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Case Law and Attorney General Opinion Update

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From THE CENTER

Dear Judges and Court Personnel,

TMCEC kicked off AY 26 on September 1, 2025, and the year is in full swing! Registration is open for remaining events that are not at capacity. As a reminder, please note that the terms and conditions for receiving training from TMCEC were revised and sent out statewide by eBlast. These terms are binding on all participants and sponsoring municipalities. It is important that you carefully review the information below before registering. Thank you for your attention and continued commitment to judicial and court personnel education.

What's New in AY 26

1. **Rules of Judicial Education:** The Texas Court of Criminal Appeals amended the Rules of Judicial Education. The amendments are in effect now. There is no longer a requirement that a judge's second year of judicial education be comprised of sixteen (16) in-person, continuous hours at a live TMCEC Judges Seminar. Beginning with a judge's second year, the requirement is that the judge must complete at least eight hours of live instruction from a TMCEC seminar or clinic. A judge may complete the remaining eight hours through approved live TMCEC trainings, approved online education, or a combination of approved live events and online education.
   - All experienced municipal judges are required to complete 16 hours of judicial education by August 31, 2026. Each judge needs to satisfy at least eight of those hours through instruction at a TMCEC seminar or clinic.
   - Judges who are licensed attorneys must, within one year after taking office, complete a minimum of 16 hours of live instruction at a seminar or clinic from TMCEC.
   - Judges who are not licensed attorneys must, within one year after taking office, complete a minimum of 32 hours of in-person, continuous instruction from TMCEC (New Judges Seminar).
   - For more information, see our Judicial Education FAQ page.
   - Required training on magistrate duties regarding bail (Article 17.024, Code of Criminal Procedure) remains available on-demand but does not yet reflect legislative changes passed by the 89th Regular Legislature. TMCEC is updating this course, and the revised version will be available by December 31, 2025.

2. **Cancellation and Refund Policy:** The TMCEC Board of Directors approved a new Cancellation and Refund Policy, effective September 26, 2025. This policy applies to all TMCEC events beginning with the current academic year. You may review the full policy in our General Enrollment Information on the TMCEC website.

Key Points of the Policy:

- Cancellations must be submitted in writing by email to register@tmcec.com at least 14 calendar days prior to the event start date to receive a full refund of the registration fee.
- Cancellations made fewer than 14 days prior to the event start date are not eligible for a refund.
- No refunds or credits will be issued for no-shows, late arrivals, or early departures.
- In extraordinary circumstances (e.g., serious illness or family emergency), participants may submit a written appeal with documentation to the Executive Director or designee for consideration. Approved refunds will be processed within 30 days of receipt.

3. New Policy for Webinar Records of Attendance: Because TMCEC events are subsidized by grant funds, completion of a record of attendance is a condition of participation and a requirement for the expenditure of grant funds. Pursuant to a new policy adopted by the TMCEC Board of Directors, participants in webinars—which are provided free of charge—must submit their record of attendance to verify participation. Failure to submit a record of attendance for a webinar constitutes non-compliance with TMCEC policy and may result in suspension of online instruction privileges, imposition of an administrative reinstatement fee, and/or restrictions on future registrations until compliance is demonstrated. Exceptions may be granted only upon documented showing of good cause, such as technical failure or personal emergency, and will be evaluated on a case-by-case basis.

4. Mental Health Clinics on Day 1 of Regional Seminars: In AY 26, Day 1 of each regional seminar will feature a four-hour mental health clinic.

- Included at no extra cost for regional seminar registrants
- Open to judges and court personnel (including municipal attorneys, court administrators, and juvenile case managers) not attending the seminar as a stand-alone event
- Clinic-only registration: $100 (housing not available) (CLE Reporting $50)

5. Concurrent Events: To preserve grant funds, TMCEC will almost exclusively host concurrent events. Beginning in AY 26, the East Texas Regional Judges and Clerks Seminars will be held at the same time. Also, one Prosecutors Seminar will be held concurrently with the Juvenile Case Managers Seminar.

Important Reminders

1. Eligibility of Participants: Participants must be current municipal judges or court personnel at the time of the event. Court personnel include, but are not limited to, municipal attorneys, court administrators, and juvenile case managers. Individuals who are no longer serving at the time of attendance are not eligible to participate, even if previously registered. In such cases, the individual and/or the sponsoring municipality will be responsible for all associated costs.

2. Education Transcripts: TMCEC uses automated systems to prepare education transcripts for thousands of participants each year. While every effort is made to ensure accuracy, errors may occur. If you believe your transcript is incomplete or inaccurate, you must notify TMCEC promptly so that the record can be reviewed and corrected.

3. Online Training Opportunities: In AY 26, TMCEC will host 12 webinars and four live four-hour Virtual Clinics. These online offerings supplement in-person seminars and clinics, providing flexibility to meet judicial education requirements.

4. **Housing Fee Increase:** To provide sustainability for TMCEC, on April 18, 2024, the TMCEC Board of Directors voted to increase the nightly housing fee to $100 beginning in FY 26, which began on September 1, 2025. On September 27, 2024, the Board voted to increase the Overhead Fee to $100. These changes are currently reflected in events open for registration.

5. **Terms of Probation for the Municipal Court Clerk Certification Program:** To foster parity between the education requirements for judges and clerks in the certification program, the Municipal Courts Education Committee amended the policies related to clerks on probation on July 10, 2025, effective September 1, 2025. The Municipal Court Clerk Certification Program Participant Guide and the TMCEC website have been updated to reflect these changes.

Check Your Profile

• Please log in and review your profile for accuracy and verify your preferred privacy settings under the Communications tab. Also, please check your email settings to ensure that you can receive emails from info@tmcec.com and registration@tmcec.com.

• Please help TMCEC maintain accurate records to comply with our grant conditions. If you no longer work in a municipal court or if you know your court roster has changed, please notify TMCEC immediately.

We look forward to seeing you in AY 26! Questions? Contact us by telephone (800.252.3718 or 512.320.8274) or email (info@tmcec.com).

Important Links for Registration

1. Enrollment FAQs: Review commonly asked questions to guide you through the enrollment process.

2. General Enrollment Information: Read TMCEC's updated terms and conditions related to registration, housing, meals, attendance, and more.

3. Academic Schedule: See the full slate of TMCEC events this year.

4. Registration: Now you're ready to register! Select the event(s) you want to attend and add housing, CLE reporting, etc. Register now! Some events fill up fast, especially in-person!

CASE LAW AND ATTORNEY GENERAL OPINION UPDATE

Judge Ryan Kellus Turner, TMCEC Executive Director
Regan Metteauer, TMCEC Deputy Director
Ned Minevitz, Program Attorney & Senior TxDOT Grant Administrator

Except where noted, the following decisions and opinions were issued between the dates October 1, 2024, and September 30, 2025. Acknowledgments: Thanks to Judge David Newell and Elaine Riot.

I. Constitutional Law

A. First Amendment

There is a presumptive First Amendment right of access to magistration.

Tex. Trib. v. Caldwell County, Texas, 121 F.4th 520 (5th Cir. 2024)

In Caldwell County, where magistration was closed to the public under a policy enforced by local officials, two news organizations and an advocacy group ("the Organizations") filed a complaint challenging the policy as unconstitutional and later filed a motion for a preliminary injunction. The district court granted the motion and enjoined Caldwell County from enforcing its policy. The County appealed to the Fifth Circuit raising two issues: (1) whether the district court erred in finding the Organizations have standing to bring their First Amendment claim, and (2) whether the district court abused its discretion in finding the Organizations showed a substantial likelihood of success on their First Amendment claim. The Fifth Circuit affirmed.

The Court found the Organizations had standing because being denied access to magistration caused them a concrete injury that directly impeded their ability to fulfill their reporting and advocacy missions, an injury traceable to the County's policy and redressable by a favorable ruling.

As to the merits, the Court found that the Organizations showed a substantial likelihood of success on the merits of their First Amendment claim. To determine whether magistration falls under the First Amendment's protection, the Court employed the two-factor "experience and logic test." Relying heavily on its past decision in *United States. v. Chagra*, 701 F.2d 354 (5th Cir. 1983), a case involving a bail reduction hearing, the Court concluded that both factors were met. First, the Court found the "experience" factor was satisfied because both historical and modern practice reflect a longstanding tradition of openness in pretrial and bail proceedings. The "logic" factor also supported a finding of openness, according to the Court, because public access to bail hearings promotes fairness, accountability, and public confidence by encouraging precise judicial decision-making.

The Court limited its holding to a presumptive First Amendment right of access to magistration, including a caveat that this right is not absolute, and instances may exist "when the public's right to access magistrations must take a back seat to the rights of the arrestee or the government."

Commentary: This case reflects the ongoing scrutiny of bail practices across the justice system. The Court broadly treated all "bail hearings" alike, without distinguishing between setting bail during magistration and holding a bail reduction hearing. In *Chagra*, the case it relied on, the proceeding was an open-court bail reduction hearing, similar to other pretrial hearings traditionally open to the public. By contrast, Texas magistration may occur outside of a court, including jails, where public access is more difficult. This decision should prompt local governments and magistrates to review policies on public access to magistration and avoid categorical restrictions that may infringe constitutional rights. Note that this case was decided on First Amendment and not Sixth Amendment grounds (right to a public trial). For a discussion of both as they relate to this case, see Mark Goodner, "Public Access and the Texas Judiciary: Lessons from *Texas Tribune v. Caldwell County*," *The Recorder* (July 2025) at 4. See also, Ryan Kellus Turner, "Jail House Pleas: Is *Rothgery* a Tap on the Shoulder or a "Fly in the Ointment" of Local Trial Court Expediency?," *The Recorder* (August 2010).

B. Second Amendment

An ATF rule interpreting the Gun Control Act to cover certain weapon parts kits, frames, and receivers is not facially inconsistent with the Act.

Bondi v. VanDerStok, 604 U.S. 458 (2025)

In 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issued a rule saying the Gun Control Act covers weapon parts kits and unfinished gun frames or receivers. Before the rule took effect, gun makers sued, claiming the Act doesn't apply to those items. The district court agreed and vacated the rule. The Fifth

Circuit affirmed, ruling that the Act does not cover weapon parts kits and only applies to fully finished frames or receivers.

Justice Gorsuch, joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Kavanaugh, Barrett, and Jackson, delivered the opinion of the Court finding the facial challenge to fail because the Act plainly reaches partially complete items like weapon parts kits and unfinished frames and receivers. Analyzing the ATF rule through the relevant provisions of the Gun Control Act, the Court found the terms "weapon," "frame," and "receiver," to be artifact nouns that may describe not-yet-complete objects. The Act treats starter guns as weapons, which require conversion work and for decades, the ATF has interpreted the Act to reach some unfinished frames and receivers. Thus, the Court reversed and remanded.

Justice Sotomayor wrote a concurring opinion to address two points from the dissenting opinions. First, the ATF's rule does not create uncertainty because the Gun Control Act has long required licensing, serial numbers, records, and background checks. Some companies have only recently tried to evade these requirements by selling easy-to-assemble firearm kits. The rule simply confirms that such kits are covered, and any manufacturer with doubts can seek an ATF classification, as they have routinely done for decades. Second, she addresses the suggestion made by Justice Alito that the Act permits the ATF to regulate only "all-but-assembled" weapon parts kits and frames "as close to completion as possible." She encourages readers to go to the source (the Court's opinion) rather than dissents to understand the holding. The Court's holding is what is binding on lower courts.

Justice Kavanaugh wrote a concurrence to address mens rea issues with respect to the ATF's 2022 rule, noting that the "willfulness" requirement in relation to licensing, recordkeeping, and serialization should help prevent the government from unfairly penalizing an individual who is not aware that his conduct violates the law. However, the lesser "knowingly" mens rea requirement for background-check violations could create concerns about fair notice in certain cases. She expects the Government to adhere to its oral argument representation that it would likely decline to bring background-check-violation charges against an individual who was unaware that he or she was violating the law.

Justice Jackson also issued a concurrence, noting that the Court's judicial charge is to evaluate the scope of the Gun Control Act's delegation of authority to the ATF and to determine whether the ATF's actions transgressed those bounds. Here, the statute's boundaries do not foreclose the agency's action. Therefore, the excess-of-authority claim should meet its end. The Court's opinion is consistent with this view.

Justice Thomas dissented, arguing that unfinished frames, receivers, and parts kits are not "firearms" under the statute, which should end the case. He says the majority misapplies the standard of review, misreads the statute, and effectively grants ATF authority Congress never gave, using a new interpretive approach ("artifact noun methodology") with no clear limits.

Justice Alito dissented because the Court decided the case on a ground neither raised nor addressed below. He questions whether the challengers even brought a true facial challenge and warns that applying the demanding *Salerno* standard to claims that an agency exceeded its statutory authority would make such challenges nearly impossible to win—greatly expanding agency power.

Eighteen U.S.C. Sections 922(b)(1) and (c)(1), which together prohibit federal firearms licensees from selling handguns to 18-20-year-old adults, are incompatible with *Bruen* and *Rahimi,* and inconsistent with the Second Amendment.

Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 127 F.4th 583 (5th Cir. 2025)

Appellants' (18-20-year-olds and non-profits) appeal was abated pending the Supreme Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), which largely reinforced and refined the analysis in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) for construing gun regulations under the Second Amendment. Appellants challenged the constitutionality of 18 U.S.C. §§ 922(b)(1) and (c)(1), and their attendant regulations, including 27 C.F.R. §§ 478.99(b), 478.124(a), and 478.96(b). They argued that these provisions, in

effect, prohibit federal firearms licensees (FFLs) from selling or delivering handguns to adults under the age of 21. Appellants contended that the federal laws unconstitutionally infringe on their right to keep and bear arms under the Second Amendment and deny them equal protection under the Due Process Clause of the Fifth Amendment.

The Fifth Circuit, applying the *Bruen* framework as reinforced by *Rahimi*, held unconstitutional 18 U.S.C. §§ 922(b)(1) and (c)(1) and related regulations that bar FFLs from selling or delivering handguns to 18–20-year-olds. The court rejected the Government's argument that commercial purchases fall outside the Second Amendment or that 18-20-year-olds are not among "the people," reasoning that the Amendment's plain text contains no age limitation, protects corollary acts necessary to exercising the right (including purchasing firearms), and historically encompassed young adults who were required to serve in the militia at the founding. Because the Government failed to show a comparable founding-era tradition of restricting handgun purchases by this age group, the court concluded that the provisions violate the Second Amendment.

