measures will help victims who depend on protective orders for their safety.

Conforming changes are also made to Section 86.0011 of the Family Code.

S.B. 737 removes a provision requiring each municipal police department and sheriff to establish a procedure to provide access for peace officers to the names of persons protected by a MOEP issued in a case involving family violence or an offense of sexual assault, aggravated sexual assault, or stalking and of persons to whom the order is directed. The bill instead requires the law enforcement agency with jurisdiction over the municipality or county in which the victim resides to enter the number and nature of protective orders and MOEPs and persons affected by active orders into the statewide law enforcement

information system maintained by the Department of Public Safety (DPS). This is required not later than the third business day after the date the law enforcement agency receives a copy of the order. The bill authorizes a law enforcement agency to delay entering such information only if the agency lacks information necessary to ensure service and enforcement.

S.B. 737 amends Section 411.042 of the Government Code requiring the DPS Bureau of Identification and Records to collect information concerning the number and nature of MOEPs. The bill includes a MOEP among the orders that provide an exception to this collection requirement with respect to certain address, employment, child-care facility, or school-related information about a person or child protected by the order. The bill expands the information required to be included in the law enforcement information system relating to an active order to include any minimum distance the person subject to a protective order or a MOEP is required to maintain from the protected places or persons.

### ***S.B. 790***

**Subject: Procedures Applicable to the Revocation of a Person's Release on Parole or to Mandatory Supervision**

**Effective: September 1, 2015**

When a prisoner is released on parole, a judge places conditions on the prisoner's release. If the conditions are violated, the director of the pardons and paroles division (or designated agent) may issue a "blue warrant," so called because of the color of paper on which it is printed. Some blue warrants are issued for parolees who only violate administrative or technical aspects of their parole agreement, including crossing a county line without permission or forgetting to pay a fine. Current law mandates that persons returned to custody under such warrants remain in custody until a parole hearing can occur. County officials have advocated allowing county judges to have more discretion in granting bail for parole violators who are non-violent and have only violated a technical or administrative aspect of their parole.

S.B. 790 amends Section 508.254 of the Government Code allowing a magistrate of the county in which the person is held in custody to release a person on bond pending a hearing if (1) the person is arrested for an administrative violation of release; (2) the pardon and paroles division includes a notice

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on the warrant that the person is eligible for release on bond; and (3) the magistrate determines that the person is not a threat to public safety. The bill also amends Section 508.281 of the Government Code requiring the board of paroles or a parole panel to make a final determination of a parole violation before issuing a warrant for the parolee's arrest.

**TMCEC:** Municipal judges are magistrates with co-equal jurisdiction with all magistrates within the county. For the purposes of Section 508.254 of the Government Code, a municipal judge is "a magistrate of the county," and therefore, may release a person on bond pending a hearing if the requirements of that section are met.

**S.B. 817**

**Subject: Issuance of a Protective Order and Appointment of a Managing Conservator in Certain Family Law Proceedings**

**Effective: September 1, 2015**

The current law dealing with issuance of protective orders in the case of abuse, specifically the definitions sections, refers to the applicant of the protective order as a "victim" instead of an "applicant for a protective order." There are many times when an applicant for a protective order is not a victim of abuse (e.g., a prosecutor or a parent or guardian), but is applying for the protective order on behalf of a victim of abuse. Some judges are reluctant to issue protective orders until the perpetrator has been convicted, believing that a person is not a "victim" until that happens.

S.B. 817 changes the language of Section 71.0021(a) of the Family Code from "victim" to "victim or applicant for a protective order." This bill also broadens the definition of "abuse" in Section 71.004 of the Family Code by incorporating, by reference, additional portions of the Family Code definition of "abuse."

S.B. 817 amends Section 153.005 of the Family Code to require a court, in making an appointment of a sole managing conservator or of joint managing conservators, to consider whether a party engaged in a history or pattern of family violence, of child abuse or child neglect, or whether a final protective order was rendered against a party.

**TMCEC:** It is important to note, municipal judges may not issue protective orders, but may issue magistrate's orders of emergency protection.

**S.B. 965**

**Subject: Certain Records Related to the Release of an Accused Person on Personal Bond**

**Effective: September 1, 2015**

Under current law, a pretrial release office must file a record with the applicable county clerk, containing information about a person released on a personal bond after review by the office. In some counties, the county clerk does not handle these cases. For example, in Harris County, the county clerk handles county civil cases while the district clerk handles county criminal cases. To address this issue, S.B. 965 amends Article 17.42 of the Code of Criminal Procedure to require the report to be filed with either the district or county clerk in any county served by the office, based on court jurisdiction over the categories of offenses addressed in the records.

**S.B. 1517**

**Subject: Appointment of Counsel to Represent Indigent Defendants in Criminal Cases**

**Effective: September 1, 2015**

When a person is arrested and jailed in a county on a warrant issued by a different county, confusion may result when determining the county responsible for appointing an attorney for the person. This inefficient process may lead to arrested persons remaining in jail, most notably in cases in which the warrant-issuing county does not properly transport the person or communicate with the arresting county to effectuate the person's release. S.B. 1517 amends Articles 1.051, 15.17, 15.18, and 26.04 of the Code of Criminal Procedure to establish a process for determining the responsibility for appointing counsel for those indigent defendants.

S.B. 1517 provides, if an indigent defendant is arrested under a warrant issued in a county other than the county where the arrest was made, a court in the county that issued the warrant is required to appoint counsel within the current time frames, regardless of whether the defendant was present in the county issuing the warrant. The appointment is required even if adversarial judicial proceedings have not yet been initiated in the county issuing the warrant.

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However, if the defendant has not been transferred or released to the county issuing the warrant before the 11th day after arrest, and if counsel has not already been appointed by the arresting county, a court in the arresting county must immediately appoint counsel to represent the defendant for matters related to writs of habeas corpus and bail. This appointment will occur regardless of whether adversarial proceedings have been initiated in the arresting county.

If the arresting county appoints counsel in these cases, that county may seek reimbursement from the county that issued the warrant for the costs paid for the appointed counsel.

When persons arrested under out-of-county warrants are presented before magistrates, the magistrates are required to inform them of procedures for requesting appointment of counsel and must ensure they receive reasonable assistance in completing the necessary forms. If these individuals request the appointment of counsel, the magistrate will transmit the request forms within 24 hours to a court in the county that issued the warrant.

## Procedural Changes

### ***H.B. 11***

#### **Subject: Human Smuggling Offenses and Changes to DPS Policies**

**Effective: September 1, 2015**

This bill amends current law relating to the powers and duties of the Texas Department of Public Safety (DPS), military and law enforcement training, and the investigation, prosecution, punishment, and prevention of certain offenses. The State of Texas has shouldered the burden of stopping human trafficking, the smuggling of illegal drugs and weapons, and the potential influx of dangerous criminals and terrorists. H.B. 11 helps DPS sustain and appropriately expand their successful efforts to tackle these problems.

H.B. 11 amends Article 18.20 of the Code of Criminal Procedure to add an offense of Aggravated Promotion of Prostitution or Compelling Prostitution to those for which a judge of competent jurisdiction may issue an order authorizing interception of wire, oral, or electronic communications.

Section 411.0208 of the Government Code is amended to authorize DPS to establish a reserve officer

corps consisting of retired or previously commissioned DPS officers who retired or resigned in good standing. The bill adds these members of the reserve officer corps to the list of peace officers in Article 2.12 of the Code of Criminal Procedure.

H.B. 11 amends Subchapter D, Chapter 411 of the Government Code by adding Section 411.054 requiring DPS to establish a goal that, not later than September 1, 2019, all local law enforcement agencies will have implemented an incident-based reporting system that meets the reporting requirements of the National Incident-Based Reporting System of the Uniform Crime Reporting Program of the Federal Bureau of Investigation, and will use the system to submit information and statistics concerning criminal offenses committed.

The bill amends Subchapter A of Chapter 411 of the Government Code by adding Section 411.0141 requiring the Texas Facilities Commission to construct a multiuse training facility to be used by DPS, the Texas military forces, county and municipal law enforcement agencies, and any other military or law enforcement agency, including agencies of the federal government, for training purposes.

As amended, Section 20.05 of the Penal Code changes the conduct that constitutes a Smuggling of Persons offense. A person commits an offense if the person, with the intent to obtain a pecuniary benefit, knowingly: uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to conceal the individual from a peace officer or special investigator or flee from a person the actor knows is a peace officer or special investigator; or encourages or induces an individual to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection. An offense under this section is enhanced from a state jail felony to third degree felony, except that the offense is: a felony of the second degree if the actor commits the offense in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death or the smuggled individual is a child younger than 18 years of age; or a felony of the first degree if it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault or aggravated sexual assault, or the smuggled

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individual suffered serious bodily injury or death. It is an affirmative defense to prosecution of an offense under this section, other than an offense punishable as a second degree felony, that the actor is related to the smuggled individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

H.B. 11 amends Chapter 20 of the Penal Code by adding Section 20.06 to define the offense of Continuous Smuggling of Persons. A person commits an offense if, during a period that is 10 or more days in duration, the person engages two or more times in conduct that constitutes an offense of Smuggling of Persons under Section 20.05 of the Penal Code. An offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if: the conduct creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; or the smuggled individual is a child younger than 18 years of age. An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years, if: the smuggled individual became a victim of sexual assault or aggravated sexual assault; or the smuggled individual suffered serious bodily injury or death.

### **H.B. 121**

**Subject: Capias Pro Fine and Alternate Means of Payment on Past Due Judgments**

**Effective: June 15, 2015**

H.B. 121 amends current law relating to an alternative means of payment of certain past due criminal fines and court costs. The amount of uncollected payments related to capias pro fines are high, and an alternative mechanism for collecting such payments will result in more revenue for counties and municipalities. In addition, the option of making such a payment at the time of arrest could avoid contributing to already crowded jails, save time for arresting officers, and relieve minor offenders suddenly informed of an uncollected payment when pulled over for a routine moving violation from the burden of dealing with an impounded vehicle and the potential inconvenience of finding someone to supervise a child because of an unexpected arrest.

H.B. 121 seeks to address these issues and amends

the Code of Criminal Procedure to authorize a court to adopt an alternative procedure for collecting a defendant's past due payment on a judgment for a fine and related court costs if a capias pro fine has been issued in the case. The bill requires, under the alternative procedure, that a peace officer who executes a capias pro fine or who is authorized to arrest a defendant on other grounds and who knows that the defendant owes such a past due payment, to inform the defendant of the possibility of making an immediate payment of the fine and related court costs by use of a credit or debit card and of the defendant's available alternatives to making an immediate payment. The bill authorizes the peace officer, on behalf of the court, to accept the defendant's immediate payment of the fine and related court costs by use of a credit or debit card, after which the peace officer is authorized to release the defendant as appropriate based on the officer's authority for the arrest. The bill authorizes a peace officer accepting such an immediate payment to also accept payment for fees for the issuance and execution of the capias pro fine.

**TMCEC:** Article 103.0025 of the Code of Criminal Procedures only applies when a court has adopted an alternate procedure authorizing payment on a judgment for a fine and courts costs if a capias pro fine has been issued. A court is not required to adopt such a procedure. A peace officer may not utilize Article 103.0025 if a procedure has not been adopted.

Article 103.0025 is likely to be a topic of local debate. As controversial as it may be, the first version of the bill was much more far-reaching and problematic. (The initial alternate procedure for payment was not limited to just those cases with capias pro fines or warrants issued. It applied to any alleged fine-only misdemeanor, including those being initially cited by law enforcement.) An entry titled "Credit Card or Jail? The Proposed Alternate Means of Payment for Class C Misdemeanors in H.B. 121" (March 13, 2015) on Full Court Press, the blog of TMCEC, discussed many of the concerns pertaining to H.B. 121 and can be accessed at [blog.tmcec.com](http://blog.tmcec.com).

While instant payment options may increase revenue and help decrease jail overcrowding, there are still a lot of concerns and questions about H.B. 121. What new problems will it create for law enforcement? Does Article 103.0025 potentially erode the significance of the capias pro fine? (Why pay now when



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you can pay later?) Does it threaten the integrity of law enforcement and the courts? Does this amendment discriminate against people who (by choice or circumstance) do not have a debit or credit card? When faced with arrest as an alternative to payment, will scofflaws pay with a card and then immediately cancel the charges? How, on the side of the road, will the rights of the indigent be preserved?

**H.B. 510**

**Subject: Disclosure of Information about Expert Witnesses in Criminal Cases**

**Effective: September 1, 2015**

In 2013, the Michael Morton Act comprehensively overhauled the discovery process for Texas criminal cases. The Act reformed the Texas criminal discovery statute in the Code of Criminal Procedure to ensure more open and transparent discovery in all criminal cases and to improve the reliability of criminal convictions. However, the Act did not change the discovery of expert witnesses, which remains covered by Article 39.14 (b) of the Code of Criminal Procedure.

H.B. 510 amends Article 39.14(b) of the Code of Criminal Procedure to change the disclosure requirement for a party receiving a request for discovery by requiring the party receiving the request to disclose to the requesting party the name and address of each person the disclosing party may use as a witness at trial to present evidence relating to expert testimony. The bill applies the disclosure requirement to a request for discovery made not later than the 30th day before the date that jury selection in the applicable trial is scheduled to begin or, in a trial without a jury, the presentation of evidence is scheduled to begin.

The bill also changes the manner in which the disclosure must be made from a manner specified by the court to in writing in hard copy form or by electronic means and changes the date by which the disclosure must be made from not later than the 20th day before the date the trial begins to not later than the 20th day before the date that jury selection in the trial is scheduled to begin or, in a trial without a jury, the presentation of evidence is scheduled to begin.

**TMCEC:** Much like the changes under The Michael Morton Act, this bill removes the court from the discovery process by eliminating the requirement of a motion to be filed with the court when a party is

seeking information regarding expert witnesses.

**H.B. 634**

**Subject: Rights of a Guardian in the Criminal Justice System**

**Effective: September 1, 2015**

Reports show situations in the criminal justice system in which court-appointed guardians were denied access to their wards. These situations occurred when the ward either failed to put the guardian on a visitor list or purposely excluded the guardian from the list. H.B. 634 seeks to address this problem along with other rights of a guardian of a person in the criminal justice system.

H.B. 634 amends Article 26.041 of the Code of Criminal Procedure authorizing the court-appointed guardian of an incapacitated defendant who provides a court with letters of guardianship to provide information relevant to the determination of the defendant's indigence and to request that counsel be appointed for the defendant's arraignment. This authorization applies to a defendant whose indigence is at issue, regardless of whether the defendant is arrested before, on, or after the bill's effective date.

H.B. 634 amends Sections 501.010 and 507.030 of the Government Code requiring the visitation policies for facilities operated by the Texas Department of Criminal Justice (TDCJ) to allow visitation by a court-appointed guardian to the same extent as the inmate's or defendant's next of kin, including placing the guardian on the inmate's or defendant's approved visitors list on the guardian's request and providing the guardian access to the inmate or defendant during a facility's standard visitation hours if the inmate or defendant is otherwise eligible to receive visitors. The same requirements apply to county jails governed by the Commission on Jail Standards. The guardian must provide the sheriff, warden, or director of the facility with letters of guardianship before being allowed to visit the inmate or defendant. TDCJ and the Commission on Jail Standards must revise the visitation policies to reflect these requirements not later than December 1, 2015.

**H.B. 1264**

**Subject: Preservation of Toxicological Evidence Collected in Intoxication Offenses**

**Effective: September 1, 2015**

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Current law provides rules for retention and storage of biological material but does not differentiate toxicological evidence from biological evidence. Unlike biological evidence, toxicological evidence, such as blood or urine, is not used for identification purposes and no longer has any evidentiary value following disposition of a case. There is no code provision for the disposal of blood and urine evidence in alcohol-related offenses.

H.B. 1264 adds Article 38.50 to the Code of Criminal Procedure to provide explicit direction regarding retention and storage of blood and urine evidence collected for use in a DWI/DUI investigation. Article 38.50 applies to a governmental or public entity or an individual charged with collecting, storing, preserving, analyzing, or retrieving toxicological evidence, and requires an entity or individual described above to ensure that toxicological evidence collected pursuant to an investigation or prosecution of an intoxication or alcoholic beverage offense is retained and preserved for a period determined by a court based on guidelines established by the bill. The court must notify the defendant, child offender, or child offender's guardian and the entity or individual charged with storing the evidence of that period or any change in the period. Article 38.50(e) allows the destruction of the evidence on expiration of the court-mandated storage period.

