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LEGISLATIVE FOREWORD

by Nydia D. Thomas
Special Counsel
Texas Juvenile Justice Department

The 84th Texas Legislature 2015

Texas Juvenile Justice: Charting a New Direction

Noted twentieth century historian and university professor Dr. John Henrik Clarke once said that "…History is a compass that people use to find themselves on the map of human geography. Most importantly, it tells them where they still must go and what they still must be." In many respects, the overarching theme of the 84th Legislative Session centered on charting a new direction for the juvenile justice system in the final portion of this decade as we approach the proverbial year 2020.

During pre-filing, practitioners and policymakers in Texas were prepared to rise above well-established aspirational goals toward the implementation of a vision of what the juvenile justice system must strive to become. Similarly, lawmakers demonstrated a willingness to consider legislation that challenged the traditional notions of jurisdiction and the age of juvenile offenders, school truancy reform as well as the reallocation of resources to rehabilitate youthful offenders in secure settings closer to home. This time, practitioners and others were poised with compass at the ready to navigate new directional coordinates guided by innovative, child-focused policymaking objectives. Indeed, there were clear expectations that we could ascertain where the state of Texas should stand on the core principles and goals of the juvenile justice system in relation to the rest of the nation.

As the session commenced in January 2015, the destination of "strategic change" was entered into the legislative GPS and the process unfolded with several unexpected turns. As a result, the navigational direction was recalculated in surprising ways. This session, some of the legislation that appeared to have early momentum, presented new ideas, made substantive corrections, or revisited recognized statutory concepts were filed but did not advance. For a variety of reasons, the legislative process seemed to redirect many of the proposed concepts leaving in place the status quo for some issues and transformative change on a number of others. Nevertheless, a clear indicator that the legislative spotlight concentrated on laws affecting children and families was the appointment of the seven-member Juvenile Justice and Family Issues Committee (JJFI), a standing committee of the House of Representatives chaired by Representative Harold Dutton of Houston. Bills referred to JJFI were addressed topically and given in-depth attention by interested lawmakers, witnesses and subject matter experts. Longtime practitioners will remember that the original JJFI committee presided over many of the major Family Code changes from 1995 until the juvenile justice system reforms of 2007 when its duties were transferred to House Corrections.

Most of the legislation filed this session originated in large measure from interim charges, practitioner workgroups and advocacy initiatives. Other proposals such as 'Raise the Age' stemmed from prominent studies that examined national trends and the efficacy of this contemporary issue in Texas. Our aim in this issue is to place the legislation enacted this session into context through a number of special features submitted by juvenile justice colleagues from the Office of Court Administration, Texas Indigent Defense Commission, Texans Care for Children and Texas Criminal Justice Coalition. We hope that you will take a close look at these special feature articles which provide extensive legislative background and commentary on truancy reform as well as concise overviews of key legislation affecting justice and municipal courts and indigent defense. We have also included a retrospective on the issue of 'Raise the Age' along with a viewpoint on the take-away lessons learned.

Our highlighted roster of bills begins with **HB 2398** which will significantly impact the jurisdiction and procedures of courts by decriminalizing school truancy conduct; **SB 107** mandates school districts to designate a campus behavior coordinator and gives guidance on factors to be considered prior to placement in a DAEP or JJAEP; **SB 108** clarifies that citations may not be issued for school offenses committed by a child and allows a child to be referred to a Teen Court program; **HB 263** and **SB 1707** are efforts to streamline and "automate" the process of sealing of juvenile records under Title 3 of the Family Code. Other juvenile records legislation such as **HB 431** creates an advisory committee to consider revi-

sions to Chapter 58 and related laws; **SB 409** prohibits the release of unadjudicated misdemeanor information in the Juvenile Justice Information System (JJIS); **SB 206** requires juvenile probation departments to share information relating to a child's terms and conditions of probation with the Department of Family and Protective Services; **HB 1491** provides additional remedies against business entities that unlawfully publish "mug shots" and commercially disclose other identifying records concerning juveniles and children in the system; **HB 4003** requires certain identifiable victim information to be redacted prior to disclosure of juvenile records. **HB 3184**, relating to victim-offender mediation programs passed, but was later vetoed by the Governor. Stakeholders will also participate in a task force established by **HB 1144** to make findings and recommendations to improve the outcomes of juvenile sex offenders. The goal of **HB 839** is to ensure continuity of Medicaid benefits after a child is placed in a juvenile facility. There were several bills that enacted cleanup amendments, such as **HB 1549,** a post-merger housekeeping bill, which comprehensively updated TJJD agency name references; **SB 219** reflects an evolution in public perception regarding the statutory references to children with intellectual disabilities in Chapter 55 of the Family Code; and **HB 1311** which corrected provisions relating to the confidentiality of the personal information of current and former TJJD and other juvenile justice system personnel under the Public Information Act. For the first time in many years, **HB 2616**, the omnibus cleanup legislation recommended by experienced juvenile justice practitioners did not move past the engrossment stage. **HB 2372**, **HB 2684**, and **SB 133** were three bills that will impact training requirements for TJJD correctional officers, school police officers and mental health training for public school employees. The legislature also enacted transformative laws that will make important structural changes to the system of juvenile facilities around the state. Specifically, **SB 1630** requires the development of a collaborative plan between counties and TJJD to regionalize commitment of youth to local post-adjudication secure correctional facilities closer to home and expands the investigative authority of the Office of the Independent Ombudsman. **SB 183** makes offense enhancements and ensures that charges for improper sexual activity offenses are filed in a similar manner regardless of where the juvenile is in custody or under supervision. Finally, **SB 888** permits the immediate appeal of the juvenile court's certification decision rather than after conviction or deferred adjudication in adult court. These and many other important bills affecting the juvenile justice system are featured in this issue.

The 2015 Special Legislative Issue captures the ever-changing direction of the juvenile justice system by providing the legislative history and insight that will be essential to professionals who have come to rely on information needed to quickly implement statutory changes. We are proud that the Texas Juvenile Justice Department, under the leadership of Executive Director **David Reilly**, has continued to support the need for the Biennial Post-Legislative Conference and the publication of the Special Legislative Issue as an invaluable service to juvenile justice professionals around the state.

We commend our outstanding team of contributing editors who, despite busy schedules, kept their commitment to this project by submitting quality analyses and information. Office of the General Counsel (OGC) - Legal Education & Technical Assistance Staff Attorney, **John Gonzales** did a yeoman's job as a contributor and project coordinator on this Special Legislative Issue. We also appreciate the commitment of our extended team of agency and guest contributors. TJJD General Counsel **Jill Mata**, **Katherine "Katie" Chancia**, **Karol Davidson**, **Kyle Dufour**, **Elizabeth Henneke**, **Mike Meyer**, **Lauren Rose**, **Wesley Shackelford** and **Ted Wood** did an amazing job preparing commentary on a variety of complex topics. Special mention goes out to contributor **Kaci Singer.** OGC attorneys, including Deputy General Counsel **Karen Kennedy**, also made important contributions to our efforts. We extend a word of gratitude to **Lisa Capers,** Senior Director of Training and Organizational Development and **Kristy Almager**, Director of the Juvenile Justice Training Academy for their recognition of the value of this issue for training and standards compliance purposes. We would also like to extend a special thank you to **Carolyn Beck**, who joined TJJD in 2014 as Government Relations Specialist, for her invaluable legislative expertise and continuing support of this project as well as **Colleen Moran, Sunni Zuniga** and **Alba Peña** for providing publications assistance.

Our final acknowledgement goes out to the Juvenile Law Section of the State Bar of Texas and Section Chair, **Kevin Collins**. We are especially proud to continue our partnership with newsletter editor, **Judge Pat Garza** and this amazing group of professionals. We appreciate your continued involvement and support of the juvenile justice system. It has been rewarding to work with you over the years.

On a special note, this issue is dedicated in memory of my mother **Meta Garvey Thomas** whose love of teaching and children has had a profound influence on the work that I do.

We also hope that you were able to attend the Post-Legislative Conference sponsored by the Texas Juvenile Justice Department in San Antonio on July 27-29, 2015 for quality presentations, roundtable discussions, and additional resource information on the highlights of the 84th Texas Legislative Session in order to strengthen the overall understanding and implementation of these important changes.

Post Stanza: Legislation referenced in this publication is categorized in its most relevant substantive category; however, legislation that is relevant to more than one substantive area will generally only be referenced in the primary area.

The statutory excerpts provided in this issue are intended as a general reference and should be considered a secondary source. While every effort has been made to accurately include recent legislative changes and provide useful interpretative commentary, it is best to consult the original legislative enactments located on the Texas Legislature Online website homepage at:

www.legis.state.tx.us

Disclaimer

Every effort has been made to include the most significant pieces of legislation that impact juvenile justice practitioners. However, the Texas Juvenile Justice Department and the Juvenile Law Section make no express representations that the legislation excerpts contained herein comprise the entirety of legislation that was passed on any subject area or topic. The reader should consult the Texas Legislature's website for a complete presentation of all legislation enacted by the 84th Texas Legislature. Any views and opinions expressed in this issue are those of contributing commentator and do not necessarily reflect those of the Texas Juvenile Justice Department or the Juvenile Law Section of the State Bar of Texas.

84th Session Legislative Appropriations to the Texas Juvenile Justice Department

David Reilly
Executive Director
Texas Juvenile Justice Department

The Texas Juvenile Justice Department (TJJD) began the 84th Regular Legislative Session with a clear directive to work with leadership offices to redefine the long-term direction of the juvenile justice system in Texas. Initial appropriations were provided as a lump sum, accompanied by a list of policy areas to be examined and resolved before a true budget for the agency would be set. In that context, TJJD was challenged to revisit its original legislative appropriations request of $701.7 million—including a base request of $644.0 million and $57.7 million in exceptional items—to address the question, "where is the juvenile justice system headed?" As the session unfolded, extensive work with legislative offices brought focus to, and ultimately answered that question.

The guiding juvenile justice reform initiative for the 2016-2017 biennium will be the regionalization of probation activities, as codified by Senate Bill 1630. This will entail the coordination of resources and programmatic efforts at the regional level, with leadership and funding from TJJD, to continue the trend of reducing commitments to the state and decreasing the state residential population. This initiative is supported by appropriations of $9.6 million, heavily weighted toward the second year of the biennium, with most of the first year devoted to working with probation departments to establish the regionalization plan.

TJJD was also directed to make changes to existing probation programs: to restructure grants to better correspond to items of appropriations, while providing flexibility in the use of funds; to clearly define "basic probation" and the methodology for calculating associated funding allocations; to establish "discretionary grant funding protocols" with recidivism reduction goals that link funding to documented, data-driven, and research-based practices; and other changes. Some funding was reduced in existing programs in response to declining populations, and some funding was shifted between existing programs. As a result, probation departments will see a reduction in their general purpose state aid equal to approximately 4 percent of their initial 2015 Grant A allocations, but offsetting funds will be available through targeted programs.

TJJD was also given direction to reexamine the use of state facilities and to redesign programs for committed youth, to re-focus the state's residential system in light of its evolving population. Although funding was reduced on the basis of projected populations, unlike previous sessions there was no directive to close a state facility, nor funding reductions substantial enough to necessitate that step. Instead, the agency will continue the operational status quo while broader planning efforts occur, except that appropriations did shift some funds and residential population from agency facilities toward contract placements. This will help TJJD achieve the complementary goals of keeping committed youth closer to home and in programs best suited for their rehabilitation, and decreasing the size of each state facility's population to improve the likelihood of success for TJJD youth.

TJJD's final budget structure included a number of changes from the current version intended to improve transparency and clarity in the use of funds. For example, facility costs that are fixed in nature will now appear separately from those that are driven by population. Two new strategies will clearly identify the system-wide administrative costs of probation. The state's residential system and the cost of parole supervision are distinguished from the costs of related programs and services. The final budget structure and funding allocations also included a realignment of some staff and programs to ensure the source of funds is appropriate based on their purpose and activities. New this biennium, TJJD and a number of other agencies will be required to coordinate planning around behavioral health programs, with up to $123.8 million per year of TJJD's budget subject to this requirement.

The table compares 2016-2017 General Revenue (GR) appropriations to the 2014-2015 base by functional area of the agency. In total, GR funding is very close to level with the prior biennium, though reprioritized to meet certain core needs and to track with TJJD's objective to prioritize the "front end" of the juvenile justice system.

Program Area	2014-15 GR	2016-17 GR	Change	Pct
Probation	$293,733,123	$297,098,741	$3,365,618	1.1%
State Programs/Facilities	$253,839,555	$246,687,414	$(7,152,141)	-2.8%
Parole	$8,187,363	$8,174,307	$(13,056)	-0.2%
Training/Monitoring	$8,948,325	$8,258,377	$(689,948)	-7.7%
Indirect Administration	$24,610,777	$28,791,766	$4,180,989	17.0%
Total, TJJD	$589,319,143	$589,010,605	$(308,538)	-0.1%
Independent Ombudsman	$889,023	$1,949,422	$1,060,399	119.3%
Grand Total, TJJD/OIO Bill Pattern	$590,208,166	$590,960,027	$751,861	0.1%

Not included in the table is approximately $43.9 million in other funding sources for the 2016-2017 biennium that are designated for specific purposes. This is less than the 2014-2015 base of $59.0 million, though nearly all of the reduction is explained by bond funds, which are received and spent unevenly across biennia.

Of TJJD's original and amended exceptional item requests, most went unfunded; however, this was the logical result of broader policy considerations and the transitions to come. Several unfunded needs will be revisited in the next appropriations cycle, with upgrades to TJJD's aging information technology infrastructure among the most critical needs. In addition to regionalization of probation activities, 2016-2017 appropriation levels support several initiatives and operational needs not included in the 2014-2015 base budget:

A 2.5 percent salary increase in each year for Juvenile Correctional and Parole Officers ($4.3 million)

Additional Parole Officers ($0.9 million) and workforce reentry positions ($0.3 million)

Building overhead costs at TJJD's headquarters building ($2.9 million) and increased Data Center Services costs ($1.2 million)

Desktop and laptop ($0.4 million) and fleet vehicle ($0.2 million) replacements

Authority to repurpose bond proceeds from previously cancelled projects toward new deferred maintenance needs ($1.7 million)

In summary, appropriations for the 2016-17 biennium meet the core needs of the agency, maintaining the operational status quo in state programs while long-term planning, programmatic transitions, and regionalization of probation activities take place. Some funding was reprioritized toward the "front end" of the juvenile justice system, and implementing that shift will be a major focus of the coming biennium. TJJD looks forward to working with its partners across the state to realize our collective goal of an effective continuum of services that promotes positive youth outcomes.

Texas Juvenile Justice Department
2016 - 2017 Biennium
Actual Funding

Description	FY 2016	FY 2017
A. Goal: Community Juvenile Justice		
A.1.1. Strategy: Prevention and Intervention	$3,137,684	$3,137,685
A.1.2. Strategy: Basic Probation Supervision	$41,464,872	$40,571,064
A.1.3. Strategy: Community Programs	$44,359,374	$45,441,926
A.1.4. Strategy: Pre and Post Adjudication Facilities	$25,814,997	$25,814,497
A.1.5. Strategy: Commitment Diversion Initiatives	$19,492,500	$19,492,500
A.1.6. Strategy: Juvenile Justice Alternative Ed Programs	$6,250,000	$6,250,000
A.1.7. Strategy: Mental Health Services Grants	$12,804,748	$12,804,748
A.1.8. Strategy: Regional Diversion Alternatives	$435,490	$9,139,405
A.1.9. Strategy: Probation System Support	$2,476,954	$2,476,955
Total, Goal A:	**$156,236,619**	**$2,476,955**
B. Goal: State Services and Facilities		
B.1.1. Strategy: Assessment, Orientation, Placement	$2,021,924	$2,021,924
B.1.2. Strategy: Institutional Operations and Overhead	$13,637,898	$13,637,898
B.1.3. Strategy: Institutional Supervision and Food Service	$58,110,656	$55,270,092
B.1.4. Strategy: Education	$15,709,509	$15,241,206
B.1.5. Strategy: Halfway House Operations	$9,738,097	$8,982,926
B.1.6. Strategy: Health Care	$8,905,512	$8,691,471
B.1.7. Strategy: Mental Health (Psychiatric Care)	$841,595	$784,272
B.1.8. Strategy: Integrated Rehabilitation Treatment	$12,577,591	$11,767,965
B.1.9. Strategy: Contract Residential Placements	$6,514,978	$8,919,672
B.1.10. Strategy: Residential System Support	$2,802,214	$2,802,214
B.2.1. Strategy: Office of Inspector General	$2,184,961	$2,184,961
B.2.2. Strategy: Health Care Oversight	$995,233	$995,233
B.3.1. Strategy: Construct and Renovate Facilities	$302,796	$302,796
Total, Goal B:	**$134,342,964**	**$131,602,630**
C. Goal: Parole Services		
C. C.1.1. Strategy: Parole Direct Supervision	$2,777,638	$2,534,133
C. C.1.2. Strategy: Parole Programs and Services	$1,443,121	$1,419,415
Total, Goal C:	**$4,220,759**	**$3,953,548**
D. Goal: Office of Independent Ombudsman		
D.1.1. Strategy: Office of Independent Ombudsman	$1,007,961	$941,461
E. Goal: Juvenile Justice System		

E.1.1. Strategy: Training and Certification	$1,676,997	$1,664,911
E.1.2. Strategy: Monitoring and Inspections	$2,296,156	$2,290,299
E.1.3. Strategy: Interstate Agreement	$260,007	$260,007
Total, Goal E:	**$4,233,160**	**$4,215,217**
F. Goal: Indirect Administration		
F.1.1. Strategy: Central Administration	$8,878,871	$8,697,709
F.1.2. Strategy: Information Resources	$5,936,364	$5,465,176
Total, Goal F:	**$14,815,235**	**$14,162,885**
Total Appropriation	**$314,856,698**	**$320,004,521**

Appropriation Riders to TJJD Budget

1. **Performance Measure Targets**. The following is a listing of the key performance target levels for the Texas Juvenile Justice Department. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Texas Juvenile Justice Department. In order to achieve the objectives and service standards established by this Act, the Texas Juvenile Justice Department shall make every effort to attain the following designated key performance target levels associated with each item of appropriation. [Modified due to length.]