Commentary: See also, *Firearms Pol'y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740 (N.D. Tex. 2022), which found Texas's statutory scheme, Section 46.02(a) of the Penal Code and Section 411.172(a)(2), (g), (h), (i) of the Government Code, to the extent it prohibits law-abiding 18-to-20-year-olds from carrying handguns for self-defense outside the home based solely on their age, in violation of the Second Amendment.

C. Fourth Amendment

1. Search Warrants

The use of a geofence warrant to obtain location history data from Google did not violate the Fourth Amendment.

Wells v. State, 714 S.W.3d 614 (Tex. Crim. App. 2025)

A geofence warrant allows police to draw a digital box ("geofence") around a specific area and ask Google to search its database for every cell phone inside that box during a set time. In this case, the box covered a house, street, and church parking lot for 25 minutes during a capital murder. The search led police to identify Wells, whose phone was linked to the scene.

A geofence warrant proceeds in three steps. First, Google provides anonymized device IDs detected within the defined time and location. Second, police request limited additional location data to narrow the pool of relevant devices. Third, Google releases identifying details such as names, emails, and IP history for the remaining accounts.

Judge Yeary, joined by Judges Keel, Finley, and Parker, concluded the warrant was constitutional because it was supported by probable cause and satisfied the Fourth Amendment's particularity requirement. The warrant was narrowly limited in time and scope to include likely suspects or witnesses, minimizing intrusion on innocent users.

Judge Finley, joined by Judge Parker, concurred, reasoning the court need not reach the constitutional issue because law enforcement did not conduct an unreasonable search. Wells lacked a reasonable expectation of privacy in data voluntarily shared with Google.

Judge Newell, joined by Judges Richardson and Walker, concurred and dissented. They agreed Wells had no privacy interest in the first two steps but dissented on the third, finding a reasonable expectation of privacy in the six months of prior IP history obtained.

Commentary: In AY 25, TMCEC highlighted *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024), where the Fifth Circuit held geofence warrants unconstitutional under the Fourth Amendment, contrasting with *United States v. Chatrie*, 107 F.4th 319 (4th Cir. 2024), which found no violation because Chatrie voluntarily shared his location with Google. See Pierre Grosdidier, "Courts Are Split: A Look at the Conditionality of Geofence Warrants," Texas Bar Journal (Nov. 2024). In *Wells*, a plurality of the Court of Criminal Appeals agreed no

Fourth Amendment violation occurred, but the judges were divided on the broader constitutional questions raised in *Smith* and *Chatrie*.

A sworn oath requirement for a search warrant affidavit requires an affiant to recite a verbal oath.

State v. Hardridge, No. 05-24-00545-CR, 2025 WL 1687988 (Tex. App.—Dallas June 16, 2025, pet. filed)

Hardridge was arrested for Driving While Intoxicated. After he refused to provide a breath or blood specimen, a Forney Police Department officer applied for a search warrant to obtain a blood sample. The probable-cause affidavit supporting the warrant was unsworn. The officer signed the affidavit, and the form contained language stating that the affiant had "personally appeared" and been "duly sworn upon oath." However, the officer failed to have the affidavit notarized, completed the jurat himself (leaving the notary line blank), and never swore an oath, verbally or otherwise, before a qualified officer. He transmitted the unnotarized affidavit to a municipal judge, who issued a search warrant for Hardridge's blood based on it. The warrant repeated that the affidavit had been given under oath. The officer executed the warrant by transporting Hardridge to a local hospital and having his blood drawn.

Hardridge moved to suppress the search warrant and all derivative evidence. The State appealed the trial court's order granting the motion to suppress. The court of appeals affirmed.

First, the court held that the affidavit was defective and invalid because the officer failed to meet the essential oath requirement. A fundamental principle of search and seizure law requires that a probable-cause affidavit be sworn "by oath or affirmation." Texas law requires that the oath be administered "before" or in the presence of a magistrate or other qualified officer to convey solemnity. The court emphasized that the act of swearing before a qualified officer is essential, not merely the presence of oath-affirming language within the affidavit. Since the officer failed to swear an oath before anyone, the affidavit was unsworn and therefore invalid.

Second, the court concluded that the good-faith exception to the exclusionary rule (Article 38.23(b) of the Code of Criminal Procedure) did not apply. The good-faith exception requires a focus on the objective reasonableness of the officer's conduct, rendering subjective intentions irrelevant. Since the oath requirement is a constitutional mandate known to law enforcement officers, no "objectively reasonable officer" could have believed that an oath was not required. Furthermore, the officer could not rely on the warrant's recitation that it was based on a sworn affidavit, as he had personal knowledge of the defect—the complete absence of an oath. The failure to meet this "indispensable constitutional and statutory requirement" meant the officer was not acting in objective good-faith reliance, and the evidence remained inadmissible.

Commentary: *Hardridge* is a wake-up call that a probable-cause affidavit for a search warrant is defective and invalid if the affiant fails to meet the essential oath requirement. Rooted in fundamental law, the oath must be administered "before" or in the presence of another qualified officer to convey solemnity. Magistrates must ensure the affiant has personally sworn to the truth of the facts to satisfy this vital "solemnizing function." Issuing a warrant based on an unsworn affidavit is a fatal defect that mandates suppression. *Wheeler v. State*, 616 S.W.3d 858 (Tex. Crim. App. 2021), established that this oath is an indispensable constitutional and statutory requirement. Stay tuned! A petition for discretionary review was filed on August 18, 2025.

The affidavit's specific facts supported a common-sense inference by the magistrate that the defendant's phone likely contained evidence of the shootings.

Llanas v. State, 711 S.W.3d 766 (Tex. App.—Austin 2025, no pet.)

Following denial of his motion to suppress evidence found on his cell phone, Llanas pled guilty and was sentenced to prison. On appeal, he argued that the detective's affidavit failed to allege facts sufficient to establish probable cause because it did not include enough facts linking the phone to the offense or showing it likely contained evidence of that offense.

The court of appeals affirmed, applying two recent cases decided by the Court of Criminal Appeals—*State v. Baldwin* and *Stocker v. State*—where the Court addressed the nexus between a cell phone and criminal activity

required by Article 18.0215 of the Code of Criminal Procedure as well as the use of boilerplate language in affidavits supporting a warrant under the article.

The court found that the magistrate had a reasonable basis to find probable cause because the affidavit's specific facts—Llanas's Facebook photos and posts about the shootings, his apparent use of a phone to create and upload them, his mobility during the relevant period (suitcases), and the discovery of firearms matching those in the photos—supported a common-sense inference that his cell phone likely contained evidence related to the offenses.

The affidavit also established a reasonable inference that the phone belonged to the defendant—he had a charging cord but no phone, told officers his phone was inside the apartment, and the resident handed over the phone saying it was his—thus supporting the search warrant.

A boilerplate affidavit in support of a search warrant for the defendant's electronic devices was insufficient to establish probable cause to search and seize the defendant's cellphone, laptop, and desktop computer from his home because it did not establish a nexus between the device to be searched and the offense.

Staley v. State, No. 02-23-00053-CR, 2025 WL 727842 (Tex. App.—Fort Worth March 6, 2025, pet. granted)

At a suppression hearing, Staley argued, among other things, that the search-warrant affidavit lacked probable cause for the magistrate to approve the seizure and search of his electronic devices, in particular his cellphone, laptop, and Mac Mini. The trial court denied his motion to suppress. A jury convicted Staley of capital murder, and the trial court sentenced him to life in prison.

On appeal, the court of appeals canvassed case law, including the recent Court of Criminal Appeals case, *State v. Baldwin*, finding that the affidavit failed to establish probable cause to search Staley's electronic devices because it never connected those devices to the offense under investigation. The affiant merely stated that electronic devices would likely be found in Staley's home and relied on generic "training and experience" about how digital evidence can be stored or synced. But the affidavit contained no facts suggesting that evidence of the alleged injury-to-a-child offense would be on any device, nor any statement that probable cause existed to search or seize them. At most, the affidavit asserted the obvious—that computers were probably in the home—which is insufficient without a factual nexus tying the devices to the suspected crime. According to the court, holding otherwise could be interpreted as approving law enforcement's seizing and searching someone's electronic devices simply because they exist.

The court reversed the conviction and remanded for a new trial.

Commentary: The court reminded magistrates that the Court of Criminal Appeals has warned against relying on boilerplate affidavit language—such as generic statements that criminals use cellphones—to find probable cause. Such boilerplate must be supported by specific facts and reasonable inferences showing a nexus between the device and the offense. (Contrast this case with *Llanas v. State* summarized above.) Stay tuned! The Court of Criminal Appeals granted the State's petition for discretionary review on December 11, 2025, potentially to address this issue or the opinion's evidentiary and harm analyses.

2. Exceptions to the Warrant Requirement

The "suspicious place" exception to the warrant requirement does not require exigent circumstances.

Armstrong v. State, 713 S.W.3d 893 (Tex. Crim. App. 2025)

In a unanimous decision written by Judge McClure, the Court of Criminal Appeals ruled that the "suspicious place" exception to the warrant requirement, found in Article 14.03(a)(1) of the Code of Criminal Procedure, does not require exigent circumstances. Most importantly, Article 14.03(a)(1) makes no mention of exigent circumstances. And while the Code of Criminal Procedure does not define what a suspicious place is, none of the common definitions depend on any sort of exigency. Prior case law spawned the debate. *See Gallups v. State*, 151 S.W.3d 196 (Tex. Crim. App. 2004); and *Swain v. State*, 181 S.W.3d 359 (Tex. Crim. App. 2005).

In *Gallups*, the suspicious place exception justified searching a defendant's home without a warrant while the exigent circumstances exception separately justified taking a warrantless blood sample. The *Swain* opinion one year later cited *Gallups* and "unfortunately" was written in a way that led many to believe that exigency was required any time law enforcement used the suspicious place exception to justify a warrantless search. The Court set the record straight in *Armstrong* by clarifying that *Swain* did not create an exigency requirement for law enforcement to conduct a warrantless search under the suspicious place exception.

Concurrences by Judges Yeary and Newell highlight the obstacles and uncertainties created by having no definition for "suspicious place."

Commentary: "Loose language" in *Swain* created a circuit split. In *State v. McGuire,* 689 S.W.3d 596 (Tex. Crim. App. 2024), the Court acknowledged that this issue needed clarification, but *McGuire* was able to be resolved on other grounds. *Armstrong* finally presented the Court with an opportunity to resolve the split. Looking forward, if the *Armstrong* concurrences are any indication, the next step may be establishing a clear definition for "suspicious place."

Under the plain-view doctrine, officers were permitted to download incriminating content from a home security camera without a warrant after obtaining consent to view the footage.

Gomez-Aldana v. State, 712 S.W.3d 731 (Tex. App.—Houston [14th Dist.] 2025, no pet.)

While investigating an aggravated assault case, police questioned the eventual defendant's wife at their residence. She allowed officers to view footage from a home security camera, which contained incriminating evidence. The officer, without additional consent or a warrant, downloaded the footage onto a thumb drive. The wife, who was not a native English speaker, later testified that she did not and would not have given consent to download the footage. The trial court denied the defendant's motion to suppress this evidence.

In upholding the trial court's ruling, the court of appeals concluded that the plain-view doctrine applied. Law enforcement may seize evidence under this doctrine without a warrant if: (1) the police officer is lawfully where the object can be plainly viewed; (2) the incriminating character of the evidence in plain view is immediately apparent to the officer; and (3) the police officer has the right to access the evidence. The officer had consent to be in the residence and view the incriminating evidence. Therefore, a warrant was not required to download (seize) the evidence. The court did not address the issue of whether downloading the footage was within the scope of the wife's consent.

The search of a bicycle rider's backpack was not justified under the automobile exception to the warrant requirement because the backpack was not part of the bicycle.

Sanchez v. State, 720 S.W.3d 529 (Tex. App.—El Paso 2025, no pet.)

Sanchez was stopped for riding his bicycle on the wrong side of the road. The officer noticed an open beer can in the bicycle's water bottle holder. He proceeded to search Sanchez's backpack "to rule out other open containers," but found drug paraphernalia. He then searched Sanchez's pockets and discovered methamphetamine. In support of his search, the officer stated that he believed the bicycle was a motor vehicle (and thus subject to open container laws) because it was "self-propelled by [Sanchez's] legs" and his backpack constituted a passenger compartment. The officer relied on the "automobile exception" to the warrant requirement to justify his searches. Sanchez was convicted for possession of methamphetamine.

The court of appeals did not decide whether a bicycle is a motor vehicle, but noted that courts outside Texas have ruled that bicycles fall within the automobile exception to the warrant requirement because bicycles are readily mobile. Furthermore, containers attached to a vehicle are generally considered part of the vehicle. In this case, however, the backpack was not attached to the bicycle—it was attached to the defendant. The automobile exception only permits warrantless searches of the vehicle itself. Therefore, searching the backpack was not justified. And the only reason Sanchez's pockets were searched was the drug paraphernalia found in his backpack. The contraband seized in both the defendant's backpack and pockets was inadmissible and constituted reversible error by the trial court. The case was remanded for a new trial.

3. Standing

Passengers have standing to challenge vehicle searches on the basis that the detention was unreasonably prolonged, if the search was the result of the exploitation of the passenger's detention.

State v. Pettit, 713 S.W.3d 834 (Tex. Crim. App. 2025)

DPS Troopers stopped a vehicle for speeding, an expired temporary tag, and an inoperative brake light. The vehicle had two occupants. Two minutes into the stop, the officers decided to give the driver warnings for three offenses and a citation for driving with an invalid license. Subsequently, one of the officers asked the passenger, Pettit, to exit the vehicle after observing that he was "shaky." Following a fruitless pat down, the officer determined that neither occupant had any outstanding warrants, but that both had drug history. Despite admitting to his partner that he "didn't know if they had enough [reasonable suspicion] for a dog," the Trooper ordered a drug-sniffing dog, which arrived 56 minutes after the traffic stop commenced. The open-air sniff led officers to discover a sawed-off shotgun. Pettit was charged with possession of a prohibited weapon.

The trial court granted Pettit's motion to suppress due to a lack of reasonable suspicion to detain Pettit and the stop being unreasonably prolonged by calling the drug-sniffing dog. The State appealed, arguing that Pettit lacked standing to contest the search of a vehicle he did not own. The Twelfth Court of Appeals, relying on *Lewis v. State*, 664 S.W.2d 345 (Tex. Crim. App. 1984), sided with the State concluding that because the search did not hinge on Pettit's presence, he lacked standing to challenge it.