**TMCEC:** In March 2013 the Attorney General opined that neither a district court nor any other court had authority to order destruction of blood collected during the investigation of an intoxication-related misdemeanor or offense after the underlying case had been resolved. Ostensibly, H.B. 1264 is partially in response to that opinion, *Tex. Atty. Gen. Op. GA-0992* (3/12/13).

### **H.B. 1386**

**Subject: End of Prohibition of More than One Counsel Appearing in a Fine-Only Misdemeanor Case**

**Effective: September 1, 2015**

H.B. 1386 amends Article 45.020(b) of the Code of Criminal Procedure by deleting the restriction barring more than one counsel conducting the prosecution or defense. H.B. 1386 updates an outdated provision of the Code of Criminal Procedure to reflect current practice. It eliminates the provision that prohibits municipal and justice court defendants from being represented by more than one lawyer.

Proponents believe the law should reflect the common understanding of court procedure, whereby a defendant may be represented by a team of attorneys working in consultation with one another. All defendants are entitled to secure the best representation available to them. Proponents of H.B. 1386 believe it is unfair to place such an arbitrary restriction on defendants' rights, and it is time to strike the one-lawyer provision from the chapter governing municipal and justice courts.

### **H.B. 1396**

**Subject: Preferential Docketing for Trials Involving Juvenile Victims**

**Effective: September 1, 2015**

H.B. 1396 amends Article 32A.01 of the Code of Criminal Procedure to speedily resolve criminal cases involving a minor by requiring the trial of a criminal action in which the alleged victim is younger than 14 years of age to be given preference over other matters before the court, whether civil or criminal.

**TMCEC:** H.B. 1396 also makes changes pertaining to "value ladder" offenses and to the search of wireless communication devices. Those amendments are described on pages 47 and 65 of this publication.

### **H.B. 1436**

**Subject: Appeals Regarding Dangerous Dogs**

**Effective: September 1, 2015**

Current law allows a person to appeal a determination by an animal control authority (ACA) that the person's dog is dangerous at a justice of the peace court, municipal court, or county court. However, the law does not specify the proper procedures and relevant jurisdiction of appellate courts necessary to pursue an appeal. As a result of these gaps in the law, a person who receives notice that the local ACA has determined his or her dog to be dangerous may be denied an adequate opportunity to appeal such a determination as provided by law.

Section 822.0421 of the Health and Safety Code is amended to clarify the appeals process by requiring the owner of the dog to: file a notice of appeal of the ACA's dangerous dog determination to a county, justice, or municipal court; attach a copy of the determination from the animal control authority; and serve a copy of the notice of appeal on the ACA by

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mailing the notice through the United States Postal Service. Under amended Section 822.042(e), a court may not order the destruction of a dog while an appeal is pending.

H.B. 1436 adds Section 822.0424 authorizing an appeal of the determination of a municipal or justice court made under Section 822.0421 (Determination that Dog is Dangerous) or Section 822.0423 to appeal the decision to a county court or county court at law in the county in which the justice or municipal court is located as well as a jury trial on request. As a condition of perfecting an appeal, not later than the 10th calendar day after the date the decision is issued, the appellant must file a notice of appeal, and if applicable, an appeal bond in the amount determined by the court from which the appeal is taken. The bill provides that a decision of a county court or county court at law under this section may be appealed in the same manner as an appeal for any other case in a county court or county court at law. Notwithstanding any other law, the bill provides that a county court or county court at law has jurisdiction to hear an appeal filed under this section.

Section 822.0423 of the Health and Safety Code is amended to require the court to determine the estimated costs to house and care for the impounded dog during the appeal process and the court shall set the amount of bond for an appeal that is adequate to cover those estimated costs.

**TMCEC:** Appeals of appeals of appeals! H.B. 1436 gives owners of dogs ample opportunity to be heard. Owners of alleged dangerous dogs will have the opportunity of four separate determinations regarding their precious pups. Currently, owners may appeal a dangerous dog determination in municipal court. Under H.B. 1436 that determination can be appealed to a county court or county court at law. Further, the county court's determination can be appealed just as any other case can be. Are the courts of appeal prepared for the potential onslaught of dangerous dog appeals?

#### ***H.B. 1779***

**Subject: Disclosure of Confidential Communications Between Physician and Patient**  
**Effective: September 1, 2015**

Under current law, the Occupations Code is ambiguous as to when a physician's office is required to

release medical records under a court subpoena or order when the patient is not a party to the case.

H.B. 1779 amends Section 159.002 of the Occupations Code to specify that the exception to the privilege of physician-patient confidentiality in a court or administrative proceeding exists when the patient is a party and the disclosure is requested under a subpoena issued under the Texas Rules of Civil Procedure, the Code of Criminal Procedure, or provisions governing acknowledgments and proofs of written instruments under the Civil Practice and Remedies Code. This does not prevent a physician from claiming the privilege of confidentiality on behalf of a patient. H.B. 1779 also amends Section 159.003 of the Occupations Code to specify that the exception to the privilege of confidentiality in a court or administrative proceeding under that section applies to a court or a party to an action under a court order, not a court subpoena.

#### ***H.B. 2300***

**Subject: Eliminating Telegraph Transmission as a Method to Communicate Information in a Criminal Case**

**Effective: September 1, 2015**

Given the evolution of modern technologies, referring to a telegraph in statutory provisions relating to warrants has become archaic, irrelevant, and unnecessary. H.B. 2300 repeals Articles 15.10 - 15.13 and amends Articles 15.08 and 15.09(a) of the Code of Criminal Procedure to eliminate a telegraph transmission as a method to communicate certain information relating to arrest under warrant.

**TMCEC:** H.B. 2300 is step two of updating our statutes to reflect current technology. The 81st Legislature passed H.B. 1060 in 2009 expanding allowable forms of warrant transmittal beyond just telegraph to include secure facsimile and other electronic means. Six years later, the 84th Legislature recognized that telegraph no longer needed to be included as a viable means of transmission.

#### ***H.B. 3668***

**Subject: Definition of Peace Officer for Purposes of Intercepting or Collecting Information by an Arson Investigating Unit**  
**Effective: June 19, 2015**

H.B. 3668 amends Section 1(2) of Article 18.21 of

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the Code of Criminal Procedure to include a member of an arson investigating unit commissioned by a municipality, county, or the state in the definition of “authorized peace officer,” for purposes of statutory provisions relating to the interception or collection of information in relation to certain communications in an investigation conducted by an arson investigating unit. A member of an arson investigation unit seeking access to certain stored communications must coordinate with an authorized peace officer to obtain a search warrant. The member’s inability to directly obtain a search warrant for such communications may limit the member’s ability to effectively pursue an arson investigation. Such communications have routinely led to confessions, arrests, and prosecutions of those responsible for arson fires, and in some cases to excluding persons of interest.

**S.B. 386**

**Subject: School Marshals for Public Junior Colleges**

**Effective: September 1, 2015**

Many school districts have adopted a school marshal program and the junior college community has expressed a growing interest in having access to such a program as an alternative to the expensive measures of creating their own police department or hiring private security.

S.B. 386 amends Subchapter E of Chapter 51 of the Education Code by adding Section 51.220 authorizing the governing board of a public junior college to appoint one or more school marshals. The governing board of a public junior college may select an applicant who is an employee of the public junior college and certified by the Texas Commission on Law Enforcement as eligible for appointment. The governing board may reimburse the amount paid by the applicant to participate in the school marshal training program. A school marshal appointed by the governing board of a public junior college may carry or possess a handgun on the physical premises of a public junior college campus, but only in the manner provided by written regulations adopted by the governing board. If the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a public junior college campus in a locked and secured safe within the marshal’s immediate reach when

conducting the marshal’s primary duty. A handgun carried by or within access of a school marshal must be loaded only with frangible ammunition designed to disintegrate on impact for maximum safety and minimal danger to others. A school marshal may access a handgun only under circumstances that would justify the use of deadly force as provided under Section 9.32 or 9.33 of the Penal Code.

A public junior college employee’s status as a school marshal becomes inactive on expiration of the employee’s school marshal license, suspension or revocation of the employee’s license to carry a concealed handgun, termination of the employee’s employment with the public junior college, or notice from the governing board that the employee’s services as school marshal are no longer required. The identity of a school marshal appointed by the governing board is confidential, with certain exceptions, and not subject to a request under state public information law. If a parent or guardian of a student enrolled at the public junior college inquires in writing, the governing board of a public junior college must provide the parent or guardian written notice indicating whether any employee of the public junior college is currently appointed a school marshal; however, such notice may not disclose information that is confidential under the bill’s provisions.

**S.B. 873**

**Subject: Courts Authorized to Hear Certain Matters Relating to a Capias Pro Fine**

**Effective: September 1, 2015**

S.B. 873 amends Articles 43.05(b) and 45.045 of the Code of Criminal Procedure authorizing peace officers to take defendants arrested on capias pro fines to another court in the same jurisdiction, if available, as an alternative to incarceration. Specifically, a peace officer may bring the defendant before another court that is in the same territorial jurisdiction (under Article 43.05) or the same city or county (under Article 45.045) as, and that has concurrent jurisdiction with, the court that issued the capias pro fine. S.B. 873 amends Article 45.046, Code of Criminal Procedure, by adding Subsection (d), authorizing another court that is in the same city or county as, and that has concurrent jurisdiction with, the court that entered the judgment and sentence, to conduct a hearing, if the defendant cannot be immediately brought before the court that entered the judgment and sentence

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against the defendant. This change prevents the unnecessary jailing of defendants when other courts are available to conduct the necessary hearing. S.B. 873 will permit local governments to manage their jail costs, avoid the inefficient use of peace officers' time, and prevent the inappropriate jailing of indigent defendants.

**TMCEC:** Initially, this bill only made changes to Article 43.05, which would not apply to municipal and justice courts. However, in committee, a substituted version also made changes to Articles 45.045 (dealing with *capias pro fines*) and 45.046 (dealing with commitment hearings). The language of the substituted version raised some questions because it said that a defendant arrested under a *capias pro fine* in a municipal or justice court could be taken before another court with "concurrent jurisdiction." The meaning of concurrent jurisdiction was not clear. Of course there would be no concurrent jurisdiction over the specific case, as only the convicting court would have any jurisdiction over that judgment. Did it mean any type of concurrent jurisdiction? Could a justice court handle a *capias pro fine* commitment hearing for a defendant convicted of a municipal ordinance violation? The potential for calamity was alarming.

The final version of the bill provides clarity but more or less states what many people likely believed is already the law. As amended, a justice court or a county criminal law court with jurisdiction over Class C misdemeanors can conduct a hearing after a *capias pro fine* is issued by a justice court in the same county. For a *capias pro fine* issued by a municipal court, another municipal court in the same municipality can handle the commitment hearing. While most municipal courts are unified, state law does allow for the creation of multiple municipal courts.) Ostensibly, most cities already allow *capias pro fine* commitment hearings to be heard at any court in the city.

S.B. 1139, similarly amending Articles 43.05, 45.045, and 45.046 relating to courts authorized to conduct hearings for defendants arrested on *capias pro fines*.

**S.B. 1139**

**Subject: Telephone Interpreters in Misdemeanor Cases and Matters Relating to Capias Pro Fines**  
**Effective: September 1, 2015**

S.B. 1139 amends Article 38.30(a-1) of the Code of Criminal Procedure authorizing qualified telephone interpreters to be sworn to interpret in any criminal proceeding before a judge or magistrate if an interpreter is not available to appear in person or is inadequate, not just Class C misdemeanor cases.

S.B. 1139 amends Articles 45.045 and 45.046 of the Code of Criminal Procedure authorizing an arresting officer, for purposes of a *capias pro fine* issued by a municipal court, to take the defendant, in lieu of placing the defendant in jail, to a municipal judge that is located within the same city as the issuing municipal court if: the defendant is not in custody when the judgment is rendered; the defendant fails to satisfy the judgment according to its terms; or the court that issued the *capias pro fine* is unavailable. The bill authorizes a municipal judge that is located within the same city as the issuing municipal court to conduct a hearing to determine certain matters regarding a defendant's indigence, if the court that issued a *capias pro fine* is unavailable. S.B. 1139 likewise amends Article 43.05 similarly authorizing arresting officers to take defendants to other county and district courts.

**TMCEC:** Especially in light of the Office of Court Administration's Texas Court Remote Interpreter Service, which is available to all courts, it was probably high time to authorize qualified telephonic interpreter services in all Texas trial courts with criminal jurisdiction.

S.B. 1139 is also one of two bills that amends Articles 43.05, 45.045, and 45.046 related to *capias pro fines*. See, S.B. 873, relating to courts authorized to conduct hearings on *capias pro fines* issued from another court in the same territorial jurisdiction with concurrent jurisdiction.

**S.B. 1574**

**Subject: Emergency Response Employees and Volunteers Exposed to Certain Diseases**  
**Effective: September 1, 2015**

Under current law, emergency response employees (ERE) do not have the same rights that peace officers have to ask that a court order testing for disease of a person whose bodily fluids the ERE came in contact with during an arrest. Further, EREs and volunteers are not receiving timely notification that they have been exposed to a disease once the presence is

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confirmed. EREs are often informed that they will be called with the results in a few days or more. There is anxiety about contracting a disease, and concern exists as to how a disease will affect family members. Delay in the disclosure of the source patient's lab can result in unnecessary treatment. HIV medications have significant side effects but delay in starting the treatment will reduce the odds of preventing disease transmission. HIV post-exposure medication is 80 percent effective in preventing disease transmission if started within two hours of the exposure. Treatment for suspected cases of exposure to bacterial meningitis often results in unnecessary precautionary antibiotic treatment since it takes 24 to 48 hours to confirm the pathogen involved.

Article 18.22 of the Code of Criminal Procedure is amended to allow EREs or volunteers to receive the information peace officers are entitled to when they come into contact with bodily fluids during the course or scope of their employment.

S.B. 1574 amends multiple sections of Chapter 81 of the Health and Safety Code and adds Section 81.012 to allow a designated infection control officer to communicate freely with hospitals, healthcare providers, medical examiners, and funeral directors to obtain the source patient and first responder lab results as it pertains to exposures to diseases in a timely manner. The changes in statute will allow the designated officer to interact and expedite post-exposure management of first responders and document accordingly, ultimately saving lives.

S.B. 1574 makes related changes to Section 607.012 of the Government Code (related to notification of exposure to certain viruses and diseases) and Section 12.0127 of the Health and Safety Code.

**TMCEC:** S.B. 1574 is not the only bill related to exposure of bodily fluids. See, H.B. 1595 regarding similar protections for magistrates and corrections employees.

## Substantive Changes

### *H.B. 207*

**Subject: Offense of Voyeurism**

**Effective: September 1, 2015**

Voyeurism is a type of behavior that serves as a common gateway offense that may lead to other, more

violent sexual offenses. The conduct constituting an offense of voyeurism may currently be classified as an inadequately serious offense, and many acts of voyeurism are carried out by repeat offenders.

H.B. 207 amends Chapter 21 of the Penal Code by adding Section 21.16 to create the Class C misdemeanor offense of voyeurism for a person who, with the intent to arouse or gratify the sexual desire of the actor, observes another person without the other person's consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy. The bill enhances the penalty to a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of a voyeurism offense. Voyeurism is a state jail felony if the victim was a child younger than 14 years of age at the time of the offense. The bill establishes that if conduct constituting the voyeurism offense also constitutes an offense under any other law, the actor may be prosecuted under either law or both laws.

### *H.B. 910*

**Subject: Authority of a Person who is Licensed to Carry a Handgun**

**Effective: January 1, 2016**

H.B. 910 amends current law relating to the authority of a person who is licensed to carry a handgun to openly carry a holstered handgun. The bill amends the Government Code, Alcoholic Beverage Code, Code of Criminal Procedure, Education Code, Election Code, Family Code, Health and Safety Code, Labor Code, Local Government Code, Occupations Code, Parks and Wildlife Code, and Penal Code to replace the phrase "concealed handgun" with "handgun."

Section 30.06 of the Penal Code is amended to make it a Class C misdemeanor (punishable by a fine not to exceed \$200) for a license holder to trespass with a concealed handgun having received notice that entry by a license holder is forbidden. The offense is enhanced to a Class A misdemeanor if a person receives oral communication by the owner of the property or someone with apparent authority to act for the owner after entering the property and fails to depart.

Similarly, H.B. 910 adds Section 30.07 to the Penal

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Code to create a Class C misdemeanor (punishable by a fine not to exceed \$200), for a license holder to trespass while openly carrying a handgun having received notice by oral or written communication that entry by a license holder is forbidden. The offense is enhanced to a Class A misdemeanor if the license holder is personally given notice by oral communication by the owner of the property or someone with apparent authority to act for the owner after entering the property and fails to depart. It is an exception if the license holder openly carries the handgun on property that is owned or leased by a government entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035 of the Penal Code.