2. **Capital Budget**. None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below shall be expended only for the purposes shown and are not available for expenditure for other purposes. Amounts appropriated above and identified on this provision as appropriations either for "Lease payments to the Master Lease Purchase Program" or for items with an "(MLPP)" notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance Authority pursuant to the provisions of Government Code §1232.103.

3. **Appropriation of Other Agency Funds**. Any unexpended balances remaining in Independent School District Funds (not to exceed $155,000 and included in the amounts above), the Student Benefit Fund (not to exceed $140,000 and included in the amounts above), the Canteen Revolving Funds (not to exceed $7,500 and included in the amounts above), any gifts, grants, and donations as of August 31, 2015, and August 31, 2016 (estimated to be $0), and any revenues accruing to those funds are appropriated to those funds for the succeeding fiscal years. Funds collected by vocational training shops at Juvenile Justice Department institutions, including unexpended balances as of August 31, 2015 (not to exceed $21,000 and included in the amounts above), are hereby appropriated for the purpose of purchasing and maintaining parts, tools, and other supplies necessary for the operation of those shops.

4. **Restrictions, State Aid**. None of the funds appropriated above and allocated to local juvenile probation boards shall be expended for salaries or expenses of juvenile board members. None of the funds appropriated above and allocated to local juvenile probation boards shall be expended for salaries of personnel that exceed 112 percent of the previous year.

5. **Revolving Funds**. The Juvenile Justice Department may establish out of any funds appropriated herein a revolving fund not to exceed $10,000 in the Central Office, and $10,000 in each institution, field office, or facility under its direction. Payments from these revolving funds may be made as directed by the department. Reimbursement to such revolving funds shall be made out of appropriations provided for in this Article.

6. **Student Employment**. Subject to the approval of the Juvenile Justice Department, students residing in any Juvenile Justice Department facility may be assigned necessary duties in the operations of the facility and be paid on a limited basis out of any funds available to the respective institutions or facility not to exceed $50,000 a year for each institution and $10,000 a year for any other facility.

7. **Appropriation and Tracking of Title IV-E Receipts**. The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The

Juvenile Justice Department (JJD) shall certify to the Texas Department of Family and Protective Services that federal financial participation can be claimed for Title IV-E services provided by counties. JJD shall direct necessary general revenue funding to ensure that the federal match for the Title IV-E Social Security Act is maximized for use by participating counties. Such federal receipts are appropriated to JJD for the purpose of reimbursing counties for services provided to eligible children. In accordance with Article IX, Section 8.02(a) of this Act, when reporting Federal Funds to the Legislative Budget Board, JJD must report funds expended in the fiscal year that funds are disbursed to counties, regardless of the year in which the claim was made by the county, received by JJD, or certified by JJD.

8. **Federal Foster Care Claims**. Out of appropriations made above, the Texas Department of Family and Protective Services and the Juvenile Justice Department shall document possible foster care claims for children in juvenile justice programs and maintain an interagency agreement to implement strategies and responsibilities necessary to claim additional federal foster care funding; and consult with juvenile officials from other states and national experts in designing better foster care funding initiatives.

9. **Support Payment Collections**. The Juvenile Justice Department shall annually report to the Governor and the Legislative Budget Board the number of active accounts, including the amounts owed to the state pursuant to the Texas Family Code §54.06 (a) court orders, and the total amount of funds collected.

10. **Employee Medical Care**. Appropriations made in this Act for the Juvenile Justice Department not otherwise restricted in use may also be expended to provide medical attention by medical staff and infirmaries at Juvenile Justice Department facilities, or to pay necessary medical expenses, including the cost of broken eyeglasses and other health aids, for employees injured while performing the duties of any hazardous position which is not reimbursed by workers' compensation and/or employees' state insurance. For the purpose of this section, "hazardous position" shall mean one for which the regular and normal duties inherently involve the risk or peril of bodily injury or harm. Appropriations made in this Act not otherwise restricted in use may also be expended for medical tests and procedures on employees that are required by federal or state law or regulations when the tests or procedures are required as a result of the employee's job assignment or when considered necessary due to potential or existing litigation.

11. **Safety**. In stances in which regular employees of facilities operated by the Juvenile Justice Department are assigned extra duties on special tactics and response teams, supplementary payments, not to exceed $200 per month for team leaders and $150 per month for team members, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classifications and assigned salary ranges.

12. **Charges to Employees and Guests**. Collections for services rendered to Juvenile Justice Department employees and guests shall be made by a deduction from the recipient's salary or by cash payment in advance. Such deductions and other receipts for these services from employees and guests are hereby appropriated to the facility. Refunds of excess collections shall be made from the appropriations to which the collection was deposited.

    As compensation for services rendered and notwithstanding any other provision in this Act, any facility under the jurisdiction of the Juvenile Justice Department may provide free meals for food service personnel and volunteer workers and may furnish housing facilities, meals and laundry service in exchange for services rendered by interns, chaplains in training, and student nurses.

13. **Juvenile Justice Department Alternative Education Program (JJAEP)**. Funds transferred to the Juvenile Justice Department (JJD) pursuant to Texas Education Agency (TEA) Rider 28 and appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, shall be allocated as follows: $1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the mandated counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

    The remaining funds shall be allocated for distribution to the counties mandated by § 37.011(a) Texas Education Code, at the rate of $96 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under §37.007, Texas Education Code. Counties are not eligible to receive these funds until the funds initially allocated at the beginning of each fiscal year have been expended at the rate of $96 per student per day of attendance. Counties in which popula-

tions exceed 72,000 but are 125,000 or less, may participate in the JJAEP and are eligible for state reimbursement at the rate of $96 per student per day.

JJD may expend any remaining funds for summer school programs. Funds may be used for any student assigned to a JJAEP. Summer school expenditures may not exceed $3.0 million in any fiscal year.

Unspent balances in fiscal year 2016 shall be appropriated to fiscal year 2017 for the same purposes in Strategy A.1.6.

The amount of $96 per student day for the JJAEP is an estimated amount and not intended to be an entitlement. Appropriations for JJAEP are limited to the amounts transferred from the Foundation School Program pursuant to TEA Rider 28. The amount of $96 per student per day may vary depending on the total number of students actually attending the JJAEPs. Any unexpended or unobligated appropriations shall lapse at the end of fiscal year 2017 to the Foundation School Fund No. 193.

JJD may reduce, suspend, or withhold Juvenile Justice Alternative Education Program funds to counties that do not comply with standards, accountability measures, or Texas Education Code Chapter 37.

14. **Funding for Additional Eligible Students in JJAEPs**. Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, a maximum of $500,000 in each fiscal year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Juvenile Justice Department at the rate of $96 per day per student for students who are required to be expelled under § 37.007, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

15. **JJAEP Accountability**. Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Justice Department (JJD) shall ensure that JJAEPs are held accountable for student academic and behavioral success. JJD shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2016. The report shall include, but is not limited to, the following:

an assessment of the degree to which each JJAEP enhanced the academic performance and behavioral improvement of attending students;

a detailed discussion on the use of standard measures used to compare program formats and identify those JJAEPs most successful with attending students;

student passage rates on the State of Texas Assessment of Academic Readiness (STARR) in the areas of reading and math for students enrolled in the JJAEP for a period of 90 days or longer;

standardized cost reports from each JJAEP and their contracting independent school district(s) to determine differing cost factors and actual costs per each JJAEP program by school year;

average cost per student attendance day for JJAEP students. The cost per day information shall include an itemization of the costs of providing educational services mandated in the Texas Education Code §37.011. This itemization shall separate the costs of mandated educational services from the cost of all other services provided in JJAEPs. Mandated educational services include facilities, staff, and instructional materials specifically related to the services mandated in Texas Education Code §37.011. All other services include, but are not limited to, programs such as family, group and individual counseling, military-style training, substance abuse counseling, and parenting programs for parents of program youth; and inclusions of a comprehensive five-year strategic plan for the continuing evaluation of JJAEPs which shall include oversight guidelines to improve: school district compliance with minimum program and accountability standards, attendance reporting, consistent collection of costs and program data, training, and technical assistance needs.

16. **Appropriations Transfers between Fiscal Years**. In addition to the transfer authority provided elsewhere in this Act, the Juvenile Justice Department may transfer appropriations in an amount not to exceed $10,000,000 made for fiscal year 2017 to fiscal year 2016 subject to the following conditions provided by this section:

a. Transfers under this section may be made only if (1) juvenile correctional populations exceed appropriated areas of daily population targets or (2) for any other emergency expenditure, including expenditures necessitated by public calamity.

b. A transfer authorized by this section must receive prior approval from the Governor and the Legislative Budget Board.

c. The Comptroller of Public Accounts shall cooperate as necessary to assist the completion of a transfer and spending under this section.

17. **State-owned Housing Authorized**. The chief superintendent, assistant superintendent, and the director of security are authorized to live in state-owned housing at a rate determined by the department. Other Juvenile Justice Department employees may live in state operated housing as set forth in Article IX, §11.02, Reporting Related to State Owned Housing, of this Act. Fees for employee housing are hereby appropriated to be used for maintaining employee housing and shall at least cover the agency cost of maintenance and utilities for the housing provided.

18. **Unexpended Balances – Hold Harmless Provision**. Any unexpended balances as of August 31, 2016, in Strategy A.1.2, Basic Probation Supervision (estimated to be $400,000), above are hereby appropriated to the Juvenile Justice Department in fiscal year 2017 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise be affected as a result of reallocation related to population shifts.

19. **Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments**. The Juvenile Justice Department (JJD) shall maintain procedures to ensure that the state is refunded all unexpended and unencumbered balances of state funds held as of the close of each fiscal year by local juvenile probation departments. All fiscal year 2016 and fiscal year 2017 refunds received from local juvenile probation departments by TJJD are appropriated above in Strategy A.1.3, Community Programs. Any juvenile probation department refunds received in excess of $2,300,000 for the 2016-17 biennium shall lapse to the General Revenue Fund.

20. **Salaries, Education Professionals**. Each principal, supervisor, and classroom teacher employed in an institution operated by the Juvenile Justice Department (JJD) shall receive a monthly salary to be computed as follows: The applicable monthly salary rate specified in §21.402, Texas Education Code, as amended, shall be multiplied by ten to arrive at a ten month salary rate. Such rate shall be divided by the number of days required in §21.401, Texas Education Code, for 10-month employees, and the resulting daily rate shall be multiplied by the number of on-duty days required of JJD educators, resulting in the adjusted annual salary. The adjusted annual salary is to be divided by 12 to arrive at the monthly rate. Salary rates for educational aides commencing employment before September 1, 1999, shall be calculated in the same manner, using 60 percent of the salary rate specified in §21.402, Texas Education Code.

JJD may authorize salary rates at the amounts above the adjusted annual salary determined in the preceding formula, but such rates, including longevity for persons commencing employment on September 1, 1983, or thereafter, and excluding hazardous duty pay, shall never exceed the rates of pay for like positions paid in the public schools of the city in which the JJD institution is located. Any authorized local increments will be in addition to adjusted annual salaries. When no similar position exists in the public schools of the city in which the JJD facility is located, the JJD may authorize a salary rate above the adjusted annual salary determined in the formula provided by Section a.

There is hereby appropriated to JJD from any unexpended balances on hand as of August 31, 2016, funds necessary to meet the requirements of this section in fiscal year 2017 in the event adjustments are made in the salary rates specified in the Texas Education Code or in salary rates paid by the public schools where JJD facilities are located.

21. **Training for GED and Reading Skills**. Out of funds appropriated above in Strategy B.1.4, Education, the Juvenile Justice Department shall prioritize reading at grade level and preparation for the GED in its educational program. A report containing statistical information regarding student performance on the Test of Adult Basic Education (TABE) shall be submitted to the Legislative Budget Board and the Governor on or before December 1, 2016.

22. **Salary Adjustment Authorized**. Notwithstanding other provisions of this Act, the Juvenile Justice Department is authorized to adjust salaries and pay an additional evening, night, or weekend shift differential not to exceed 15 percent of the monthly pay rate of Juvenile Correctional Officers I, Juvenile Correctional Officers II, Juvenile Correctional Officers III, Juvenile Correctional Officers IV, Juvenile Correctional Officers V, and Juvenile Correctional Officers VI to rates within the designated salary group for the purpose of recruiting, employing and retaining career juvenile correctional personnel. Merit raises are permitted for all Juvenile Correctional Officers who are not receiving or are

no longer eligible to receive step adjustments on the career ladder system.

23. **Appropriations Prohibited for Purposes of Payment to Certain Employees**. None of the appropriations made by this Act to the Juvenile Justice Department (JJD) may be distributed to or used to pay an employee of JJD who is required to register as a sex offender under Chapter 62 Code of Criminal Procedure, or has been convicted of an offense described in Article 42.12, Section 3g, Code of Criminal Procedure.

24. **Appropriation: Unexpended Balances of General Obligation Bond Proceeds**. In addition to the amounts appropriated above are unexpended and unobligated balances of General Obligation Bond Proceeds for projects that have been approved under the provisions of Article IX, Section 17.02 of Senate Bill 1, Eighty-third Legislature, Regular Session, 2013, remaining as of August 31, 2015 (estimated to be $5,307,914), for repair and rehabilitation for existing facilities, for the 2016-17 biennium.

    In addition to the amounts appropriated above are unexpended and unobligated balances of General Obligation Bond Proceeds for projects that have been approved under the provisions of Article IX, Sections 17.11 of Senate Bill 1, Eighty-first Legislature, Regular Session, 2009, remaining as of August 31, 2015, (estimated to be $230,681), for repair and rehabilitation of existing facilities, for the 2016-17 biennium.

    In addition to the amounts appropriated above are unexpended and unobligated balances of General Obligation Bond Proceeds for projects that have been approved under the provisions of Article IX, Sections 19.70 and 19.71 of House Bill 1, Eightieth Legislature, Regular Session, 2007, remaining as of August 31, 2015, (estimated to be $1,714,301), for repair and rehabilitation of existing facilities, for the 2016-17 biennium. JJD may repurpose an amount not exceeding $1,714,301 from General Obligation Bond Proceeds from previously cancelled projects for expenditure on other repair and rehabilitation projects.

    Any unexpended balances in General Obligation Bond Proceeds described herein and remaining as of August 31, 2016, are hereby appropriated for the same purposes for the fiscal year beginning September 1, 2016.

25. **Managed Health Care and Mental Health Services Contract(s)**. From funds appropriated above, the Juvenile Justice Department (JJD) shall develop and manage a provider contract, or contracts, to deliver the most effective managed health care and mental health (psychiatric) services for the best value. Potential service providers shall not be entitled to pass-through funding from JJD appropriations.

26. **JJAEP Disaster Compensation**. Out of the funds appropriated above in Strategy A.1.6, the Juvenile Justice Department may compensate a mandatory JJAEP for missed mandatory student attendance days in which disaster, flood, extreme weather condition, or other calamity has a significant effect on the program's attendance.

27. **Specialized Treatment Report**. The Juvenile Justice Department shall, in its annual report, provide an assessment of the effectiveness of specialized treatment, emphasizing re-arrest rates of offenders receiving treatment.

28. **Reporting Requirements to the Legislative Budget Board**. From funds appropriated above, the Juvenile Justice Department shall maintain a specific accountability system for tracking funds targeted at making a positive impact on youth. The Juvenile Justice Department shall implement a tracking and monitoring system so that the use of all funds appropriated can be specifically identified and reported to the Legislative Budget Board. In addition to any other requests for information, the agency shall produce annual report on the following information for the previous fiscal year to the Legislative Budget Board by December 1st of each year;

    The report shall include detailed monitoring, tracking, utilization, and effectiveness information on all funds appropriated in Goal A. Community Juvenile Justice. The report shall include information on the impact of any new initiatives and all programs tracked by the Juvenile Justice Department. Required elements include, but are not limited to prevention and intervention programs, residential placements, enhanced community-based services for serious and chronic felons such as sex offender treatment, intensive supervision, and specialized supervision, community-based services for misdemeanants no longer eligible for commitment to the Juvenile Justice Department, and the Commitment Diversion Initiatives, and Regional Diversion Alternatives.

    The report shall include information on all training, inspection, monitoring, investigation, and technical assistance activities conducted using funds appro-

priated in Goal A, D and E. Required elements include, but are not limited to training conferences held, practitioners trained, facilities inspected, and investigations conducted.

The annual report submitted to the Legislative Budget Board pursuant to this provision must be accompanied by supporting documentation detailing the sources and methodologies utilized to assess program effectiveness and any other supporting material specified by the Legislative Budget Board.

The annual report submitted to the Legislative Budget Board pursuant to this provision must contain a certification by the person submitting the report that the information provided is true and correct based upon information and belief together with supporting documentation.

The annual report submitted to the Legislative Budget Board pursuant to this provision must contain information on each program receiving funds from Strategy A.1.1, Prevention and Intervention, including all outcome measures reported by each program and information on how funds were expended by each program.

In addition to the annual report described above, the Juvenile Justice Department shall report juvenile probation population data as requested by the Legislative Budget Board on a monthly basis for the most recent month available. The Juvenile Justice Department shall report to the Legislative Budget Board on all populations specified by the Legislative Budget Board, including, but not limited to, additions, releases, and end-of-month populations. End of fiscal year data shall be submitted indicating each reporting county to the Legislative Budget Board no later than two months after the close of each fiscal year. The Juvenile Justice Department will use Legislative Budget Board population projections for probation supervision and state correctional populations when developing its legislative appropriations request for the 2018-19 biennium.