The Court of Criminal Appeals unanimously reversed. The Court, in an opinion written by Judge Newell, disavowed the "theoretical" *Lewis* test and instead relied on *Kothe v. State*, 152 S.W.3d 54 (Tex. Crim. App. 2004). *Kothe* is similar to *Lewis*. But unlike *Lewis*, *Kothe* does not require creating a fiction where the passenger does not exist. *Kothe* states that if a vehicle search is the result of the exploitation of a passenger's detention, the passenger has standing to challenge the search. Here, "the search occurred precisely because the Trooper detained [Pettit] and the driver for nearly an hour to await a K-9 unit" and "[t]he search was the fruit of [that] detention." Accordingly, Pettit had standing to challenge the search. The Court remanded the case to the court of appeals to determine whether the prolonged detention was reasonable.

Commentary: Following remand, the Twelfth Court of Appeals determined that the stop was unreasonably prolonged and the officers lacked reasonable suspicion to conduct the K-9 sniff. The trial court's suppression was sustained.

4. Reasonable Suspicion

It was not a detention, and thus the Fourth Amendment was not implicated, when an officer illuminated a spotlight onto a vehicle parked on the side of the road.

Hines v. State, No. 04-24-00196-CR, 2025 WL 2458633 (Tex. App.—San Antonio, August 27, 2025, pet. filed) (mem. op., not designated for publication)

In a rural and unlit area, police noticed a parked vehicle on the side of the road with its headlights on and engine running. Concerned for the occupant (Hines), the officer parked behind the vehicle and shined his front spotlight on it. Just after the officer exited his cruiser, Hines peeled out onto the street, drifted into the wrong lane, and eventually came to an abrupt halt, which nearly caused a collision. Hines was ultimately arrested for and convicted of Driving While Intoxicated.

At issue on appeal was the reasonableness of the initial encounter when the officer parked behind Hines and shined a spotlight on Hines's vehicle. Hines argued that because he was legally parked and exhibited no signs of distress, the community caretaking exception did not justify a warrantless detention. The court of appeals, however, found that there was no detention at all before Hines took off. The officer did not block Hines's vehicle, issue any commands, or activate his strobe lights. Therefore, the officer's actions prior to Hines peeling out did not implicate the Fourth Amendment and there was no need to analyze whether the community caretaking

exception justified the encounter. Hines's driving behavior after peeling out was more than enough to create reasonable suspicion and justify the stop and arrest that led to his Driving While Intoxicated conviction.

5. Blood Warrants

Probable cause for a blood search warrant was established when a driver was involved in a particularly violent collision, made inconsistent statements about his prior marijuana use, had no memory of the collision three hours after it, and commented on his "bad life choices."

Taylor v. State, No. 03-23-00521-CR, 2025 WL 1911540 (Tex. App.—Austin, July 11, 2025, pet. stricken) (mem. op., not designated for publication)

Taylor, a nighttime driver without his headlights on, veered into the center turn lane and crashed into a stationary vehicle that was waiting to turn, causing it to spin backward for over 30 feet and killing its driver. A field sobriety test could not be performed because Taylor was injured. He refused to provide a breath or blood sample. When EMS questioned Taylor, he stated that he "smoked a blunt earlier in the day, prior to driving." Later at the hospital, he denied having smoked a blunt. When the officer referenced the crash to Taylor, Taylor was "unaware of any details." Taylor also made self-deprecating remarks about his bad life choices but refused to expound on what he meant by them. A blood search warrant was issued and revealed alcohol in Taylor's system, which led to an intoxication manslaughter conviction.

The defense argued that probable cause was not established to support the warrant because the affidavit contained nothing about Taylor's speech, the odor of drugs or alcohol, or the presence of drugs or alcohol in his vehicle. Furthermore, his admission that he smoked marijuana "earlier in the day" did not necessarily indicate intoxication at the time of the crash.

The court of appeals found that, based on the totality of the circumstances, probable cause was established and the warrant was properly issued by the magistrate. While magistrates are limited to considering information within the four corners of the affidavit, they may draw logical, reasonable inferences from it. Here, the nature of the crash itself was "particularly probative" of the existence of probable cause. Witness accounts of the collision paint a grim picture: a vehicle travelling at night with no headlights on at such a high speed to send a stationary vehicle over 30 feet. Based on this, the magistrate could reasonably have inferred that Taylor was intoxicated. Moreover, Taylor's behavior at the hospital, observed by an officer with over seven years of experience who believed it indicated intoxication, also supported probable cause. Specifically, his lack of memory of a crash he was involved in just three hours prior, comments about his poor life choices, refusal to consent to chemical tests, and changing story about his marijuana use that day.

D. Fifth Amendment

1. Double Jeopardy

A prosecution for DWI violated the Double Jeopardy prohibition on multiple punishments because the defendant had already been punished for contempt based on that same DWI.

Ex parte Estevez, 713 S.W.3d 913 (Tex. Crim. App. 2025)

Estevez was charged with misdemeanor DWI in November 2021 and released on bond conditioned on not committing any new offense or engaging in conduct resulting in arrest. While that case was pending, she was arrested for a second DWI in December. The trial court then issued a show-cause order for contempt, alleging she had "committed a crime and/or engaged in conduct that resulted in arrest," without specifying which crime.

At the contempt hearing, defense counsel objected to insufficient notice but withdrew the objection after the judge warned she would keep Estevez in custody longer to reissue proper notice. The State relied on the second DWI charging instrument to prove the bond violation. The court found Estevez in criminal contempt, sentencing her to three days in jail (probated for nine months) and residential treatment. Estevez later sought habeas relief, arguing the contempt punishment barred a subsequent DWI prosecution under the Double Jeopardy Clause. The

trial court withdrew the contempt judgment for lack of notice but denied the writ; the court of appeals affirmed.

In a 5-4 decision, the Court of Criminal Appeals reversed. Writing for the majority, Judge Keel held that while Estevez's *successive-prosecution* claim failed, her *multiple-punishment* claim succeeded. The contempt judgment—though void for inadequate notice—still imposed punishment for conduct that was, in substance, the second DWI. Under *United States v. Dixon*, 509 U.S. 688 (1993), "the crime of violating a condition of release cannot be abstracted from the element of the violated condition." Because the contempt punishment rested entirely on commission of the second DWI, the later DWI prosecution constituted a second punishment for the same offense. The Court ordered dismissal of the second DWI charge.

Three members of the Court dissented. Presiding Judge Schenck stated that Estevez failed to meet her burden: the contempt finding did not require proof of the DWI's elements because the bond condition barred any conduct leading to arrest. Judge Finley, joined by Judge Parker, maintained that the contempt order was not void because notice defects are waivable and counsel waived them; the case should be remanded for consideration of the successive-prosecution claim.

Commentary: Judges imposing bond or deferred disposition conditions should be cautious with the broad "commit no offense" clause. If contempt sanctions are based on a specific new offense, that contempt punishment may trigger Double Jeopardy and bar later prosecution for the same conduct.

2. *Miranda* Warnings

A defendant's request for counsel made prior to receiving Miranda warnings did not invoke Miranda protections; thus, police could lawfully initiate interrogation after subsequently administering the warnings.

State v. Johnson, 707 S.W.3d 256 (Tex. Crim. App. 2024)

The appellee voluntarily came to the station about a missing child. After two interviews, he was handcuffed on unrelated warrants and said, "I need to talk to a lawyer." Hours later, unaware of that statement, Detective Harris Mirandized him; the appellee signed the warning card and agreed to talk. He later moved to suppress his statements to Harris. The trial court denied the State's motion for reconsideration, and the State timely filed an appeal. The court of appeals affirmed the trial court's order suppressing the appellee's statements to the police.

In an opinion delivered by Presiding Judge Keller and joined by Judges Hervey, Yeary, Keel, Slaughter, and McClure, the Court of Criminal Appeals reversed. The appellee was not in custody during the first two interviews. When he was later taken into custody, he received no *Miranda* warnings, and officers did not question him. Before any interrogation occurred, Detective Harris gave *Miranda* warnings for the first time. Only then—after being advised of his rights in custody—did the appellee have the opportunity to invoke counsel. He did not do so. It is established under precedent that the right to counsel under *Miranda* cannot be invoked anticipatorily.

A suspect's right to remain silent was violated when police continued to question her after she said "I think I'm done with this interview."

State v. Robles, 720 S.W.3d 546 (Tex. App.—El Paso 2025, pet. denied)

E. Sixth Amendment

1. Confrontation

A defendant does not have the right to confront his witnesses in person in a parole-revocation hearing rather than over Zoom.

Ex parte Zubiate, 710 S.W.3d 724 (Tex. Crim App. 2025)

In an opinion by Judge Keel, the Court denied the application for a writ of habeas corpus. The majority held that the Sixth Amendment Confrontation Clause does not apply to parole revocation hearings for three reasons: First, these hearings are not "criminal prosecutions" because they occur after a conviction. Second, a parolee

is not an "accused" person, a term reserved for individuals facing trial prior to conviction. Third, witnesses in revocation hearings are not "against" the parolee in the constitutional sense because their testimony is not used to secure a criminal conviction.

Regarding due process, the Court ruled that while parolees have a limited right to confrontation, it is flexible. Because the applicant could see, hear, and cross-examine witnesses via Zoom, his due process rights were honored, even if in-person confrontation might be preferred. Zubiate's due process argument was rooted in the Fourteenth Amendment, though he attempted to equate its protections with those of the Sixth Amendment. Zubiate argued that "his due process right to confrontation matches his Sixth Amendment right," thereby entitling him to in-person confrontation rather than a hearing via Zoom.

While agreeing with the denial of relief, Judges Newell and Walker filed separate opinions to critique the majority's reasoning. Judge Newell, joined by Judge Walker, argued that the majority over-analyzed the law. Judge Newell asserted it was sufficient to rely on Supreme Court precedent (*Morrissey*) establishing that parole revocations are not criminal prosecutions and criticized the majority for "needlessly" defining terms like "accused" and "witnesses" when the case could be resolved more simply. Judge Walker, joined by Judge Newell, agreed that Zoom testimony meets the bare minimum of due process but argued it is less-than-ideal. Judge Walker emphasized that face-to-face confrontation is superior for fact-finding and assessing credibility and urged parole officials to strive for in-person hearings rather than relying on Zoom simply because it is legally permissible.

Allowing the complainant to testify while wearing a mask without a compelling, evidence-based justification violated the defendant's Sixth Amendment right to face-to-face confrontation.

Finley v. State, 707 S.W.3d 320 (Tex. Crim. App. 2024)

In a misdemeanor assault trial held during the COVID-19 pandemic, masks were optional for everyone in the courtroom, including witnesses. The complainant testified while wearing a surgical mask, and the defendant was convicted. The Fort Worth Court of Appeals reversed on rehearing, and the Court of Criminal Appeals granted review on its own motion and affirmed the reversal.

The Court held that the defendant's Sixth Amendment right to face-to-face confrontation was violated when the complainant was allowed to testify while masked. Although she testified under oath and the defense fully cross-examined her, the mask impaired both her presence and the jury's ability to observe her demeanor—interests protected by the Confrontation Clause. The emergency orders in effect did not require masks, the record did not show what evidence supported the trial court's finding of an overriding public-policy need specific to the witness, and mere witness comfort was insufficient under existing case law to justify masking.

Judge Yeary dissented, arguing that the Court should not decide the issue on discretionary review but should instead remand the case for the court of appeals to address the question first.

A Driving While Intoxicated defendant's confrontation clause rights were not violated when a detective testified about data generated from a vehicle's airbag control module (e.g., vehicle speed, whether the driver was wearing a seatbelt, and whether brakes were applied) even though the detective did not testify about the underlying scientific veracity of the module's output.

Del Toro v. State, 720 S.W.3d 484 (Tex. App.—San Antonio 2025, no pet.)

2. Capacity

A probate court's guardianship finding does not control a criminal defendant's Sixth Amendment right to self-representation, which the trial court must independently assess by determining whether the defendant is competent to proceed pro se and has knowingly and voluntarily waived counsel, regardless of any guardian's role.

Tex. Atty. Gen. Op. KP-0485 (2025)

Probate courts may appoint full or limited guardians for incapacitated persons, with wards retaining all rights not expressly granted to the guardian. In criminal cases, a ward may assert the Sixth Amendment right to self-representation, subject to the trial court's determination of competency and a knowing, voluntary waiver of counsel. Guardians may hire attorneys for civil litigation but may not represent wards pro se unless licensed, as doing so constitutes unauthorized practice of law, and attorneys may not assist in such conduct.

A probate court's prior finding of incapacity does not relieve the criminal trial court of its independent duty to determine whether the defendant may proceed pro se. Because self-representation derives from the Sixth Amendment and requires a knowing, intelligent, and unequivocal waiver of the right to counsel, that determination rests with the trial judge, not a guardian. The trial court must separately assess the defendant's competence to conduct trial proceedings—distinct from competence to stand trial—and may require representation by counsel if the defendant lacks the capacity to represent himself, even if otherwise competent to stand trial.

3. Fair Trial

A jury trial held in an auxiliary courtroom housed in the same building as the county jail and sheriff's department was not inherently prejudicial to the defendant's presumption of innocence because jurors would have viewed the courtroom as a separate and ordinary facility, seen the defendant in civilian clothes and without restraints, encountered only routine security measures, and could have reasonably attributed the location to practical factors rather than guilt or dangerousness.

Nixon v. State, 707 S.W.3d 279 (Tex. Crim. App. 2024)

In a capital murder case, over the appellant's objection, his jury trial was held in an auxiliary courtroom located in the same building as the Medina County Jail and Sheriff's Department. The court of appeals reversed the conviction, concluding that the setting was inherently prejudicial to the appellant's presumption of innocence after reviewing cases from other jurisdictions that had both approved and disapproved of "jailhouse courtrooms." The State then petitioned the Court of Criminal Appeals for review.

Judge Yeary delivered the opinion of the Court, joined by Presiding Judge Keller and Judges Hervey, Richardson, Keel, and Slaughter. The issue was whether holding the trial in this location was inherently prejudicial to the presumption of innocence. The court of appeals found that the building's signage and proximity to the jail created an unacceptable risk that jurors would view the appellant as too dangerous to transport and in need of isolation.