Section 46.02 of the Penal Code is amended to create an offense if a person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which the handgun is in plain view, unless the person is licensed to carry a handgun under Subchapter H of Chapter 411 of the Government Code, and the handgun is carried in a shoulder or belt holster. An offense under this section is a Class A misdemeanor, except that the offense is a third degree felony if committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

H.B. 910 amends Section 46.035 of the Penal Code to create an offense if a license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H of Chapter 411 of the Government Code, and intentionally displays the handgun in plain view of another person on the premises of a public or private institution of higher education; or on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education. An offense committed under this section is a Class A misdemeanor.

**TMCEC:** Under Sections 46.03 and 46.035, there is quite of list of places where carrying a weapon is generally prohibited. This list includes school premises, polling places, courts, racetracks, airports,

premises of sporting or interscholastic events, correctional facilities, amusement parks, churches, and at any governmental meeting. The Class A misdemeanor offense created under Section 46.035 of the Penal Code is identical to one of the Class A misdemeanors created under S.B. 11.

### ***H.B. 975***

#### **Subject: Charitable Raffles Conducted by Certain Professional Sports Team Charitable Foundations**

#### **Effective: January 1, 2016 (Subject to Adoption of Constitutional Amendment)**

The Charitable Raffle Enabling Act authorizes a qualified nonprofit organization to conduct charitable raffles in which prizes other than money are offered or awarded, with all of the proceeds from the sale of raffle tickets being allocated for the organization's charitable purposes.

H.B. 975 amends Title 13 of the Occupations Code by adding Chapter 2004 to create the Professional Sports Team Charitable Foundation Raffle Enabling Act to authorize a qualified professional sports team charitable foundation to conduct a charitable raffle during each preseason, regular season, and postseason game hosted at the home venue of the professional sports team associated with the foundation to provide revenue for the foundation's charitable purposes and to set out the qualifications for conducting such a raffle. The bill authorizes a professional sports team charitable foundation authorized to conduct a raffle under the bill's provisions to award to a raffle winner, selected by random draw, a cash prize and sets the maximum amount of the cash prize at 50 percent of the gross proceeds collected from the sale of raffle tickets. The bill authorizes only employees or volunteers of the professional sports team charitable foundation or the professional sports team associated with the foundation to sell raffle tickets for a charitable raffle and restricts the purchase of tickets to persons 18 years of age or older.

H.B. 975 makes it a Class C misdemeanor offense to accept any form of payment other than United States currency for the purchase of a raffle ticket for a charitable raffle conducted under the bill's provisions; to sell or offer to sell such a raffle ticket to an individual that the person knows to be younger than

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18 years of age; to purchase such a raffle ticket with the proceeds of a check issued as payment under certain financial assistance programs; or to misrepresent a person's own age or display fraudulent evidence that the person is 18 years of age or older in order to purchase such a raffle ticket.

**TMCEC:** This bill is only effective if the constitutional amendment proposed by the 84th Legislature, Regular Session, 2015, is approved by the voters. H.B. 975 creates a defense to prosecution for the Class C misdemeanor gambling offense under Section 47.02 of the Penal Code, as well as other Chapter 47 offenses, if the actor reasonably believed that the conduct was permitted under the new Chapter 2004 of the Occupations Code.

***H.B. 1039***

**Subject: Sale by Package Stores of Containers of Liquor**

**Effective: June 19, 2015**

H.B. 1039 amends Section 101.46(a) of the Alcoholic Beverage Code removing the requirement that containers of liquor with a capacity less than six fluid ounces be sold only in units of sealed packages featuring multiple bottles of liquor.

**TMCEC:** Section 101.61 of the Alcoholic Beverage Code provides that a person who fails or refuses to comply with a requirement of this code violates this code. Failing to follow the requirements for persons, holders of distillers' or rectifiers' permits, wholesalers, and package stores in Section 101.46 of the Alcoholic Beverage Code results in a violation of the code, subject to the general penalty in Section 1.05 of that code (fine not less than \$100 or more than \$1000, confinement in county jail, or both). H.B. 1039 removes the requirement from Section 101.46.

***H.B. 1061***

**Subject: Offense of Interference with Public Duties**

**Effective: September 1, 2015**

Current law does not adequately protect law enforcement officials from acts of retaliation, specifically with respect to the dissemination of personal information. Recently, incidents in which private data belonging to employees of certain law enforcement agencies, including social security numbers

and passwords, were published online by a hacking group.

H.B. 1061 amends current law relating to the prosecution of the offense of interference with public duties. An offense committed under Section 38.15 of the Penal Code is a Class B misdemeanor. H.B. 1061 adds Subsection (d-1) to Section 38.15 of the Penal Code to establish a rebuttable presumption, in a prosecution for an offense involving interference with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law, that the actor interferes with the peace officer if it is shown on the trial of the offense that the actor intentionally disseminated the home address, home telephone number, emergency contact information, or social security number of the officer or an officer's family member or any other information that is specifically described by Section 552.117(a), Government Code. H.B. 1061 adds Subsection (d-2) to Section 38.15 of the Penal Code to establish that the presumption does not apply to information disseminated by a radio or television station that holds a license issued by the Federal Communications Commission, or a newspaper that is a free newspaper of general circulation or qualified to publish legal notices, published at least once a week, and available and of interest to the general public.

***H.B. 1212***

**Subject: Prosecution, Punishment, and Regulation of Abusable Synthetic Substances**  
**Effective: September 1, 2015**

In recent years, there has been a significant increase in the production, evolution, and sale of synthetic drugs. Several states, including Texas, have taken steps to ban the substances but have had little success with those bans because the manufacturers change the compounds constantly. These drugs evolve rapidly so there is a need for Texas to have the ability to designate and regulate abusable synthetic substances at all times, not just through legislation passed during a legislative session.

H.B. 1212, the Montana Brown and Jesse High Act, amends Chapter 431 of the Health and Safety Code establishing the authority of the commissioner of state health services to designate a consumer commodity that poses a threat to public health as



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an abusable synthetic substance and to emergency schedule a substance as a controlled substance to avoid an imminent hazard to public safety. The bill classifies certain controlled substance analogues in Penalty Group 2-A of the Texas Controlled Substances Act and eliminates an affirmative defense to prosecution for the manufacture, delivery, or possession of a controlled substance analogue relating to the analogue's intended use.

**TMCEC:** See also, S.B. 461, which adds Chapter 484 of the Health and Safety Code, titled Abusable Synthetic Substances, including a definition of "abusable synthetic substance." Both bills provide additional measures to address the unique problems associated with synthetic drugs.

***H.B. 1286***

**Subject: Offense of Injury to a Child, Elderly Individual, or Disabled Individual**

**Effective: September 1, 2015**

Under current law, for purposes of the offense of injury to a child, elderly individual, or disabled individual, a "disabled individual" is currently defined as a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself or herself from harm or to provide food, shelter, or medical care for himself or herself. H.B. 1286 amends Section 22.04 of the Penal Code to expand the conditions that qualify a person as a disabled individual for purposes of the offense of injury to a child, elderly individual, or disabled individual. The bill also provides an affirmative defense if the defendant did not know and could not reasonably have known that the individual was a disabled individual. An offense under Section 22.04 ranges from a first degree felony to a state jail felony depending on the actor's mental state and the type of harm.

***H.B. 1396***

**Subject: Changing Value Thresholds for Certain Criminal Offenses, and Lenity**

**Effective: September 1, 2015**

H.B. 1396 amends Chapter 311 of the Government Code by adding Section 311.035 to require a statute or rule that creates or defines a criminal offense or penalty, other than a criminal offense or penalty under the Penal Code, to be strictly construed against the government and construed in favor of the actor

whose criminal responsibility is at issue if any part of the statute or rule is susceptible to more than one objectively reasonable interpretation, including an element of the offense or the penalty to be imposed. The bill provides that this does not apply to a criminal offense or penalty under the Penal Code or under the Texas Controlled Substances Act. H.B. 1396 also provides that the ambiguity of a part of a statute or rule to which this section applies is a matter of law to be resolved by the judge.

H.B. 1396 amends Sections 28.08, 31.16, and 33.02 of the Penal Code to create a Class C misdemeanor for the offenses of Graffiti, Organized Retail Theft, and Breach of Computer Security. The bill also amends Section 31.03 of the Penal Code to remove the distinction between theft and theft by check.

H.B. 1396 amends Chapters 28, 31, 32, 33, 34, 35, and 39 of the Penal Code to increase penalty thresholds for certain crimes. The monetary threshold has uniformly increased for the crimes of: Criminal Mischief, Interference with Railroad Property, Graffiti, Theft, Theft of Service, Organized Retail Theft, Trademark Counterfeiting, False Statement to Obtain Property or Credit or in the Provision of Certain Services, Hindering Secured Creditors, Credit Card Transaction Record Laundering, Illegal Recruitment of an Athlete, Misapplication of Fiduciary Property or Property of Financial Institution, Securing Execution of Document by Deception, Breach of Computer Security, Insurance Fraud, Medicaid Fraud, and Abuse of Official Capacity. The maximum monetary amount lost, damaged, or involved in a Class C misdemeanor for those offenses listed has uniformly increased from either \$20 or \$50 to \$100.

H.B. 1396 uniformly increases the value ladder for the offenses listed above, along with Fraudulent Transfer of a Motor Vehicle and Money Laundering, to increase the monetary amount lost, damaged, or involved to \$100 or more but less than \$750 for a Class B misdemeanor; \$750 or more but less than \$2,500 for a Class A misdemeanor; \$2,500 or more but less than \$30,000 for a state jail felony; \$30,000 or more but less than \$150,000 for a third degree felony; \$150,000 or more but less than \$300,000 for a second degree felony; and \$300,000 or more for a first degree felony.

H.B. 1396 creates a commission to study and review all penal laws of Texas other than criminal offenses

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under the Penal Code, under Chapter 481 of the Health and Safety Code, or related to the operation of a motor vehicle. The commission must make recommendations to the Legislature regarding the repeal of laws that are identified as being unnecessary, unclear, duplicative, overly broad, or otherwise insufficient to serve the intended purpose of the law.

**TMCEC:** What began as a bill about code construction and the interpretation of substantive criminal laws ended up being about a whole lot more. The last time the value ladder increased for certain offenses listed was in 1993 during the 73rd Legislature. The change was from less than \$20 to less than \$50 for a Class C misdemeanor. H.B. 1396 increases the value ladder for certain offenses to reflect inflation since those offenses were either updated by the 73rd Legislature or originally codified. Under current law, the offense of Graffiti is a Class B misdemeanor if the amount of pecuniary loss is less than \$500, but under H.B. 1396, a person commits a Class C misdemeanor if the amount of pecuniary loss is less than \$100.

H.B. 1396 also makes changes pertaining to the search of wireless communication devices and trials involving victims who are children. Those amendments are described on pages 61 and 73 of this publication.

***H.B. 1424***

**Subject: Penalties for the Manufacture, Delivery, or Possession of Certain Controlled Substances**  
**Effective: September 1, 2015**

H.B. 1424 amends Section 481.119(a) of the Health and Safety Code to increase the penalties for defendants convicted of manufacturing, delivering, or possessing a controlled substance added by the commissioner of health but not listed in a penalty group. The penalty increases from a Class A misdemeanor to a state jail felony for persons previously convicted of an offense under this subsection, and a third degree felony for persons previously convicted two or more times.

***H.B. 1481***

**Subject: Operation of Unmanned Aircraft over Critical Infrastructure Facility**  
**Effective: September 1, 2015**

The Federal Aviation Administration advises pilots

against circling or entering the airspace above nuclear, hydro-electric, or coal-fired power plants, dams, refineries, industrial complexes, military facilities, and similar sites. However, these regulations serve only as a guideline for pilots and aircraft operators and have no means of enforcement for remotely piloted vehicles.

H.B. 1481 amends Chapter 423 of the Government Code by adding Section 423.0045 to prohibit the operation of an unmanned aircraft over a critical infrastructure facility. The bill lists examples of critical infrastructure facilities such as: a gas processing plant; transmission facility used by a federally licensed radio or television station; port, railroad switching yard, trucking terminal, or other freight transportation facility; and other similar facilities. Section 423.0045 creates an offense for a person who intentionally or knowingly: operates an unmanned aircraft not higher than 400 feet above ground level over a critical infrastructure facility; allows an unmanned aircraft to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or allows an unmanned aircraft to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility. H.B. 1481 provides that an offense under Section 423.0045 is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section.

**TMCEC:** The use an unmanned aircraft to capture images of an individual or privately owned property with the intent to conduct surveillance or possessing, disclosing, displaying, distributing, or using such an image captured illegally are still Class C misdemeanor offenses. See, Colin Norman, "The Texas Privacy Act: Tall Enough Fences to Keep Out Nosy Drones?" *The Recorder* (April, 2014) at 1. Under Section 423.0045, it is a Class B misdemeanor to even operate an unmanned aircraft over any critical infrastructure facility listed. For other drone-related legislation, see H.B. 2167 (images captured by unmanned aircraft).

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**H.B. 2167****Subject: Images Captured by an Unmanned Aircraft****Effective: September 1, 2015**

In 2013, the 83rd Legislature passed a bill that created an offense for the use of an unmanned aircraft to capture an image of a person or privately owned real property in this state with the intent to conduct surveillance on the person or property. The same bill included a “nonapplicability” provision expressly enumerating situations in which it is lawful to capture an image using an unmanned aircraft.

H.B. 2167 amends Section 423.002 of the Government Code by adding three additional situations in which it is lawful to capture an image using an unmanned aircraft. H.B. 2167 provides that it is lawful to capture an image using an unmanned aircraft by: a registered professional land surveyor in connection with the practice of surveying, provided no person is identifiable in the captured image; a licensed professional engineer in connection with the practice of engineering, provided no person is identifiable in the captured image; and a person acting on behalf of a private or independent institution of higher education for the purposes of conducting professional or scholarly research.

**TMCEC:** The use an unmanned aircraft to capture images of an individual or privately owned property with the intent to conduct surveillance or possessing, disclosing, displaying, distributing, or using such an image captured illegally are still Class C misdemeanor offenses. See, Colin Norman, “The Texas Privacy Act: Tall Enough Fences to Keep Out Nosy Drones?” *The Recorder* (April, 2014) at 1. H.B. 2167 adds three new situations in which it is lawful to use unmanned aircrafts to capture images. For other drone-related legislation, see H.B. 1481 (operation of unmanned aircraft over critical infrastructure facility).

**H.B. 2291****Subject: Penalty for Persons Convicted of Possession or Promotion of Child Pornography**  
**Effective: September 1, 2015**

H.B. 2291 amends Section 43.26 of the Penal Code and Section 42.037 of the Code of Criminal Proce-

dures to increase the penalty for persons convicted of possession or promotion of child pornography who have previously been convicted of that offense. The bill enhances the punishment for possession of child pornography from a third degree felony to a second degree felony for a person with one prior conviction and to a first degree felony for a person with two or more prior convictions. The punishment for promotion of child pornography is likewise enhanced from a second to a first degree felony for a subsequent conviction of that offense.

H.B. 2291 also authorizes a court to order a defendant convicted of an offense of possession or promotion of child pornography to make restitution to an individual who was younger than 18 years of age and depicted in the visual material. The amount may be equal to the expenses incurred by the individual as a result of the offense, including: medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; and attorney’s fees.

**H.B. 2589****Subject: Defining “Disabled Individual” for Aggravated Sexual Assault**  
**Effective: September 1, 2015**

Prosecutors have expressed concern that there is a gap in current law regarding the age at which a juvenile is considered a disabled individual for purposes of certain sexual assault offenses. Under Section 22.021 of the Penal Code (Aggravated Sexual Assault), a 14-year-old victim is not young enough for Subsection (a)(2)(B) (victim younger than 14 years of age) and is also not old enough to be considered a disabled individual in Subsection (a)(2)(C) (older than 14 years of age). So the offender can only be charged with the less serious offense of sexual assault for a 14-year-old victim who would otherwise meet the definition of a “disabled individual.”

H.B. 2589 amends Section 22.021(b) of the Penal Code defining “disabled individual” to mean a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person’s self from harm or to provide food, shelter, or medical care for the person’s self. Previously, Section 22.021(2)(b)(2) referenced the definition of “disabled individual” in

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Section 22.04(c), which only includes persons older than 14 years of age.