Upon the request of the Legislative Budget Board, the Juvenile Justice Department shall report expenditure data by strategy, program, or in any other format requested, including substrategy expenditure detail.

The Comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to the Juvenile Justice Department in Goal E, Indirect Administration, if the Legislative Budget Board certifies to the Comptroller of Public Accounts that the Juvenile Justice Department is not in compliance with any of the provisions of this Section.

29. **Harris County Leadership Academy**. Out of funds appropriated above in Strategy A.1.4, Pre and Post Adjudication Facilities, $1,000,000 in General Revenue Funds in each fiscal year shall be expended for the Harris County Leadership Academy.

30. **Commitment Diversion Initiatives**. Out of the funds appropriated above in Strategy A.1.5, Commitment Diversion Initiatives, $19,492,500 in General Revenue Funds in fiscal year 2016 and $19,492,500 in General Revenue Funds in fiscal year 2017, may be expended only for the purposes of providing programs for the diversion of youth from the Juvenile Justice Department. The programs may include, but are not limited to, residential, community-based, family, and aftercare programs. The allocation of State funding for the program is not to exceed the rate of $140 per juvenile per day. The Juvenile Justice Department shall maintain procedures to ensure that the State is refunded all unexpended and unencumbered balances of State funds at the end of each fiscal year.

These funds shall not be used by local juvenile probation departments for salary increases or costs associated with the employment of staff hired prior to September 1, 2009.

The juvenile probation departments participating in the diversion program shall report to the Juvenile Justice Department regarding the use of funds within thirty days after the end of each quarter. The Juvenile Justice Department shall report to the Legislative Budget Board regarding the use of the funds within thirty days after receipt of each county's quarterly report. Items to be included in the report include, but are not limited to, the amount of funds expended, the number of youth served by the program, the percent of youth successfully completing the program, the types of programming for which the funds were used, the types of services provided to youth served by the program, the average actual cost per youth participating in the program, the rates of recidivism of program participants, the number of youth committed to the Juvenile Justice Department, any consecutive length of time over six months a juvenile served by the diversion program resides in a secure corrections facility, and the number of juveniles transferred to criminal court under Family Code, §54.02.

The Juvenile Justice Department shall maintain a mechanism for tracking youth served by the diversion program to determine the long-term success for diverting youth from state juvenile correctional incarceration and the adult criminal justice system. A report on the program's results shall be included in the report that is required under Juvenile Justice Department Rider 28 to be submitted to the Legislative Budget Board by December 1st of each year. In the report, the Juvenile Justice Department shall report the cost per day and average daily population of all programs funded by Strategy A.1.5, Commitment Diversion Initiatives, for the previous fiscal year.

The Comptroller of Public Accounts shall not allow the expenditures of funds appropriated by this Act to the Juvenile Justice Department in Goal E, Indirect Administration, if the Legislative Budget Board certifies to the Comptroller of Public Accounts that the Juvenile Justice Department is not in compliance with any of the provisions of this Section.

31. **Local Assistance**. From funds appropriated above Strategy F.1.1, Central Administration, $140,000 in fiscal year 2016 and $144,000 in fiscal year 2017 in General Revenue Funds and two full-time equivalent positions in each fiscal year shall be used to increase technical assistance on program design and evaluation for programs operated by juvenile probation departments. This shall include, but not be limited to:

providing in-debt consultative technical assistance on program design, implementation, and evaluation to local juvenile probation departments;

assisting juvenile probation departments in developing logic models for all programs;

developing recommended performance measures by program type;

facilitating partnerships with universities, community colleges, or larger probation departments to assist departments with statistical program evaluations where feasible;

following current research on juvenile justice program design, implementation, and evaluation; and,

disseminating best practices to juvenile probation departments.

Staff who perform these duties shall be included in the agency's research function and shall not be responsible for monitoring departments' compliance with standards.

32. **Grievance Procedures**. From funds appropriated above, the Juvenile Justice Department will adopt and maintain employee disciplinary and grievance procedures substantially equivalent to the Texas Department of Criminal Justice's employee grievance procedures.

The Juvenile Justice Department Board's disciplinary procedures shall allow an employee of the department to be represented by a designee of the employee's selection who may participate in the hearing on behalf of an employee charged with any type of disciplinary violation.

The Board's grievance procedures shall attempt to solve problems through a process which recognizes the employee's right to bring grievances pursuant to the procedures in this section. The grievance procedures shall include either independent mediation or independent, non-binding arbitration of disputes between the employer and the employee if the disciplining authority recommends that the employee be terminated or the employee is terminated.

33. **Mental Health Services**. Out of the funds appropriated above in Strategy A.1.7, Mental Health Services Grants, the Juvenile Justice Department shall allocate $12,804,748 in fiscal year 2016 and $12,804,748 in fiscal year 2017 to fund mental health services provided by local juvenile probation departments. Funds subject to this provision shall be used local juvenile probation departments only for providing mental health services to juvenile offenders. Funds subject to this provision may not be utilized for administration expenses of local juvenile probation departments nor may they be used to supplant local funding.

34. **Probation Grants**. From funds appropriated above in Goal A, Community Juvenile Justice, the Juvenile Justice Department shall develop a juvenile probation grant structure that:

adheres to the budget structure in the agency's bill pattern;

is straightforward in its requirements, providing flexibility to juvenile probation departments within the confines of the agency budget structure and other provisions of this Act; and,

requires juvenile probation departments to report expenditures in accordance with the agency budget structure and agency grant requirements.

35. **Regional Diversion Alternatives**. Out of funds appropriated above the Texas Juvenile Justice Department (TJJD) is appropriated $435,490 in fiscal year 2016 and $9,139,405 in fiscal year 2017 in General Revenue in Strategy A.1.8, Regional Diversion Alternatives, for the implementation of a regionalization program to keep juveniles closer to home in lieu of commitment to the juvenile secure facilities operated by the TJJD.

    TJJD shall develop a plan for the implementation of regionalization of juveniles to keep juveniles closer to home in lieu of commitment to the juvenile secure facilities operated by the Texas Juvenile Justice Department (TJJD). The regionalization plan shall be developed through consultation with juvenile probation departments to define regions, identify post-adjudication facility capacity for support of the plan, and with TJJD confirmation that each region has defined, appropriate, research-based programs for the target populations under the regionalization plan. The plan shall include timelines for implementation, including minimization of use of state secure capacity and potential closure of TJJD facilities. TJJD shall submit the regionalization plan to the Chair of the House Appropriations Committee, Chair of the Senate Finance Committee, Speaker of the House, Lieutenant Governor, Office of the Governor, and the Legislative Budget Board not later than January 1, 2016.

    Out of funds appropriated above and contingent upon the enactment of Senate Bill 1630, or similar legislation by the Eighty-fourth Legislature, $560,500 in fiscal year 2016 and $494,000 in fiscal year 2017 in General Revenue Funds and seven full-time equivalent positions are appropriated in Strategy D.1.1, Office of the Independent Ombudsman, for the expansion of duties of the office to local secure facilities. If Senate Bill 1630 or similar legislation is not enacted by the Eighty-fourth Legislature, the appropriation and intent in Section b shall have no effect.

36. **Contingency for Behavioral Health Funds**. Notwithstanding appropriation authority granted above, the Comptroller of Public Accounts shall not allow the expenditure of General Revenue-Related behavioral health funds for the Texas Juvenile Justice Department in Strategies A.1.1, Prevention and Intervention; A.1.3, Community Programs; A.1.4, Pre and Post Adjudication Facilities; A.1.5, Commitment Diversion Initiatives; A.1.7, Mental Health Services Grants; B.1.1, Assessment, Orientation, and Placement; B.1.6, Health Care; B.1.7, Mental Health (Psychiatric) Care; B.1.8, Integrated Rehabilitation Treatment; and C.1.2, Parole Programs and Services, in fiscal year 2017, as identified in Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures, if the Legislative Budget Board provides notification to the Comptroller of Public Accounts that the agency's planned expenditure of those funds in fiscal year 2017 does not satisfy the requirements of Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.

37. **Mental Health Services.** Out of the funds appropriated above in Strategy A.1.7, Mental Health Services, the Juvenile Justice Department shall allocate $12,804,748 in fiscal year 2014 and $12,804,748 in fiscal year 2015 to fund mental health services provided by local juvenile probation departments. Funds subject to this provision shall be used local juvenile probation departments only for providing mental health services to juvenile offenders. Funds subject to this provision may not be utilized for administration expenses of local juvenile probation departments nor may they be used to supplant local funding.

1. Title 3 and Related Provisions

Family Code

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION. (b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;

(3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;

(6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305;

(7) notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b) [~~43.02(a)(1) or (2)~~], Penal Code; or

(8) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

Commentary by Kaci Singer

Source: SB 825
Effective Date: September 1, 2015
Applicability: Applies to offenses occurring on or before the effective date.
Summary of Changes: This makes conforming changes to the section references to the Penal Code offense of prostitution, which were amended to have one provision specific to the person accepting a monetary benefit and one provision specific to the person offering the monetary benefit.

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION. (b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;

(3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;

(6) [~~conduct that violates a reasonable and lawful order of a court entered under Section 264.305;~~

[~~(7)~~] notwithstanding Subsection (a)(1), conduct described by Section 43.02(a)(1) or (2), Penal Code; or

(7) [~~(8)~~] notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

Commentary by Kaci Singer

Source: SB 206
Effective Date: September 1, 2015
Applicability: Applies to violations occurring on or after the effective date.
Summary of Changes: The Department of Family and Protective Services (DFPS) is required to provide services to at-risk youth (i.e., the STAR Program), aged seven to seventeen. Current law provides that DFPS can petition a district court to make a finding that a child is an at-risk child. Upon such a finding, the court can order the child and parents to participate in certain services. A child's failure to participate in those services constitutes conduct indicating a need for supervision (CINS) and is to be referred to the juvenile court. SB 206 repeals Family Code Sections 264.303-306, the provisions that contain the mechanism for taking a child to court for an at-risk finding and the subsequent referral to juvenile court. Thus, the definition of CINS in Family Code Section 51.03 has been modified to delete a violation of a STAR court order as a type of conduct indicating a need for supervision.

Family Code Sec. 51.041. JURISDICTION AFTER APPEAL. (a) The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person or the state under Chapter 56 [~~or by the person under Article 44.47, Code of Criminal Procedure,~~] of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.

Commentary by Kaci Singer

Source: SB 888
Effective Date: September 1, 2015
Applicability: Applies to a certification order issued on or after the effective date, regardless of the date of the offense.
Summary of Changes: This is a conforming change related to the repeal of Article 44.47, Code of Criminal Procedure, which is the current law that limits the appeal rights of a juvenile certified to stand trial as an adult so that an appeal cannot be taken until after the person is convicted of, or receives deferred adjudication for, the transferred offense(s). The impetus for this change was the Houston case of *Cameron Moon*. In 2014, his certification as an adult was overturned because the court failed to conduct an individualized assessment of the factors to be considered in making a certification decision and failed to document the reasons for the certification in its order. This was the first successful appeal of a certification in Texas in nearly 25 years. The secondary issue raised with the appeal was the fact that it took more than 6 years from the time of certification to the appeal decision. Supporters of SB 888 cited that time lapse and the fact that the individual was over 18-years of age, made rehabilitation in the juvenile system unavailable to him, as grounds to allow a direct appeal of the certification decision rather than waiting until the conviction or deferred adjudication. This was the law prior to January 1, 1996, at which point it was changed in large part due to concerns over the length of the appellate process. To address this issue, certification appeals must be given priority. The Texas Supreme Court will be required to adopt rules to expedite these cases. It should be noted that the prosecutor also has the right to appeal a certification decision.

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (c) A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

(1) for temporary detention in a jail or lockup pending juvenile court hearing or disposition under conditions meeting the requirements of Section 51.12;

(2) after transfer for prosecution in criminal court under Section 54.02, unless the juvenile court orders the detention of the child in a certified juvenile detention facility under Section 54.02(h); [~~or~~]

(3) after transfer from the Texas Juvenile Justice Department under Section 245.151(c), Human Resources Code; or

(4) after transfer from a post-adjudication secure correctional facility, as that term is defined by Section 54.04011.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.
Summary of Changes: In 2013, Travis County was given the authority to commit juveniles to its post-adjudication secure correctional facility in the same manner as a commitment to the Texas Juvenile Justice Department (TJJD). Unfortunately, not every law that should have been amended was changed. Section 51.13(c), Family Code prohibits the commitment or transfer of a juvenile to an adult penal institution or other facility and sets forth certain exceptions. This amendment adds in Subdivision (c)(4) an exception to apply to circumstances when a juvenile is sent to the Texas Department of Criminal Justice (TDCJ) after transfer from the local post-adjudication secure correction facility in Travis County. This also applies to the transfer of a juvenile who has been committed to TJJD under(c)(3).

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (d) An adjudication under Section 54.03 that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to the Texas Juvenile Justice Department under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) or commitment to a post-adjudication secure correctional facility under Section 54.04011 for conduct that occurred on or after December 1, 2013, is a final felony conviction only for the purposes of Sections 12.42(a), (b), and (c)(1) or Section 12.425, Penal Code.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.
Summary of Changes: This is a cleanup provision to clarify that commitment to a post-adjudication secure correctional facility for conduct that occurred on or after December 1, 2013, is a final felony conviction for punishment enhancement in adult cases. This is identical to a commitment to TJJD except that for TJJD purposes,

the offense date is January 1, 1996. Only offenses committed on or after December 1, 2013, can result in commitment to Travis County's facility.

Family Code Section 53.03. DEFERRED PROSECUTION. (h-1) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, deferred prosecution under this section may include a condition that the child attend a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code.

Commentary by Kaci Singer

Source: HB 642
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Deferred prosecution for possession of a controlled substance (all penalty groups) or possession of marijuana may include a condition that the child must attend a drug education program designed to educate on the dangers of drug abuse. The program must be approved by the Department of State Health Services.

Family Code Section 53.03. DEFERRED PROSECUTION. (h-2) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, deferred prosecution under this section may include a condition that the child attend an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code.

Commentary by Kaci Singer

Source: HB 642
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Deferred prosecution for certain alcohol-related offenses may include a condition requiring the child to attend an alcohol awareness program. The eligible offenses include purchase or attempt to purchase alcohol by a minor, possession or consumption of alcohol by a minor, misrepresentation of age, public intoxication, and driving a vehicle or operating a watercraft by a minor under the influence of any detectable amount of alcohol.

Family Code Sec. 53.045. OFFENSES ELIGIBLE FOR DETERMINATE SENTENCE. (a) Except as provided by Subsection (e), the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that constitutes habitual felony conduct as described by Section 51.031 or that included the violation of any of the following provisions:

(1) Section 19.02, Penal Code (murder);

(2) Section 19.03, Penal Code (capital murder);

(3) Section 19.04, Penal Code (manslaughter);

(4) Section 20.04, Penal Code (aggravated kidnapping);

(5) Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);

(6) Section 22.02, Penal Code (aggravated assault);

(7) Section 29.03, Penal Code (aggravated robbery);

(8) Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other than a state jail felony;

(9) Section 22.05(b), Penal Code (felony deadly conduct involving discharging a firearm);

(10) Subchapter D, Chapter 481, Health and Safety Code, if the conduct constitutes a felony of the first degree or an aggravated controlled substance felony (certain offenses involving controlled substances);

(11) Section 15.03, Penal Code (criminal solicitation);

(12) Section 21.11(a)(1), Penal Code (indecency with a child);

(13) Section 15.031, Penal Code (criminal solicitation of a minor);

(14) Section 15.01, Penal Code (criminal attempt), if the offense attempted was an offense under Section 19.02, Penal Code (murder), or Section 19.03, Penal Code (capital murder), or an offense listed by Article 42A.054(a) [~~Section 3g(a)(1), Article 42.12~~], Code of Criminal Procedure;

(15) Section 28.02, Penal Code (arson), if bodily injury or death is suffered by any person by reason of the commission of the conduct;

(16) Section 49.08, Penal Code (intoxication manslaughter); or

(17) Section 15.02, Penal Code (criminal conspiracy), if the offense made the subject of the criminal conspiracy includes a violation of any of the provisions referenced in Subdivisions (1) through (16).

Commentary by Kaci Singer

Source: HB 2299
Effective Date: January 1, 2017

Applicability: This is a non-substantive revision and renumbering that takes effect January 1, 2017.
Summary of Changes: This is a conforming amendment related to the renumbering of Article 42.12, Code of Criminal Procedure. The offenders currently known as "3(g) offenses" will now be found in Article 42A.054, Code of Criminal Procedure.

Family Code Sec. 54.04. DISPOSITION HEARING. (d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable foster home;

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by the Texas Juvenile Justice Department; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Juvenile Justice Department;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony, the court or jury made a special commitment finding under Section 54.04013, and [~~if~~] the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Juvenile Justice Department under Section 54.04013, or a post-adjudication secure correctional facility under Section 54.04011(c)(1), as applicable, without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Juvenile Justice Department or a post-adjudication secure correctional facility under Section 54.04011(c)(2) with a possible transfer to the Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003;

(5) the court may place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standards for the facility as provided by Section 51.126; or

(6) if applicable, the court or jury may make a disposition under Subsection (m) or Section 54.04011(c)(2)(A).

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2017
Applicability: Applies to conduct that occurs on or after September 1, 2017.
Summary of Changes: Current law allows for an indeterminate commitment to the Texas Juvenile Justice Department or to the Travis County post-adjudication secure correctional facility for a felony offense. This change provides that an indeterminate commitment may only be made if the court makes a "special commitment finding" under new Section 54.04013, Family Code.