The Court of Criminal Appeals disagreed, concluding that the location did not necessarily suggest guilt or dangerousness. It reasoned that jurors would have viewed the courtroom as a separate government facility, unconnected to the jail, and that seeing the appellant in civilian clothes and without restraints would have dispelled any prejudice. Once inside, jurors would have perceived an ordinary courtroom, with the same judge and attorneys from voir dire (which was held at the fairgrounds to accommodate a large jury panel and COVID-19 restrictions). The Court also noted that security measures were routine—no greater than at other courthouses—and that jurors could have reasonably attributed the location to practical factors such as security, pandemic restrictions, available space, or technology, or drawn no inference at all.

Judge Newell and Judge McClure concurred without written opinion.

Judge Walker dissented, concluding that holding the trial in the county jail created an unacceptable risk to the presumption of innocence because jurors would see Appellant as dangerous and confined, much like if he had appeared in shackles or jail clothing.

Commentary: This case is a good reminder that procedural protections can be won or lost by what court users encounter at the courthouse. The court's signage and proximity to the jail and sheriff's department called into question the fairness of the setting of the jury trial. Similarly, the proximity of municipal courts to police departments and other city services requires careful consideration to preserve the independence of the judiciary and procedural fairness.

A Jewish defendant's due process rights were violated because the judge had a bias against him.

Ex parte Halprin, 708 S.W.3d 1 (Tex. Crim. App. 2024)

A judge sentenced a Jewish defendant, Halprin, to death for murdering a peace officer. Halprin sought habeas relief on the grounds that the judge was biased against him. Years of habeas proceedings revealed numerous instances where the judge made derogatory remarks aimed not only at Jewish people generally, but at Halprin himself. None of the anti-Semitic comments, however, occurred in the courtroom. They were uttered in private or semiprivate settings.

In a majority opinion written by Judge Hervey, joined by Judges Richardson, Newell, Walker, and McClure, the Court found that the judge had an actual bias against Halprin. *Liteky v. United States*, 510 U.S. 540 (1994), outlines when a judge is biased: when his or her comments during trial "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." The Court found no reason that *Liteky* should not also apply to a judge's pervasive patterns of speech and behavior *outside* the courtroom. The judge's out-of-court remarks were egregious and specific enough to constitute actual bias against Halprin. Accordingly, the Court granted him a new trial.

Judge Keller, joined by Judges Keel and Slaughter, dissented. In their view, U.S. Supreme Court precedent requires a finding that a judge's conduct *during* a criminal proceeding was influenced by derogatory views. Nothing in the trial record for this case indicated a bias or that the judge's personal views influenced the court proceeding. The dissent wrote, "What a judge *does* can violate the Constitution. What he *thinks* cannot."

4. Right to Counsel

Officers violated a suspect's Sixth Amendment right to counsel when they interrogated her in 2018 for the purpose of re-charging her for the same 2007 offenses, knowing she had retained counsel in 2007.

State v. McDonald, 709 S.W.3d 665 (Tex. App.—Corpus Christi-Edinburg 2024, pet. granted)

A detective, acting on his own initiative, visited McDonald's home in 2018 to question her about the same offenses for which she had been a suspect and represented by counsel in 2007, though those charges had been no-billed and carried no statute of limitations. McDonald provided information to a second officer, and her attorney moved to suppress, arguing a Sixth Amendment violation. The State argued that McDonald had no Sixth Amendment right to counsel in 2018 because her original charges were terminated a decade earlier, and that, as a general rule, the right ends when charges are dismissed or otherwise terminated. Relying on *State v. Frye*, the court of appeals held otherwise, concluding that McDonald's Sixth Amendment right to counsel had attached in 2007 and remained intact; the 2018 questioning was a police-initiated, noncustodial interrogation conducted to further the same investigation; and the officers therefore violated her right to counsel by interrogating her for purposes of re-charging her with the 2007 offenses.

Commentary: Stay tuned! The Court of Criminal Appeals granted the State's petition for discretionary review on March 12, 2025.

F. Separation of Powers

The Commission's disciplinary proceeding is nonjusticiable under separation of powers because it collaterally intrudes on the Attorney General's constitutional authority.

Webster v. Commission for Lawyer Discipline, 704 S.W.3d 478 (Tex. 2024)

The Commission for Lawyer Discipline initiated an action based on a grievance related to Webster's filings before the United States Supreme Court following the 2020 presidential election. Webster, operating under the Attorney General's authority, appeared on the initial pleadings filed on behalf of the State of Texas. The Commission alleged that six statements within those pleadings violated Texas Disciplinary Rule of Professional Conduct 8.04(a)(3)—which prohibits conduct involving dishonesty or misrepresentation—because they were not "supported by any charge, indictment, judicial finding, and/or credible or admissible evidence."

The trial court granted Webster's plea to the jurisdiction, finding that the separation-of-powers doctrine deprived it of subject matter jurisdiction. The court of appeals reversed, but the Supreme Court of Texas reversed the court of appeals, reinstating the dismissal.

In a matter of first impression, Justice Young, writing for the Court, held that the disciplinary petition was nonjusticiable under the separation-of-powers doctrine. The majority opinion, delivered by Justice Young, found that the Attorney General's (and, by extension, the First Assistant Attorney General's) authority includes the discretion to assess the evidence and determine the arguments necessary for bringing suit on behalf of the State. The Court emphasized that while all lawyers are bound by the disciplinary rules, alleged violations based wholly on representations in initial pleadings must be addressed by direct scrutiny from the court to whom those pleadings were presented (the U.S. Supreme Court), rather than through the Commission's purely collateral review. In contrast, allowing collateral review, as in this case, risked improperly invading the executive branch's prerogatives and introducing the judiciary into contentious political disputes.

Justice Boyd, joined by Justice Lehrmann, dissented, arguing that separation of powers restricts branches from exercising another's power, but does not limit the means by which the judicial branch exercises its inherent power to regulate the practice of law. The Court's "freshly minted direct/collateral distinction is unheard of in separation of power jurisprudence." It is "an imaginative invention." Accordingly, the dissent asserted that collateral enforcement through the Commission is an equally valid exercise of judicial authority as direct scrutiny by a court.

Commentary: *Webster* draws a brightline distinction between when a lawyer is referred to the Commission by a court, which did not happen in this case, and when the lawyer in question represents the executive branch. Despite its holding, *Webster* is a good case to cite if you are looking for authority regarding the duty of attorneys to conduct themselves in a professional manner when appearing in court. "Lawyers who submit to a court's jurisdiction subject themselves to that court's authority to compel adherence to the highest standards of professional conduct." *Webster* at 484. "The importance of professional discipline is unquestioned, and it is part of the judicial power itself for courts to be able to demand that any attorney appearing before them adhere to professional standards." *Id*. at 493.

II. Procedural Law

A. Jurisdiction

A suit brought by the Cities of Houston, San Antonio, and El Paso challenging the constitutionality of the *Texas Regulatory Consistency Act* was dismissed for lack of subject-matter jurisdiction.

State v. City of Houston, et al., No. 03-23-00531-CV, 2025 WL 2014935 (Tex. App.—Austin July 18, 2025, no pet.)

In 2023, the Texas Regulatory Consistency Act passed via H.B. 2127, which sought to eliminate a "patchwork" of local regulations by preempting certain ones. Before it took effect, Houston, San Antonio, and El Paso sued in a district court challenging the Act's constitutionality. The Cities prevailed. The State appealed to the Austin Court of Appeals arguing that there was no subject-matter jurisdiction because the Cities' live pleadings affirmatively negated their standing to sue.

The court of appeals ruled for the State. First, the Cities failed to show an actual or potential injury-in-fact. Rather, they simply claim the Act is unconstitutional on its face and will require them to review charters, repeal preempted regulations, and suffer generalized injuries as a result of the Act. Second, the Cities failed to show that their alleged injuries were fairly traceable to the State. The Cities did not allege that the State threatened to enforce the Act against the Cities; rather, the pre-enforcement injuries the Cities allege relate to a new exposure to civil litigation brought by parties other than the State. The fact that the Legislature enacts a law does not automatically render the State the proper defendant in constitutional challenges. *See Abbott v. Mexican American Legislative Caucus, Texas House of Representatives*, 647 S.W.3d 681 (Tex. 2022). Because

no amount of repleading would have made the State the proper defendant, the court of appeals declined to remand the case and dismissed the suit without prejudice for lack of subject-matter jurisdiction.

Commentary: To view TMCEC's H.B. 2127 summary, see *The Recorder* (August 2023) at 40.

B. Charging

Although a charging instrument contained grammatical mistakes, it sufficiently tracked the language of the statute and was thus valid

Gutierrez v. State, 710 S.W.3d 804 (Tex. Crim. App. 2025)

A court could conclude that a traffic citation integrating a QR code complies with Texas law.

Tex. Att'y Gen. Op. No. KP-0477 (2025)

Texas State Senator Donna Campbell from District 25, via RQ-0552-KP, submitted a request for the Attorney General to weigh in on whether citations issued through a QR code provided on a "citation card" would comport with Texas law. Senator Campbell described QR code citations as a new technology where, instead of traditional paper citations or citation machines, peace officers enter required citation information and then hand alleged violators a card, which gives them access to the complete citation electronically. The card includes lines for both the officer's and the driver's signature "for the violator's records." The officer does not retain the citation card or capture the driver's written promise to appear. Traditional paper tickets are available to drivers that are unable to utilize the QR code citation. The Attorney General analyzed whether QR code citations would satisfy the Transportation Code's notice requirement as well as its signature and copy requirements.

Regarding notice, Section 543.003 of the Transportation Code provides that "[a]n officer who arrests a person for a violation of [the Rules of the Road] punishable as a misdemeanor and who does not take the person before a magistrate shall issue a written notice to appear in court showing the time and place the person is to appear, the offense charged, the name and address of the person charged, and, if applicable, the license number of the person's vehicle." The Attorney General opined that notice provided electronically through a QR code could satisfy Section 543.003. Courts have consistently ruled that words appearing on a screen (as opposed to paper) are "written" and all of Section 543.003's required information is provided to the defendant through the QR code.

For signature and copy requirements, Section 543.005 provides that "[t]o secure release, the person arrested must make a written promise to appear in court by signing the written notice prepared by the arresting officer. The signature may be obtained on a duplicate form or on an electronic device capable of creating a copy of the signed notice. The arresting officer shall retain the paper or electronic original of the notice and deliver the copy of the notice to the person arrested." While the citation card Senator Campbell described does have a signature line for both the officer and the driver, the Attorney General states that this would not satisfy Section 543.003. First, it is not "prepared by the arresting officer." Second, there is no indication in Senator Campbell's request that the driver is ever actually required to sign anything. A court could nonetheless conclude that a signature captured electronically through a QR code would satisfy the signature requirement. The officer would need to be able to obtain the electronic original and generate a copy to provide the driver. Because the statute does not provide the manner of creating a copy, a court could conclude that a digital copy provided through a QR code would suffice.

Commentary: Attorney General Paxton's conclusion appears, on its own, to answer Senator Campbell's question affirmatively. However, his conclusion requires QR code citations to have capabilities that do not appear to be featured in the QR code citations that the Senator describes. Most notably, the capability of the driver to provide a written notice to appear (i.e., signature) *that is retained by the officer*, copied, and provided to the driver. For this to work, the officer could give the driver a QR code to scan and electronically fill out—or get a signature the old-fashioned way. Then perhaps a copy of the full *signed* citation could be provided to the driver via QR code. Whether or not QR code citations, which are touted as saving time and resources, become commonplace remains to be seen.

C. Probation

Trial courts have discretion to make affirmative family violence findings in cases where deferred adjudication is ordered.

Zapata v. State, 707 S.W.3d 440 (Tex. Crim. App. 2025)

In exchange for the State's recommendation that the trial court impose deferred adjudication, Zapata pled no contest to a Class A misdemeanor assault charge. The charging instrument made no mention of family violence. Zapata did not agree to any specific terms or conditions of the deferred adjudication in advance—he "went open" to the plea hearing, meaning that the court would determine the conditions of deferred. At the plea hearing, the State asked the court to enter an affirmative finding that the assault involved family violence, which the court did. Zapata appealed. He contended that under Article 42.013 of the Code of Criminal Procedure, a family violence finding may only be entered in the "judgment" of a case—and there was no "judgment" here. The Fourth Court of Appeals, based on Articles 42A.104(a) and 42A.504(b) of the Code of Criminal Procedure, affirmed (these statutes contemplate certain "affirmative findings" in deferred adjudication cases).

The Court of Criminal Appeals also affirmed. Judge Yeary, joined by Presding Judge Schenk and Judges Keel, Finley, and Parker, authored the majority opinion, explaining that nothing in Article 42.013 prohibits a family violence finding in a deferred case. Furthermore, Chapter 42A generally authorizes affirmative findings in deferred adjudication cases. The fact that family violence affirmative findings are not among those specifically listed in Article 42A.105 does not indicate the legislature's intent to prohibit such findings. Such a conclusion would require applying the disfavored *expression unius est exclusio alterius* maxim where something is prohibited by negative implication. The majority also noted that a family violence finding could dictate or impact which conditions of deferred adjudication are imposed, which may be beneficial from a criminal justice standpoint. For these reasons, trial courts have discretion whether to attach a family violence finding to a deferred adjudication case.

Judges Richardson, Newell, Walker, and McClure dissented without written opinion.

Commentary: *Zapata* was initially decided on October 23, 2024, where the Court ruled in a 6-3 decision that the trial judge improperly made a family violence finding that was not alleged in the charging instrument and was unsupported by the evidence. This opinion was withdrawn and superseded by the opinion above on February 5, 2025. The February decision did not address the sufficiency of the finding or the lack of a family violence allegation in the charging instrument. This is likely because the new majority, as evidenced by written dissents by Judges Keller and Yeary in October, did not believe those questions were properly before the court. Notably, three Court of Criminal Appeals judges (Presiding Judge Keller, Judges Hervey and Slaughter) in October 2024 were no longer on the bench in February 2025. In October, Judges Hervey and Slaughter ruled for the defendant. The three new judges (Presiding Judge Schenk and Judges Finley and Parker) all sided with the State, which flipped the case's outcome.

While *Zapata* is a deferred adjudication case, it is reasonable to suggest that its holding has implications in the municipal court context. It at least supports the conclusion that municipal judges may make family violence findings on Class C assault cases where the defendant is placed on deferred disposition. More concrete authority is needed, however, because the Court's holding in *Zapata* relies in large part on wording in the deferred adjudication statute—wording that does not exist in the deferred disposition statute.