**H.B. 3618**

**Subject: Prohibition of Camping and Building Fires**

**Effective: September 1, 2015**

H.B. 3618 amends Chapter 90 of the Parks and Wildlife Code by adding Section 90.0085 to prohibit camping and building fires in a section of the Blanco River that is not located in a county adjacent to a county with a municipality with a population greater than 1.5 million (i.e., Kendall County and Blanco County).

The bill also prohibits a person from camping or building a fire in a dry riverbed in those counties. Under provisions of this bill, the punishment for a person who restricts, obstructs, interferes with, or limits public recreation use of a protected fresh water area by camping and building fires is a Class C misdemeanor, and the punishment is enhanced to a Class B misdemeanor if it is shown that the defendant was previously convicted two or more times of this offense.

**H.B. 3982**

**Subject: Solicitation of a Person to Buy Drinks for Consumption by an Employee**

**Effective: September 1, 2015**

Section 104.01 of the Alcoholic Beverage Code prohibits an employee or a person authorized to sell beer at retail from engaging in or permitting conduct on the premises of the retailer that is lewd, immoral, or offensive to public decency. Certain acts are specified as falling into this category, including solicitation of any person to buy drinks for consumption by the retailer or any of the retailer's employees. H.B. 3982 amends Section 11.64(a) of the Alcoholic Beverage Code to prohibit an individual who solicited a person to buy drinks for a retailer or any of the retailer's employees from having the opportunity to pay a civil penalty instead of having their license or permit suspended.

**S.B. 11**

**Subject: Carrying Handguns on Campuses of Institutions of Higher Education**

**Effective: August 1, 2016 (except public junior colleges, August 1, 2017)**

S.B. 11 amends Chapter 411 of the Government Code and Section 46.03 of the Penal Code (Places Weapons Prohibited) to authorize a handgun license holder to carry a **concealed** handgun while on the campus of a public, private, or independent institution of higher education in Texas, except that after appropriate consultation, a private or independent institution may prohibit license holders from carrying handguns on its campus, any grounds or building on which a university-sponsored activity is being conducted, or certain university-owned vehicles. The authorization is only for concealed handguns, not other prohibited weapons listed in Section 46.03(a). Public, private, or independent institutions of higher education are authorized to establish regulatory provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the institution's campus.

S.B. 11 amends Section 46.035 of the Penal Code to add three Class A misdemeanor offenses related to carrying handguns on campuses of institutions of higher education. Subsection (a-1) prohibits a handgun license holder from carrying a partially or wholly visible handgun, regardless of whether the handgun is holstered, and intentionally or knowingly displaying the handgun in plain view of another person on campus premises, driveways, streets, sidewalks, parking lots, parking garages, or other parking areas. Subsection (a-2) prohibits a license holder from carrying a handgun on the campus of an institution that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns on the campus, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06 of the Penal Code. Subsection (a-3) prohibits license holders from carrying concealed handguns on the campus of an institution that has established rules prohibiting carrying concealed handguns, provided the institution gives effective notice under Section 30.06 of the Penal Code.

**TMCEC:** The Class A misdemeanor offense created under Section 46.035(a-1) of the Penal Code is identical to the Class A misdemeanor created under H.B. 910.

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**S.B. 97****Subject: Regulation of the Sale, Distribution, Possession, and Use of E-Cigarettes**  
**Effective: October 1, 2015 (except for Section 41, September 1, 2015)**

Electronic cigarettes, also known as e-cigarettes or vape pens, are battery-powered vaporizers that turn nicotine, flavor, and other chemicals into an aerosol that is then inhaled by the user. The liquid that is vaporized in e-cigarettes comes in hundreds of flavors. The lack of regulation by the federal government and the potential harmful effects on adolescents prompted this legislation.

Chapter 161 of the Health and Safety Code is amended by defining e-cigarettes and including e-cigarettes among the products to which provisions regulating the sale and distribution of cigarettes and tobacco products apply, including provisions establishing prohibited conduct that constitutes an offense. S.B. 97 also redefines “retailer” in Section 161.081 to mean a person who sells cigarettes, e-cigarettes, or tobacco products and includes an owner of a coin-operated vending machine that contains such products.

S.B. 97 includes e-cigarettes among the products prohibited in Section 161.082 for possession, purchase, consumption, or receipt by minors. S.B. 97 amends Section 161.083 prohibiting a person from selling, giving, or causing to be sold or given an e-cigarette to someone who is younger than 27 years of age without identification. S.B. 97 amends Section 161.084 requiring a warning sign in a conspicuous location. S.B. 97 amends Section 161.085(a) and (b) prohibiting the sale or distribution of e-cigarettes to a minor, a violation of which is a Class C misdemeanor. S.B. 97 amends Section 161.086(a) prohibiting selling e-cigarettes in a manner that permits customers direct access or installing a vending machine containing e-cigarettes.

Section 161.087(a) and (b), as amended, prohibit distribution of e-cigarettes as free samples to minors or distributing to or accepting from minors coupons for discounted e-cigarettes.

S.B. 97 adds Section 161.0875 requiring nicotine containers sold as an accessory for an e-cigarette to

either satisfy federal child-resistant effectiveness standards or be pre-filled and sealed by the manufacturer and not intended to be opened by a consumer.

The bill includes enforcement of the subchapter in Section 161.088(b) as a purpose for which the comptroller may block grants to counties and municipalities for use by local law enforcement agencies. Added Section 161.0902 requires the Department of State Health Services (DSHS) to report on the status of the use of e-cigarettes in Texas each odd-numbered year.

S.B. 97 includes e-cigarettes among the products to which provisions relating to the prohibited possession, purchase, consumption, or receipt of cigarettes or tobacco products by minors apply, including the Class C misdemeanor offenses in Section 161.252. S.B. 97 amends Section 161.253 requiring a court, upon conviction for an offense under Section 161.252, to suspend execution of sentence and require attendance of an e-cigarette and tobacco awareness program approved by DSHS. The court may also require the parent or guardian to attend. S.B. 97 authorizes the court, if the defendant resides in a rural or other area without access to an e-cigarette and tobacco awareness program, to require eight to 12 hours of e-cigarette- and tobacco-related community service instead. Upon completion of an e-cigarette and tobacco awareness program or e-cigarette- and tobacco-related community service, amended Section 161.255(a) permits the individual to have the conviction expunged. This bill amends Section 161.256 giving justice and municipal courts jurisdiction to impose such requirements. S.B. 97 includes the reduction of e-cigarette use by minors among the goals of DSHS’s tobacco use public awareness campaign and as a required program component for a youth group to receive support through a related grant program.

Sections 145.451, 161.452, 161.453, 161.454, 161.455, 161.456, and 161.461 are amended to include e-cigarettes among the products to which these provisions regulating the delivery sales of cigarettes apply, including provisions establishing prohibited conduct that constitutes an offense and provisions applicable to forfeiture of e-cigarettes sold or that a person attempted to sell in a non-compliant delivery sale. The bill requires a person taking a delivery sale

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order of e-cigarettes to comply with age verification, disclosure, shipping, and registration and reporting requirements and to comply with other state law that generally applies to sales of e-cigarettes that occur entirely within Texas. The bill prohibits a person from mailing or shipping e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 18 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. The bill requires the person, after the order is accepted, to use a method of mailing or shipping that requires an adult signature. The bill sets out the manner in which a retailer in Texas that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with the age verification requirements for delivery sale orders. S.B. 97 requires a delivery sale of an e-cigarette to include a prominent statement that sales to individuals under 18 are illegal under state law and that proof of age is required.

S.B. 97 amends Section 38.006 of the Education Code to require the board of trustees of a school district to prohibit the use of e-cigarettes at a school-related or school-sanctioned activity and to prohibit students from possessing e-cigarettes. S.B. 97 amends Section 48.01 of the Penal Code to include e-cigarettes in the conduct that constitutes an offense involving possession of a burning tobacco product or smoking a tobacco product in certain public places.

**TMCEC:** E-cigarettes, a \$1.7 billion industry, have rapidly become the subject of proposed federal, state, and local regulation in recent years. Public concerns include a lack of research regarding the health effects of inhaling liquid nicotine; marketing to adolescents coupled with the growing popularity of use by middle school and high school students; and a lack of regulation concerning safety, packaging, labeling, and chemical composition. As Texas cities began to pass ordinances relating to e-cigarettes, heads began to turn to the Texas Legislature. See, Regan Metteauer, “E-Cigarettes: Texas Cities Dipping their Toes in the Vapor” *The Recorder* (January 2014). Four bills relating to e-cigarettes were filed, but only S.B. 97 passed. When introduced, S.B. 97 amended Section

161.089 of the Health and Safety Code adding e-cigarettes to the list of products that local governments are not preempted from regulating. Upon its return to the Senate, S.B. 97 no longer contained that amendment. Section 161.089 only references cigarettes and tobacco products, not e-cigarettes, despite the extensive overhaul of Chapter 161 of the Health and Safety Code to add e-cigarettes. This is problematic for the 45 or more Texas cities that have regulated e-cigarettes in some form. Prior to the 84th Legislative Session, no Texas law addressed e-cigarettes, nor was a bill related to e-cigarettes filed in the 83rd Session. If S.B. 97 had amended Section 161.089 to include e-cigarettes, cities would have express authority to regulate e-cigarettes in the same manner as cigarettes. Cities are not expressly preempted from regulating e-cigarettes, but the removal of that amendment creates a deafening silence. A notable gap in regulation of e-cigarettes by S.B. 97 is in the area of advertising. Provisions from the introduced bill regulating advertising did not survive.

### ***S.B. 172***

**Subject: Modifying Penalty Groups 1-A and 2 within Controlled Substances Act**  
**Effective: September 1, 2015**

A continuing trend in legal synthetic drugs is designer psychedelics which, when ingested, mimic the effects of LSD or ecstasy, commonly referred to as 25-I. 25-I and its chemical cousins are an extremely dangerous class of synthetic drugs being sold in Texas. These drugs seek to mimic the effects of LSD but are substantially more potent with deadly consequences. Texas has seen a significant increase in the amount of synthetic drugs being sold and possessed in recent years, and law enforcement and prosecutors are prevented from policing these dangerous substances because there are no laws in place to address the issue. The drugs can be in both liquid and powder form and laced into paper or mixed with edible goods.

S.B. 172 amends Section 481.1021 of the Health and Safety Code to revise the controlled substances listed in Penalty Groups 1-A and 2 of the Texas Controlled Substances Act. In addition to certain other substances, the bill adds 25I-NBOMe to Penalty Group 2 of the Texas Controlled Substances Act.

S.B. 172 also amends Section 481.002 of the Health and Safety Code to expand the definition of “abuse

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unit” for purposes of the Texas Controlled Substances Act to include 40 micrograms of a controlled substance in solid form, including any adulterant or dilutant.

**TMCEC:** For more information on how designer drugs relate to traffic safety, see Ned Minevitz’s article, “Designer Drugs: How Drivers Might be Circumventing Intoxicated Driving Laws” *The Recorder* (January 2014) at 1.

### **S.B. 173**

#### **Subject: Additional Controlled Substances in Penalty Group 2-A**

**Effective: September 1, 2015**

The increased presence of synthetic marijuana in Texas is causing growing concern due to the dangerous side effects of using the drug. Synthetic marijuana is made in a lab and is different and more powerful than traditional marijuana. K2 (commonly known as Spice) is marketed as incense, but is actually a product that has been sprayed with a chemical compound that mimics the effects of THC, the active ingredient in marijuana, and is being smoked to produce intoxicating effects. K2 is banned in 43 states and undetectable in toxicology screenings. The substances are not banned in Texas and have a high potential for abuse with no medical benefit.

S.B. 173 amends Section 481.1031 of the Health and Safety Code to change the substances listed in Penalty Group 2-A of the Texas Controlled Substances Act. The bill establishes that Penalty Group 2-A, for the purposes of the prosecution of an offense under the Texas Controlled Substances Act involving the manufacture, delivery, or possession of a controlled substance, includes a controlled substance analogue that has a chemical structure substantially similar to the chemical structure of a controlled substance listed in Penalty Group 2-A or is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance in Penalty Group 2-A.

### **S.B. 183**

#### **Subject: Violations of Civil Rights or Improper Sexual Activity with Persons in Custody in Juvenile Facility**

**Effective: September 1, 2015**

Offenders who commit crimes under the abuse of of-

fice have previously been prosecuted and have been duly subject to conviction. However, similar offenders who are employees of contracted juvenile facilities who have committed sexual offenses against juveniles detained in juvenile correctional facilities repeatedly get away with abuse because current law does not penalize their behavior. Nearly all officials, employees, volunteers, or peace officers working in juvenile facilities or juvenile placement are not currently held to the same accountability standard as correctional officers in state-owned facilities. This problem leads to an unintentional oversight in the law. Juvenile offenders in custody who are victims of such illegal sexual conduct have no recourse under current law.

S.B. 183 amends the Penal Code to expand the actors to whom the offenses of violation of the civil rights of a person in custody and of improper sexual activity with a person in custody apply to include an official or employee of a juvenile facility. S.B. 183 removes from the definition of “correctional facility,” for purposes of those offenses, a secure correctional facility or secure detention facility as those terms are defined by the juvenile justice code. The bill defines “juvenile facility” as a facility for the detention or placement of juveniles under juvenile court jurisdiction and that is operated wholly or partly by TJJD, a juvenile board, or another governmental unit or by a private vendor under a contract.

### **S.B. 219**

#### **Subject: Repeals Class C Misdemeanor of Making a False Report of Theft or Suspicious Purchase of a Product used in the Manufacture of Methamphetamines**

**Effective: September 1, 2015**

S.B. 219 clarifies and updates the health and human services statutes to make the law more understandable and accessible for stakeholders and the public. It also allows lawmakers to focus on making vital policy changes that are needed to improve the provision of health and human services in Texas.

Among other changes, the bill repeals Section 468.005 of the Health and Safety Code, and the Class C misdemeanor of making a false report of theft or suspicious purchase of a product used in the manufacture of methamphetamines. This repeal does not apply to any offense committed before the

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effective date of this act.

The bill makes nonsubstantive changes to Section 32.033 of the Human Resources Code, and to the attendant Class C misdemeanor, changing a reference to an obsolete department consolidated under the Health and Human Services Commission.

**S.B. 236**

**Subject: Drug-Free Zone**

**Effective: September 1, 2015**

Under current law, the sale or possession of substances in penalty group 1, 2, 2-A, 3 and 4 of the Texas Controlled Substances Act within a drug-free zone subjects an offender to an enhanced penalty. A new category, Penalty Group 1-A, of controlled substances created by previous legislation was omitted in provisions enhancing the penalty for the sale or possession of certain substances within drug-free zones.

S.B. 236 amends Section 481.134 of the Health and Safety Code to increase the penalty from a state jail felony to a third degree felony if the offense of manufacture or delivery of substance in penalty group 1-A was committed in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning; the premises of a public or private youth center, or a playground; or in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility. S.B. 236 expands the category of offenses for which the minimum term of confinement or imprisonment is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed on a school bus or in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground, to include an offense, other than a state jail felony, for the knowing possession of and the knowing manufacture or delivery of or possession with intent to deliver a controlled substance listed in Penalty Group 1-A in any amount equal to or greater than 20 abuse units.

**S.B. 339**

**Subject: Medical Use of Low-THC Cannabis**

**Effective: June 1, 2015**

According to estimates of the Epilepsy Foundation

of Texas, intractable epilepsy afflicts almost 150,000 people in this state. Patients with intractable epilepsy can suffer dozens or more severe seizures each week and these individuals are at a higher risk for disability, injury, and even death. This bill regulates the growth and dispensation of low-THC cannabis for use in treating certain Texas residents diagnosed with intractable epilepsy by adding Chapter 169 to Title 3 of the Occupations Code to authorize a qualified physician to prescribe low-THC cannabis to a patient with intractable epilepsy, defined by the bill as a seizure disorder in which the patient's seizures have been treated by two or more appropriately chosen and maximally titrated anti-epileptic drugs that have failed to control the seizures. The bill authorizes a qualified physician to prescribe low-THC cannabis to alleviate a patient's seizures if the patient is a permanent Texas resident; the physician complies with the bill's registration requirements; and the physician certifies to the Department of Public Safety (DPS) that the patient is diagnosed with intractable epilepsy, that the physician determines the risk of the medical use of low-THC cannabis by the patient is reasonable in light of the potential benefit for the patient, and that a second qualified physician has concurred with that determination and the second physician's concurrence is recorded in the patient's medical record.