Family Code Sec. 54.04013. SPECIAL COMMITMENT TO TEXAS JUVENILE JUSTICE DEPARTMENT. Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2017
Applicability: Applies to conduct that occurs on or after September 1, 2017.
Summary of Changes: As part of the continuing reforms aimed at reducing the number of juveniles com-

mitted to the Texas Juvenile Justice Department (TJJD), this change has the stated purpose of limiting who may be committed to TJJD or the Travis County post-adjudication secure correctional facility. In order to commit a juvenile with an indeterminate sentence, the juvenile must have committed a felony and the court must make a "special commitment finding," which is essentially an affirmative finding, that the child has behavioral health or other special needs that cannot be met with the resources available in the community. In making its determination, the court should, but is not required to, consider the findings of a validated risk and needs assessment and any other professional assessments available to the court. The "special commitment finding" is not required to be made for a determinate sentence commitment. It bears noting that this provision only requires the "special commitment finding" to be made in a disposition hearing under Section 54.04, Family Code; it was not extended to a modification hearing under Section 54.05, Family Code. This is possibly a drafting oversight. Courts should likely consider making this finding for every indeterminate commitment, whether it is a direct commitment or a commitment as a result of a modification hearing.

Family Code Sec. 54.0404 ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING A MINOR: EDUCATIONAL PROGRAMS. (a) If a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) [~~51.03(b)(8)~~], the juvenile court may enter an order requiring the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

Commentary by Kaci Singer

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This is a change as a result of the bill to decriminalize failure to attend school. In addition to decriminalizing truancy, the law was changed to remove truancy as conduct indicating a need for supervision (CINS). This change resulted in renumbering within the definition of CINS and corresponding changes. This change ensures that the reference in this subsection continues to relate to "sexting."

Family Code Sec. 54.047. ALCOHOL OR DRUG RELATED OFFENSE. (a) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision [~~or delinquent conduct~~] that constitutes a violation of Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the court may order that the child attend a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code.

(b) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, the court may order that the child attend an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code.

(c) The court shall, in addition to any order described by Subsection (a) or (b), [~~subject to a finding under Section 54.04(c),~~] order[~~, in addition to any other order authorized by this title,~~] that, in the manner provided by Section 106.071(d), Alcoholic Beverage Code:

(1) the child perform community service; and

(2) the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.

(d) An order under this section:

(1) is subject to a finding under Section 54.04(c); and

(2) may be issued in addition to any other order authorized by this title.

(e) The Department of State Health Services:

(1) is responsible for the administration of the certification of drug education programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding drug education programs approved under this section; and

(4) shall monitor and provide training to a person who provides a drug education program.

(f) If the court orders a child under Subsection (a) or (b) to attend a drug education program or alcohol awareness program, unless the court determines that the parent or guardian of the child is indigent and unable to pay the cost, the court shall require the child's parent or a guardian of the child to pay the cost of attending the program. The court shall allow the child's parent or guardian to pay the cost of attending the program in installments.

Commentary by John Gonzales

Source: HB 642
Effective Date: September 1, 2015
Applicability: Applies to adjudication and disposition orders rendered on or after the effective date.

Summary of Changes: When a child is adjudicated for an alcohol related offense, the judge is required to order both community service and suspend or deny a child's driver's license or permit. Depending on the offense, the court must now also order the child to attend a drug education or alcohol awareness program. Section 54.047, Family Code is retitled and adds several offenses to the list of adjudications in which a court has the discretion to require a juvenile to attend a drug education or alcohol awareness program. For a drug education program the offenses include possession of substances in penalty groups 1, 1-A, 2, 2-A, 3, 4 and possession of marijuana. Driving a watercraft while under the influence of alcohol was added to this section of alcohol related offenses. The court is still required to find that the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made before ordering a juvenile to participate in the programs. The court must determine whether a parent is indigent and if not, the parent will be responsible for payment of the fee for the class which can be paid in installments. The Department of State Health Services may charge a fee for the application, approval and certification of the programs.

Family Code Section 54.05. HEARING TO MODIFY DISPOSITION. (b) Except for a commitment to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility under Section 54.04011[~~, a disposition under Section 54.0402,~~] or a placement on determinate sentence probation under Section 54.04(q), all dispositions automatically terminate when the child reaches the child's 18th birthday.

Commentary by Kaci Singer

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This is a conforming change related to the decriminalization of failure to attend school and the deletion of truancy as conduct indicating a need for supervision. Section 54.0402, deleted here, was a provision regarding a juvenile court disposition order for truancy.

Family Code Sec. 54.06. JUDGMENTS FOR SUPPORT. (e) The court shall apply the child support guidelines under Subchapter C, Chapter 154, in an order requiring the payment of child support under this section. The court shall also require in an order to pay child support under this section that health insurance <u>and dental insurance</u> be provided for the child. Subchapter D, Chapter 154, applies to an order requiring health insurance <u>and dental insurance</u> for a child under this section.

Commentary by John Gonzales

Source: SB 550
Effective Date: September 1, 2018
Applicability: Applies to a suit affecting the parent-child relationship filed on or after the effective date.
Summary of Changes: When the juvenile court orders placement of a child outside the home, a finding to order or waive child support is required. Should the court adjudge an order of support, Section 54.06 (e) now requires the parent to maintain both health and dental insurance coverage.

Senate Bill 219
Extensive Bill Text Omitted

AN ACT relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies, and the licensing of certain health professionals; clarifying certain statutory provisions; authorizing the imposition of fees.

Commentary by John Gonzales

Source: SB 219
Effective Date: April 2, 2015
Applicability: The bill makes non-substantive changes.
Summary of Changes: While SB 219 relates to the reorganization of the Health and Human Services Commission, juvenile justice practitioners will be most interested in its effect on Chapter 55 of the Family Code. Chapter 55 is renamed Proceedings Concerning Children with Mental Illness or Intellectual Disabilities. SB 219 updates sections that contain terminology recognized as offensive or insensitive. The term "mental retardation" has been deleted and replaced with the descriptive term "intellectual disability." References to the former Department of Mental Health and Mental Retardation have also been deleted and replaced with the Department of State Health Services.

Family Code Sec. 56.01. RIGHT TO APPEAL. (c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

(A) <u>Section 54.02 respecting transfer of the child for prosecution as an adult;</u>

(B) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;

(C) [~~(B)~~] Section 54.04 disposing of the case;

(D) [~~(C)~~] Section 54.05 respecting modification of a previous juvenile court disposition; or

(E) [~~(D)~~] Chapter 55 by a juvenile court committing a child to a facility for the mentally ill or intellectually disabled [~~mentally retarded~~]; or

(2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the Texas Department of Criminal Justice.

Commentary by Kaci Singer

Source: SB 888
Effective Date: September 1, 2015
Applicability: Applies to a certification order issued on or after the effective date, regardless of the date of the offense.
Summary of Changes: Since January 1, 1996, juveniles certified to stand trial as adults have not been permitted to appeal the certification decision until after a conviction in the criminal court. In 2003, this was expanded to also allow an appeal after a granting of deferred adjudication in the adult court. One of the main reasons cited for the limitations was that appeals take a long time and end up delaying the trial. However, the fact that appeals take so long was also one argument proffered in support of changing the law to allow for an appeal to be taken after the certification decision, without waiting for a conviction or deferred adjudication, which is what this change in law accomplishes. The impetus for this change was the Houston case of *Cameron Moon*. In 2014, Moon's certification as an adult was overturned because the court failed to conduct an individualized assessment of the factors to be considered in making a certification decision and failed to document the reasons for the certification in its order. This was the first successful appeal of a certification in Texas in nearly 25 years. The secondary issue raised with the appeal was the fact that it took more than 6 years from the time of certification to the appeal decision. To address the issue regarding the length of appeals and the impact of that delay in these cases, the appeals must be given priority. The Texas Supreme Court will be required to adopt rules to expedite certification appeals.

Family Code Sec. 56.01. RIGHT TO APPEAL. (g-1) An appeal from an order entered under Section 54.02 respecting transfer of the child for prosecution as an adult does not stay the criminal proceedings pending the disposition of that appeal.

Commentary by Kaci Singer

Source: SB 888
Effective Date: September 1, 2015
Applicability: Applies to juvenile court orders to waive and transfer jurisdiction to criminal court on or after the effective date.
Summary of Changes: As noted above, one of the issues with regard to appeal of a certification decision is the length of time that an appeal can take. In addition to requirements that the appeal be expedited, this section specifies that an appeal of a certification does not stay the criminal proceedings. Thus, the adult court can proceed with the prosecution of the certified offense(s) even though there is an appeal pending regarding the transfer decision.

Family Code Sec. 56.01. RIGHT TO APPEAL. (h) If the order appealed from takes custody of the child from the child's [~~his~~] parent, guardian, or custodian or waives jurisdiction under Section 54.02 and transfers the child to criminal court for prosecution, the appeal has precedence over all other cases.

(h-1) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of an order waiving jurisdiction under Section 54.02 and transferring a child to criminal court for prosecution.

Commentary by Kaci Singer

Source: SB 888
Effective Date: September 1, 2015
Applicability: Applies to a certification order issued on or after the effective date, regardless of the date of the offense.
Summary of Changes: As noted above, one of the issues with regard to appeal of a certification decision is the length of time that an appeal can take. The changes to Section 56.01(h) and (h-1) of the Family Code provide that, in addition to appeals of an order taking custody away from a parent, appeals related to a certification decision have precedence over all other cases. Additionally, the Texas Supreme Court must adopt rules accelerating the disposition of such appeals by the appellate court and Supreme Court.

Family Code Sec. 58.0022. FINGERPRINTS OR PHOTOGRAPHS TO IDENTIFY RUNAWAYS. A law enforcement officer who takes a child into custody with probable cause to believe that the child has engaged in conduct indicating a need for supervision as described by Section 51.03(b)(2) [~~51.03(b)(3)~~] and who after reasonable effort is unable to determine the identity of the child, may fingerprint or photograph the child to establish the child's identity. On determination of the child's identity or that the child cannot be identified by the fingerprints or photographs, the law enforcement officer shall immediately destroy all copies of the fingerprint records or photographs of the child.

Commentary by Kaci Singer

Source: HB 2398
Effective Date: September 1, 2015

Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This is a conforming change related to the decriminalization of failure to attend school and the deletion of truancy as conduct indicating a need for supervision. This change ensures Section 58.0022, Family Code still refers to runaways.

Family Code Sec. 58.003. SEALING OF RECORDS. (a) Except as provided by Subsections (b), [~~and~~] (c), and (e), the juvenile court shall order the sealing of the records in the case [~~on the application~~] of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether the person engaged in delinquent conduct or conduct indicating a need for supervision, [~~on the juvenile court's own motion the court shall order the sealing of the records in the case~~] if [~~the court finds that~~]:

(1) two years have elapsed since final discharge of the person or since the last official action in the person's case if there was no adjudication; and

(2) since the time specified in Subdivision (1), the person has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication.

Commentary by Kaci Singer

Source: HB 263/SB 1707
Effective Date: September 1, 2015
Applicability: Applies to the records of a person who becomes eligible for sealing under Sec. 58.003, Family Code on or after the effective date. The former law continues in effect for records eligible for sealing before the effective date.
Summary of Changes: This change creates an automatic sealing process. There will no longer be an application filed by the person or an attorney on behalf of the person, requesting to have his or her records sealed. Instead, the responsibility falls to the court and the court staff to determine if a person is eligible to have his or her records sealed. For sealing cases in which the record involves no adjudication or an adjudication for a misdemeanor or CINS offense, the court will need to develop a tickler system to know when two years have elapsed since the child's discharge in a case with an adjudication or two years since the date of the last official action in a case in which there was no adjudication. The court will also need to run a criminal history search with the Department of Public Safety (DPS) to determine if the person is eligible for sealing under Section 58.003(a). For a case involving a felony adjudication, the court will need to run each case as the person is approaching 19 years of age to determine if the person meets the sealing eligibility requirements in Section 58.003(c). In any case in which the only reason the person does not qualify for sealing is a pending case, the court will need to continue running the criminal history until the case is resolved. If the case does not result in a disqualifying conviction or adjudication, the person becomes eligible for sealing at the point of resolution. It bears noting, also, that the elimination of an application process effectively eliminates the ability to have records sealed earlier, as currently exists since there is no trigger for early consideration.

Family Code Sec. 58.003. SEALING OF RECORDS. (c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court, on the court's own motion and without a hearing, shall order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~] or taken into custody to determine whether the child engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~]. This subsection applies only to records related to conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~].

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to the records of a person who commits an offense or conduct that occurs on or after the effective date.
Summary of Changes: This is a conforming change related to the decriminalization of failure to attend school and the deletion of truancy as conduct indicating a need for supervision. This change ensures that this subsection still applies to CINS prostitution.

Family Code Sec. 58.003. SEALING OF RECORDS. (e) The court shall give the prosecuting attorney for the juvenile court reasonable notice before a person's records become eligible for sealing under Subsection (a) or (c) and may [~~shall~~] hold a hearing before sealing the [~~a~~] person's records if [~~under Subsection (a) or (c) unless the applicant waives the right to a hearing in writing and the court and~~] the prosecuting attorney requests a hearing [~~for the juvenile court consent~~]. Reasonable notice of the hearing shall be given to:

(1) the person who [~~made the application or who~~] is the subject of the records at issue [~~named in the motion~~];

(2) [~~the prosecuting attorney for the juvenile court;~~

[~~(3)~~] the authority granting the discharge if the final discharge was from an institution or from parole;

(3) [~~(4)~~] the public or private agency or institution having custody of the person's records [~~named in the application or motion~~]; and

(4) [~~(5)~~] the law enforcement agency having custody of the person's files or records [~~named in the application or motion~~].

Commentary by Kaci Singer

Source: HB 263/SB 1707
Effective Date: September 1, 2015
Applicability: Applies to the records of a person who becomes eligible for sealing under Sec. 58.003, Family Code on or after the effective date. The former law continues in effect for records eligible for sealing before the effective date.
Summary of Changes: The amendment to Section 58.003(e) is part of the new automatic sealing provisions. The court, after making its own determination that a person is eligible to have his or her records sealed, must give the prosecuting attorney notice. This notice must be given prior to the time the records actually become eligible for sealing. As such, the court will need to conduct its checks prior to the timelines in Subsections (a) and (c) of Section 58.003. In addition, the courts should conduct checks of eligibility again after those timelines have expired. Current law provides that there is a hearing to seal the records unless both the juvenile and prosecutor agree that no hearing is necessary. As such, a hearing is no longer required unless the prosecutor requests one. Presumably, the prosecutor would only request a hearing in felony sealing cases since sealing in misdemeanor adjudication or no adjudication cases is mandatory when all criteria are met. An implementation issue is presented when a hearing has been requested and notice must be provided to the juvenile. It is not uncommon for juveniles to have moved between the time the case was in court and the time the records are eligible for sealing. The elimination of the application or any affirmative steps by the juvenile means that the court may not have a current address to provide the notice required under the statute. It is unclear whether the prosecutor is authorized to go forward with a hearing without due process notice to the subject of the records. For future legislative proposals regarding this provision, it will be important for practitioners to track whether this results in fewer sealed records than under current procedures.

Family Code Sec. 58.003. SEALING OF RECORDS. (m) On request of the Department of Public Safety, a juvenile court shall reopen and allow the department to inspect the files and records of the juvenile court relating to an applicant for a license to carry a [~~concealed~~] handgun under Subchapter H, Chapter 411, Government Code.

Commentary by Nydia Thomas

Source: HB 910
Effective Date: January 1, 2016
Applicability: Applies to applications for open carry licenses on or after the effective date.
Summary of Changes: This is a conforming change to the sealing provisions contained in Section 58.003 of the Family Code. Under current law, the Department of Public Safety (DPS) is authorized to re-open a juvenile file that has been sealed in order to determine the eligibility of an applicant to carry a concealed handgun. House Bill 910 enacted laws that would allow the state of Texas to issue a license to openly carry handguns. The amendment to Subsection (m) removes the reference to "concealed" handguns to permit inspection of sealed juvenile records under the new open carry licensing process.

Family Code Sec. 58.003. SEALING OF RECORDS. (o) An agency or official named in the order that cannot seal the records because the information required in the order under Subsection (p) is incorrect or insufficient shall notify the court issuing the order before the 61st day after the date the agency or official receives the order. The court shall notify the person who [~~made the application or who~~] is the subject of the records at issue [~~named in the motion~~], or the attorney for that person, before the 61st day after the date the court receives the notice that the agency or official cannot seal the records because there is incorrect or insufficient information in the order.

Commentary by Kaci Singer

Source: HB 263/SB 1707
Effective Date: September 1, 2015
Applicability: Applies to the records of a person who becomes eligible for sealing under Section 58.003 of the Family Code on or after the effective date. The former law continues in effect for records eligible for sealing before the effective date.
Summary of Changes: This is a conforming change to Section 58.003(o) relating to the creation of automatic sealing and the deletion of the requirement to apply for sealing. The court is required to notify the person who is subject of the records or his attorney if the records cannot be fully sealed due to incorrect or insufficient information in the order. Some practitioners have cited several issues with this. First, the removal of the child and his attorney from the sealing process means the court must on its own determine what entities might have records without the benefit of an application completed by the persons most likely to know that information; thus, there are likely to be more instances of incorrect or insufficient information. Second, as noted earlier, it is highly likely a child will have moved from the address referenced in the court's files, thereby making the process of providing notice more difficult. Finally, since the child has been removed from the process, this increases the

likelihood that the court's order could contain a mistakes or other inaccurate information that cannot be addressed. It is unclear what process can be implemented to comply with the notice requirement under this provision.