D. Habeas Corpus

Pretrial habeas relief is available to defendants charged with Class C misdemeanors who are neither in custody nor released from custody on bond.

Ex parte Kleinman, *Ex parte Auspro Enterprises, L.P.* Nos. PD-0966-24, PD-0975-24, 2025 WL 2169102 (Tex. Crim. App. July 30, 2025)

Appellants Kleinman and AusPro Enterprises, L.P. were charged with fifteen violations of a Cedar Park

ordinance prohibiting the sale of drug paraphernalia—fine-only Class C misdemeanors under the City Code. After convictions in the municipal court, they appealed for a trial de novo in the county court at law, posting appellate bonds totaling $64,881.72. They then filed pretrial applications for writs of habeas corpus, challenging the ordinances as unconstitutionally vague.

The county court found that the appellants were restrained by the cash bonds but denied relief on the merits. The Austin Court of Appeals affirmed, holding that habeas relief was unavailable because the appellants failed to show a "sufficient restraint."

In an opinion by Judge Yeary, the Court of Criminal Appeals reversed, holding that the appellants were indeed under "restraint" as required for pretrial habeas relief under Chapter 11 of the Code of Criminal Procedure. Rejecting the "sufficient restraint" standard, the Court emphasized that Texas law mandates habeas remedies be "speedy and effectual," and that Chapter 11 must be liberally construed. Citing longstanding precedent, the Court reaffirmed that "any character or kind of restraint that precludes absolute and perfect freedom of action" qualifies for relief.

The Court found restraint based on three factors: (1) numerous pending complaints placing the appellants under the formal threat of prosecution, (2) their non-final municipal convictions, and (3) the appellate bonds that compelled personal appearances "from day to day," subject to arrest and forfeiture for non-compliance. Distinguishing federal "custody" jurisprudence under 28 U.S.C. § 2254, the Court noted that Texas's broader "restraint" standard governs pretrial applications and that paying a fine does not dissolve restraint where prosecution and appeal remain pending. It also clarified that the double-jeopardy provision of the Texas Constitution does not define or limit "restraint" under Chapter 11. The Court reversed and remanded for further proceedings.

Commentary: For more than 15 years, Michael Kleinman, better known as the owner of Planet K and the principal of AusPro Enterprises, L.P., has appeared many times in the TMCEC Case Law Update. He first appeared on the statewide radar in *Kleinman v. City of San Marcos*, 597 F.3d 323 (5th Cir. 2010), cert. denied, 562 U.S. 1036 (2010), when his nose-down "art car" tested the limits of the First Amendment and municipal junk-vehicle ordinances. A few years later came *AusPro Enterprises, L.P. v. Texas Department of Transportation*, 506 S.W.3d 688 (Tex. 2016), the "Ron Paul sign" case that reshaped Texas signage law and the state's approach to content-neutrality in outdoor advertising. Now we will not only wait to see what the Austin Court of Appeals does with this case on remand, we will also wait to see what the Court of Criminal Appeals does with a related but different case regarding whether a county court was required to give Kleinman an opportunity to cure defects in appeal bonds for lack of personal signature before dismissing appeals. *Kleinman v. State*, 703 S.W.3d 813 (Tex. App.—Austin 2024, pet. granted).

E. Trial

The right to be personally present at trial, contained in Article 33.03 of the Code of Criminal Procedure, is a waivable-only right.

Tates v. State, 721 S.W.3d 268 (Tex. Crim. App. 2025)

Tates was convicted of evading arrest, but due to the COVID-19 pandemic, he appeared for his punishment hearing via videoconference while remaining in custody. Although Tates did not object to the remote proceeding at trial, he later appealed, arguing that his remote appearance violated his statutory right to be present. The court of appeals reversed the judgment, holding that the right to be present is not forfeited by a failure to object, a decision the State challenged via a petition for discretionary review,

Judge Newell, writing for the Court, affirmed the lower court's judgment, holding that the statutory right to be personally present under Article 33.03 is a "waivable-only" right, known as a category-two *Marin* right. This category requires that a right be implemented unless affirmatively waived, meaning Tates did not forfeit the error simply by remaining silent at trial. The Court reasoned that the plain text of Article 33.03 mandates that a defendant "must be personally present," and the only statutory exception involves a defendant who "voluntarily

absents" himself, which implies an affirmative waiver rather than forfeiture by inaction. The Court clarified that the lower court erred in relying on *Lira v. State*, 666 S.W.3d 498 (Tex. Crim. App. 2023) to suggest the sentence was illegal, but the ultimate conclusion regarding preservation was correct. Furthermore, the Court held that the Texas Supreme Court's Emergency Orders regarding the pandemic did not suspend substantive rights such as personal presence.

Judge Yeary concurred, emphasizing that the statutory history of Article 33.03 and its predecessors support the conclusion that the right to presence has historically been treated as waivable-only, not forfeitable. Judge Parker also concurred, arguing that the "voluntary absence" exception cannot apply to an incarcerated defendant who complies with a court order to appear virtually, as mere submission to authority does not constitute a voluntary waiver.

Judge Keel dissented, arguing that the right to presence should be considered forfeitable, similar to many constitutional rights. She contended that the majority imposed a waiver requirement not found in the statute's text, noting that Article 33.03 only explicitly mentions forfeiture in the context of voluntary absence.

Commentary: COVID-19 is over but Zoom and its telecommunication cousins remain. The Court of Criminal Appeals case law regarding such technology in the courtroom consistently treated remote appearances as inferior substitutes for true, in-person presence, especially in any stage where a statute requires a defendant to be "personally present." COVID emergency orders did not soften this stance. While Zoom may be used in narrow, explicitly authorized situations, the default and expected norm in Texas criminal cases remains physical presence in the courtroom.

A prosecutor's suggestion during closing arguments that the defendant was prejudiced against the Hispanic victim was improper because it was not a reasonable deduction from evidence presented at trial.

Kitchens v. State, 721 S.W.3d 467 (Tex. Crim. App. 2025)

During closing arguments in a murder trial where a shop owner shot a Hispanic man that walked into his place of business, the prosecutor suggested that the shooting was based on race. After alluding to the victim's appearance and race, the prosecutor started saying "The defendant's own prejudices…" when the defense objected. The judge overruled. The court of appeals found that this was not an abuse of discretion because the prosecutor's suggestion was a reasonable deduction from evidence presented at trial.

In an 8-1 opinion written by Judge Parker, the Court of Criminal Appeals found the prosecutor's comments to be improper and remanded the case for a harm analysis. While it is true that reasonable deductions from the evidence can be presented during closing arguments, the prosecutor's comments in this case were "mere speculation." The victim's Hispanic appearance did come up at trial and testimony was offered that the shop owner was scared when the victim entered his store. But the suggestion that the defendant was prejudiced against the Hispanic victim was not a reasonable deduction. In fact, it was not a deduction at all. No link whatsoever was established between the defendant's fear and the victim's race.

Presiding Judge Schenk dissented. After reiterating that race-based statements that might violate a defendant's due process rights are inappropriate at trial, he disagreed with the notion that the trial judge abused her discretion in overruling the defense's motion. He suggested that he may have ruled differently than the trial judge, but he has "had six months to think about the issues" whereas the trial judge "had six seconds." At the time of the ruling, whether to sustain or overrule the objection was inside the zone of reasonable disagreement. Therefore, the court of appeals properly found no abuse of discretion.

A trial court's use of a court *recorder* as opposed to a court *reporter*, which the defendant requested under Section 52.046 of the Government Code, was harmless error because the defendant was unable to show it affected his substantial rights or harmed him in any way.

Alvarado v. State, 722 S.W.3d 109 (Tex. App.—Houston [1st Dist.] 2025, pet. denied)

Because the record does not affirmatively show otherwise, the appellate court must presume the trial court considered the full range of punishment.

Jacobs v. State, 720 S.W.3d 217 (Tex. App.—Eastland 2025, no pet.)

On appeal from the revocation of his community supervision, the appellant argued that the trial court violated his due-process rights by refusing to consider the full range of punishment. Although the plea agreement capped punishment at ten years, and the trial court imposed a ten-year sentence, the appellant claimed the court never expressly stated it considered a lesser sentence and later remarked that it was "limited" to ten years.

The court of appeals first held that the appellant could raise this issue for the first time on appeal. It then rejected his argument, concluding that the trial court's remarks did not show an arbitrary refusal to consider the full punishment range. The record showed the court heard evidence that the appellant violated multiple conditions of supervision and committed a new offense—aggravated assault with a deadly weapon against a law-enforcement officer. No authority requires a trial court to expressly state that it considered the full range of punishment, and courts presume it did so unless the record affirmatively indicates otherwise. This record did not.

A judge's statement to the jury pool that he did not think crime in Harris County would subside anytime soon was not an improper communication because it was not a comment on the defendant's guilt.

Rodriguez v. State, No. 01-23-00664-CR, 2025 WL 1335328 (Houston [1st Dist.], May 8, 2025, pet. denied) (mem. op., not designated for publication)

During voir dire, a Harris County criminal trial court judge was explaining to the venire steps the county was taking to reduce its case backlog. During this discussion, the judge stated, "I had a prospective juror ask me some weeks back, months back, when did I think we would get caught up. And I answered in this way, I said when individuals stop breaking the law we might get caught up. But the way things have been going, as you see on the news, it doesn't look like we're going to get caught up anytime soon." Article 38.05 of the Code of Criminal Procedure prohibits judges from making remarks meant to convey their opinion on the present case to the jury. The defendant argued that the judge violated Article 38.05 because the jury pool could have interpreted his statement to mean that the defendant in their trial had contributed to Harris County's case backlog by committing a crime. The court of appeals identified nothing in the judge's comments indicating that the defendant had committed a crime or that people being tried in his court had committed crimes.

F. Appeals

1. Standard of Review

Non-constitutional harmless error (Texas Rule of Appellate Procedure 44.2(b)) is the appropriate standard of review when the State fails to timely disclose evidence under Article 39.14 of the Code of Criminal Procedure.

Hallman v. State, 721 S.W.3d 307 (Tex. Crim. App. 2025)

2. Waiver

An ability-to-pay inquiry under Article 42.15(a-1) of the Code of Criminal Procedure may be waived if a defendant does not object to the lack of inquiry in trial court.

Cruz v. State, 698 S.W.3d 265 (Tex. Crim. App. 2024)

Cruz was convicted of aggravated kidnapping and sentenced to imprisonment and an $8,000 fine plus court costs in August 2021. Article 42.15(a-1) of the Code of Criminal Procedure mandates that a court shall inquire whether the defendant has sufficient resources to immediately pay all or part of the fine and costs, doing so during or immediately after imposing the sentence. Although the judgment noted that the court conducted an inquiry, none appeared in the record, and Cruz did not object to its absence.

Judge Keel, writing for the Court, joined by Presiding Judge Keller, and Judges Yeary, Slaughter, and McClure, held that Cruz forfeited his argument on appeal because he failed to object in the trial court. Citing *Marin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993), the Court classified the right to the ability-to-pay inquiry under the *Marin* error-preservation rules as a Category 3 right. Category 3 rights are those that are implemented upon request or else forfeited.

The Court held that the ability-to-pay inquiry is not fundamental to the proper functioning of the adjudicatory system. It is a post-trial procedure that has no consequence to the adjudicatory process and does not ensure a fair trial, a correctly informed sentencing judge, or the defendant's ability to understand the proceedings.

The court of appeals concluded that because Article 42.15(a-1) places a *sua sponte* duty on the judge, the right to an ability to pay inquiry should be non-forfeitable (Category 1 or 2). The Court rejected this conclusion because only fundamental rights fall into the first two *Marin* categories. The presence of a *sua sponte* duty alone does not negate the requirement of fundamentality.

Even without the inquiry, the defendant is not doomed to undue hardship, as relief from fines and costs (including delayed payments, community service, or waiver) remains "available forever after sentencing" under Article 43.035(a) of the Code of Criminal Procedure. A defendant needs only notify a court of hardship, by motion, letter, or any method the court allows. Under Article 43.035(b) and (d), a court must grant a hearing unless it has already found no hardship or can determine relief is warranted without one. A court may also waive fines and costs entirely per Article 43.091 or credit an indigent defendant's jail time per Article 43.09(a). The Court observed, with 1,609 days credited toward fines and costs, an ability-to-pay inquiry in Cruz's case would have been pointless.

Because the Court resolved the case on the threshold issue of forfeiture, it did not reach the questions of whether the 2021 statutory amendment (which required the inquiry to be made on the record) applied retroactively to Cruz's case, or whether such retroactive application would be constitutional.

In a concurring opinion, Presiding Judge Keller, joined by Judge Yeary, addressed the notion that the defense lacked the opportunity to object to the "on the record" requirement, noting that the statute had been passed and signed, though not yet effective, by the time Cruz was sentenced, meaning Cruz's attorney had the opportunity to raise the claim that a soon-to-be-effective retroactive statute would require the inquiry be on the record.

Judge Newell, joined by Judges Richardson and Walker, concurred only in the judgment, because he believed the Court should have addressed the retroactivity of the 2021 amendments requiring the inquiry to be on the record, which was the primary issue for which the court of appeals sought guidance. The concurrence asserted that Cruz should not be faulted for failing to object because the law changed *while the case was on appeal*, the appellant raised the complaint at his first opportunity, and "[a] bar card does not come with a crystal ball attached."

Commentary: Since 2017, all criminal trial courts in Texas have been required by the Code of Criminal Procedure to inquire when imposing a sentence that includes fines and costs in open court, whether the defendant has sufficient resources or income to pay all or part of them. Article 42.15 (Fines and Costs), located in Chapter 42 governing the judgment and sentence in criminal cases, applies broadly to both felony and misdemeanor matters. Article 45A.252 (Sufficiency of Resources to Pay Fines or Costs) governs the corresponding inquiry in municipal and justice courts. Unlike Article 42.15(a-1), which expressly requires that the inquiry be conducted "on the record" (unless waived under Article 42.15(a-2)), Article 45A.252(a) contains no such on-the-record requirement.

Cruz is the most recent installment in Texas case law that arguably narrows statutory procedural safeguards for criminal defendants. *See Ybarra v. State*, 705 S.W.3d 819 (Tex. App.—San Antonio 2024, no pet.) (failure to conduct inquiry held harmless because omission had no effect on jury's verdict); *Alston v. State*, 705 S.W.3d 849 (Tex. App.—Amarillo 2024, no pet.) (trial court not required to conduct an extensive on-the-record inquiry); *Sloan v. State*, 676 S.W.3d 240 (Tex. App.—Tyler 2023, no pet.) (failure to conduct inquiry on the record

not harmful). The decision may serve as a framework for classifying other legislatively created rights, because, as the Court notes, most rights—even constitutional ones—fall into *Marin* Category 3.