S.B. 339 adds Chapter 487 to the Health and Safety Code, known as the Texas Compassionate-Use Act, to require DPS to issue or renew a license to operate as a dispensing organization, defined by the bill as an organization licensed by DPS to cultivate, process, and dispense low-THC cannabis to a patient for whom low-THC cannabis is prescribed, to each applicant who satisfies the bill's requirements and to register directors, managers, and employees of each dispensing organization.

Section 487.201 of the Health and Safety Code to prohibit a municipality, county, or other political subdivision from enacting, adopting, or enforcing a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, dispensing, or possession of low-THC cannabis as authorized by the bill's provisions.

Section 481.062, as amended, exempts a licensed



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dispensing organization that possesses low-THC cannabis from registration under the Texas Controlled Substances Act. Section 481.111 of the Health and Safety Code authorizes such a dispensing organization to possess a controlled substance under the act, and exempts, under certain conditions, a person who engages in the acquisition, possession, production, cultivation, delivery, or disposal of a raw material used in or by-product created by the production or cultivation of low-THC cannabis from offenses relating to the delivery or possession of marihuana, the delivery of a controlled substance or marihuana to a child, or the possession or delivery of drug paraphernalia (which can be a Class C misdemeanor).

**TMCEC:** Recreational marihuana use is still illegal in Texas. S.B. 339 does not create a criminal offense, increase punishments, or change parole eligibility for those charged with marihuana-related crimes. It does create narrow exceptions to some drug offenses if marihuana is legally possessed for the treatment of intractable epilepsy.

**S.B. 344**

**Subject: Offense of Online Solicitation of a Minor**  
**Effective: September 1, 2015**

In October 2013, the Texas Criminal Court of Appeals unanimously declared unconstitutional the crime of “online solicitation of a minor” in Section 33.021(b) of the Penal Code. The Court opined that the statute is “overbroad because it prohibits a wide array of constitutionally protected speech and is not narrowly drawn to achieve only the legitimate objective of protecting children from sexual abuse.” Since that time, there has existed no punishable offense for online solicitation of a minor because the ruling occurred during the legislative interim. The current statute is overbroad. Though the statute was enacted to impose sanctions upon those who engage in Internet conversations with minors with intent for physical contact to take place, the statute’s sexually explicit communication provision contains no requirement that an actor ever possess the intent to meet the child.

S.B. 344 amends current law relating to the prosecution of the offense of online solicitation of a minor by amending Section 33.021 of the Penal Code.

The bill redefines “minor” from an individual who represents himself or herself to be younger than 17 to an individual who is younger than 17 years of age. The bill replaces the overbroad and unconstitutional language with the specific intent to commit existing Sex Offender Registration Offenses, found under Section 62.001(5) of the Penal Code. The intent of S.B. 344 is to punish a defendant intending to commit an offense under Article 62.001(5)(A), (B), or (K) of the Code of Criminal Procedure, as opposed to intending to arouse or gratify the sexual desire of any person. An offense committed under this section is a third degree felony, except that the offense is a second degree felony if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense.

**S.B. 367**

**Subject: Unauthorized Use of Alcoholic Beverage Permit or License**  
**Effective: September 1, 2015**

Subterfuge occurs when a business without an alcoholic beverage permit or license uses a valid alcoholic beverage permit or license issued to another person or business by the Texas Alcoholic Beverage Commission. Under current law, only the permit holder who allows the business to illegally use the permittee’s permit is penalized.

S.B. 367 adds Section 61.16 the Alcoholic Beverage Code to prohibit an alcoholic beverage licensee from consenting to or allowing the use or display of the licensee’s license by a person other than the person to whom the license was issued. The bill creates a Class B misdemeanor offense of unlawful display or use of a permit or license for a person who knowingly allows another person to display or use a permit or license in any manner not allowed by law. The bill enhances the penalty for a subsequent conviction of the offense to a Class A misdemeanor. The amended Section 11.46 of the Alcoholic Beverage Code prohibits the commission or administrator to issue an original permit to a person for a period of five years from date of a conviction of the new offense, and, under an amended Section 11.61 the commission or administrator must cancel an original or renewal permit if it is found, after notice and

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hearing, that the permittee or licensee was convicted of such an offense.

**S.B. 461**

**Subject: Criminal Offense and Civil Penalties for False or Misleading Labeling of Synthetic Drugs Effective: September 1, 2015**

Synthetic drugs have become a widespread problem across Texas in recent years. The ease with which manufacturers alter the chemical makeup of these drugs to circumvent the law puts a strain on local law enforcement agencies, first responders, and hospitals. Intending to give law enforcement officers an additional measure to address the problem, S.B. 461 adds Chapter 484 to the Health and Safety Code, titled Abusable Synthetic Substances. Section 484.002 creates a Class C misdemeanor for knowingly producing, distributing, selling, or offering for sale a mislabeled “abusable synthetic substance,” as that term is defined in Section 484.001, in the course of business. The offense is a Class A misdemeanor if the defendant has previously been convicted of an offense under Section 484.002 or under Section 32.42(b)(4) of the Penal Code (Deceptive Business Practices) where the commodity was an abusable synthetic substance. Under Section 484.001, “mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

S.B. 461 authorizes district, county, and city attorneys to bring an action in district court to collect a civil penalty from a person engaging in the same conduct that constitutes an offense in Section 484.002. The civil penalty may not exceed \$25,000 a day for each offense, and if recovered in a suit brought by a city attorney, is paid to the local government.

S.B. 461 provides an affirmative defense if the substance is approved by the FDA or other authorized state or federal regulatory agency and if the substance was lawfully produced, distributed, sold, or offered for sale. It is explicitly not a defense to prosecution or civil liability that the substance is labeled “Not for Human Consumption,” or other similar wording.

**TMCEC:** Contrast this bill with H.B. 124 from the

83rd Legislative Session, which arguably preempted city ordinances prohibiting the use and sale of K2 (Salvia Divinorum). S.B. 461 expressly includes city attorneys and local governments. Synthetic drugs or “designer drugs” pose a unique problem as they relate to traffic safety. See, Edward Minevitz, “Designer Drugs: How Drivers Might Be Circumventing Intoxicated Driving Laws” *The Recorder* (January 2014) at 11. For background information on the specific synthetic substance K2, see, Cathy Reidel, “K2: What’s the Buzz About?” *The Recorder* (January 2011) at 1.

**S.B. 505**

**Subject: Painting and Marking Requirements for Certain Meteorological Evaluation Towers Effective: September 1, 2015**

The increasing prevalence of meteorological evaluation towers (METs), which are used to measure wind speed and direction to identify locations for future wind turbines, has caused concern for the National Transportation Safety Board (NTSB) and the Federal Aviation Administration (FAA) due to an increase in fatal accidents involving these towers and low altitude pilots. Under current federal and state law, towers that are less than 200 feet above ground level are not required to be marked or lighted so as to be visible to low altitude pilots. Texas law does require wireless communications facilities that are between 100 feet and 200 feet above ground level to be marked with two warning spheres and requires a notice to be given to certain airport and aerial applicators of the construction of a wireless communication facility for those facilities taller than 100 feet above ground level. Unfortunately, these laws are largely ineffective due to a number of exemptions and lack of enforcement.

S.B. 505 amends Subchapter B of Chapter 21 of the Transportation Code by adding Section 21.071 to help prevent tower-related accidents and fatalities. S.B. 505 provides that METs between 50 and 200 feet above ground level must be painted in equal alternating bands of aviation orange and white, beginning with orange at the top of the tower; must have aviation orange marker balls installed and displayed; may not be supported by guy wires unless the guy wires have a seven-foot-long safety sleeve at

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each anchor point that extends from the anchor point along each guy wire attached to the anchor point; and an owner of an MET that does not comply with these safety standards commits a Class C misdemeanor, except that the offense is a Class B misdemeanor if a collision with the tower occurs causing bodily injury or death to another person.

**TMCEC:** METs have a diameter of six to eight inches, are made from galvanized tubing, and fall just below the 200-foot FAA threshold for obstruction markings. A MET's size, color, and lack of markings make it difficult to see. NTSB has investigated several fatal accidents involving aircraft collisions with METs, one of which happened in Ralls, Texas where an airplane collided with a MET that was erected 15 days before the accident. METs erected before September 1, 2015 are not required to comply with the new requirements until September 1, 2016.

**S.B. 825**

**Subject: Unlawful Disclosure or Promotion of Certain Intimate Visual Material**  
**Effective: September 1, 2015**

Under the current statutory framework, there is no distinction between the buyer and the seller involved in prostitution. As Texas moves toward an increasingly victim-centric and survivor-informed approach to sexual exploitation and sex trafficking, it is important to distinguish the roles of the buyers and sellers. The number of individuals arrested or charged with purchasing or attempting to purchase sex is a valuable measurement of the demand for commercial sex.

S.B. 825 amends Section 43.02 of the Penal Code by distinguishing the roles of the buyers and sellers of prostitution. The bill makes the conduct constituting a prostitution offense applicable if a person engages in the conduct in return for receipt of a fee or if a person engages in the conduct based on the payment of a fee by the actor or another person on behalf of the actor. The bill specifies that a prostitution offense is established regardless of whether the actor is offered or actually receives the fee or regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee, as applicable. The bill removes provisions relating to the estab-

lishment of the offense with respect to receiving or paying a fee or the hiring of a person. The bill retains the Class A misdemeanor and state jail felony penalty enhancements for a prostitution offense, regardless of whether the party is a buyer or seller.

**S.B. 835**

**Subject: Increasing the Punishment for the Offense of Fraudulent or Fictitious Military Record**  
**Effective: September 1, 2015**

Recent legislation revised federal law relating to offenses involving fraudulent claims of military service. S.B. 835 updates Texas law similarly, criminalizing certain such claims to reflect the higher penalties in federal law. S.B. 835 amends Section 32.54 of the Penal Code to increase the penalty for the offense of fraudulent or fictitious military record from a Class C misdemeanor to a Class B misdemeanor.

**TMCEC:** State legislatures have continued to search for new ways to address this kind of deception since *U.S. v. Alvarez*, 132 S.Ct. 2537 (2012). In *Alvarez*, the Court struck down the Stolen Valor Act, a federal law that criminalized false statements about having a military medal. The law had been passed as an effort to stem instances where people falsely claimed to have won the medal in an attempt to protect the "valor" of those who really had. In a 6-3 decision, the Court agreed that the law was unconstitutional under the 1st Amendment's free speech protections.

As amended, there are many ways to commit an offense under on Section 32.54, including claiming to hold a military record that is fictitious for the purpose of receiving benefits. Recently, a handful of stories gained national attention when military imposters dressed in uniform were captured on camera receiving donations and seeking retail discounts. Such imposters in Texas now face the possibility of jail time.

**S.B. 970**

**Subject: Failure to Handle Certain Animals in Accordance with Rules of the Texas Animal Health Commission**  
**Effective: September 1, 2015**

Currently, it is not a criminal offense to improperly

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handle or move livestock, exotic livestock, domestic fowl, or exotic fowl when the owner has been notified that the animal is restricted because of disease exposure or disease testing. In accordance with the rules of the Texas Animal Health Commission, S.B. 970 amends Section 161.041 of the Agriculture Code and makes it a Class C misdemeanor to improperly handle livestock, exotic livestock, domestic fowl, or exotic fowl when the owner has been notified that the animal is restricted because of disease exposure or disease testing.

**S.B. 1135**

**Subject: Unlawful Disclosure or Promotion of Certain Intimate Visual Material**

**Effective: September 1, 2015**

Recently, there has been an Internet trend of sexually explicit images being disclosed without the consent of the depicted person, resulting in immediate and, in many cases, irreversible harm to the victim. Victims' images are often posted with identifying information such as name, contact information, and links to their social media profiles. Many victims have reportedly been threatened with sexual assault, harassed, stalked, fired from jobs, or forced to change schools. Some victims have even committed suicide. In some instances, the images are disclosed by a former spouse or partner who is seeking revenge, a practice commonly referred to as "revenge pornography" by the media. To add insult to injury, some websites further prey on victims by charging fees to remove the sexually explicit images from the Internet.

S.B. 1135 seeks to preserve relationship privacy by providing victims both civil and criminal remedies when these intimate images are disclosed in a non-consensual manner and cause harm to the depicted person by adding Section 21.16 to Chapter 21 of the Penal Code. The bill creates a Class A misdemeanor offense of unlawful disclosure or promotion or intentionally threaten to disclose intimate visual material for a person who, without the effective consent of the depicted person, intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct under the following conditions: the visual material was obtained by the person or created under circumstances in which the depicted person had a

reasonable expectation that the visual material would remain private; the disclosure of the visual material causes harm to the depicted person; and the disclosure of the visual material reveals the identity of the depicted person in any manner, including through any accompanying or subsequent information or material related to the visual material or information or material provided by a third party in response to the disclosure of the visual material.

S.B. 1135 specifies that it is not a defense to prosecution for such an offense that the depicted person created or consented to the creation of the visual material or voluntarily transmitted the visual material to the actor.

**S.B. 1317**

**Subject: Improper Photography or Visual Recording**

**Effective: June 18, 2015**

Under current law, the statute governing the offense of improper photography or visual material is overly broad, particularly in regard to the offender's intent in taking such invasive photographs. The Texas Court of Criminal Appeals found that, in such cases, with respect to the actor's intent to arouse or gratify sexual desire, the Legislature cannot legislate a person's mind. S.B. 1317 provides a legal remedy for those whose privacy has been violated.

S.B. 1317 amends the Penal Code to rename the offense invasive visual recording. The bill removes from the offense the conditions that the actor commits the offense with the intent to arouse or gratify the sexual desire of any person, if the image or recording is of another at a location other than a bathroom or private dressing room, or that the actor commits the offense with the intent either to invade the other person's privacy or to arouse or gratify the sexual desire of any person, if the image or recording is of another in a bathroom or private dressing room. The bill instead creates a state jail felony for a person, without another person's consent and with intent to invade that other person's privacy, to photograph or by videotape or other electronic means record, broadcast, or transmit a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view; to photograph or by vid-

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eotape or other electronic means record, broadcast, or transmit a visual image of another in a bathroom or changing room; or to promote such a photograph, recording, broadcast, or transmission knowing the character and content of the photograph, recording, broadcast, or transmission. The bill requires a court, under the added Article 38.451 of the Code of Criminal Procedure, to place such property or material under seal of the court on the conclusion of the hearing or proceeding, and authorizes the court to issue an order lifting the seal if found in the public's best interest. The bill provides the state attorney access to such property or material and requires the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial to be provided access to such property or material in the manner provided by the bill's provisions.

S.B. 1317 also amends Chapter 39 of the Code of Criminal Procedure by adding Article 39.151, requiring a court to allow discovery of property or material that constitutes or contains a visual image, described by Section 21.15(b) of the Penal Code, of a child younger than 14 years old and that was seized by law enforcement based on a reasonable suspicion that an offense under that subsection has been committed. The bill requires a court to deny any request by a defendant to photograph or otherwise reproduce any such property or material described above, provided the state makes the property or material reasonably available to the defendant.

**S.B. 1462**

**Subject: Opioid Antagonists for Treatment of Suspected Opioid Overdoses**

**Effective: September 1, 2015**

Drug overdose is one of the leading causes of accidental death in the United States, with opioid painkillers accounting for a large majority of these cases. At highest risk are the elderly and medically ill who are already medically compromised. As most of these overdoses are witnessed, there is frequently the opportunity to intervene. Opioid overdose deaths can be reduced by making anti-overdose medications more accessible.

S.B. 1462 adds Subchapter E to Chapter 483 of the Health and Safety Code which removes criminal or

civil liability or any professional disciplinary action for pharmacists and prescribers dispensing opioid antagonists to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend, or other person in a position to assist a person at risk. The bill clarifies that any person may possess an opioid antagonist, regardless of whether the person holds a prescription for the opioid antagonist.

**S.B. 1828**

**Subject: The Offense of Cargo Theft**

**Effective: September 1, 2015**

Current law does not provide law enforcement with the tools necessary to stop organized cargo theft. Typically, the only person charged with an offense related to cargo theft is the person in possession of a stolen item, but other people are often involved in the theft. Additionally, there is not a clear, consistent understanding of the term cargo theft.

S.B. 1828 adds Section 31.18 of the Penal Code creating the offense of cargo theft. The bill defines the offense broadly to include possession, delivery, failure to transport, and receipt of stolen cargo. The bill defines "cargo" as goods, defined by Section 7.102, Business & Commerce Code, which constitute, wholly or partly, a commercial shipment of freight moving in commerce. S.B. 1828 establishes penalties for the offense ranging from a state jail felony to a first degree felony, depending on the total value of the cargo involved in the activity.