Family Code Sec. 58.003. SEALING OF RECORDS. (p) A [~~person who is eligible to seal records may file an application for the sealing of records in a juvenile court of the county in which the proceedings occurred. The application and~~] sealing order entered under this section [~~on the application~~] must include the following information or an explanation for why one or more of the following is not included:

(1) the person's [~~applicant's~~]:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) the offense charged against the person [~~applicant~~] or for which the person [~~applicant~~] was referred to the juvenile justice system;

(3) the date on which and the county where the offense was alleged to have been committed; and

(4) if a petition was filed in the juvenile court, the cause number assigned to the petition and the court and county in which the petition was filed.

Commentary by Kaci Singer

Source: HB 263/SB 1707
Effective Date: September 1, 2015
Applicability: Applies to the records of a person who becomes eligible for sealing under Section 58.003, Family Code, on or after the effective date. The former law continues in effect for records eligible for sealing before the effective date.
Summary of Changes: Section 58.003(p) contains a conforming change related to the creation of the automatic sealing process to delete references to the application.

Family Code Sec. 58.004. REDACTION OF VICTIM'S PERSONALLY IDENTIFIABLE INFORMATION. (a) Notwithstanding any other law, before disclosing any juvenile court record or file of a child as authorized by this chapter or other law, the custodian of the record or file must redact any personally identifiable information about a victim of the child's delinquent conduct or conduct indicating a need for supervision who was under 18 years of age on the date the conduct occurred.

(b) This section does not apply to information that is:

(1) necessary for an agency to provide services to the victim;

(2) necessary for law enforcement purposes; or

(3) shared within the statewide juvenile information and case management system established under Subchapter E.

Commentary by Jill Mata

Source: HB 4003
Effective Date: September 1, 2015
Applicability: Applies to victim information and documents relating to juvenile court cases without regard to whether the conduct that is the basis of the case occurred before, on, or after the effective date.
Summary of Changes: Newly added Section 58.004 requires the redaction of the personally identifiable information about a victim under the age of 18 before juvenile records can be disclosed to anyone unless the information is necessary for an agency to provide services to the victim or for law enforcement purposes. Victim information shared in the Juvenile Case Management System (JCMS/Caseworker) is excluded from this requirement.

Family Code Sec. 58.0052. INTERAGENCY SHARING OF CERTAIN NONEDUCATIONAL RECORDS.

Commentary by Nydia Thomas

Source: SB 206
Effective Date: September 1, 2015
Applicability: This is a non-substantive clarification.
Summary of Changes: In 2011, the legislature enacted new statutes in Chapter 58 of the Family Code to facilitate information sharing between various entities that serve multi-system youth who receive services from two or more juvenile service providers. The overall objective of the statute is to improve youth outcomes through an established protocol for the exchange of information. This amendment changes the heading to insert the word "certain" to clarify that disclosures authorized under Section 58.0052 are limited to those described in statute.

Family Code Sec. 58.0053. INTERAGENCY SHARING OF JUVENILE PROBATION RECORDS. (a) On request by the Department of Family and Protective Services, a juvenile probation officer shall disclose to the department the terms of probation of a child in the department's conservatorship.

(b) To the extent of a conflict between this section and another law of this state applicable to confidential information held by a governmental agency, this section controls.

(c) This section does not affect the confidential status of the information being shared. The information may be released to a third party only as directed by a court order or as otherwise authorized by law. Personally identifiable information disclosed to the Department of Family and Protective Services under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(d) The Department of Family and Protective Services shall enter into a memorandum of understanding with the Texas Juvenile Justice Department to adopt procedures for handling information requests under this section.

Commentary by Nydia Thomas

Source: SB 206
Effective Date: September 1, 2015
Applicability: Applies to records created on, before, or after the effective date.
Summary of Changes: Newly added Section 58.0053(a), (Interagency Sharing of Juvenile Probation Records) requires a juvenile probation officer to disclose the terms and conditions of probation of a child under the conservatorship of the Department of Family and Protective Services (DFPS). Subsection (b) clarifies that the disclosures authorized in this provision control over any conflicting state law that applies to confidential information held by a governmental agency. Subsection (c) maintains the confidential status of the information exchanged and authorizes release to a third party only by court order or as otherwise permitted by law. DFPS is prohibited from disclosing personally identifiable information (i.e. name, identification numbers, etc.) to third parties who request the information under the Chapter 552, Government Code, the Public Information Act. Subsection (d) requires DFPS and the Texas Juvenile Justice Department to enter into a memorandum of understanding (MOU) to adopt procedures for handling the information requests permitted under this new provision.

Family Code Sec. 58.00711. RECORDS RELATING TO CHILDREN CHARGED WITH, [~~OR~~] CONVICTED OF, OR RECEIVING DEFERRED DISPOSITION FOR FINE-ONLY MISDEMEANORS. (a) This section applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(b) Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, [~~or who has received a dismissal after deferral of disposition for~~] or is granted deferred disposition for an offense described by Subsection (a) are confidential and may not be disclosed to the public.

Commentary by Nydia Thomas

Source: SB 1296
Effective Date: September 1, 2015
Applicability: This is a non-substantive reenactment of existing law.
Summary of Changes: SB 1296 made a number of comprehensive recodifications and corrective amendments to statutes enacted during the 83rd Regular Session in 2013. The change affecting Section 58.00711, Family Code consolidates language enacted in two different bills (HB 528 and SB 394) from the 83rd Session which attempted to address when and at what stage of justice and municipal court proceedings a child's criminal records are considered confidential. This reenactment does not make any substantive changes to this provision.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM [~~CONFIDENTIALITY~~].

Commentary by Nydia Thomas

Source: SB 409
Effective Date: September 1, 2015
Applicability: This is a non-substantive change.
Summary of Changes: Chapter 58 of the Family Code contains a number of provisions relating to confidentiality. This heading change clarifies that Section 58.106 specifically relates to the dissemination of confidential information in the Juvenile Justice Information System (JJIS), the statewide repository of juvenile records maintained by the Department of Public Safety.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM [~~CONFIDENTIALITY~~]. (a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a criminal justice agency as defined by Section 411.082, Government Code [~~person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code~~];

(3) to a noncriminal justice agency authorized by federal statute or federal executive order to receive juvenile justice record information;

(4) to a juvenile justice agency;

(5) [~~(4)~~] to the Texas Juvenile Justice Department [~~Youth Commission and the Texas Juvenile Probation Commission for analytical purposes~~];

(6) [~~(5)~~] to the office of independent ombudsman of the Texas Juvenile Justice Department [~~Youth Commission~~]; [~~and~~]

(7) [~~(6)~~] to a district, county, justice, or municipal court exercising jurisdiction over a juvenile, including a court exercising jurisdiction over a juvenile under Section 54.021; and

(8) to the Department of Family and Protective Services as provided by Section 411.114, Government Code.

Commentary by Nydia Thomas

Source: SB 409
Effective Date: September 1, 2015
Applicability: Applies to dissemination of information on or after the effective date without regard to whether the information was compiled before, on, or after that date.
Summary of Changes: In 2013, the legislature established the Fingerprint Advisory Committee to conduct a comprehensive examination of fingerprint practices in the state's juvenile justice system. In a 2014 published report, *SB1769: A Report on Juvenile Fingerprinting Practices in Texas,* the advisory committee concluded that the current practice of fingerprinting juvenile misdemeanor offenders was an essential component to achieving the state's public safety objectives. In order to accomplish the basic aim of reducing the detrimental effects of low-level delinquency offenses, the committee recommended statutory changes that would limit the dissemination of certain misdemeanor history without impacting the ability of system stakeholders to exchange needed information for interagency sharing, prosecution, supervision and related programs and services. Senate Bill 409 originated from the efforts of the Fingerprint Advisory Committee.

Subsections (a) (2) and (a)(3) specify that information contained in the juvenile justice information system is confidential and may not be disseminated by the Department of Public Safety (DPS) except to a criminal justice agency as defined by Section 411.082, Government Code or a non-criminal justice agency authorized by federal statute or executive order. Non-criminal justice agencies include various state licensing entities that are permitted by statute to receive criminal history information from DPS. Prior language which authorized DPS to grant full access to all JJIS offense records to non-criminal justice agencies or entities with access to adult criminal history records under Section 411.083 has been removed. Subsection (a)(5) updates the agency name reference to the Texas Juvenile Justice Department (TJJD) and removes language in order to expand the access authority of TJJD for any agency purpose, not just for statistical and analytical purposes. DPS is permitted to disclose criminal violation history of children in the JJIS to a county, justice or municipal court that exercises jurisdiction in school cases under Section 54.021 of the Family Code. Subsection (a)(7) has been amended to allow district courts to also receive information on school cases. Subsection (a)(8) clarifies that the Department of Family and Protective Services retains full JJIS access (i.e., felony and adjudicated and unadjudicated misdemeanor information) to facilitate delinquency history background checks necessary for the placement of children in conservatorship.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM [~~CONFIDENTIALITY~~]. (a-1) The department may disseminate information contained in the juvenile justice information system to a noncriminal justice agency or entity not listed in Subsection (a) to which the department may grant access to adult criminal history record information as provided by Section 411.083, Government Code, only if the information does not relate to conduct indicating a need for supervision or to delinquent conduct constituting a misdemeanor offense:

(1) for which a child is on deferred prosecution under Section 53.03;

(2) for which deferred prosecution was successfully completed under Section 53.03;

(3) for which a charge was dropped or not pursued for reasons other than a lack of probable cause;

(4) for which a charge is pending final adjudication under Section 54.03; or

(5) found by the juvenile court to be "not true."

Commentary by Nydia Thomas

Source: SB 409
Effective Date: September 1, 2015
Applicability: Applies to dissemination of information on or after the effective date without regard to whether the information was compiled before, on, or after that date.
Summary of Changes: Generally, a referral to juvenile court under Title 3 of the Family Code triggers the transmission of fingerprints and other information to the Department of Public Safety (DPS) for inclusion in the statewide Juvenile Justice Information System (JJIS). Under current law, the transmission of the records collected by law enforcement officers and juvenile justice personnel under this provision is permitted for conduct constituting a felony or misdemeanor punishable by confinement in jail. Although the information contained in the juvenile justice information system is confidential, there are certain criminal justice and non-

criminal justice agencies that have specific statutory authority to obtain criminal history information under Chapter 411 of the Government Code. Non-criminal justice agencies include various licensing entities such as Board of Nursing, Board of Law Examiners and the Texas Education Agency. DPS is permitted by a number of different statutes to disclose criminal history information to these entities.

As amended, the information disclosures authorized under this provision are intended to apply to non-felony, unadjudicated conduct. Subsection (a-1) clarifies that DPS is permitted only to disseminate information that does not relate to conduct indicating a need for supervision (CINS) or misdemeanor delinquent conduct under circumstances in which: 1) a child is on deferred prosecution under Section 53.03, FC; 2) a child has successfully completed deferred prosecution; 3) a charge was dropped or not pursued for reasons other than lack of probable cause; 4) the charge is pending final adjudication under Section 54.03, FC; or 5) found by the court to be "not true." The reference to the term "charge" makes it clear that this provision is intended to govern each individual charge reported to DPS.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM [~~CONFIDENTIALITY~~]. (a-2) Information disseminated under Subsection (a) or (a-1) remains confidential after dissemination and may be disclosed by the recipient only as provided by this title.

Commentary by Nydia Thomas

Source: SB 409
Effective Date: September 1, 2015
Applicability: Applies to dissemination of information on or after the effective date without regard to whether the information was compiled before, on, or after that date.
Summary of Changes: Subsection (a-2) specifies that any records released by the Department of Public Safety (DPS) remains confidential and the receiving court or entity may not share or make the information public except as authorized under Title 3 of the Family Code. It is important to note that DPS' authority to disseminate confidential delinquency summary "rap sheet" information in the Juvenile Justice Information System for felonies and adjudicated misdemeanor conduct is unchanged.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM [~~CONFIDENTIALITY~~]. (b) Subsections (a) and (a-1) do [~~Subsection (a) does~~] not apply to a document maintained by a juvenile justice agency that is the source of information collected by the department.

Commentary by Nydia Thomas

Source: SB 409
Effective Date: September 1, 2015
Applicability: Applies to dissemination of information on or after the effective date without regard to whether the information was compiled before, on, or after that date.
Summary of Changes: This is a conforming change to the provision that specifies that the disclosures listed in Subsection (a) and (a-1) do not apply to documents maintained by a juvenile justice agency that is the source of the information collected by DPS.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM [~~CONFIDENTIALITY~~]. (c) The department may, if necessary to protect the welfare of the community, disseminate to the public the following information relating to a juvenile who has escaped from the custody of the Texas Juvenile Justice Department [~~Youth Commission~~] or from another secure detention or correctional facility:

(1) the juvenile's name, including other names by which the juvenile is known;

(2) the juvenile's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the juvenile; and

(4) a description of the conduct for which the juvenile was committed to the Texas Juvenile Justice Department [~~Youth Commission~~] or detained in the secure detention or correctional facility, including the level and degree of the alleged offense.

Commentary by Nydia Thomas

Source: SB 409
Effective Date: September 1, 2015
Applicability: Applies to dissemination of information on or after the effective date without regard to whether the information was compiled before, on, or after that date.
Summary of Changes: The changes in Subsection (c) and (c)(4) update agency name references to the Texas Juvenile Justice Department (TJJD) and do not include substantive changes.

Family Code Sec. 261.301. INVESTIGATION OF REPORT. (i) If at any time during an investigation of a report of child abuse or neglect to which the department has assigned the highest priority the department is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, the department shall notify the Department of Public Safety

that the location of the child and the child's family is unknown. If the Department of Public Safety locates the child and the child's family, the Department of Public Safety shall notify the department of the location of the child and the child's family.

Commentary by John Gonzales

Source: HB 2053
Effective Date: September 1, 2015
Applicability: Applies to reports and investigations of child abuse or neglect made on or after the effective date.
Summary of Changes: The Texas Department of Family and Protective Services (DFPS) must begin an investigation of child abuse or neglect assigned its highest priority within 24 hours after receiving the report. As amended, Section 261.301 of the Family Code requires DFPS to notify the Department of Public Safety (DPS) if the child or the child's family who is the subject of the investigation cannot be located. DPS is required to notify DFPS when the child or family is located.

Family Code Sec. 265.004. USE OF EVIDENCE-BASED PROGRAMS FOR AT-RISK FAMILIES. a) To the extent that money is appropriated for the purpose, the department shall fund evidence-based programs, including parenting education, home visitation, family support services, mentoring, positive youth development programs, and crisis counseling, offered by community-based organizations that are designed to prevent or ameliorate child abuse and neglect. The [~~evidence based~~] programs funded under this subsection may be offered by a child welfare board established under Section 264.005, a local governmental board granted the powers and duties of a child welfare board under state law, [~~or~~] a children's advocacy center established under Section 264.402, or other persons determined appropriate by the department.

(a-1) The department shall ensure that not less than 75 percent of the money appropriated for parenting education programs under Subsection (a) funds evidence-based programs described by Section 265.101(b) and that the remainder of that money funds promising practice programs described by Section 265.101(c).

(a-2) The department shall actively seek and apply for any available federal funds to support parenting education programs provided under this section.

Commentary by John Gonzales

Source: HB 2630
Effective Date: September 1, 2015
Applicability: Applies to a program provided under Chapter 265, Family Code, on or after the effective date.
Summary of Changes: The amendment to Section 265.004 of the Family Code requires Texas Department of Family and Protective Services (DFPS) to use the majority of funds allocated for parenting education on programs that are evidence based. Evidence-based programs for at-risk families are programs that have proven to be effective in reducing both the risk factors and rates of child abuse and neglect. DFPS is now required to pursue all possible federal funds that are available for educating parents on the prevention of child abuse and neglect.

Editor's Note: *New Title 3A of the Family Code is included in the segment on Legislation Affecting Truancy Reform and School Attendance.*

Alcoholic Beverage Code

Alcoholic Beverage Code Sec. 106.05. POSSESSION OF ALCOHOL BY A MINOR. (b) A minor may possess an alcoholic beverage:

(1) while in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;

(2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; [~~or~~]

(3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code; or

(4) if the beverage is lawfully provided to the minor under Section 106.16.

Commentary by John Gonzales

Source: HB 909
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Under current law, a minor may legally possess alcohol while in the scope of his lawful employment for a business with a permit or license to sell alcohol, when in the visible presence of his adult parents, guardian or spouse, and if the minor is assisting in the enforcement of the liquor laws. The amendment to Section 106.05 of the Alcoholic Beverage Code expands the list of exceptions to the offense of possession of alcohol by a minor to include an exception for certain higher education culinary course work discussed in Section 106.16 below.

Alcoholic Beverage Code Sec. 106.06. PURCHASE OF ALCOHOL FOR A MINOR; FURNISHING ALCOHOL TO A MINOR. (b) A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if the person is:

(1) [~~he is~~] the minor's adult parent, guardian, or spouse, or an adult in whose custody the minor has been

committed by a court, and [~~he~~] is visibly present when the minor possesses or consumes the alcoholic beverage; or

(2) a person lawfully providing an alcoholic beverage to a minor under Section 106.16.

Commentary by John Gonzales

Source: HB 909
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This amendment conforms to the new provision in Section 106.16, Exception for Certain Course Work, which allows limited possession of alcohol by a minor. As amended, this language authorizes an educator that teaches a culinary class for an institution of higher education to purchase and provide alcohol to a minor while attending class and under the strict conditions discussed below in Section 106.16.

Alcoholic Beverage Code Sec. 106.071. PUNISHMENT FOR ALCOHOL-RELATED OFFENSE BY MINOR. (e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol or drugs, as applicable, if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

Commentary by John Gonzales

Source: HB 642
Effective Date: September 1, 2015
Applicability: Applies to dispositional orders rendered on or after the effective date.
Summary of Changes: Previously, when a child is placed on community supervision for alcohol related offenses, the sentencing judge has two options when ordering community service. Under Section 106.71 of the Alcoholic Beverage Code, the justice or municipal court was required to order the child defendant to community service that educates on alcohol awareness and the dangers of alcohol abuse. HB 642 adds Subsection (e) to allow the court the additional option to order community service that provides education on drug abuse and drug-associated criminal activity.