Be careful with *Cruz*. Municipal judges have a statutory duty to conduct the ability-to-pay inquiry *sua sponte. Cruz* addresses only error preservation for defendants, not the seriousness of the court's underlying obligation. A judge who ignores a mandatory duty can face investigation or sanctions under Canon 2A of the Code of Judicial Conduct for willful failure to comply with the law, thereby undermining public confidence in judicial integrity and impartiality. Judges should not confuse caselaw with expectations in regard to judicial conduct.

By failing to object, a defendant waived any complaint about an imposition of a condition of probation ordering him to pay $100 to a women's shelter.

Steele v. State, 713 S.W.3d 770 (Tex. Crim. App. 2024)

After a jury convicted the appellant of Driving While Intoxicated, the trial court placed Steele on probation and ordered him to pay $100 to the Houston Area Women's Shelter. Steele did not object. The court of appeals held that he could raise the issue for the first time on appeal and deleted the condition. In an opinion by Presiding Judge Keller, joined by Judges Hervey, Richardson, Keel, Slaughter, and McClure, the Court of Criminal Appeals reversed, holding that the appellant's failure to object waived his complaint because payment to a women's shelter is not a condition "the criminal justice system simply finds intolerable."

The Court relied on *Speth v. State*, 6 S.W.3d 530 (Tex. Crim. App. 1999), which held that a defendant waives any complaint about a probation condition if he fails to object when it is imposed. Because the trial judge announced the condition in open court, the appellant had the opportunity to object but did not, thereby accepting it.

The Court noted a narrow exception to this rule recognized in *Gutierrez v. State*, 80 S.W.3d 167 (Tex. Crim. App. 2012), where a probation condition violated federal law (i.e., banishment or deportation) and was deemed "intolerable" and not subject to waiver. However, the Court emphasized that most conditions, even those alleged to violate statutes or constitutional rights, are waived if not challenged at trial. For example, *Gutierrez-Rodriguez v. State*, 444 S.W.3d 21 (Tex. Crim. App. 2014), confirmed that restitution imposed for uncharged items did not meet the "intolerable" standard.

Here, the appellant argued that payment to a women's shelter violated Article 42A.651(a) of the Code of Criminal Procedure, which limits payments as a probation condition. The Court rejected that claim, finding it incorrect to treat any statutory prohibition as an "absolute prohibition" immune from waiver. The statute resembled the restitution provision in *Gutierrez-Rodriguez*. The condition was not "intolerable" or "antithetical to justice," like the banishment condition in *Gutierrez*. Failure to object constituted valid acceptance and waiver of his complaint.

Judge Yeary filed a concurring opinion, explaining that under *Marin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993), the right to object to a probation condition is a category-three right that must be asserted at trial or is forfeited, and that the $100 payment condition was not a fundamental or systemic right exempt from waiver.

Judges Newell and Walker dissented without written opinion.

Commentary: This case tangentially provides helpful parameters for imposing conditions of probation such as deferred disposition. Though Article 45A.303 of the Code of Criminal Procedure authorizes the judge to order any reasonable condition, the judge needs to ensure such a condition does not violate another statutory provision or, more extremely, is not preempted by federal law. Conditions of probation are contractual in nature. In practice, all judges would agree that the time for a defendant to raise an issue with a condition of probation is when it is imposed, allowing the judge to reconsider. Procedurally, if the defendant does not object to a condition when it is imposed, he or she waives any complaint on appeal. However, if the condition is "intolerable" and "antithetical to justice," it is subject to an absolute prohibition and the defendant can complain for the first time on appeal.

3. State's Right to Appeal

An order of deferred disposition for a Class C offense is not a "sentence" within the meaning of Article 44.01(b) so it cannot be appealed.

State v. Cuarenta, 707 S.W.3d 424 (Tex. Crim. App. 2025)

The police cited Cuarenta for speeding (82 mph in a 60 mph zone). After pleading no contest in a justice court, he was found guilty and assessed a fine and fees. Cuarenta then filed a *de novo* appeal to county court, pleaded not guilty, was found guilty, but the court suspended his sentence, deferred the disposition, and placed him on probation for 180 days.

The State appealed this ruling to the Waco Court of Appeals (later transferred to the Amarillo Court of Appeals) under Article 44.01(b) of the Code of Criminal Procedure. The State argued that the suspended sentence and deferred disposition constituted an "illegal sentence" because Cuarenta held a commercial driver's license. The Amarillo Court of Appeals questioned its own jurisdiction but exercised it due to transfer rules, ultimately agreeing with the State, reversing, and remanding the case. Cuarenta filed a petition for discretionary review with the Court of Criminal Appeals.

The Court of Criminal Appeals, in a unanimous opinion delivered by Judge McClure, held that an order of deferred disposition is not a "sentence" within the meaning of Article 44.01(b). Consequently, the Court held that the court of appeals was without jurisdiction over the appeal and reversed its decision.

The Court based its holding on the plain language of the relevant statutes. Article 44.01(b) authorizes the State to "appeal a sentence in a case on the ground that the sentence is illegal." Article 42.02 (Definition of Sentence) defines "sentence" narrowly as "that part of the judgment, or order revoking a suspension of the imposition of a sentence, that orders that the punishment be carried into execution in the manner prescribed by law." The Court concluded that an order of deferred disposition is not a "sentence" because it does not order that the punishment be carried into execution and it does not revoke a suspension of the imposition of a sentence. Furthermore, in a deferred disposition, there is no declaration of a conviction or acquittal, meaning there is no "judgment." Without a judgment, there can be no sentence.

The State Prosecuting Attorney argued that a narrow reading of "sentence" frustrated legislative intent and produced absurd results, urging the Court to interpret it to include any erroneous ruling imposing an illegal punishment. The Court disagreed, noting the Legislature distinguishes between an "order" (appealable under 44.01(a)) and a "sentence" (under 44.01(b)) and would have used "order" if it intended a broader reach.

By resolving the appellate split, the Court nullified prior decisions asserting jurisdiction over State appeals from deferred disposition or adjudication orders. Specifically, the Court abrogated: *In re State, 489* S.W.3d 24 (Tex. App.—Amarillo 2016, no pet.) (conditionally granting mandamus relief directing trial court to vacate an order deferring proceedings in a speeding offense case involving a defendant holding a commercial driver's license); *State v. Hollis*, 327 S.W.3d 750 (Tex. App.—Waco 2010, no pet.) (exercising jurisdiction over State's appeal from order granting deferred adjudication in a speeding case); and *State v. Sosa*, 830 S.W.2d 204 (Tex. App.—San Antonio 1992, pet. ref'd) (finding jurisdiction over State's appeal from a deferred adjudication).

Commentary: This decision makes clear that the State has no right to appeal an order of deferred disposition or deferred adjudication. The State's appeal rights under Article 44.01 are confined to the grounds listed in the statute. *Cuarenta* is straightforward, but its consequences are not. It leaves a gap where trial courts may issue legally flawed deferred orders without any State right of appeal. The Legislature could address this by amending Article 44.01 or redefining "sentence" in Article 42.02. Perhaps footnote 6 in *Cuarenta* offers a clue: "The issue of whether mandamus is appropriate to address an allegedly illegal order of deferred disposition is not raised by the particular facts of this appeal and is therefore not before us today." Footnote 6 can be read as an invitation—or a hint—that mandamus or prohibition may be the State's only remaining remedies.

The State may appeal to the court of appeals when a county court of appeals reverses the judgment of a municipal court of record, effectively granting a new trial.

State v. Villa, 707 S.W.3d 263 (Tex. Crim. App. 2024)

Villa was convicted of Class C assault by a Mesquite municipal court of record jury and fined $331. The Dallas County Court of Criminal Appeals No. 1 reversed and remanded for a new trial, finding error in failing to submit a self-defense instruction. The State appealed, but the Dallas Court of Appeals dismissed for lack of jurisdiction, adopting *State v. Pugh*, No. 02-12-00108-CR, 2022 WL 1793518 (Tex. App.—Fort Worth June 2, 2022, no pet.) (mem. op., not designated for publication), holding that Article 44.01 of the Code of Criminal Procedure was superfluous because Section 30.00027 of the Government Code did not reference it. Justice Bonnie Goldstein dissented, warning that the majority's view would make county appellate courts courts of last resort. The Court of Criminal Appeals granted review.

Presiding Judge Keller, joined by Judges Hervey, Richardson, Yeary, Keel, Slaughter, and McClure, reversed. The Court held that the reference in Section 30.00027(a) to "appellant" applies only to defendants, as including the State would yield absurd results, and that the State's right to appeal arises under Section 30.00027(b), which incorporates Article 44.01. Because Section 30.00026 provides that a reversal and remand "stands as if a new trial had been granted," Article 44.01(a)(3) authorizes the State's appeal. Section 30.00027(a) thus operates as a legislative limitation on a defendant's right to appeal under Article 44.02.

Judge Newell concurred and Judge Walker dissented without written opinions.

Commentary: In its amicus brief supporting discretionary review, TMCEC described Chapter 30 of the Government Code, the Uniform Municipal Courts of Record Act, as the "undiscovered country" of Texas criminal appellate jurisprudence. While case law clearly defines appeals from county and district courts and de novo appeals from non-record municipal and justice courts, it offers little direction for appeals from municipal courts of record. TMCEC advocated for adoption of the term *incidental appellate jurisdiction* to describe the authority of county-level trial courts, such as county criminal courts, to hear these appeals—an arrangement found in only a few states. TMCEC cautioned that, without discretionary review, Chapter 30 could become a "private universe" in which questionable county-level rulings are insulated from oversight, effectively making those courts the State's courts of last resort. TMCEC urged the Court to clarify these boundaries and preserve meaningful appellate review within this distinctive Texas framework.

Villa overrules the reasoning of *Pugh*. The Dallas Court of Appeals in *Villa* had adopted *Pugh*'s view that Article 44.01 was superfluous to the analysis because Section 30.00027 did not expressly reference it. In light of *Villa*, the Court also remanded *State v. Jivani*, No. PD-0060-24, 2025 WL 262033 (Tex. Crim. App. Jan. 22, 2025), a case involving a pretrial motion to quash Dallas City Code § 31-27 ("Manifesting the Purpose of Engaging in Prostitution") as unconstitutionally vague and overbroad. The municipal court granted the motion, the county court affirmed, and the Dallas Court of Appeals dismissed for lack of jurisdiction, relying on its *Villa* opinion. Stay tuned!

The court of appeals does not have jurisdiction under Article 44.01(a)(5) when the State appeals a trial court order denying its motion to present witness testimony via videoconferencing.

State v. Castaneda, 714 S.W.3d 254 (Tex. App.—Amarillo 2025, no pet.)

The State sought to appeal a trial court's denial of its motion to allow a witness to testify via videoconference, raising questions about the Sixth Amendment's right to confrontation in the age of virtual communication. However, the court of appeals held it lacked jurisdiction because Article 44.01(a)(5) only permits the State to appeal an order that grants a motion to suppress evidence or exclude it from trial. Since the State was appealing the denial of its own motion—and no motion to suppress had been granted—the court concluded it could not hear the case, dismissing the appeal and leaving the constitutional question for a future date.

Commentary: While we do not normally quote opinions we are summarizing in the commentary of our summaries, sometimes the legal prose is too good not to share. Such is the case in the opening paragraph of *Castaneda*: "We have Zoom, Teams, and, no doubt, other programs allowing for individuals to visually communicate with each other over the internet. Someday, a la inspiration from various scenes from Star Wars, we may also have technology to broadcast holograms by which individuals in far reaches of our world appear within the same room. Will such technology affect the right to confront witnesses found in the Sixth Amendment of the United States Constitution? That is the very question posed to us. And, that is the very question we cannot answer in these appeals by the State of Texas from orders denying its motions 'to Permit Witness to Testify Via Videoconferencing.'" Chief Justice Quinn, you had us at "Star Wars."

III. Substantive Law

Section 822.042(a) of the Health and Safety Code (Requirements for Owner of Dangerous Dog) can-serve as the source of a statutory duty to act for purposes of satisfying the elements of injury to a child by omission.

Cockrell v. State, 721 S.W.3d 448 (Tex. Crim. App. 2025)

Judge Yeary, writing for the Court, determined that the duty of an owner of dangerous dogs to restrain or securely enclose them can be imported to the Penal Code to serve as a statutory duty for purposes of injury to a child by omission under Section 22.04(b)(1). "[T]he relevant provisions of Texas' dangerous dog law impose a statutory duty to act, and 22.04(b)(1) does not plainly limit what statutory duties from outside the Penal Code can form the basis for liability under the statute. Accordingly, we conclude that the provisions of 822.042(a) can serve as the statutory duty to act for purposes of Section 22.04(b)."

Judge McClure, joined by Judge Keel, joins the majority based on the statute's plain text, acknowledging that no law prohibits importing duties from the Health and Safety Code. However, he warns that interacting statutory duties create a "minefield" where citizens face unexpected criminal liability. Citing the Rule of Lenity and James Madison, he argues that laws must be precise, so the public clearly understands prohibited conduct. He concludes by urging the Legislature to explicitly define punishable acts rather than relying on complex, potentially unfair statutory schemes.

Judge Richardson concurred in the result only.

Judge Finley, joined by Judge Newell and Judge Walker, dissented. Because the legal or statutory duty to act required for injury to a child by omission must be interpreted as a duty owed specifically to the victim, such as in familial or care-oriented relationships, rather than a general regulatory duty owed to the public. The dissent warns that the majority's broad interpretation ignores the statute's structure and history, potentially creating limitless criminal liability by allowing any statute containing the word "shall" to serve as a predicate for a first-degree felony. Its interpretation of Section 22.04 may invite prosecutors to throw spaghetti at the wall and see what sticks.

Commentary: At its core, this is a Code Construction Act case about the word "shall." It poses a lingering question: Can any legal duty—even from another code—trigger a first-degree felony? The Court of Criminal Appeals says yes. By holding that "shall" in any Texas statute creates a mandatory duty to act, the Court allows prosecutors to pull duties from non-criminal codes into the Penal Code. The court of appeals warned that, under this logic, even traffic violations could become predicates for first-degree felonies.

IV. Juvenile Justice

A. Written Statements

A juvenile defendant's confession was involuntary due to his age, lack of maturity, and lack of exposure to the criminal justice system.