**TMCEC:** Cargo theft accounts for an estimated loss of 10 to 25 billion dollars per year nationwide. According to FreightWatch International, the average value lost per cargo theft was \$232,924 in 2014. Texas is one of the top five states for verified cargo theft incidents.

### Resources for Your Court

TMCEC is in the process of updating its *Bench Book*, *Forms Book*, certification study guides, and charts with changes from the 84<sup>th</sup> Session. Watch the TMCEC website [www.tmcec.com] for announcements on when revisions will be complete.

The following charts have been created or revised:

- Court Costs
- Common Defenses to Prosecution
- Compliance Dismissals
- Comparisons of Deferred Options
- Dangerous Dogs
- Expunctions Juveniles and Minors
- Municipal Court Jurisdiction
- Municipal Court Theft and Related Offenses Jurisdiction
- Municipal Court Procedures: Children Ages 10-16
- Municipal Juvenile/Minor Chart
- Probation-Related Dismissals
- School Responsibilities Regarding Truancy Flowchart (OCA)
- The Big Three – Registration, Inspection, & Financial Responsibility Requirements
- Transitioning to Title 2A of the Family Code
- Truancy Court Procedures Flowchart (OCA)



## Traffic Safety, Transportation

### **H.B. 7**

**Subject: Reducing Driver Responsibility Surcharges for Certain Offenses**

**Effective: September 1, 2015**

H.B. 7 modifies fees, eligible uses of funds, procedures, and other provisions governing general revenue dedicated funds and accounts.

**TMCEC:** Notably, H.B. 7 amends Sections 708.103 and 708.104 of the Transportation Code reducing the driver responsibility program surcharges for the offenses of driving without a license (Section 521.021) and failure to maintain financial responsibility (Section 601.191) if drivers come into compliance with the law within 60 days of their offense. Both surcharges are halved, reducing the surcharge to \$125 for not maintaining financial responsibility and to \$50 for driving without a license. The \$125 surcharge in amended Section 708.103 only applies if the person is convicted of failure to maintain financial responsibility and no other offense in Subsection (a), i.e., driving while license invalid or operating a motor vehicle with suspended registration (Class A misdemeanor). There is no such limitation in amended Section 708.104 for convictions of driving without a license. This means that at the time DPS assesses surcharges, if a person has convictions of both failure to maintain financial responsibility and driving with an invalid license in the preceding 36-month period, the reduced surcharge in Section 708.103 does not apply, and is instead \$250 per year. These changes apply to surcharges pending on September 1, 2015, regardless of when the surcharge was assessed.

### **H.B. 75**

**Subject: Exemption from Vehicle Registration for Certain Farm Vehicles**

**Effective: May 28, 2015**

H.B. 75 amends Section 502.146 of the Transportation Code to exempt from vehicle registration certain farm vehicles owned by a farmers' cooperative society or marketing association. Many Texas farmers use state highways, rather than using "Farm-to-Market" roads, as an alternative transportation source when using their vehicles or transporting equipment. When farmers use these types of roads, the Texas Department of Motor Vehicles issues them a special license

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plate that exempts them from having to register their vehicle and equipment. Current law does not extend the exemption from registering vehicles and equipment to farmers who are members of local farmers' cooperatives through which they are able to rent or borrow vehicles and equipment. This cost-effective approach is especially important for smaller farmers. Without the exemption, when coop farmers are using highways, it is possible for them to be fined by Texas highway patrol officers for lack of proper registration for the vehicles and equipment.

***H.B. 441***

**Subject: Extended Use of Court Order as an Occupational License**  
**Effective: September 1, 2015**

H.B. 441 amends Section 521.249(a) of the Transportation Code extending the period during which a person awaiting issuance of an occupational driver's license may use a copy of the court order as a restricted occupational driver's license until the 45th day after the date the order takes effect. Current law permits such use until the 31st day after the date the order takes effect. H.B. 441 gives the Department of Public Safety more time to issue the occupational driver's license and reduces the risk that a driver will either drive illegally or miss work due to a lack of proper licensing documentation.

***H.B. 716***

**Subject: Certification of Peace Officers in Certain Municipalities to Enforce Commercial Motor Vehicle Safety Standards**  
**Effective: June 1, 2015**

H.B. 716 amends Section 644.101(b) of the Transportation Code to include police officers in a municipality located in a county with a population between 60,000 and 66,000 adjacent to a bay connected to the Gulf of Mexico as eligible to apply for certification to enforce commercial motor vehicle safety standards under Chapter 644 of the Transportation Code. H.B. 716 responds to increased commercial truck traffic and related crashes in San Patricio County, particularly in areas closest to the Port of Corpus Christi.

***H.B. 804***

**Subject: Forms of Payment for Vehicle Storage Facility**  
**Effective: September 1, 2015**

H.B. 804 amends Section 2303.159 of the Occupations Code to modify the payment forms that vehicle storage facilities must accept. Under current law, a vehicle storage facility must accept payment by electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. This has been interpreted to allow these facilities to refuse certain forms of payment that are included in the language (See, 16 Texas Administrative Code, Section 85.711, Administrative Rules of the Texas Department of Licensing and Regulation). Refusal may prevent individuals from paying in a timely manner and allow certain facility operators to keep vehicles longer and charge excessive storage fees. Under H.B. 804, the operator of a vehicle storage facility must accept, for any charge associated with delivery or storage of a vehicle, cash, debit card, and credit card. H.B. 804 requires a conspicuously posted sign stating that requirement.

**TMCEC:** H.B. 804 protects consumers against policies historically implemented by vehicle impound facilities. In the past, one interpretation of the law allowed facility operators to accept one legal method of payment to the exclusion of the others. H.B. 804 addresses this issue and limits operator control over the form of payment.

***H.B. 1252***

**Subject: Weighing Procedure Requirements for Motor Vehicle Weight Enforcement Officers**  
**Effective: September 1, 2015**

H.B. 1252 amends Section 621.402 of the Transportation Code to require the Department of Public Safety (DPS) to establish by rule uniform weighing procedures to ensure an accurate weight is obtained for a motor vehicle by a weight enforcement officer who has reason to believe that the weight of the motor vehicle is unlawful. Currently, weight enforcement officers are allowed to weigh vehicles with portable or stationary scales to determine if a loaded motor vehicle is in violation of state law. Enforcement officers can typically obtain accurate weights from stationary scales, but weights obtained from portable scales vary for a number of reasons. This can result in the citation of trucking companies for overweight vehicles when, in fact, the vehicles are of legal weight.

H.B. 1252 authorizes DPS to revoke or rescind the authority of a weight enforcement officer who fails

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to comply with the uniform weighing procedures. This revocation could apply to a weight enforcement officer of a municipal police department, a sheriff's department, or a constable's office. The bill adds an affirmative defense in Section 621.508(b) of the Transportation Code against the offense of operating a vehicle with a single axle weight, tandem axle weight, or gross weight heavier than the weight authorized by law, if the weight enforcement officer failed to follow the weighing procedures established under Section 621.402. However, that affirmative defense only applies to an offense committed on or after the effective date of a rule adopted by DPS, which is required to adopt rules not later than January 1, 2016.

**H.B. 1317**

**Subject: Report on Parking for Persons with Disabilities**

**Effective: September 1, 2015**

H.B. 1317 amends Chapter 115 of the Human Resources Code by adding Section 115.012, requiring a report on laws, standards, and policies regarding parking for persons with disabilities to be prepared by the Governor's Committee on People with Disabilities. Many issues face disabled individuals when attempting to use disabled parking spaces in Texas. For example, while van-accessible disabled parking spaces include an extra space that typically allows a ramp or lift affixed to a van to lower and allow a person in a wheelchair to exit the ramp or lift and turn, this exit process is not possible in the non-van-accessible spaces. Unfortunately, many individuals who are not in wheelchairs and do not require the extra space to unload choose to park in van-accessible spaces, thereby limiting access to those few available spaces for individuals who require the additional space to exit and enter a specially equipped vehicle.

**H.B. 1733**

**Subject: Insurance for Transportation Network Company Drivers**

**Effective: January 1, 2016**

H.B. 1733 adds Chapter 1954 to Subtitle C, Title 10 of the Insurance Code requiring specific coverage for transportation network company (TNC) drivers. Section 1954.001(4) defines a TNC as an entity that uses a digital network to connect a driver and a rider for a prearranged ride. The emergence of TNCs such as Uber and Lyft exposed gaps in Texas insurance

policies. TNC drivers provide rides using personal vehicles; however, personal insurance does not provide coverage for collisions occurring while transporting a passenger for money. Most TNC drivers transport passengers part-time, making commercial insurance policies too expensive and likely inappropriate.

Chapter 1954 requires primary automobile insurance for vehicles transporting TNC passengers for compensation. The requirements vary depending on whether the driver is logged on to the TNC network but not transporting a passenger and actually transporting a passenger. H.B. 1733 also addresses coverage lapses, the relationship between a TNC and its drivers, and authorized exclusions from coverage. Added Section 1954.056 provides that insurance that satisfies the requirements of Chapter 1954 satisfies the financial responsibility requirement under Chapter 601 of the Transportation Code. A TNC driver must carry proof of insurance that satisfies Chapter 1954 when using a vehicle in connection with a TNC's digital network.

**TMCEC:** In 2014, Austin, Dallas, Houston, and San Antonio passed ordinances regulating TNCs, which included insurance requirements. H.B. 2440 would have regulated TNCs to the same extent as such ordinances and expressly preempted them to at least some degree. That bill, however, died in Calendars. H.B. 1733 contains no preemption language or references to local ordinances. Cities could arguably have additional and more stringent insurance requirements for TNCs than those in H.B. 1733 as long as they do not conflict with Chapter 1954 of the Insurance Code. Regulation beyond insurance requirements, including requirements for drivers, equipment, fares, ADA accommodations, and reporting, remains unaddressed by H.B. 1733. For background information on TNCs and related city ordinances, see, Regan Metteauer, "Transportation Network Companies: Litigation, Livelihood, and Local Regulation" *The Recorder* (February 2015) at 4.

**H.B. 1786**

**Subject: Transfer of Driver and Traffic Safety Education to the Texas Department of Licensing and Regulation**

**Effective: September 1, 2015**

Under current law, the Texas Education Agency (TEA) oversees the licensing and curriculum of



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private driver training schools, including driver education schools and driving safety schools, and the Department of Public Safety (DPS) oversees parent-taught driver education programs. DPS approves and licenses course providers that sell driver-education programs and associated materials to family members, often parents or guardians, who serve as instructors to the student driver during the in-car portion of the program.

H.B. 1786 amends Chapter 1001 of the Education Code to move authority over the driver and traffic safety education program, which governs driver training schools, from TEA to the Texas Department of Licensing and Regulation (TDLR). The bill also amends Section 521.205 of the Transportation Code moving oversight of parent-taught driver education programs from DPS to TDLR, and adds Section 1001.112 of the Education Code requiring TDLR to approve, by rule, parent-taught programs. In addition, the bill places TDLR, instead of TEA, in charge of developing driver education and traffic safety programs offered as courses to students in public schools and by institutions of higher education.

Section 545.412 of the Transportation Code is also amended requiring judges deferring proceedings under Article 45.0511 (Driving Safety Course) for a child passenger safety seat offense to require the defendant to complete a specialized driving course approved by TDLR relating to child passenger safety seat systems.

The amended Section 1001.151 of the Education Code allows TDLR to establish application, license, and registration fees for course providers. Additionally, H.B. 1786 amends Section 1001.057 creating an advisory committee for the driver education program.

### ***H.B. 1814***

**Subject: Online Renewal of Driver's Licenses of Active Duty Military Personnel and Relatives**  
**Effective: June 1, 2015**

Although current law authorizes the online renewal of a Texas driver's license under certain conditions, a military service member on active duty outside of the United States may not be able to renew online if the service member has renewed online previously or has been stationed outside of the United States for longer than two years. The same difficulty may be encountered by the family of such a service member. H.B.

1814 amends Section 521.274 of the Transportation Code allowing online renewal of driver's licenses, regardless of when the license expires, of both a person who is on active duty in the armed forces of the United States and is absent from the state and also the spouse or dependent child of such a person.

### ***H.B. 1888***

**Subject: Commercial Driver's Licenses and Commercial Learner's Permits, Inspection Offense**  
**Effective Date: January 1, 2016**

Currently, the Department of Public Safety of the State of Texas (DPS) has the authority to issue commercial driver learner's permits and commercial driver's licenses (CDLs). However, Texas must ensure continued compliance with federal regulations in order to maintain this authority. Texas risks the loss of several million dollars in federal highway funds if it does not comply with Federal Motor Carrier Safety Administration (FMCSA) rules and regulations. Numerous federal regulations have recently been enacted. H.B. 1888 amends Chapter 522 of the Transportation Code, the Texas Commercial Driver's License Act, to make the necessary conforming changes to maintain federal compliance.

In conformity with federal law, H.B. 1888 renames the commercial driver learner's permit as a "commercial learner's permit" in Section 522.003 of the Transportation Code. The bill also redefines driver's license not to include a commercial learner's permit (CLP). Other conforming changes to Section 522.003 are renaming a nonresident commercial driver's license to a "non-domiciled" commercial driver's license, including the United States, a state, or a political subdivision of a state in the definition of "person," and expanding the regulations and criteria governing the term "out-of-service order."

H.B. 1888 amends Section 522.011 requiring a person driving a commercial motor vehicle to have in the person's immediate possession a CDL (and not be disqualified or subject to an out-of-service order) or a **CLP and a driver's license** issued by DPS in addition to being accompanied by the holder of a CDL. The accompanying license holder must at all times occupy, for the purpose of giving instruction in driving the vehicle, a seat beside the permit holder or, in the case of a passenger vehicle, directly behind the driver in a

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location allowing direct observation and supervision.

H.B. 1888 increases the punishment for driving a commercial motor vehicle without a CDL or CLP to \$1000 if the defendant has a previous conviction of an offense under Section 522.011 in the year preceding the current offense. H.B. 1888 adds Section 522.011(e) creating a defense to prosecution if the defendant shows a CLP or driver's license (whichever is applicable) that was valid at the time of the offense. The court may assess a \$10 administrative fee for dismissing the charge.

H.B. 1888 amends Section 522.013 authorizing DPS to issue a non-domiciled commercial learner's permit with the same issuance requirements as a non-domiciled commercial driver's license.

Section 522.014 as amended requires issuance of a driver's license by DPS before DPS may issue a commercial learner's permit. It also requires that the CLP be a separate document from a driver's license or a CDL. A CLP must be issued before issuing a CDL or upgrading classification of a CDL that requires a skills test. A CLP holder may not take a CDL skills test before the 15th day after the date of the issuance of the permit.

H.B. 1888 amends Section 522.015 to require a person with a CLP issued by another jurisdiction to also have a driver's license issued by the same jurisdiction to drive a commercial motor vehicle in Texas.

Section 522.021(d) is amended to change the penalty for a person who knowingly falsifies information on an application for a non-domiciled commercial driver's license or commercial learner's permit from a 60-day cancellation of the person's commercial driver's license or permit to a 60-day disqualification of those documents. That offense is a Class C misdemeanor. This change only applies to an application filed on or after January 1, 2016.

The fee in Section 522.029 for the issuance or renewal of a CLP is reduced to \$24 and creates a fee of \$60 for administration of a skills test to a non-domiciled person. This applies to permits issued or renewed on or after January 1, 2016.

The bill authorizes DPS to issue a Class A, Class B, or Class C CLP. The holder of such a permit may

drive any vehicle in the class for which the permit was issued and lesser classes of vehicles except a motorcycle or moped.

H.B. 1888 adds Subsection 522.042(b) authorizing DPS to issue a CLP with endorsements authorizing driving a passenger vehicle or school bus with limited types of passengers and an empty tank vehicle that has been purged of any hazardous materials. It is a Class C misdemeanor to drive such vehicles without the proper endorsement on the permit.

As amended, H.B. 1888 changes the expiration date of a CLP in Section 522.051 to the earlier of the expiration date of the driver's license or CDL or the 181st day after the date of issuance. This applies to permits issued on or after January 1, 2016.

H.B. 1888 amends Section 522.0541 expanding DPS authority to deny under certain circumstances renewal of a DPS-issued CDL in the manner ordered by a court in another state in connection with a matter involving a certain motor vehicle traffic control violation and on receipt of the necessary information from the other state to include the authority to deny renewal of a DPS-issued CLP under such circumstances and expands those circumstances to include failure to answer a citation or to pay fines, penalties, or costs related to the original violation. The bill requires DPS to apply any such notification received from another state as a conviction to the person's driving record.