Alcoholic Beverage Code Sec. 106.09. EMPLOYMENT OF MINORS. (a) Except as provided by [~~in~~] Subsections (b), (c), [~~and~~] (e), and (f) [~~of this section~~], no person may employ a person under 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so.

Commentary by John Gonzales

Source: SB 1651
Effective Date: May 19, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This amendment to Section 106.09 adds the reference to new Subsection (f) to the list of circumstances a minor may be employed to perform duties related to the sale, preparation, serving or handling of alcohol.

Alcoholic Beverage Code Sec. 106.09. EMPLOYMENT OF MINORS. (f) The holder of a permit or license providing for the on-premises consumption of alcoholic beverages that derives less than 50 percent of its gross receipts for the premises from the sale or service of alcoholic beverages may employ a person under 18 years of age to work as a cashier for transactions involving the sale of alcoholic beverages if the alcoholic beverages are served by a person 18 years of age or older.

Commentary by John Gonzales

Source: SB 1651
Effective Date: May 19, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This amendment adds an exception to Section 106.09. Subsection (e) allows a holder of a permit or license that also holds a food and beverage certificate and derives less than 50% of its gross receipts from the sale and service of alcoholic beverages to employ a person under the age of 18 years to work as a cashier. This change does not allow the minor to serve the alcohol but requires the alcohol to be served by a person 18 years of age or older. Many grocery stores are integrating restaurants into their stores and have been unable to hire 16 and 17 year-old cashiers due to Texas Alcoholic Beverage Code restrictions and Alcoholic Beverage Commission rules. This change allows a business to employ 16 and 17 year-olds to work as cashiers for sales involving alcohol. This clarifies that a person under the age of 18 years is prohibited from handling or serving the alcohol. Representatives of the Texas grocery story company HEB testified in the committee hearing on SB 1651.

Alcoholic Beverage Code Sec. 106.115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION. (a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Department of State

Health Services under this section, a drug education program approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code, or a drug and alcohol driving awareness program approved by the Texas Education Agency. On conviction of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend an alcohol awareness program, a drug education program, or a drug and alcohol driving awareness program described by this subsection. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend an alcohol awareness program, a drug education program, or a drug and alcohol driving awareness program described by this subsection. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Department of State Health Services:

(1) is responsible for the administration of the certification of approved alcohol awareness programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding alcohol awareness programs approved under this section; and

(4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

Commentary by John Gonzales

Source: HB 642
Effective Date: September 1, 2015
Applicability: Applies to dispositional orders rendered on or after the effective date.
Summary of Changes: The amendment to Section 106. 115 gives the court an additional mandatory course option when a minor defendant is placed on deferred disposition community supervision for an alcohol related offense. Previously when a minor defendant was placed on deferred disposition for public intoxication, purchase of alcohol, attempt to purchase alcohol, consumption, driving or operating a watercraft under the influence, in possession, or presents a fake ID representing he is at least 21 years old, the court was required to order the minor defendant to attend either an alcohol awareness program or a drug and alcohol awareness program. The change now allows the court the option to order the minor defendant to attend a drug education program approved by the Department of State Health Services.

Alcoholic Beverage Code Section 106.115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION. (a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Texas Department of Licensing and Regulation [~~State Health Services~~] under this section or a drug and alcohol driving awareness program approved by the Texas Education Agency. On conviction of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend an alcohol awareness program or a drug and alcohol driving awareness program described by this subsection. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend an alcohol awareness program or a drug and alcohol driving awareness program described by this subsection. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Texas Department of Licensing and Regulation or Texas Commission of Licensing and Regulation, as appropriate [~~State Health Services~~]:

(1) is responsible for the administration of the certification of approved alcohol awareness programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding alcohol awareness programs approved under this section; and

(4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

(b-1) If the defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county, the court may allow the defendant to take an online alcohol awareness program if the Texas Department of Licensing and Regulation [~~State Health Services~~] approves online courses or require the defendant to perform not less than eight hours of community service related to alcohol abuse prevention or treatment and approved by the Texas Department of Licensing and Regulation [~~State Health Services~~] under Subsection (b-3) instead of attending the alcohol awareness program. Community service ordered under this subsection is in addition to community service ordered under Section 106.071(d).

(b-3) The Texas Department of Licensing and Regulation [~~State Health Services~~] shall create a list of community services related to alcohol abuse prevention or treatment in each county in the state to which a judge may sentence a defendant under Subsection (b-1).

Commentary by John Gonzales

Source: SB 202
Effective Date: September 1, 2017
Applicability: Applies to dispositional orders rendered on or after the effective date.
Summary of Changes: Senate Bill 202 transferred certain Department of State Health Services (DSHS) programs to the Texas Department of Licensing and Regulation (TDLR). One such transfer includes the regulation of offender education providers from DSHS to TDLR during the biennium ending August 31, 2019. The amendment conforms to this transfer of regulation to the TDLR. The legislative intent for this transfer is to allow DSHS to focus more on its true mission of improving the health and well-being of the people in Texas.

Alcoholic Beverage Code Sec. 106.16. EXCEPTION FOR CERTAIN COURSE WORK. (a) In this section:

(1) "Career school or college" has the meaning assigned by Section 132.001, Education Code.

(2) "Taste" means to draw a beverage into the mouth without swallowing or otherwise consuming the beverage.

(b) Notwithstanding any other law, a minor may taste an alcoholic beverage if:

(1) the minor:

(A) is at least 18 years old; and

(B) is enrolled:

(i) as a student at a public or private institution of higher education or a career school or college that offers a program in culinary arts, viticulture, enology or wine technology, brewing or beer technology, or distilled spirits production or technology; and

(ii) in a course that is part of a program described by Subparagraph (i);

(2) the beverage is tasted for educational purposes as part of the curriculum for the course described by Subdivision (1)(B)(ii);

(3) the beverage is not purchased by the minor; and

(4) the service and tasting of the beverage is supervised by a faculty or staff member who is at least 21 years of age.

(c) A public or private institution of higher education or a career school or college is not required to hold a license or permit to engage in the activities authorized under this section.

Commentary by John Gonzales

Source: HB 909
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Some institutions of higher education offer culinary programs associated with the production of liquor, beer or wine and include instruction in tasting alcohol as it relates to food. Some students were unable to complete the course until after attaining the age of 21. Section 106.16 was enacted to allow, under strict conditions, the possession of alcohol by a minor while attending class and for the sole purpose of learning how alcohol and food complement one another. This change would permit students under age 21 to fully participate in class lessons. The student must be at least 18 years old and in the presence of a faculty member who is at least 21 years of age. This amendment clarifies that taste does not include consumption but requires the student to expel the alcohol after tasting it.

Business and Commerce Code

Business and Commerce Code Sec. 109.001. DEFINITIONS. (5) "Confidential criminal record information of a child" means information about a person's involvement in the criminal justice system resulting from conduct that occurred or was alleged to occur when the person was younger than 17 years of age that is confidential under Chapter 45, Code of Criminal Procedure, or other law. The term does not include:

(A) criminal record information of a person certified to stand trial as an adult for that conduct, as provided by Section 54.02, Family Code; or

(B) information relating to a traffic offense.

(6) "Confidential juvenile record information" means information about a person's involvement in the juvenile justice system that is confidential, sealed, under restricted access, or required to be destroyed under Chapter 58, Family Code, or other law, including:

(A) a description or notation of any referral to a juvenile probation department or court with jurisdiction under Title 3, Family Code, including any instances of being taken into custody, any informal disposition of a custodial or referral event, or any formal charges and the disposition of those charges;

(B) a photograph of the person taken pursuant to a custodial event or other involvement in the juvenile justice system under Title 3, Family Code; and

(C) personal identifying information of the person contained in any other records of the person's involvement in the juvenile justice system.

(7) "Information service" has the meaning assigned by 47 U.S.C. Section 153.

(8) "Interactive computer service" has the meaning assigned by 47 U.S.C. Section 230(f).

(9) "Telecommunications provider" has the meaning assigned by Section 51.002, Utilities Code.

Commentary by Nydia Thomas

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date.
Summary of Changes: The statutory provisions governing the collection and maintenance of photographs of juveniles were enacted nearly twenty years ago. Since that time, changing technology has resulted in the emergence of companies that seek to profit from websites featuring adult arrest booking photos (i.e., mug shots) and other identifying criminal record information on the Internet. These businesses often post mug shots online and then charge a fee for removal of the photographs and information. Lawmakers have enacted legislation in recent sessions to better regulate these practices.

Juvenile procedures include an intake or booking process in which photographs and fingerprints may be taken for purposes of the Juvenile Justice Information System (JJIS). These photos are not "mug shots" but may be used for pre-trial identification purposes such as line-ups, array photographs, and show ups. Photographs are also routinely taken by juvenile probation departments for file administration and by law enforcement for investigative comparison and identification of runaways. These photographs are confidential under Title 3 of the Family Code. House Bill 1491 is an effort to add a measure of protection and provide additional remedies for children with juvenile and criminal records under the Business and Commerce Code.

As amended, Section 109.001 adds definitions, in Subdivisions (5) and (6), of confidential criminal record information of a child and confidential juvenile record information at any creation point or event under Title 3 of the Family Code or Article 45 of the Code of Criminal Procedure. The criminal records of a person certified as an adult are excluded. Subdivisions (7) and (8) define information service or interactive computer service as defined under federal law. Subdivision (9) defines telecommunications provider under state law.

Business and Commerce Code Sec. 109.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this [~~This~~] chapter applies to:

(1) a business entity that:

(A) [~~(1)~~] publishes criminal record information, including information:

(i) [~~(A)~~] originally obtained pursuant to a request for public information under Chapter 552, Government Code; or

(ii) [~~(B)~~] purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety under Subchapter F, Chapter 411, Government Code; and

(B) [~~(2)~~] requires the payment:

(i) [~~(A)~~] of a fee in an amount of $150 or more or other consideration of comparable value to remove criminal record information; or

(ii) [~~(B)~~] of a fee or other consideration to correct or modify criminal record information; or

(2) a business entity that publishes confidential juvenile record information or confidential criminal record information of a child in a manner not permitted by Chapter 58, Family Code, Chapter 45, Code of Criminal Procedure, or other law, regardless of:

(A) the source of the information; or

(B) whether the business entity charges a fee for access to or removal or correction of the information.

(b) This chapter does not apply to:

(1) a statewide juvenile information and case management system authorized by Subchapter E, Chapter 58, Family Code;

(2) a publication of general circulation or an Internet website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report;

(3) a radio or television station that holds a license issued by the Federal Communications Commission;

(4) an entity that provides an information service or that is an interactive computer service; or

(5) a telecommunications provider.

Commentary by Nydia Thomas

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date.
Summary of Changes: Subsection (a)(2) makes Chapter 109 of the Business and Commerce Code applicable to a business entity that publishes confidential juvenile record information or confidential criminal record information of a child in a manner not permitted by Chapter 58, Family Code, Chapter 45, Code of Criminal Procedure, or other law, regardless of the source of the information or whether the business entity charges a fee

for access to or removal or correction of the information. The provisions contained in Chapter 109 do not apply to the statewide juvenile information and case management system (also known as JCMS). Subdivisions (2-5) make the chapter inapplicable to newspaper and Internet publications, radio and television stations licensed by the FCC and information on interactive computer services or telecommunication providers.

Business and Commerce Code Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD PROHIBITED. (a) A business entity may not publish confidential juvenile record information or confidential criminal record information of a child.

(b) If a business entity receives a written notice by any person that the business entity is publishing information in violation of this section, the business entity must immediately remove the information from the website or publication.

(c) If the business entity confirms that the information is not confidential juvenile record information or confidential criminal record information of a child and is not otherwise prohibited from publication, the business entity may republish the information.

(d) This section does not entitle a business entity to access confidential juvenile record information or confidential criminal record information of a child.

(e) A business entity does not violate this chapter if the business entity published confidential juvenile record information or confidential criminal record information of a child and:

(1) the child who is the subject of the records gives written consent to the publication on or after the 18th birthday of the child;

(2) the publication of the information is authorized or required by other law; or

(3) the business entity is an interactive computer service, as defined by 47 U.S.C. Section 230, and published material provided by another person.

Commentary by Nydia Thomas

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date.
Summary of Changes: Section 109.0045 specifies that a business entity may not publish confidential juvenile record information or confidential criminal record information of a child. Subsection (b) requires the business entity to immediately remove information from the website or publication upon receiving a written notice that the information has been published in violation of this provision. The information may be republished under Subsection (c) if the entity confirms that the information is not a confidential juvenile record or criminal record information of a child or is not otherwise prohibited. Subsection (d) clarifies, in compliance with other state law, that the business entity is not entitled to access the confidential record information of a juvenile or child. Subsection (e) specifies that the law is not violated if the business obtains written consent on or after the child's 18th birthday or the publication is permitted under law or the business is an interactive computer service that publishes material provided by another person. Some practitioners have expressed concerns that the consent exception may create a mechanism that opens delinquency records and criminal records of children in a manner not authorized by the Family Code or Code of Criminal Procedure.

Business and Commerce Code Sec. 109.005. (a-1) Except as provided by Section 109.0045(e), a business entity may not publish any information with respect to which the business entity has knowledge or has received notice that the information is confidential juvenile record information or confidential criminal record information of a child.

(b) A business entity that publishes information in violation of this section [~~Subsection (a)~~] is liable to the individual who is the subject of the information in an amount not to exceed $500 for each separate violation and, in the case of a continuing violation, an amount not to exceed $500 for each subsequent day on which the violation occurs.

Commentary by Nydia Thomas

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date.
Summary of Changes: Section 109.005(a-1) prohibits publication of confidential juvenile record information or confidential criminal record information if the business entity has knowledge or has received notice that the information is confidential.

Business and Commerce Code Sec. 109.006. CIVIL PENALTY; INJUNCTION. (a) A business entity that publishes criminal record information, confidential juvenile record information, or confidential criminal record information of a child in violation of this chapter is liable to the state for a civil penalty in an amount not to exceed $500 for each separate violation and, in the case of a continuing violation, an amount not to exceed $500 for each subsequent day on which the violation occurs. For purposes of this subsection, each

[~~criminal~~] record published in violation of this chapter constitutes a separate violation.

Commentary by Nydia Thomas

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date.
Summary of Changes: As amended, Section 106.009 provides a penalty and injunctive relief against any business entity that publishes criminal record information, confidential juvenile record information, or confidential criminal record information of a child in violation of Chapter 109 of the Business and Commerce Code. The business is liable to the state for a civil penalty in an amount up to $500 for each separate violation. The penalty for continuing violations is an amount up to $500 for each subsequent day on which the violation occurs. Each record published in violation constitutes a separate violation.

Business and Commerce Code Sec. 109.007. VENUE. An action under this chapter must be brought in a district court:

(1) in Travis County if the action is brought by the attorney general;

(2) in the county in which the person who is the subject of the criminal record information, confidential juvenile record information, or confidential criminal record information of a child resides; or

(3) in the county in which the business entity is located.

Commentary by Nydia Thomas

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date.
Summary of Changes: Section 109.007 specifies that venue for an action under Chapter 109 may be brought in the district court of Travis County if brought by the attorney general, in the county of residence of the subject of the record information, or in the county in which the business is located.

Code of Criminal Procedure

Code of Criminal Procedure Art. 2.139. VIDEO RECORDINGS OF ARRESTS FOR INTOXICATION OFFENSES. A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

(1) the stop;

(2) the arrest;

(3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or

(4) a procedure in which a specimen of the person's breath or blood is taken.

Commentary by Kyle Dufour

Source: HB 3791
Effective Date: September 1, 2015
Applicability: Applies to a recording of conduct that occurs on or after the effective date.
Summary of Changes: The amendment to Article 2.139 requires law enforcement to make available to a person stopped or arrested for a driving intoxication crime, a copy of any video resulting from the stop or arrest. Since defense attorneys cannot release video evidence provided pursuant to criminal discovery laws to a client, some suggest that an accused person would likely benefit from being able to watch a video provided by law enforcement at home without counsel present. Others argue that the bill language provides no specific deadline requirements or guidance on compliance. The bill also does not address who is responsible for costs of producing copies, to whom request must be made or whether the accused is entitled to notice that the video is available to them.

Code of Criminal Procedure Art. 4.14. JURISDICTION OF MUNICIPAL COURT. (f) A municipality with a population of 1.19 [~~1.9~~] million or more and another municipality contiguous to that municipality may enter into an agreement providing concurrent jurisdiction for the municipal courts of either jurisdiction for all criminal cases arising from offenses under state law that are:

(1) committed on the boundary of those municipalities or within 200 yards of that boundary; and

(2) punishable by fine only.

Commentary by Kyle Dufour

Source: SB 631
Effective Date: June 19, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: The amendment to Article 4.14 of the Code of Criminal Procedure reduces the population threshold of a municipality that is authorized contract with another contiguous municipality to provide concurrent jurisdiction for municipal courts in both

jurisdictions to give law enforcement the ability to reallocate valuable resources. The current threshold appears to apply to one city in Texas. Some suggest, however, that if the population threshold is reduced, the law would apply to more municipalities such as San Antonio.

Code of Criminal Procedure Art. 4.18. CLAIM OF UNDERAGE. (g) This article does not apply to a claim of a defect or error in a discretionary transfer proceeding in juvenile court. A defendant may appeal a defect or error only as provided by Chapter 56, Family Code [Article 44.47].

Commentary by Kaci Singer

Source: SB 888
Effective Date: September 1, 2015
Applicability: Applies to appeals filed on or after the effective date.
Summary of Changes: This conforming amendment in Article 4.18 of the Code of Criminal Procedure relates to changes made in the Family Code that allow a child or prosecutor to appeal a certification decision.