Ochoa v. State, 707 S.W.3d 344 (Tex. Crim. App. 2024)

In 2018, five-year-old M.G. was found with severe injuries from sexual assault and strangulation. Fourteen-year-old Ochoa, who lived in the same home, discovered her and voluntarily went with officers to the sheriff's office. There, a Texas Ranger interviewed him alone for over an hour before a magistrate gave Family Code warnings. Afterward, the Ranger resumed questioning and obtained a confession to kidnapping and assault.

The juvenile court transferred the case to adult court. Ochoa moved to suppress his statements, arguing he was in custody before warnings and that his later confession was involuntary due to misleading magistrate warnings and coercive promises. The court denied the motion, the confession was admitted, and a jury convicted him, imposing concurrent sentences of 45, 55, and 20 years.

The Fort Worth Court of Appeals affirmed. It held that Ochoa was not in custody during the initial interview and found the Ranger's tactics and the magistrate's comments concerning but not enough to overbear Ochoa's will, calling the Ranger's statements "predictions," not promises. The Court of Criminal Appeals granted review on its own motion to address three issues: whether the Ranger made an improper promise of leniency, whether that rule applies differently to juveniles, and whether the confession was involuntary under the totality of the circumstances.

Justice Slaughter, writing for the majority, ruled that the totality of the circumstances demonstrated that law enforcement tactics overbore Ochoa's will. The Court emphasized that juveniles cannot be judged by adult standards of maturity and are uniquely susceptible to coercion. The Court identified two key coercive factors: (1) the tactics used by the Texas Ranger conducting the interview, and (2) the misleading warning given by the magistrate.

The Texas Ranger utilized high-pressure techniques, including physically dominating the small interview room and isolating Ochoa from his mother. The Ranger repeatedly downplayed the gravity of the offense, characterizing it as a "mistake" or "accident," and implied that confessing immediately would allow Ochoa to remain in the juvenile system and avoid prison. The Ranger also leveraged his status as an "elite" peace officer, appointed by the Governor, to convince Ochoa that resistance was futile.

The magistrate provided inaccurate information regarding Ochoa's rights. He suggested that the right to counsel was primarily relevant only if Ochoa were charged with a crime and minimized the right to silence.

The majority concluded that the intermediate court erred by analyzing these factors in isolation rather than holistically and failing to give adequate weight to Ochoa's youth and lack of sophistication. The judgment was reversed and remanded for a harm analysis.

Presiding Judge Keller dissented without written opinion.

The trial court committed reversible error by admitting a juvenile's written statement after the magistrate, contrary to statute, allowed the juvenile to sign it on a public street in view of armed officers, in violation of the requirement that no law-enforcement officer be "present."

In the Matter of F.M.V., 720 S.W.3d 494 (Tex. App.—El Paso 2025, no pet.)

The magistrate mishandled the confession by allowing a juvenile, F.M.V., to sign his written statement while in the visual presence of armed law enforcement officers, which directly violated Section 51.095(a)(1)(B)(i) of the Family Code that strictly requires that a juvenile's written statement be "signed in the presence of a

magistrate by the child with no law enforcement officer or prosecuting attorney present." Instead of using a private office or courtroom, the magistrate conducted the official review and signing of the confession on the street outside the jail facility. During this interaction, multiple police officers were positioned roughly 30 feet away but remained within the juvenile's direct line of sight throughout the process. The officers present were visibly armed, violating the statute that explicitly forbids officers from carrying weapons in the presence of a child during this procedure, even in rare instances where their presence is deemed necessary for safety.

The environment failed to remain free from police interference. At one point during the review, the magistrate raised her voice to ask detectives for a time check, and a detective walked past the magistrate and the juvenile to retrieve paperwork. Later, the magistrate waved the detectives over to explain a correction the juvenile had made to the statement. The appellate court clarified that "present" in this context means in view or at hand, a definition intended to ensure the juvenile is not intimidated or coerced by the sight of law enforcement. By conducting the signing on a public street with armed officers standing nearby and walking past, the magistrate failed to create the required environment free from police influence.

The magistrate attempted to justify holding the meeting on the street by claiming the jail lacked a designated Juvenile Processing Office and she feared exposing the juvenile to adult offenders inside the facility. The court rejected this justification, noting that the law allows a juvenile to be temporarily detained in an adult facility as long as they are sight-and-sound separated from adult offenders. The magistrate could have utilized a private office or empty courtroom within the secure facility to ensure privacy and compliance rather than conducting the proceeding on a busy street. Furthermore, the law allows an officer to be present only if the magistrate fears for their personal safety, but Judge Priddy testified she had no fear of F.M.V. and would not have required a bailiff in a formal setting. Because the magistrate failed to exclude law enforcement from the visual presence of the juvenile during the signing, the confession was deemed inadmissible, resulting in the reversal of the delinquency adjudication.

B. Discovery

Article 39.14 of the Code of Criminal Procedure is inapplicable to third-party records in the possession of the local juvenile justice agency and used in support of its social history report to a juvenile court.

Tex. Atty. Gen. Op. KP-0478 (2025)

At a disposition hearing, under Section 54.04 of the Family Code, the juvenile court may consider a probation officer's social history report, but a local juvenile probation department is not "the state" for purposes of Article 39.14 of the Code of Criminal Procedure and has no disclosure duty on that basis. Article 2A.209 does not require disclosure of materials used to prepare the report, and whether *Brady v. Maryland* requires disclosure is a fact-specific question beyond the scope of an Attorney General opinion. While Section 54.04(b) requires defense access to documents appended to and considered with the social history report, it does not apply to unconsidered materials; such materials may be sought by subpoena under Article 24.02 and are subject to in-camera review.

V. Local Government

The City of San Marcos's ordinance prohibiting the issuance of citations and arrests for low-level marijuana offenses was preempted by state law.

State v. City of San Marcos, 714 S.W.3d 224 (Tex. App.—15th Dist. 2025, no pet.)

The State filed suit against the City of San Marcos, a home-rule city, seeking a declaratory judgment and injunctive relief claiming that the City's voter-approved ordinance was preempted by state law. The ordinance prohibited police officers from (1) issuing citations and making arrests for Class A and Class B misdemeanor marijuana offenses as well as Class C misdemeanor possession of drug paraphernalia and (2) using the odor of hemp or marijuana to establish probable cause. The 207th District Court in Hays County dismissed the suit

for lack of jurisdiction and denied the State's request for a temporary injunction.

The 15th District Court of Appeals ruled for the State. Under Article 11, Section 5(a) of the Texas Constitution, no ordinance passed under a city charter may be inconsistent with state law. Under Section 370.003 of the Local Government Code, local government bodies and prosecutors may not adopt a policy under which the entity will not fully enforce laws relating to drugs. The legislative intent to preempt local policy is unmistakably clear and San Marcos's ordinance falls within the scope of Section 370.003. Furthermore, Section 37.006(b) of the Texas Civil Practices and Remedies Code provides that in any proceeding that involves the validity of a municipal ordinance, the municipality must be made a party and, if the ordinance is alleged to be unconstitutional, the attorney general is entitled to be heard. Therefore, the district court incorrectly ruled that there was a lack of jurisdiction. Finally, the State sufficiently alleged its claim under the *ultra vires* exception to governmental immunity that the San Marcos mayor and city council acted without legal authority in creating the marijuana ordinance. The fact that it was passed by the voters did not insulate them. Accordingly, the court of appeals remanded the case to the district court to enter a temporary injunction prohibiting enforcement of the ordinance.

VI. Ethics

Neither Article XVI, Section 40(a) of the Texas Constitution nor the common-law incompatibility doctrine prohibits one person from serving in a dual role as an administrative assistant to both a county judge and a prosecuting attorney.

Tex. Att'y Gen. Op. KP-0486 (2025)

Commentary: Because the request did not identify a specific law or policy barring one person from serving as administrative assistant to both a county judge and a county attorney, the opinion addressed general concerns such as dual-office holding and judicial ethics. It concluded that an administrative assistant position is not an "office," so constitutional prohibitions and the common-law incompatibility doctrine do not apply but cautioned that the arrangement could implicate the Code of Judicial Conduct or the attorney disciplinary rules—issues that depend on specific facts and therefore could not be resolved in an Attorney General opinion. If a city is considering hiring an administrative assistant that would work for both the municipal judge and municipal attorney, this opinion could provide a starting point for analyzing the legality of such employment.

89th Texas Legislature: 2nd Special Session Update

The following summaries highlight selected legislation enacted during the Second Special Session of the 89th Texas Legislature, which convened on August 15, 2025, and adjourned on September 4, 2025. Each summary provides a brief overview of the bill's substantive provisions and includes its effective date. TMCEC encourages readers to review the full text of each bill for complete and accurate details.

H.B. 16
Subject: Judicial Branch Omnibus (Operations, Administration, Practices, and Procedures)
Effective Date: December 4, 2025 (except where noted)

H.B. 16 is an omnibus bill that encompasses changes to court operations, procedures, and personnel. H.B. 16 addresses court security planning, deferred disposition, expunctions, filing fees, privacy protections for court employees, youth diversion, jail credit, community service, jury service exemptions, harassment offenses involving court personnel, and other procedural matters.

Court Security
H.B. 16 expands the duties of court security committees under both Chapters 29 and 30 of the Government Code. Every court security committee is required to develop a court emergency management plan. The bill tasks the judicial security division of the Office of Court Administration (OCA) with creating a model court emergency management plan. H.B. 16 also requires that court security committees make recommendations regarding the use of security funds and requires that the governing body of a municipality take these recommendations into consideration when deciding how to expend the funds.

Deferred Disposition
The bill modifies Article 45A.302 of the Code of Criminal Procedure (Deferred Disposition), to replace the term "fine" with "special expense fee," reversing a change made in 2019 by S.B. 346 (86th Regular Session).

Expunction Filing Fees
Passed in the 89th Regular Session, S.B. 1667 repealed Article 102.006 of the Code of Criminal Procedure, eliminating the $100 filing fee for a Chapter 55A expunction effective September 1, 2025. H.B. 16 temporarily reinstated Article 102.006 of the Criminal Code of Procedure, effective September 17, 2025 but with an expiration date of January 1, 2026. On January 1, 2026, new Section 102.0061 takes effect, reestablishing a $100 filing fee for a Chapter 55A expunction.

Court Leadership Conference
H.B. 16 adds Section 74 Subchapter D-1 to the Government Code, establishing an annual leadership conference to be held by OCA for presiding judges of administrative regions, local administrative judges, and court administrators. The conference will address court budgets and operational funding, court activity statistics and case-level information on the amount and character of business transacted by the state trial courts, the duties of local administrative judges, and other matters related to court administration.

Court Recording
H.B. 16 requires OCA to study digital court recordings, evaluate the current use of digital court recordings, analyze the use of digital court recordings in other states and jurisdictions, and make recommendations on any necessary changes to statutes, rules, regulations or standards within Texas. Additionally, OCA shall establish a workgroup of stakeholders to include, among others, judges of courts of record.

Magistrate's Orders of Emergency Protection
H.B. 16 amends Article 17.292(n) of the Code of Criminal Procedure, allowing, upon request, a court that assumes jurisdiction over an offense to modify all or part of a magistrate's order for emergency protection. Additionally, H.B.

16 provides that the standards under Subsection (j) are applicable to a court modifying all or part of an order under this subsection.

Privacy and Confidentiality

H.B. 16 expands confidentiality protections for municipal court personnel. H.B. 16 adds "local government" to Section 72.016 of the Government Code, a provision requiring OCA to regularly notify certain government entities of persons whose information is required to be kept confidential.

H.B. 16 extends protection under Section 13.0021(b) of the Election Code to include current and former municipal court personnel and juvenile case managers as well as their family members. This change permits protected persons to omit their address from the voter registration list with the registrar of the county.

Section 552.117 of the Government Code is amended to include current or former court clerks, court administrators, and juveniles case managers in the list of people for whom information related to home address, home telephone number, emergency contact information, and social security number that would otherwise be public information under Section 552.021 of the Government Code may be confidential. Additionally, H.B. adds subsection (b-1) to Section 552.117 of the Government Code, requiring that a county or district clerk, upon request of the protected person, redact any information that is confidential under Section 552.117(a) and has been posted on a website by the clerk or anyone that contracts with county for internet services.

Section 552.1175 of the Government Code is amended to include current or former court clerks, court administrators, and juveniles case managers in the list of people for whom information may be confidential related to home address, home telephone number, emergency contact info, date of birth, and social security number if the person: (1) chooses to restrict public access; and (2) notifies "the governmental body" of this choice. H.B. 16 adds subection (e-1) to Section 522.1175 of the Government Code requiring that a county or district clerk, upon request of the person covered, redact any information that is confidential under Section 552.1175 from a website if the clerk is the one that posted it.

Section 25.025(a) of the Tax Code is amended to include current or former court clerks, court administrators, and juvenile case managers in the list of people for whom their home address information may remain confidential in appraisal records. Persons seeking protection must fill out the form provided by the Comptroller under Section 5.07 of the Tax Code in order to make this information confidential.

Section 521.121(c) of the Transportation Code is amended to include current court clerks, court administrators, and juvenile case managers in the list of people who may omit their home address from their driver's license, using the address of the courthouse in which they work instead. The residence of the license holder whose address is omitted is confidential and available only for official use by the Department of Public Safety (DPS) or other law enforcement agencies. Additionally, DPS is required to, not later than November 1, 2026, review the process for and implementation of compliance with this section as amended by H.B. 16.

Jail Credit

H.B. 16 expands Article 45A.251(e) of the Code of Criminal Procedure to allow a defendant to receive jail credit for time served while "awaiting trial" for another offense if that confinement occurred after the commission of the misdemeanor.

Community Service

H.B. 16 amends Articles 45A.254(e), 45A.459(i), and 45A.460(i) of the Code of Criminal Procedure to increase the amount of fines or costs that may be discharged through community service from not less than $100 to not less than $150 for each eight hours of service performed.

Youth Diversion

H.B. 16 makes changes to youth diversion in Subchapter K of Chapter 45A, clarifying existing language and procedures. H.B. 16 clarifies that "traffic offense" is given the same meaning as defined by Section 51.02(16) of the Family Code. A child may be eligible to enter a diversion agreement only once every 12 months, rather than only once every 365 days. Additionally, a child is eligible to enter into a diversion agreement for more than one offense if the offenses are alleged to have occurred as part of the same criminal episode, as defined by Section 3.01 of the Penal Code. The bill also clarifies that an administrative fee *not to exceed* $50 may be collected, instead of a flat $50 fee.