The bill expands the scope of the following statutory provisions regarding CDLs to make the provisions applicable also to a CLP: provisions regarding clearance notice from another state to DPS that the grounds for denial of the renewal of a CDL based on previously reported violations have ceased to exist (Section 522.055), provisions regarding the offense of driving a commercial motor vehicle while disqualified for or denied a CDL (Section 522.071), provisions regarding the circumstances under which a CDL holder is disqualified from driving a commercial motor vehicle (Sections 522.081 and 522.089), and provisions regarding notification to DPS or to a CDL holder's employer of a conviction in this state or another state of certain motor vehicle traffic control violations (Section 522.061).

As amended, Subsection 522.087(d) makes certain

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disqualifications take effect on the 10th day after the date DPS issues the order of disqualification.

H.B. 1888 requires DPS to remove the commercial driver's license privilege from a CDL or a CLP holder if the holder fails to provide DPS a self-certification of operating status or fails to provide and maintain with DPS a current medical examiner's certificate that is required based on the self-certification.

Section 522.105(a) is amended to specify that the required disqualification by DPS of a person driving a commercial motor vehicle due to a peace officer's report that the person refused to give a requested specimen or submitted a specimen that disclosed an alcohol concentration of 0.04 or more begins on the 45th day after the date the report is received unless a hearing is granted.

Section 548.256 of the Transportation Code is amended to require the Texas Department of Motor Vehicles (DMV) or the county assessor-collector registering a vehicle to verify that the vehicle complies with applicable inspection requirements in Chapter 548 and Chapter 382 of the Health and Safety Code (vehicle emissions). The DMV or a county assessor-collector may register a non-compliant vehicle if the vehicle is located in another state at the time the applicant applies for registration or renewal and the applicant certifies that the vehicle was located in another state and that the applicant will comply with the applicable inspection requirements and DMV administrative rules once the vehicle is operated in Texas. H.B. 1888 requires the DMV to add a notation to the registration database for law enforcement to verify the inspection status. H.B. 1888 adds Section 548.605 creating an offense for operating a vehicle registered based on certification under Section 548.256 not in compliance with applicable inspection requirements. A peace officer may require the owner or operator to produce a vehicle inspection report if the DMV registration database includes a notation for law enforcement to verify the inspection status of the vehicle. That offense is a Class C misdemeanor. Section 548.605 includes a compliance dismissal for the offense of operating a vehicle without complying with inspection requirements as certified and requires an administrative fee not to exceed \$20. H.B. 1888 adds that administration fee to the list of additional fees and costs in Section

103.0213 of the Government Code.

The DMV or county assessor-collector does not have to verify compliance for a vehicle being registered under Section 502.091 (International Registration Plan) or a token trailer being registered under Sections 502.255 or 502.0023.

**TMCEC:** H.B. 1888 had lowly beginnings as merely a three-section bill that increased the fine for driving a commercial motor vehicle without a commercial driver's license to a Class B misdemeanor if a prior conviction occurred in the year preceding the date of the offense. The enrolled version contains 47 sections, carrying text from at least two other bills, both of which originally contained a Class C misdemeanor offense for operating commercial motor vehicles while using a wireless communication device. That offense is not part of H.B. 1888. The bill does contain an inspection offense related to all vehicles, not just commercial motor vehicles. In the 83rd Legislative Session, Section 548.605 of the Transportation Code was repealed, removing a compliance dismissal for driving with an expired inspection certificate, which as of March 1, 2015 is no longer an offense. H.B. 1888 adds a new Section 548.605 creating an offense for operating a vehicle without complying with inspection requirements as certified under Section 548.256 and includes a corresponding compliance dismissal.

### ***H.B. 2194***

#### **Subject: Offense of Leaving a Motor Vehicle Unattended**

**Effective: June 19, 2015**

H.B. 2194 amends Section 545.404 of the Transportation Code by providing an exception to the unattended motor vehicle offense for operators who remotely start a motor vehicle that is parked on a street or highway, provided the vehicle cannot be operated without the key being placed in the ignition or being physically present in the vehicle.

**TMCEC:** Currently, it is against the law to leave a vehicle unattended unless you stop your engine, lock the ignition, take out the key, set your parking brake, and turn the wheels toward the curb or side of the road if on a grade. With recent developments in automobile technology, many cars can be started remotely, and H.B. 2194 provides an exemption from some of those requirements for those that drive cars with this

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capability. H.B. 2194 is a good example of a bill that squeezes new technology into old laws. S.B. 1530 was another bill aiming to make the same changes that did not make it to a full House vote.

**H.B. 2216**

**Subject: Mental Health Inquiries on Driver's License Applications**

**Effective: September 1, 2015**

To avoid potential unfairness to a driver's license applicant with a medical history containing a psychiatric illness that does not affect the person's ability to drive, H.B. 2216 amends Section 521.142 of the Transportation Code prohibiting an application from including an inquiry, other than a general inquiry as to whether the applicant has a mental condition that may affect the applicant's ability to safely operate a motor vehicle. Other than that general inquiry, an application may not include an inquiry regarding the mental health of the applicant, including an inquiry as to whether the applicant has been diagnosed with, treated for, or hospitalized for a psychiatric disorder.

**H.B. 2246**

**Subject: Ignition Interlock Device in Lieu of License Suspension**

**Effective: September 1, 2015**

HB 2246 adds Subsection (o) to Section 13, Article 42.12 of the Code of Criminal Procedure. Subsection (o) allows a defendant whose license is suspended under Sections 49.04 - 49.08 of the Penal Code to operate a motor vehicle during the period of suspension if the defendant (1) uses an Ignition Interlock Device (IID) during the entire period of suspension; and (2) applies for and receives an occupational driver's license (ODL) with an IID designation under Section 521.2465 of the Transportation Code. The designation signifies that the license holder is only permitted to operate vehicles equipped with an IID. The designation must be "conspicuous" on the license card.

HB 2246 amends Sections 521.246(a), (b), (d), and (f) of the Transportation Code to require that if a person's license is suspended after being convicted of an offense under Sections 49.04 - 49.08 of the Penal Code, the judge shall restrict the person to the operation of motor vehicles equipped with an IID if the judge decides to grant an ODL. The IID must remain installed for the duration of the suspension.

HB 2246 adds Section 521.244(e) to the Transportation Code providing that a person convicted of an offense under Sections 49.04 - 49.08 of the Penal Code who may only operate vehicles equipped with an IID is entitled to receive an ODL without a finding that an essential need exists as long as they show: (1) evidence of financial responsibility under Chapter 601; and (2) proof that they have an IID installed on each vehicle owned and operated by the person.

Under added Subsection 521.248(d) of the Transportation Code, a person restricted to driving only a vehicle with an IID is not subject to time, reason, or location restrictions currently required in an order granting an ODL.

**TMCEC:** Known as the "All-Offender Ignition Interlock Law," HB 2246, at its core, means that beginning September 1, 2015, if persons with suspended licenses for DWI-related offenses are permitted to drive using an ODL, they must have an IID installed. Until September 1, they will continue to be able to apply for occupational driver's licenses without the IID requirement. Once HB 2246 takes effect, however, those with suspended licenses will not have to show that an "essential need" exists for them to obtain an ODL. This is a calculated trade-off: if convicted impaired drivers are required to have an IID, the burden will be softened on allowing them to drive with an ODL. Courts, law enforcement, and others should be aware of ODLs with the "IID required" designation.

**H.B. 2549**

**Subject: Authority and Operation of Regional Tollway Authorities**

**Effective Date: September 1, 2015**

H.B. 2549 shortens the customer payment period in Section 366.178 of the Transportation Code for operators of vehicles driven or towed through a toll assessment facility. A registered owner must pay the unpaid tolls included in an invoice not later than the 25th day after the date the invoice is mailed (instead of the 30th day). H.B. 2549 amends Subsection (g) of Section 366.178 removing the requirement that a court of local jurisdiction in which the unpaid toll was assessed collect unpaid tolls, administrative fees, and third-party collections services. Also removed is language prohibiting a court from waiving payment of the unpaid tolls and fees unless the court first finds

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that the registered owner is indigent.

As amended, a court assessing and collecting a fine from a vehicle owner who failed to pay a toll after repeated notice may collect and forward to the authority the properly assessed unpaid toll and other fees as determined by the court after a hearing or by written agreement of the vehicle owner. H.B. 2549 also allows tolling authorities to send information such as invoices to tollway users online, instead of by first-class mail, if the recipient agreed to the terms of electronic billing and receipt of information.

**TMCEC:** Municipal courts that have grown weary of collecting and forwarding unpaid tolls no longer have to do so, but they do have the ability. Some courts may be happy to not work as a forced collection agency for other entities (or at least not as many entities). Curiously, the previous restriction on waiver left open the possibility of waiver in the case of indigence. Now, waiver and indigence are no longer mentioned in Section 366.178 at all.

### ***H.B. 2633***

**Subject: Release of a Motor Vehicle Accident Report Effective: June 18, 2015**

A motor vehicle accident report not only contains general information about the accident, but also private information about the individuals involved, including personal addresses and telephone numbers. Release of this information could lead to direct harassment of crash victims and their families by some persons with access to motor vehicle accident reports.

H.B. 2633 amends Section 550.065 of the Transportation Code to remove the requirement to provide accident report information held by TxDOT or another governmental entity to a person who provides two or more items of certain specified information about the reported accident. The bill adds as a required recipient of such information: any person involved in the accident; the authorized representative of any person involved in the accident; a driver involved in the accident; an employer, parent, or legal guardian of a driver involved in the accident; the owner of a vehicle or property damaged in the accident; a person who has established financial responsibility for a vehicle involved in the accident, including a policyholder of a motor vehicle liability insurance policy covering the vehicle; an insurance company that issued a motor vehicle liability insurance policy covering a vehicle

involved in the accident; a radio or television station licensed by the FCC; certain types of newspapers; or any person who may sue because of death resulting from the accident. On receiving such reports or information, TxDOT or another applicable governmental entity must create a redacted accident report that may be requested by any person. The report may include only the location, date, and time of the accident and the make and model of a vehicle involved in the accident. The provision establishing a \$6 fee for a copy of a written accident report also applies to a redacted accident report.

**TMCEC:** Accident reports sometimes show up in case files. If mistakenly filed accident reports trigger the requirement in Section 550.065(c-1) to create a redacted accident report, extra precautions may be worthwhile to prevent such filing. An accident report may also be requested by a defendant in municipal court as part of discovery. The rules of discovery govern what the State is required to disclose, produce, or permit to inspect. See, Article 39.14 of the Code of Criminal Procedure.

### ***H.B. 3225***

**Subject: Lane Restrictions for Certain Motor Vehicles in Highway Construction or Maintenance Work Zones Effective: September 1, 2015**

H.B. 3225 adds Section 545.0653 of the Transportation Code to allow the Texas Department of Transportation to restrict commercial motor vehicles to a specific lane of traffic in a construction or maintenance work zone.

**TMCEC:** While the new Section 545.0653 does not specifically make mention of a new Class C misdemeanor in the statute, it does charge the Department of Public Safety with erecting and maintaining traffic control devices to enforce a lane restriction; this may lead to a new way that drivers could disregard an official traffic control device, a Class C misdemeanor under Section 544.004 of the Transportation Code.

### ***S.B. 58***

**Subject: Enforcement of Commercial Motor Vehicle Standards in Certain Municipalities along Texas' Gulf Coast Effective Date: September 1, 2015**

S.B. 58 amends Section 644.101 of the Transportation Code to include a municipality with a population of

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more than 40,000 and less than 50,000 that is located in a county with a population of more than 285,000 and less than 300,000 that borders the Gulf of Mexico among the municipalities from which a police officer is eligible to apply for certification to enforce commercial motor vehicle safety standards. S.B. 58 decreases from one million to 700,000 the minimum population of a county that triggers a county sheriff's or deputy sheriff's eligibility to apply for such certification.

**TMCEC:** As introduced, S.B. 58 only made changes regarding the population of a county triggering eligibility for certification. Between the Senate Committee report and the engrossed version of the bill, specific provisions regarding a municipality were added. This is one of two bills that amend Section 644.101 of the Transportation Code. See H.B. 716 for another change with similar, specific language concerning a municipality's officers' ability to apply for certification.

**S.B. 193**

**Subject: Issuance of Specialty License Plates to Honor Recipients of Certain Military Medals**  
**Effective: September 1, 2015**

S.B. 193 amends Section 504.315 of the Transportation Code to require the Texas Department of Motor Vehicles to issue specialty license plates for recipients of the Soldier's Medal, the Navy and Marine Corps Medal, the Coast Guard Medal, or the Airman's Medal. The Soldier's Medal is awarded for acts of heroism that did not occur in conflict with an armed enemy, the Navy and Marine Corps Medal for acts of heroism that had a life-threatening risk, the Coast Guard Medal for acts of heroism that involved a great personal danger while not in conflict with an enemy, and the Airman's Medal for heroic acts in a noncombat situation. The license plates must include the respective medal's emblem and the name of each medal at the bottom of each plate.

**TMCEC:** Vehicles with these license plates, like other specialty license plates listed in Section 504.315, are generally exempt under Section 681.008(b) of the Transportation Code from the payment of a parking fee collected through a parking meter charged by a governmental authority.

**S.B. 449**

**Subject: Titling, Registration, and Operation of Autocycles**  
**Effective: May 22, 2015**

Currently, the Texas Department of Motor Vehicles refuses to issue titles for vehicles, such as autocycles, that are not within the narrow definition of a motorcycle under the Transportation Code. S.B. 449 adds Sections 501.008 and 502.004 to the Transportation Code, defining autocycle as a three-wheeled motor vehicle, other than a tractor, that is equipped with a steering wheel, with seating that does not require straddling or sitting astride the seat, and is manufactured and certified to comply with federal safety requirements for a motorcycle. The bill considers autocycles to be motorcycles for the purposes of issuing a title and registering a vehicle. The bill exempts autocycles, as defined by Section 501.008, and motorcycles, as defined by Section 521.001(a)(6-a), from the requirement to be equipped with footrests and handholds for passenger use under Section 547.617 of the Transportation Code. The bill subjects autocycles to the statutory provisions relating to protective headgear by adding Section 661.0015 to the Transportation Code.

**TMCEC:** An autocycle is yet another example to add to our list of "things with wheels." The requirement to have footrests and handholds on motorcycles was established in 2013 with the passage of Malorie's Law. Certain types of motorcycles such as an autocycle without a saddle to straddle or one with an enclosed passenger compartment would not benefit from the inclusion of footrests and handholds, and S.B. 449 exempts them accordingly.

**S.B. 562**

**Subject: Annual Permits to Move Certain Equipment**  
**Effective: May 15, 2015**

Electric utilities throughout Texas regularly haul electric power poles for the routine maintenance of transmission and distribution lines as well as to repair damage to those lines after storms, often requiring special permits because of their combined length and height. Currently, the DMV requires haulers to purchase "over-length" permits that are good for 30, 60, or 90 days. An annual permit may make permitting more efficient than obtaining a 90-day permit up to

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four times a year.

S.B. 562 amends Section 623.071 of the Transportation Code to authorize the Texas Department of Motor Vehicles to issue an annual permit for operating a vehicle or combination of vehicles that exceeds the length and height limits provided by law over a state highway or road. S.B. 562 limits the size of such vehicles to a maximum length of 110 feet and a maximum height of 14 feet. S.B. 562 amends Section 623.076 requiring an application for such a permit to be accompanied by a permit fee of \$960, allocating \$480 of that amount to the general revenue fund.

**S.B. 971**

**Subject: Requirements for Certain Farm Vehicles Operating on a Highway**  
**Effective: September 1, 2015**

Section 621.901 of the Transportation Code allows a width exemption for “implements of husbandry” on public roads. “Implements of husbandry” are defined in Section 541.201(6) of the Transportation Code. S.B. 971 amends Section 541.201(6) to include in the definition: (1) a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; and (2) a motor vehicle designed and adapted to deliver feed to livestock. The bill clarifies that the exemption in Section 622.901 from vehicle width limitations for farm tractors, implements of husbandry, and vehicles moving such equipment traveling on certain highways during daylight applies to farm tractors and implements of husbandry as those terms are defined under statutory provisions.