Code of Criminal Procedure, Art. 12.01. [LIMITATIONS] FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained;

(D) continuous sexual abuse of young child or children under Section 21.02, Penal Code;

(E) indecency with a child under Section 21.11, Penal Code;

(F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code; [~~or~~]

(H) continuous trafficking of persons under Section 20A.03, Penal Code; or

(I) compelling prostitution under Section 43.05(a)(2), Penal Code;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E) sexual assault, except as provided by Subdivision (1);

(F) arson;

(G) trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or

(H) compelling prostitution under Section 43.05(a)(1), Penal Code;

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit under Section 32.32, Penal Code;

(E) money laundering;

(F) credit card or debit card abuse under Section 32.31, Penal Code;

(G) fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H) Medicaid fraud under Section 35A.02, Penal Code; or

(I) bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6);

(4) five years from the date of the commission of the offense:

(A) theft or robbery;

(B) except as provided by Subdivision (5), kidnapping or burglary;

(C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D) abandoning or endangering a child; or

(E) insurance fraud;

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

(6) ten years from the 18th birthday of the victim of the offense:

(A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;

(B) injury to a child under Section 22.04, Penal Code; or

(C) [~~compelling prostitution under Section 43.05(a)(2), Penal Code; or~~

[~~(D)~~] bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed; or

(7) three years from the date of the commission of the offense: all other felonies.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: This provision does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date. The prosecution of that offense remains barred as if the change in this law had not taken effect.
Summary of Changes: In 2009, the Texas Legislature created the Texas Human Trafficking Prevention Task Force designed to collaborate with the state and federal government in an effort to prevent human trafficking, increase data collection, provide public education and victim services, and training for various state actors. According to a 2014 human trafficking report issued by the Department of Public Safety, sex trafficking is the fastest-growing business of organized crime and the third-largest criminal enterprise in the world. Further, the report states that Texas was the second-largest source of tips to a national human trafficking hotline in 2013. Current law provides that a felony indictment must be brought against a person accused of compelling prostitution of a child within ten years from the 18th birthday of the victim of the offense. Many suggest that a child victim of sex trafficking is impacted for life and some measure of justice should always be available for them. As amended, Article 12.01 would eliminate the statute of limitations for compelling prostitution of children making it consistent with the limitations period of the similar crime of child sex trafficking and allowing child victims more time to come forward.

Code of Criminal Procedure Art. 14.06. MUST TAKE OFFENDER BEFORE MAGISTRATE. (d) Subsection (c) applies only to a person charged with committing an offense under:

(1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(1-a) Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) or (3) [~~(b)(1)~~] of that section;

(4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Generally, the law allows peace officers to issue citations for certain Class B misdemeanor offenses and higher in lieu of making an arrest. The law currently allows peace officers to issue a citation for Class B misdemeanor graffiti. As amended, Article 14.06 of the Code of Criminal Procedure now allows the issuance of citations for Class A or B misdemeanor graffiti.

Code of Criminal Procedure Art. 18.01. SEARCH WARRANT. (b-1)(1) For purposes of this article, a magistrate may consider information communicated by telephone or other reliable electronic means in determining whether to issue a search warrant. The magistrate may examine an applicant for a search warrant and any person on whose testimony the application is based. The applicant or other person must be placed under oath before the examination.

(2) If an applicant for a search warrant attests to the contents of an affidavit submitted by reliable electronic means, the magistrate must acknowledge the attestation in writing on the affidavit. If the magistrate

considers additional testimony or exhibits, the magistrate must:

(A) ensure that the testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(B) ensure that any recording or reporter's notes are transcribed and that the transcription is certified as accurate and is preserved;

(C) sign, certify the accuracy of, and preserve any other written record; and

(D) ensure that the exhibits are preserved.

(3) An applicant for a search warrant who submits information as authorized by this subsection must prepare a proposed duplicate original of the warrant and must read or otherwise transmit its contents verbatim to the magistrate. A magistrate must enter into an original search warrant the contents of a proposed duplicate original that are read to the magistrate. If the applicant transmits the contents by reliable electronic means, the transmission received by the magistrate may serve as the original search warrant.

(4) The magistrate may modify a search warrant that is submitted as described by Subdivision

(3). If the magistrate modifies the warrant, the magistrate must:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(5) A magistrate who issues a search warrant for which information is provided by telephone or reliable electronic means must:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant; and

(C) transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(6) Evidence obtained pursuant to a search warrant for which information was provided in accordance with this subsection is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith.

Commentary by Kyle Dufour

Source: HB 326
Effective Date: September 1, 2015
Applicability: Applies to a search warrant that is issued on or after the effective date.
Summary of Changes: As amended, Article 18.01 of the Code of Criminal Procedure authorizes a magistrate to consider information communicated by telephone or other reliable electronic means in determining whether to issue a search warrant. The magistrate is authorized to examine a search warrant applicant under oath and is required to acknowledge in writing on the affidavit, an applicant's attestation of an affidavit submitted by reliable electronic means. Current law requires a law enforcement officer to support the issuance of a search warrant to a magistrate by presenting certain information either by physically walking to the magistrate or by sending a fax. This practice may present logistical difficulties for large counties and jurisdictions. In addition to fax and physical presence, federal rules allow an officer to provide information by e-mail or phone. Practitioners have suggested that this statute should more closely track the language of the federal rules so as to avoid confusion. One cited example relates to the requirement that a judge ensure the preservation of certain exhibits supporting affidavits, while the federal rule requires exhibits to be filed. Since the term "preserved" is not defined, some argue that it is unclear how such exhibits would be accessed, which could lead to varying treatment by judges or peace officers.

Code of Criminal Procedure Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant may be issued to search for and seize:

(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;

(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

(3) arms and munitions kept or prepared for the purposes of insurrection or riot;

(4) weapons prohibited by the Penal Code;

(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

(7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;

(8) any property the possession of which is prohibited by law;

(9) implements or instruments used in the commission of a crime;

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;

(11) persons;

(12) contraband subject to forfeiture under Chapter 59 of this code; [~~or~~]

(13) electronic customer data held in electronic storage, including the contents of and records and

other information related to a wire communication or electronic communication held in electronic storage; or

(14) a cellular telephone or other wireless communications device, subject to Article 18.0215.

Commentary by Kyle Dufour

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offense committed on or after the effective date.
Summary of Changes: House Bill 1396 originally began as a measure to formally codify the "rule of lenity" to ensure that Texas courts continued to follow it when considering criminal offenses outside of the Penal Code however it was amended to codify the U.S. Supreme Court's landmark ruling in *Riley v. California,* 573 U.S. ____ (2014) which held that the police generally may not, without a warrant, search digital information on a cellphone seized from an individual who has been arrested. The amendment to Article 18.02 authorizes that a search warrant may be issued for a wireless device subject to the procedures given in Art. 18.0215, Code of Criminal Procedure.

Code of Criminal Procedure Art. 18.021. ISSUANCE OF SEARCH WARRANT TO PHOTOGRAPH INJURED CHILD. (c) In addition to the requirements of Subdivisions (1), (4), and (5) [~~and (4)~~] of Article 18.04 of this code, a warrant issued under this article shall identify, as near as may be, the child to be located and photographed, shall name or describe, as near as may be, the place or thing to be searched, and shall command any peace officer of the proper county to search for and cause the child to be photographed.

Commentary by Kyle Dufour

Source: HB 644
Effective Date: September 1, 2015
Applicability: Applies to a search warrant issued on or after the effective date.
Summary of Changes: Article 18.021 was changed this session to require search warrants to contain a clearly, legible handwritten or typed name of the issuing magistrate on the document to accompany their signature. From 2010 to 2012, a now-defunct South Texas narcotics police task force, dubbed the Panama Unit, was forging what appeared to be magistrate issued search warrants and illegally seizing money, drugs, jewelry, and other valuable items from suspected drug dealers in addition to unlawfully incarcerating suspects. In response, the Legislature also expanded the third degree felony penal offense of tampering with a governmental record to include a search warrant issued by a magistrate.

Code of Criminal Procedure Art. 18.0215. ACCESS TO CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A peace officer may not search a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person without obtaining a warrant under this article.

(b) A warrant under this article may be issued only by a judge in the same judicial district as the site of:

(1) the law enforcement agency that employs the peace officer, if the cellular telephone or other wireless communications device is in the officer's possession; or

(2) the likely location of the telephone or device.

(c) A judge may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before the judge. The application must:

(1) state the name, department, agency, and address of the applicant;

(2) identify the cellular telephone or other wireless communications device to be searched;

(3) state the name of the owner or possessor of the telephone or device to be searched;

(4) state the judicial district in which:

(A) the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession; or

(B) the telephone or device is likely to be located; and

(5) state the facts and circumstances that provide the applicant with probable cause to believe that:

(A) criminal activity has been, is, or will be committed; and

(B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

(d) Notwithstanding any other law, a peace officer may search a cellular telephone or other wireless communications device without a warrant if:

(1) the owner or possessor of the telephone or device consents to the search;

(2) the telephone or device is reported stolen by the owner or possessor; or

(3) the officer reasonably believes that:

(A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or

(B) there exists an immediate life-threatening situation, as defined by Section 1, Article 18.20.

(e) A peace officer must apply for a warrant to search a cellular telephone or other wireless communications device as soon as practicable after a search is conducted under Subsection (d)(3)(A) or (B). If the judge

finds that the applicable situation under Subsection (d)(3)(A) or (B) did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

Commentary by Kyle Dufour

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: New Article 18.0215 of the Code of Criminal Procedure outlines the procedures that must be followed before a magistrate may issue a search warrant, an example of which is that the actual or likely location of the device be in the same district as the issuing magistrate and that the application supporting the cellphone search warrant meet certain listed criteria. The changes to this provision also set out three limited exceptions to the warrant requirement.

Code of Criminal Procedure Art. 18.04. CONTENTS OF WARRANT. A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

(1) that it run in the name of "The State of Texas";

(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named; [~~and~~]

(4) that it be dated and signed by the magistrate; and

(5) that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

Commentary by Kyle Dufour

Source: HB 644
Effective Date: September 1, 2015
Applicability: Applies to a search warrant issued on or after the effective date.
Summary of Changes: Article 18.04 requires search warrants to contain a clearly, legible handwritten or typed name of the issuing magistrate on the document to accompany their signature. From 2010 to 2012, a now-defunct South Texas narcotics police task force, dubbed the Panama Unit, was forging what appeared to be magistrate issued search warrants and illegally seizing money, drugs, jewelry, and other valuable items from suspected drug dealers in addition to unlawfully incarcerating suspects. This change expands the third degree felony penal offense of tampering with a governmental record to include a search warrant issued by a magistrate.

Code of Criminal Procedure Art. 18.065. EXECUTION OF WARRANT ISSUED BY DISTRICT JUDGE FOR DNA SPECIMEN. (a) A warrant issued by the judge of a district court under Article 18.02(10) to collect a DNA specimen from a person for the purpose of connecting that person to an offense may be executed in any county in this state.

(b) This article does not apply to a warrant issued by a justice of the peace, judge, or other magistrate other than a judge of a district court.

Commentary by Kyle Dufour

Source: HB 2185
Effective Date: September 1, 2015
Applicability: Applies to a search warrant issued on or after the effective date.
Summary of Changes: Law enforcement officers report that serving a suspect with a search warrant to submit a DNA specimen for the purpose of connecting the suspect to an offense can be laborious and time-consuming as it requires coordination with the court of proper jurisdiction to obtain the specimen. Article 18.065 was added to authorize a search warrant to collect DNA for the purpose of connecting a suspect to an offense to be executed in any jurisdiction regardless of whether the issuing court's jurisdiction extends to the county in which the court is located.

Code of Criminal Procedure Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES [~~FOLLOWING CERTAIN ARRESTS~~]. (a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or the [~~an~~] arrest, during a judicial proceeding or initial period of confinement following the arrest, or during the person's confinement after a conviction or adjudication resulting from the arrest [~~commission of that offense~~] causes the person's bodily fluids to come into contact with a peace officer, a magistrate, or an employee of a correctional facility where the person is confined [~~to come into contact with the person's bodily fluids~~] shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer, magistrate, or correctional facility employee. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health

authority, and the local health authority shall notify the peace officer, magistrate, or correctional facility employee, as appropriate, of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

Commentary by Kyle Dufour

Source: HB 1595
Effective Date: June 17, 2015
Applicability: Applies to a motion by the court or request of a magistrate or correctional facility employee made on or after the effective date.
Summary of Changes: Current law authorizes a court, on its own motion or upon request, to test a detainee for communicable diseases when a peace officer comes in contact with the detainee's bodily fluid. This change authorizes a magistrate to require testing of a detainee if the detainee's bodily fluids come into contact with a magistrate or a correctional facility employee. This extends the same protections to magistrates and correctional staff who are similarly in close proximity with detainees.

Code of Criminal Procedure Art. 18.22. TESTING FOR COMMUNICABLE DISEASES FOLLOWING CERTAIN ARRESTS. (a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or an arrest following the commission of that offense causes an emergency response employee or volunteer, as defined by Section 81.003, Health and Safety Code, [~~a peace officer~~] to come into contact with the person's bodily fluids shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the emergency response employee or volunteer [~~peace officer~~]. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority and the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer, and the local health authority or the designated infection control officer of the affected employee or volunteer shall notify the emergency response employee or volunteer [~~peace officer~~] of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

Commentary by Kyle Dufour

Source: SB 1574
Effective Date: September 1, 2015
Applicability: Applies to testing for communicable diseases following arrests on or after the effective date.
Summary of Changes: The amendment to Article 18.22 of the Code of Criminal Procedure expands the current requirement that a detainee arrested for an offense who causes a peace officer to come into contact with the person's bodily fluids be tested for a communicable disease to now include testing of a detainee who exposes any emergency response employee or volunteer to bodily fluids. While term "peace officer" has been deleted from Section 18.22(a) Code of Criminal Procedure, it now references "emergency response employee or volunteer" as defined by Section 81.003, Health and Safety Code, which encompasses the term "peace officer". Therefore, it expands the category of persons who may request testing and does not remove peace officer from the protected category of persons who may request testing of a detainee. Additionally, the person performing the test is required to make the test results available to the designated infection control officer of the entity that employs or uses the services of the affected employee or volunteer and requires that officer to notify the employee or volunteer of the test result.

Code of Criminal Procedure Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES [~~FOLLOWING CERTAIN ARRESTS~~]. (b) Testing under this article shall be conducted in accordance with written infectious disease control protocols adopted by the Department [~~Texas Board~~] of State Health Services that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the arrested person and the peace officer, magistrate, or correctional facility employee.

Commentary by Kyle Dufour

Source: HB 1595
Effective Date: June 17, 2015
Applicability: Applies to a motion by the court or request of a magistrate or correctional facility employee made on or after the effective date.
Summary of Changes: This session, Article 18.22 of the Code of Criminal Procedure was amended by two different bills. The language in HB 1595 requires testing to be conducted in accordance with protocols set by the Department of State Health Services, instead of the Texas Board of Health, that establish clear criteria and guidelines for testing that respect the rights of the arrested person and the peace officer, magistrate or correctional facility employee.

Code of Criminal Procedure Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES [~~FOLLOWING CERTAIN ARRESTS~~]. (d) In this article, "correctional facility" means:

(1) any place described by Section 1.07(a)(14), Penal Code; or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Commentary by Kyle Dufour

Source: HB 1595
Effective Date: June 17, 2015
Applicability: Applies to a motion by the court or request of a magistrate or correctional facility employee made on or after the effective date.
Summary of Changes: The amendment to Article 18.22, Subsection (d) defines correctional staff in reference to Section 51.02, Family Code in order to expand who may request that a detainee be tested to include an employee of a secure juvenile correctional facility or a secure juvenile detention facility.

Code of Criminal Procedure Art. 18.24. BODY CAVITY SEARCH DURING TRAFFIC STOP. (a) In this article, "body cavity search" means an inspection that is conducted of a person's anal or vaginal cavity in any manner, but the term does not include a pat-down.

(b) Notwithstanding any other law, a peace officer may not conduct a body cavity search of a person during a traffic stop unless the officer first obtains a search warrant pursuant to this chapter authorizing the body cavity search.

Commentary by Kyle Dufour

Source: HB 324
Effective Date: September 1, 2015
Applicability: Applies to traffic stop that occur on searches on or after the effective date.
Summary of Changes: The Fourth Amendment to the U.S. Constitution ensures the right to be free from unreasonable searches and seizures, thus a law enforcement officer generally may not conduct a search without a warrant. While exceptions to the search warrant requirement exist, recent warrantless searches of body cavities during traffic stops in Texas have prompted concerns regarding the absence of law enforcement policies regarding such searches. Article 18.24, as added, prohibits a peace officer from conducting a search of a person's anal or vaginal cavity in any manner during a traffic stop without a search warrant.

Code of Criminal Procedure Art. 32A.01. TRIAL PRIORITIES. (b) Unless extraordinary circumstances require otherwise, the trial of a criminal action in which the alleged victim is younger than 14 years of age shall be given preference over other matters before the court, whether civil or criminal.

Commentary by Kyle Dufour

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to the prosecution of an offense committed on or after the effective date.
Summary of Changes: Currently, the speedy trial statute gives criminal cases priority in trial settings over civil cases. Article 32A.01 of the Code of Criminal Procedure is amended in Subsection (b) to give priority to criminal cases over all other cases in which the alleged victim is younger than 14 years of age.

Code of Criminal Procedure Art. 38.50. RETENTION AND PRESERVATION OF TOXICOLOGICAL EVIDENCE OF CERTAIN INTOXICATION OFFENSES. (a) In this article, "toxicological evidence" means a blood or urine specimen that was collected as part of an investigation of an alleged offense under Chapter 49, Penal Code.

(b) This article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of toxicological evidence.