H.B. 16 also repeals Article 45A.251(a-1), which removes the requirement to offer diversion to an eligible child following a trial.

Jury Service
H.B. 16 amends Sections 62.107 and 62.108 of the Government Code to change the process of claiming or rescinding a permanent jury service exemption. Respective notice and filings must now go to the district clerk rather than the secretary of state or voter registrar.

Child Arrest Warrant
H.B. 16 adds Section 58.010 to the Family Code (Confidentiality of Warrants of Arrest), making arrest warrants issued for children and supporting complaints or affidavits confidential and subject to limited disclosure as provided by statute.

Harassment
H.B. 16 amends Section 42.07 of the Penal Code (Harassment) to define "court employees" and enhance penalties for harassment. It enhances the offense from a Class B misdemeanor to a Class A misdemeanor if the offense was committed against a person the actor knows is a court employee, or a state jail felony if the offense was committed against a person the actor knows is a court employee and the actor has previously been convicted under this section. The offense is a state jail felony if the offense was committed against a person the actor knows is a judge or a felony of the third degree if the offense was committed against a person the actor knows is a judge and the actor has previously been convicted under this section.

H.B. 20
Subject: Disaster Scam Prevention
Effective: December 4, 2025

Following the devastating floods on July 4, 2025, in Central Texas, Texas Division of Emergency Management Chief Nim Kidd testified before the Joint Hearing of the Senate and House Select Committee on Disaster Preparedness and Flooding about the fraud in Kerrville and the surrounding areas that occurred in the aftermath. People purported to be volunteers demanded payment for cleaning debris. Scammers called grieving families claiming to have their missing children and demanded ransom. Well-meaning people donated money to organizations that they believed to be charities, only to find out that they had been deceived.

H.B. 20 (the "Disaster Scam Response Act") amends the Penal Code and Government Code to curb fraudulent solicitations in disaster settings, establish a program to help the public identify where to donate to legitimate relief, and create criminal offenses for such fraud.

The bill modifies Section 31.03 of the Penal Code (Theft) to create a state jail felony if property valued at less than $30,000 is taken in a declared disaster area or obtained through a purported disaster volunteer scheme. Additionally, H.B. 20 adds Section 32.61 to the Penal Code, creating the offense of Malicious Solicitation of Disaster Victim or For Disaster Response or Recovery, targeting those who fraudulently solicit donations or payments after a disaster, or solicit for payment of family searches or returns with the intent to defraud or harm.

H.B. 20 creates Chapter L of the Government Code, establishing a designation program for nonprofit organizations and financial institutions to solicit and receive disaster relief and recovery donations. Counties and cities may designate multiple eligible entities. The Secretary of State will develop and oversee this program.

H.B. 20 adds Chapter 100D to the Civil Practice and Remedies Code, establishing Liability for Malicious Solicitation During Disaster. A prevailing plaintiff under this statute would be entitled to up to 300% of the donation and reasonable and necessary attorney's fees.

H.B. 26
Subject: Contracts for Law Enforcement Services for Certain Counties
Effective: December 4, 2025

H.B. 26 amends Chapter 85 (Sheriff) and Chapter 86 (Constable) of the Government Code to permit contracted law enforcement services in counties with populations of more than 3.3 million.

H.B. 26 permits the sheriff or constable to enter contracts with local governments, property owners' associations, or landowners to provide law enforcement services within their jurisdiction. The county commissioners court cannot prohibit or restrict such contracts.

S.B. 11
Subject: Affirmative Defense for Certain Victims
Effective: December 4, 2025

S.B. 11 amends Chapter 8 of the Penal Code by adding an affirmative defense for certain victims of trafficking or compelling prostitution. S.B 11 establishes an affirmative defense for individuals who commit certain offenses as a direct result of force, fraud, or coercion stemming from trafficking or compelling prostitution under Sections 20A.02 or 43.05. To invoke the defense, the actor must show that they were a victim of trafficking or compelling prostitution and that their criminal conduct was directly caused by use of force, fraud, or coercion. The defense is unavailable if the actor would have engaged in the conduct otherwise.

S.B. 12
Subject: Attorney General Jurisdiction Over Election Crimes
Effective: December 4, 2025

S.B. 12 amends Chapter 402 of the Government Code by adding Subchapter E, Prosecution of Criminal Offenses Prescribed by State Election Laws. Under Section 402.152, law enforcement agencies must submit reports of probable cause in election crimes investigations to the Office of the Attorney General (OAG). Both law enforcement and local prosecutors must comply with OAG requests for information in such investigations.

The bill also amends Section 273.021 of the Election Code to provide that the OAG shall have jurisdiction to prosecute election crimes and appear before a grand jury for such criminal offenses.

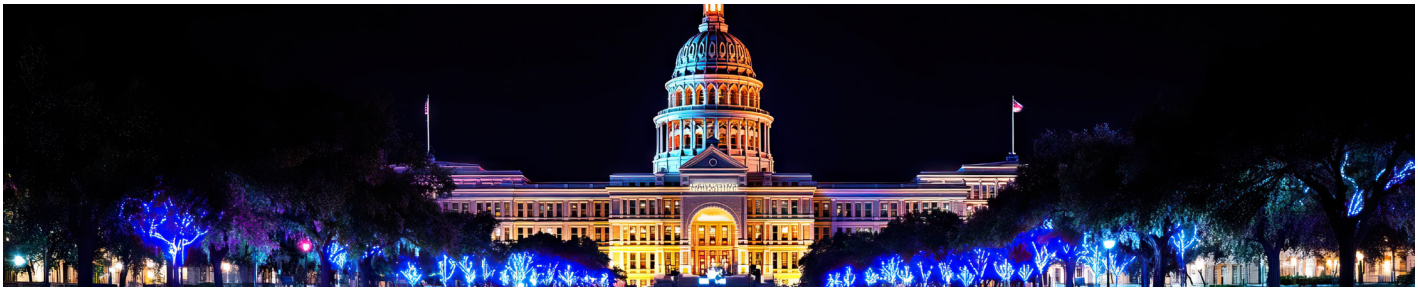
S.B. 16
Subject: Real Property Theft and Fraud
Effective: December 4, 2025 (except where noted)

S.B. 16 expands criminal laws relating to real property by creating two new offenses and imposing new procedural and recording requirements for county clerks.

The bill amends current law relating to real property theft and fraud, establishing recording requirements for certain real property documents criminal offenses of real property theft and real property fraud.

S.B. 16 creates two new felonies, real property theft under Section 31.23 of the Penal Code, and real property fraud under Section 32.60 of the Penal Code. A person commits this offense by effectuating or attempting a transfer, encumbrance, sale, or other transaction in real property without consent of the true owner, with intent to deprive the owner of the property or the benefit of the transaction. A person commits real property fraud if they intentionally or knowingly use false or misleading written statements or documents without consent to obtain real property, cause a public servant to record an improper document, or cause another to file a document affecting real property interests. Penalties for both new offenses escalate according to the value or benefit and range and are enhanced to the next higher felony if the victim is elderly, disabled, a nonprofit, or the property had tax-exempt status under Subchapter B, Chapter 11 of the Tax Code.

S.B. 16 institutes other safeguards to prevent real property fraud. Judgments or orders must include legal descriptions or street addresses and identification numbers assigned by the county clerk. Certified copies of judgments must be filed with the clerk in the county where the real property is located, along with a statement explaining the filing. A person filing a real property document in person must present photo identification, which the clerk must copy or record. Court clerks must report to law enforcement when they receive information that a fraudulent document was filed for recording purporting to convey real property, providing the identification of the person who presented the document (this provision is effective January 1, 2026).



Municipal Traffic Safety Initiatives Update

Texas traffic safety improved in 2024—but we still have a long way to go:

- 4,150 traffic fatalities: 3.29% decrease from 2023 (4,291)
- 768 pedestrian fatalities: 5.19% decrease from 2023 (810)

Every day since November 7, 2000, at least one person has died on Texas roads. In fact, Texas is averaging 10 per day. Your municipal court can help end this deadly streak!

Free TMCEC Traffic Safety Materials for Your Court

In 2026, TMCEC, through its TxDOT funded Municipal Traffic Safety Initiatives (MTSI) grant, plans on printing several traffic safety educational materials, including the Pocket U.S. Constitutions and some of the existing children's books. MTSI is also creating a new children's book about general traffic safety issues. As a reminder, most MTSI children's safety books are available at tmcec.com/mtsi/educators/childrens-books/ for courts to utilize. Do not hesitate to reach out to TMCEC for personalized guidance and resources!

Conferences

TMCEC will offer three special MTSI-funded conferences in 2026. Register today at register.tmcec.com!

- Teen Court Workshop, February 23-24 (Georgetown) - 8.75 hours (free lodging + travel reimbursement!)
- MTSI (Traffic Safety) Conference, April 1-3 (Conroe) - 16 hours
- Impaired Driving Symposium (judges only), August 12-13 (Boerne) - 8 hours (free lodging + travel reimbursement!)

MTSI Awards

The 2026 MTSI Award application is now available at tmcec.com/mtsi/mtsi-awards/. These awards recognize the municipal courts that have made outstanding contributions to increasing traffic safety in calendar year 2025. Applications are due by December 31, 2025!

Educator Workshops

MTSI's teacher workshops are held in June and July at Regional Education Service Centers. Educators can go to tmcec.com/mtsi/educators/teacher-training/ to see available workshops. MTSI's marquee teacher workshop, the Teacher Traffic Safety Academy, will be held July 27–29, 2026 in Austin. Applications for this free workshop open in the spring. Contact elizabeth@tmcec.com for more information.

Contact Us

Call (512) 320-8274 or email Ned Minevitz (ned@tmcec.com) or Elizabeth De La Garza (elizabeth@tmcec.com). We look forward to helping you!

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MISSION STATEMENT

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

On January 1, 2025, most of Chapter 45 of the Texas C.C.P. was replaced with Chapter 45A. In the 89th Legislative Session, youth diversion laws were added. To help with the transition, TMCEC has created the updated

45A Conversion Chart 2.0

A two-sided, 8.5"x14" laminated sheet with 45 to 45A corresponding provisions on one side and 45A to 45 provisions on the other

Quantity	Price per chart	S&H
1	$10	$4.87
2 - 4	$8	$4.87
5 or more	$6	$4.87

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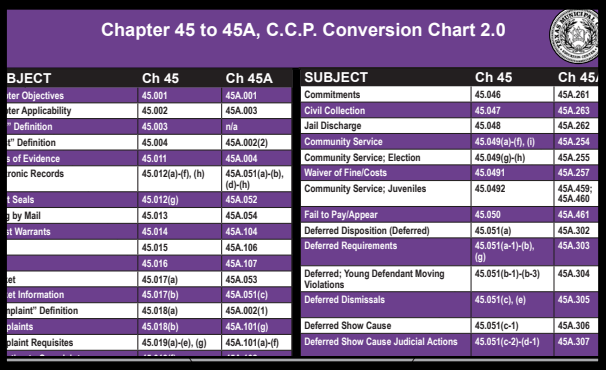
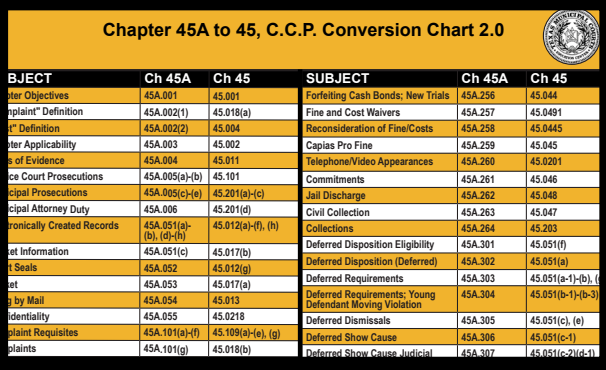


Chapter 45 to 45A, C.C.P. Conversion Chart 2.0

SUBJECT	Ch 45	Ch 45A
ter Objectives	45.001	45A.001
ter Applicability	45.002	45A.003
" Definition	45.003	n/a
t" Definition	45.004	45A.002(2)
s of Evidence	45.011	45A.004
ronic Records	45.012(a)-(f), (h)	45A.051(a)-(b), (d)-(h)
t Seals	45.012(g)	45A.052
g by Mail	45.013	45A.054
t Warrants	45.014	45A.104
	45.015	45A.106
	45.016	45A.107
et	45.017(a)	45A.053
et Information	45.017(b)	45A.051(c)
nplaint" Definition	45.018(a)	45A.002(1)
plaints	45.018(b)	45A.101(g)
plaint Requisites	45.019(a)-(e), (g)	45A.101(a)-(f)

SUBJECT	Ch 45	Ch 45A
Commitments	45.046	45A.261
Civil Collection	45.047	45A.263
Jail Discharge	45.048	45A.262
Community Service	45.049(a)-(f), (i)	45A.254
Community Service; Election	45.049(g)-(h)	45A.255
Waiver of Fine/Costs	45.0491	45A.257
Community Service; Juveniles	45.0492	45A.459; 45A.460
Fail to Pay/Appear	45.050	45A.461
Deferred Disposition (Deferred)	45.051(a)	45A.302
Deferred Requirements	45.051(a-1)-(b), (g)	45A.303
Deferred; Young Defendant Moving Violations	45.051(b-1)-(b-3)	45A.304
Deferred Dismissals	45.051(c), (e)	45A.305
Deferred Show Cause	45.051(c-1)	45A.306
Deferred Show Cause Judicial Actions	45.051(c-2)-(d-1)	45A.307



Chapter 45A to 45, C.C.P. Conversion Chart 2.0

SUBJECT	Ch 45A	Ch 45
ter Objectives	45A.001	45.001
nplaint" Definition	45A.002(1)	45.018(a)
t" Definition	45A.002(2)	45.004
ter Applicability	45A.003	45.002
s of Evidence	45A.004	45.011
ce Court Prosecutions	45A.005(a)-(b)	45.101
cipal Prosecutions	45A.005(c)-(e)	45.201(a)-(c)
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ronically Created Records	45A.051(a)-(b), (d)-(h)	45.012(a)-(f), (h)
et Information	45A.051(c)	45.017(b)
t Seals	45A.052	45.012(g)
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dentiality	45A.055	45.0218
plaint Requisites	45A.101(a)-(f)	45.109(a)-(e), (g)
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