**S.B. 1171**

**Subject: Operation of Certain Oversize or Overweight Vehicles**  
**Effective: September 1, 2015**

S.B. 1171 amends Sections 621.102 and 621.301 of the Transportation Code to include among the vehicles authorized to operate over maximum weight, a vehicle operating under a permit issued by the Texas Department of Motor Vehicles for certain oversize or overweight vehicles transporting unrefined timber, wood chips, or woody biomass in a timber producing county.

The bill adds another permit that exempts from the maximum width limitation for a vehicle operated on a

public highway a vehicle traveling during daylight on a public highway other than a highway that is part of the national system of interstate and defense highways or traveling for not more than 50 miles on a highway that is part of that system if the vehicle is used in the harvesting and production of timber. This does not apply to equipment: being transported from one dealer to another; being moved to deliver the equipment to a new owner; being transported to or from a mechanic for maintenance or repair; or in the course of an agricultural forestry operation.

**S.B. 1338**

**Subject: Exemption from Length Limitations for Transportation of Harvest Machines**  
**Effective: June 18, 2015**

In order to remove an undue burden on Texas farmers transporting harvesting equipment long distances, sometimes across state lines, S.B. 1388 amends Section 622.902 of the Transportation Code to exempt from statutory length limitations, for certain vehicles or combinations of vehicles, a truck-tractor operated in combination with a semitrailer and trailer or semitrailer and semitrailer if the combination is used to transport a harvest machine. The overall length of the combination, excluding the length of the truck-tractor, must not be longer than 81½ feet and the combination must not be traveling on certain highway systems.

S.B. 1338 removes the exemption in Subsection (7) from such length limitations for a vehicle or combination of vehicles used to transport a combine, replacing it with an exemption for a vehicle or combination of vehicles used to transport a harvest machine if the overall length of the vehicle or combination is no longer than 75 feet if traveling on certain highway systems, or otherwise 81½ feet.

**S.B. 1436**

**Subject: Setback Requirements for Junkyard or Auto Wrecking and Salvage Yard**  
**Effective Date: September 1, 2015**

S.B. 1436 amends Section 396.022(a) prohibiting junkyards and automotive wrecking and salvage yards from being located within 50 feet of the nearest property line of a residence in addition to the right-of-way of a public street or state highway. A violation of Section 396.022 is a Class C misdemeanor, punishable by a fine of \$100 to \$500. Current law prohibits

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junkyards and automobile wrecking and salvage yards from being within 50 feet of a residence, a reference point that can move. S.B. 1436 establishes a reference point that can be accurately applied in all situations, protecting the health and safety of individuals living on property adjacent to these entities. S.B. 1436 applies only to a junkyard or automotive wreckage and salvage yard that begins operating on or after September 1, 2015. Entities in operation before the effective date are governed by current law, prohibiting a location within 50 feet of a residence.

**S.B. 1451**

**Subject: Disputed Credit or Debit Card Payment for Vehicle Registration Fee**  
**Effective: September 1, 2015**

S.B. 1451 adds Section 502.1931 to the Transportation Code requiring a county assessor-collector who receives payment by credit card or debit card for a vehicle registration fee for a registration year that has not ended that is returned unpaid and disputed by the credit card or debit card company to certify the fact to the sheriff or a constable or highway patrol officer in the county. Prior to certification, the county assessor-collector must attempt to contact the person and fail to collect payment. S.B. 1451 includes certain certification requirements regarding evidence and documentation, and the certification must be made within 30 days of the assessor-collector being made aware of the disputed payment.

S.B. 1451 requires the sheriff, constable, or highway patrol officer, upon receiving such a certification from the county assessor-collector, to locate the person who authorized the credit card or debit card payment, if the person is in the county, and demand immediate payment from the person. If the person fails or refuses to redeem the payment, the officer must seize and remove the license plates and registration insignia from the vehicle and return the license plates and registration insignia to the assessor-collector.

**TMCEC:** According to Senate Transportation Committee testimony on S.B. 1451, the purpose of the bill is to extend the longstanding procedure in Section 502.193 of the Transportation Code for payments by hot checks to disputed credit and debit card payments. Since 1936, the procedure for failed collection of payment for vehicle registration due to a check

drawn against insufficient funds included the requirement that officers locate the owner and seize, remove, and return the license plate (seizure and return of the registration insignia was added in 2011 by the 82nd Legislature). Prior to S.B. 1451, no procedure existed for revoking registration in the event of a disputed credit or debit card payment, resulting in some owners registering their vehicles for free. S.B. 1451 closes that loophole.

**S.B. 1820**

**Subject: Exemption of Certain Vehicles from Towing Regulations**  
**Effective: May 23, 2015**

S.B. 1820 amends Section 2308.002(11) of the Occupations Code excluding from the definition of “tow truck,” for purposes of the Texas Towing and Booting Act: (1) a truck-trailer combination that is owned or operated by a dealer licensed to sell or lease a motor vehicle and used to transport new vehicles in a transaction in which the dealer is a party and ownership or right of possession of the vehicle is conveyed or transferred; and (2) a car hauler that is used solely to transport motor vehicles as cargo in the course of a prearranged shipping transaction or for use in mining, drilling, or construction operations. The Texas Department of Licensing and Regulation (TDLR), which is responsible for administering the Texas Towing and Booting Act, does not interpret these vehicles as being tow trucks for the purposes of the Act. However, some law enforcement officials cite operators of these types of vehicles for failing to register with TDLR as tow trucks. S.B. 1820 clarifies that such citations are not valid.

**S.B. 1918**

**Subject: Use of Certain Motorcycle Lighting Equipment**  
**Effective: September 1, 2015**

A study conducted by the Texas A&M Transportation Institute found that, in crashes involving a motorcycle and another vehicle, the other driver reported never seeing the motorcycle about one-half of the time. To combat this safety issue, some motorcyclists attach light emitting diodes (LEDs) on the underbody of their motorcycle. Whether or not current law permits such lighting is unclear. S.B. 1918 adds Section 547.306 of the Transportation Code permitting opera-

*continued on pg. 92*



## 2016 Academic Schedule

Seminar	Date(s)	City	Hotel Information
New Judges & Clerks Orientation	October 21, 2015 (W)	Austin	TMCEC
Regional Clerks Seminar	October 26-28, 2015 (M-T-W)	Tyler	Holiday Inn South Broadway
Regional Judges Seminar	October 28-30, 2015 (W-Th-F)	Tyler	Holiday Inn South Broadway
Regional Judges & Clerks Seminar	November 8-10, 2015 (Su-M-T)	Austin	Omni Southpark Austin
Clerks One Day Clinic	November 12, 2015 (Th)	Midland	Courtyard Marriott
New Judges & Clerks Seminar	December 7-11, 2015 (M-T-W-Th-F)	Austin	Omni Southpark Austin
Regional Judges & Clerks Seminar	January 5-7, 2016 (T-W-Th)	San Antonio	Omni San Antonio at the Colonnade
Regional Clerks Seminar	January 10-12, 2016 (Su-M-T)	Galveston	San Luis Resort
Clerks One Day Clinic	January 21, 2016 (Th)	McAllen	Doubletree Hotel
Level III Assessment Clinic	January 25-28, 2016 (M-T-W-Th)	Austin	Crowne Plaza Austin
Regional Judges Seminar	February 7-9, 2016 (Su-M-T)	Galveston	San Luis Resort
Regional Judges and Clerks Seminar	February 14-16, 2016 (Su-M-T)	Houston	Omni Houston Westside
Regional Judges Seminar	March 7-9, 2016 (M-T-W)	Addison	Crowne Plaza Dallas Galleria - Addison
Regional Clerks Seminar	March 9-11, 2016 (W-Th-F)	Addison	Crowne Plaza Dallas Galleria - Addison
New Judges & Clerks Orientation	March 16, 2016 (W)	Austin	TMCEC
Traffic Safety Conference	March 20-22, 2016 (Su-M-T)	Dallas	Omni Dallas at Park West
Prosecutor's Seminar	March 28-30, 2016 (M-T-W)	Houston	Omni Houston Westside
Regional Judges & Clerks Seminar	April 11-13, 2016 (M-T-W)	Lubbock	Overton Hotel
One Day Clinic	April 14, 2016 (Th)	Nacogdoches	Hampton Inn & Suites
Regional Clerks Seminar	April 25-27, 2016 (M-T-W)	S. Padre Island	Isla Grand Beach Resort
Regional Attorney Judges Seminar	May 1-3, 2016 (Su-M-T)	S. Padre Island	Isla Grand Beach Resort
Regional Non-Attorney Judges Seminar	May 3-5, 2016 (T-W-Th)	S. Padre Island	Isla Grand Beach Resort
Mental Health Summit	May 9-11, 2016 (M-T-W)	Austin	Omni Southpark Austin
Bailiffs and Warrant Officers Seminar	May 16-18, 2016 (M-T-W)	Dallas	Omni Dallas at Park West
New Judges & Clerk Orientation	June 1, 2016 (W)	Austin	TMCEC
Prosecutors & Court Administrators Seminar	June 5-7, 2016 (Su-M-T)	Corpus Christi	Omni Corpus Christi
Regional Judges & Clerks Seminar	June 20-22, 2016 (M-T-W)	El Paso	Wyndham El Paso Airport Hotel
Juvenile Case Mangers Seminar	June 27-29, 2016 (M-T-W)	Austin	Omni Southpark Austin
New Judges & Clerks Seminar	July 11-15, 2016 (M-T-W-Th-F)	Austin	Omni Southpark Austin
Impaired Driving Symposium	August 4-5, 2016 (Th-F)	Austin	Sheraton Austin Hotel

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY16 REGISTRATION FORM:**

**Regional Judges & Clerks Seminar, Court Administrators, Bailiffs & Warrant Officers, Level III Assessment  
Clinic, Traffic Safety, and Mental Health Summit**

Conference Date: \_\_\_\_\_

Conference Site: \_\_\_\_\_

Check one:

- Non-Attorney Judge (\$50)
- Attorney Judge not-seeking CLE credit (\$50)
- Attorney Judge seeking CLE credit (\$150)
- Regional Clerks (\$50)

- Traffic Safety Conference-Judges & Clerks (\$50)
- Level III Assessment Clinic (\$100)
- Court Administrators Seminar (\$100)
- Bailiff/Warrant Officer (\$100)

By choosing TMCEC as your MCLE provider, attorney-judges help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (please print legibly): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Names you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_

Position held: \_\_\_\_\_ Date appointed/hired/elected: \_\_\_\_\_ Are you also a mayor?: \_\_\_\_\_

Emergency contact (Please include name and contact number): \_\_\_\_\_

**HOUSING INFORMATION - Note: \$50 a night single room fee**

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a **double occupancy room at all regional judges and clerks seminars**. To share with a specific seminar participant, you must indicate that person's name on this form.

I request a private room (\$50 per night : \_\_\_\_ # of nights x \$50 = \$\_\_\_\_ ). TMCEC can only guarantee a private room, type of room (queen, king, or 2 double beds\*) is dependent on hotels availability. Special Request: \_\_\_\_\_

I request a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign roommate **or** you may request roommate by entering seminar participant's name here: \_\_\_\_\_

I request a private room at the Impaired Driving Symposium (judges only - no additional room fee.)

**Hotel Arrival Date (this must be filled out in order to reserve a room):** \_\_\_\_\_

\*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_

Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

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

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

DOB: \_\_\_\_\_ TCOLE PID # \_\_\_\_\_

I have read and accepted the cancelation policy, which is outlined in full on page 10-11 of the Academic Catalog and under the Registration section of the website, [www.tmcec.com](http://www.tmcec.com). **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form (with all applicable information completed) and full payment of fees.**

\_\_\_\_\_  
*Participant Signature (may only be signed by participant)*

\_\_\_\_\_  
*Date*

**PAYMENT INFORMATION:**

**Registration/CLE Fee:** \$ \_\_\_\_\_ + **Housing Fee:** \$ \_\_\_\_\_ = **Amount Enclosed:** \$ \_\_\_\_\_

- Check Enclosed (Make checks payable to TMCEC.)
- Credit Card

Credit Card Payment:

Amount to Charge: \_\_\_\_\_ Credit Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

Credit card type: \$ \_\_\_\_\_

MasterCard

Visa Name as it appears on card (print clearly): \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY16 REGISTRATION FORM:  
New Judges and New Clerks, and Prosecutors Conferences**

Conference Date: \_\_\_\_\_ Conference Site: \_\_\_\_\_

**Check one:**

- New, Non-Attorney Judge Program (\$200)
- New Clerk Program (\$200)
- Non-municipal prosecutor seeking CLE credit (\$400)
- Non-municipal prosecutor not seeking CLE credit (\$300)

- Prosecutor not seeking CLE/no room (\$100)
- Prosecutor seeking CLE/no room (\$200)
- Prosecutor not seeking CLE/with room (\$250)
- Prosecutor seeking CLE/with room (\$350)

By choosing TMCEC as your MCLE provider prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (please print legibly): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_  
 Names you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_  
 Position held: \_\_\_\_\_  
 Date appointed/hired/elected: \_\_\_\_\_ Years experience: \_\_\_\_\_  
 Emergency contact (Please include name and contact number): \_\_\_\_\_

**HOUSING INFORMATION**

**TMCEC will make all hotel reservations** from the information you provide on this form. **TMCEC will pay for a single occupancy room at the following seminars:** four nights at the new judges seminars, four nights at the new clerks seminars, and two nights at the prosecutors conference (if selected). To share with another seminar participant, you must indicate that person's name on this form.

I need a private, single-occupancy room. TMCEC can only guarantee a private room, type of room (queen, king or 2 double beds\*) is dependent on hotels availability. Special Request: \_\_\_\_\_

I need a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign you a roommate or you may request a roommate by entering seminar participant's name here: \_\_\_\_\_

I do not need a room at the seminar.

**Hotel Arrival Date (this must be filled out in order to reserve a room):** \_\_\_\_\_

\*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

**STATUS (Check all that apply):**

- Full Time  Part Time  Attorney  Non-Attorney  Court Clerk  Deputy Court Clerk
- Presiding Judge  Court Administrator  Prosecutor  Mayor (*ex officio* Judge)
- Associate/Alternate Judge  Bailiff/Warrant Officer  Justice of the Peace  Other \_\_\_\_\_

I have read and accepted the cancelation policy, which is outlined in full on page 10-11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form and full payment of fees.**

\_\_\_\_\_  
Participant Signature (May only be signed by participant)

\_\_\_\_\_  
Date

**PAYMENT INFORMATION:** Payment **will not** be processed until all pertinent information on this form is complete.

- Check Enclosed (Make checks payable to TMCEC.) **Amount Enclosed: \$** \_\_\_\_\_
- Credit Card

Credit Card Payment:

Credit card type: *Amount to Charge:* \$ \_\_\_\_\_ *Credit Card Number* \_\_\_\_\_ *Expiration Date* \_\_\_\_\_

MasterCard

Visa *Name as it appears on card (print clearly):* \_\_\_\_\_

*Authorized signature:* \_\_\_\_\_

**Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.**

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## Change Service Requested

### TMCEC MISSION STATEMENT

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

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*continued from pg. 88*

tion of a motorcycle equipped with “LED ground effect lighting equipment,” that emits a non-flashing amber or white light.

#### ***S.B. 1934***

**Subject: Requirements for Issuance of Driver’s License or Personal Identification Certificate**

**Effective Date: September 1, 2015**

In an effort to align the requirements for issuance of an identification card with those of a driver’s license, S.B. 1934 amends Section 521.142 of the Transportation Code, under which the Department of Public Safety (DPS) must require an applicant for an original driver’s license to provide the applicant’s social security number or proof that the applicant is not eligible for a social security number and removes the limitation on DPS to only require that information for a limited purpose. The bill adds Section 521.183 specifying that a person is not entitled to receive a driver’s license until the person surrenders to DPS each personal identification certificate in the person’s possession that was issued by this state nor is entitled to receive a personal identification certificate until the person surrenders to DPS each driver’s license in the person’s possession that was issued by this state.

S.B. 1934 amends Section 522.044 of the Transportation Code to expand the applicability of statutory provisions limiting the use and disclosure of a driver’s license applicant’s social security number information to include such information with respect to an applicant for a personal identification certificate. S.B. 1934 expands the entities in Subsection 522.044(a) to which such social security number information may be disclosed to include an agency of another state responsible for issuing driver’s licenses or identification documents. S.B. 1934 removes the specification in Section 521.101 that the personal identification certificate of an applicant who is 60 years of age or older does not expire.

**TMCEC:** S.B. 1934 also requires DPS to conduct a study to determine the feasibility of allowing digital proof that a person has a driver’s license. The report is due no later than September 1, 2016. This will be something to watch for in the 85th Legislative Session.