(c) An entity or individual described by Subsection (b) shall ensure that toxicological evidence collected pursuant to an investigation or prosecution of an offense under Chapter 49, Penal Code, is retained and preserved, as applicable:

(1) for the greater of two years or the period of the statute of limitations for the offense, if the indictment or information charging the defendant, or the petition in a juvenile proceeding, has not been presented;

(2) for the duration of a defendant's sentence or term of community supervision, as applicable, if the defendant is convicted or placed on community supervision, or for the duration of the commitment or supervision period applicable to the disposition of a juvenile adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; or

(3) until the defendant is acquitted or the indictment or information is dismissed with prejudice, or, in a juvenile proceeding, until a hearing is held and the court does not find the child engaged in delinquent conduct or conduct indicating a need for supervision.

(d) For each offense subject to this article, the court shall determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence under Subsection (c) and notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological

evidence of the period for which the evidence is to be retained and preserved. If an action of the prosecutor or the court changes the applicable period under Subsection (c), the court shall notify the persons described by this subsection about the change.

(e) The entity or individual charged with storing toxicological evidence may destroy the evidence on expiration of the period provided by the notice most recently issued by the court under Subsection (d).

(f) To the extent of any conflict between this article and Article 2.21 or 38.43, this article controls.

Commentary by Kyle Dufour

Source: HB 1264
Effective Date: September 1, 2015
Applicability: Applies to all toxicological evidence stored by an entity or individual on or after the effective date.
Summary of Changes: The current law gives guidance regarding the retention, storage and disposal of biological material that constitutes biological evidence used for identity. In recent years, proponents have cited well-publicized examples of police departments that have stored blood and urine from intoxication crimes for decades. There are, however, no rules relating to biological material that is specifically used for toxicological evidence in intoxication crimes. Article 38.50, adds new language that gives specific direction for retention and storage of toxicological evidence from intoxication investigations. Generally, the provision requires retention of evidence for the greater of two years or the statute of limitations for the offense, the duration of the sentence or community supervision, or until the accused is acquitted or case is dismissed. Section 51.17 (c), Family Code specifically makes Chapter 38 of the Code of Criminal Procedure applicable to Title 3 juvenile proceedings..

Code of Criminal Procedure Art. 39.14. DISCOVERY. (b) On [~~motion of~~] a party's request made not later than the 30th day before the date that jury selection in the trial is scheduled to begin or, in a trial without a jury, the presentation of evidence is scheduled to begin, the party receiving the request shall [~~party and on notice to the other parties, the court in which an action is pending may order one or more of the other parties to~~] disclose to the requesting party [~~making the motion~~] the name and address of each person the disclosing [~~other~~] party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence. Except as otherwise provided by this subsection, the disclosure must be made in writing in hard copy form or by electronic means [~~The court shall specify in the order the time and manner in which the other party must make the disclosure to the moving party, but in specifying the time in which the other party shall make disclosure the court shall require the other party to make the disclosure~~] not later than the 20th day before the date that jury selection in the trial is scheduled to begin or, in a trial without a jury, the presentation of evidence is scheduled to begin. On motion of a party and on notice to the other parties, the court may order an earlier time at which one or more of the other parties must make the disclosure to the requesting party [~~begins~~].

Commentary by Kyle Dufour

Source: HB 510
Effective Date: September 1, 2015
Applicability: Applies to the prosecution of an offense committed on or after the effective date.
Summary of Changes: In 2013, SB 1611, known as the Michael Morton Act, changed the discovery procedure in criminal cases by removing provisions that required the defendant to file a motion for discovery and instead permitted disclosure merely upon request of the defendant. The 2013 legislation did not amend the portion related to expert witnesses and still requires a motion for disclosure of experts to be filed by the defendant. To address this, Article 39.14 no longer requires a motion for disclosure but requires a party that received merely a request for disclosure of experts to disclose the name and address of each expert to the requesting party. The requesting party must make the request at least 30 days before jury selection or presentation of evidence is scheduled to begin.

Code of Criminal Procedure Art. 44.01. APPEAL BY STATE. (j) Nothing in this article is to interfere with the defendant's right to appeal under the procedures of Article 44.02 [~~of this code~~]. The defendant's right to appeal under Article 44.02 may be prosecuted by the defendant where the punishment assessed is in accordance with Subchapter C, Chapter 42A [~~Subsection (a), Section 3d, Article 42.12 of this code~~], as well as any other punishment assessed in compliance with Article 44.02 [~~of this code~~].

Commentary by Kyle Dufour

Source: HB 2299
Effective Date: September 1, 2017
Applicability: Applies to criminal appeals on or after the effective date.
Summary of Changes: During the 83rd Legislature, the House Select Committee on Criminal Procedure Reform tasked the Texas Legislative Council (TLC) to make recommended non-substantive revisions of Article 42.12, Code of Criminal Procedure. The process involved re-arranging the statutes in a more logical order, and eliminating repealed, invalid, duplicative, and other ineffective provisions without altering the sense, meaning, or effect of the law. HB 2299 codifies Article 42.12

as new Chapter 42A. It changes current law relating to the non-substantive revision of certain laws concerning community supervision granted in criminal cases, including conforming amendments. As amended, Art. 44.01 makes a conforming reference to the new Chapter 42A. While no substantive changes were made to Sec. 3g of Art. 42.12, the statutes appear to have rearranged and reclassified offenses for which the judge may not suspend the imposition of a sentence. These are no longer found under the familiar "3g" heading commonly referred to by criminal justice practitioners. Instead, they are listed under Art. 42A.054 of Code of Criminal Procedure.

Code of Criminal Procedure Art. 45.020. APPEARANCE BY COUNSEL. (b) [~~Not more than one counsel shall conduct either the prosecution or defense.~~] State's counsel may open and conclude the argument in the case.

Commentary by Kyle Dufour

Source: HB 1386
Effective Date: September 1, 2015
Applicability: Applies to a criminal proceeding that commences on or after the effective date.
Summary of Changes: Article 45.020 updates an outdated provision of the Code of Criminal Procedure that prohibits municipal court defendants from being represented by more than one lawyer. Since the current practice overlooks this provision, this change updates the law to reflect the common understanding of courtroom practice where a defendant may be represented by more than one attorney working together.

Code of Criminal Procedure Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS. (h) Records of a person under 17 years of age relating to a complaint [~~dismissed as provided by Article 45.051 or 45.052~~] may be expunged under this article if:

(1) the complaint was dismissed under Article 45.051 or 45.052 or other law; or

(2) the person was acquitted of the offense.

Commentary by Kyle Dufour

Source: SB 108
Effective Date: September 1, 2015
Applicability: Applies to arrest records and files created before, on, or after the effective date.
Summary of Changes: Current law allows the records of a complaint citation against person under 17 years old to be expunged if the complaint was dismissed. The change to Subsection (h) now expands the conditions under which an expunction may be sought for a person 17 years of age or under to include the condition that the person was acquitted of the offense.

Code of Criminal Procedure Art. 45.052. DISMISSAL OF MISDEMEANOR CHARGE ON COMPLETION OF TEEN COURT PROGRAM. (a) A justice or municipal court may defer proceedings against a defendant who is under the age of 18 or enrolled full-time in an accredited secondary school in a program leading toward a high school diploma for not more than 180 days if the defendant:

(1) is charged with an offense that the court has jurisdiction of under Article 4.11 or 4.14[~~, Code of Criminal Procedure~~];

(2) pleads nolo contendere or guilty to the offense in open court with the defendant's parent, guardian, or managing conservator present;

(3) presents to the court an oral or written request to attend a teen court program or is recommended to attend the program by a school employee under Section 37.146, Education Code; and

(4) has not successfully completed a teen court program in the year [~~two years~~] preceding the date that the alleged offense occurred.

Commentary by Kyle Dufour

Source: SB 108
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Current law allows a justice or municipal judge to defer proceedings against a person under the age of 18 or enrolled in a certain full-time secondary school program if certain criteria are met, one of which is if the person makes an oral or written request to attend a teen court program. Instead of a request, the criterion has now been expanded the criterion to provide an alternative criterion that the person is recommended to attend the program by a school employee. Additionally, the amount of time required between the alleged offense date and the date the person completed the last teen court program, if any, has been reduced from two years to one year.

Code of Criminal Procedure Art. 45.058. CHILDREN TAKEN INTO CUSTODY. (g) Except as provided by Subsection (g-1) and Section 37.143(a), Education Code, a law enforcement officer may issue a field release citation as provided by Article 14.06 in place of taking a child into custody for a traffic offense or an offense punishable by fine only.

Commentary by Kyle Dufour

Source: SB 108
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Section 45.058 has been amended in Subsection (g) to prohibit a law enforcement officer from issuing a citation to a child who is alleged to have committed a school offense as that term is defined in the Education Code. Under the Education Code, a school offense means an offense committed by a child in public school that is a Class C misdemeanor, other than a traffic offense, and one that is committed on property under the control and jurisdiction of a school district.

Government Code

Government Code Sec. 411.1882. EVIDENCE OF HANDGUN PROFICIENCY FOR CERTAIN PERSONS. (a) A person who is serving in this state as a judge or justice of a federal court, as an active judicial officer[~~,~~] as defined by Section 411.201, [~~or~~] as a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney, as a supervision officer as defined by Section 2, Article 42.12, Code of Criminal Procedure, or as a juvenile probation officer may establish handgun proficiency for the purposes of this subchapter by obtaining from a handgun proficiency instructor approved by the Texas Commission on Law Enforcement for purposes of Section 1702.1675, Occupations Code, a sworn statement that indicates that the person, during the 12-month period preceding the date of the person's application to the department, demonstrated to the instructor proficiency in the use of handguns.

Commentary by Nydia Thomas

Source: HB 1376
Effective Date: September 1, 2015
Applicability: Applies to an application for a concealed handgun license by community supervision officer or juvenile probation officer on or after the effective date.
Summary of Changes: In 2009, the legislature authorized juvenile probation officers to carry a firearm in the course of duties under limited circumstances outlined in Section 142.006, Human Resources Code. In recent years, community supervision and other probation stakeholders have suggested that the firearm training provided by the Texas Commission on Law Enforcement (TCOLE), formerly TCLEOSE, and similar proficiency training prerequisites for obtaining a concealed handgun license for off-duty purposes were redundant. The amendment to Section 411.1882(a), Government Code adds juvenile probation officers and adult community supervision officers to the persons who may obtain a sworn statement from a TCOLE proficiency instructor that attests that the officer has demonstrated handgun proficiency within the 12-month period prior to application for the concealed handgun license.

Government Code Sec. 411.1953. REDUCTION OF FEES FOR COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT OFFICERS AND JUVENILE PROBATION OFFICERS. Notwithstanding any other provision of this subchapter, an applicant who is serving in this state as a supervision officer, as defined by Section 2, Article 42.12, Code of Criminal Procedure, or as a juvenile probation officer shall pay a fee of $25 for the issuance of an original or renewed license under this subchapter.

Commentary by Nydia Thomas

Source: HB 1376
Effective Date: September 1, 2015
Applicability: Applies to applications for a concealed handgun license by a community supervision officers and juvenile probation officers on or after the effective date.
Summary of Changes: Newly added Section 411.1953 of the Government Code specifies that juvenile probation officers and adult community supervision officers who apply for the issuance of an original or renewed concealed handgun license are entitled to a reduced fee of $25.

Government Code Sec. 411.0765. DISCLOSURE BY CRIMINAL JUSTICE AGENCY. (a) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure of criminal history record information under this subchapter only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (b), or the person who is the subject of the order.

Commentary by John Gonzales

Source: SB 1902
Effective Date: September 1, 2015
Applicability: Applies to the issuance of orders of non-disclosure of criminal history record information for an offense committed on or after the effective date.
Summary of Changes: Former Government Code Sections 411.081(a) and (b) were amended in 2013 to conform to changes made when the Texas Youth Commission and the Texas Juvenile Probation Commission were merged as the Texas Juvenile Justice Department. This amendment reenacts and transfers Section 411.081 to the new Subchapter E-1 of Government Code Chapter 411. It does not make any substantive changes. The Texas Juvenile Justice Department continues to have access to criminal history information that is the subject of orders of non-disclosure for hiring and certification purposes.

Government Code Sec. 411.0765. DISCLOSURE BY CRIMINAL JUSTICE AGENCY. (b) [~~(i)~~] A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure of criminal history record information under this subchapter [~~Subsection (d)~~] to the following noncriminal justice agencies or entities only:

(1) the State Board for Educator Certification;

(2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;

(3) the Texas Medical Board;

(4) the Texas School for the Blind and Visually Impaired;

(5) the Board of Law Examiners;

(6) the State Bar of Texas;

(7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;

(8) the Texas School for the Deaf;

(9) the Department of Family and Protective Services;

(10) the Texas Juvenile Justice Department;

(11) the Department of Assistive and Rehabilitative Services;

(12) the Department of State Health Services, a local mental health service, a local intellectual and developmental disability [~~mental retardation~~] authority, or a community center providing services to persons with mental illness or intellectual or developmental disabilities [~~retardation~~];

(13) the Texas Private Security Board;

(14) a municipal or volunteer fire department;

(15) the Texas Board of Nursing;

(16) a safe house providing shelter to children in harmful situations;

(17) a public or nonprofit hospital or hospital district, or a facility as defined by Section 250.001, Health and Safety Code;

(18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;

(19) the Texas State Board of Public Accountancy;

(20) the Texas Department of Licensing and Regulation;

(21) the Health and Human Services Commission;

(22) the Department of Aging and Disability Services;

(23) the Texas Education Agency;

(24) the Judicial Branch Certification Commission;

(25) a county clerk's office in relation to a proceeding for the appointment of a guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code;

(26) the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:

(A) the Department of Information Resources; or

(B) a contractor or subcontractor of the Department of Information Resources;

(27) the Texas Department of Insurance;

(28) the Teacher Retirement System of Texas; [~~and~~]

(29) [~~(30)~~] the Texas State Board of Pharmacy;

(30) a bank, savings bank, savings and loan association, credit union, or mortgage banker, a subsidiary or affiliate of those entities, or another financial institution regulated by a state regulatory entity listed in Subdivision (18) or by a corresponding federal regulatory entity, but only regarding an employee, contractor, subcontractor, intern, or volunteer of or an applicant for employment by that bank, savings bank, savings and loan association, credit union, mortgage banker, subsidiary or affiliate, or financial institution; and

(31) an employer that has a facility that handles or has the capability of handling, transporting, storing, processing, manufacturing, or controlling hazardous, explosive, combustible, or flammable materials, if:

(A) the facility is critical infrastructure, as defined by 42 U.S.C. Section 5195c(e), or the employer is required to submit to a risk management plan under Section 112(r) of the federal Clean Air Act (42 U.S.C. Section 7412) for the facility; and

(B) the information concerns an employee, applicant for employment, contractor, or subcontractor whose duties involve or will involve the handling, transporting, storing, processing, manufacturing, or controlling hazardous, explosive, combustible, or flammable materials and whose background is required to be screened under a federal provision described by Paragraph (A).

Commentary by John Gonzales

Source: SB 1902
Effective Date: September 1, 2015
Applicability: Applies to the issuance of orders of nondisclosure of criminal history record information for an offense committed on or after the effective date.
Summary of Changes: The most significant change in this amendment is the expansion of persons entitled to orders of non-disclosure. Formerly, only persons successfully completing deferred adjudication probation were eligible. Now, certain persons who were ordered to community supervision and or served jail time can meet the requirements for an order of non-disclosure. This legislation continues to authorize a criminal justice agency to disclose criminal history record information that was ordered sealed by an order of nondisclosure to

criminal justice agencies, for criminal justice or regulatory licensing purposes. Criminal history record information involving convictions the subject of an order of non-disclosure can be admitted into evidence during the trial of any subsequent offense, if otherwise admissible. The person who is the subject of the order also continues to have the authority to access criminal history records that have been sealed by the order of non-disclosure. While non-disclosure orders do not apply to juvenile records, the Texas Juvenile Justice Department continues to have access to criminal history information for various purposes, including hiring and certification.

Government Code Sec. 499.053. TRANSFERS FROM TEXAS JUVENILE JUSTICE DEPARTMENT OR POST-ADJUDICATION SECURE CORRECTIONAL FACILITY. (a) In this section, "post-adjudication secure correctional facility" has the meaning assigned by Section 152.00011, Human Resources Code.

(a-1) The department shall accept persons transferred to the department from:

(1) the Texas Juvenile Justice Department under Section 245.151, Human Resources Code; or

(2) a post-adjudication secure correctional facility under Section 152.00161, Human Resources Code.

(b) A person transferred to the department from the Texas Juvenile Justice Department or from a post-adjudication secure correctional facility is entitled to credit on the person's sentence for the time served in the custody of the Texas Juvenile Justice Department or the juvenile board or local juvenile probation department, as applicable.

(c) All laws relating to good conduct time and eligibility for release on parole or mandatory supervision apply to a person transferred to the department by the Texas Juvenile Justice Department or by a juvenile board or local juvenile probation department that operates the post-adjudication secure correctional facility as if the time the person was detained in a detention facility and the time the person served in the custody of the Texas Juvenile Justice Department or the juvenile board or local juvenile probation department was time served in the custody of the department.

(d) A person transferred from the Texas Juvenile Justice Department or a post-adjudication secure correctional facility for the offense of capital murder shall become eligible for parole as provided in Section 508.145(d) for an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.
Summary of Changes: This cleanup provision clarifies that the Texas Department of Criminal Justice (TDCJ) shall accept juveniles transferred to its Correctional Institutional Division from Travis County just as it accepts children transferred from the Texas Juvenile Justice Department. It ensures these individuals get credit for time served in the custody of the Travis County Juvenile Probation Department and applies good conduct time and eligibility for parole or mandatory supervision, including specifying parole eligibility for capital murder or offenses with a deadly weapon finding.

Government Code Sec. 508.003. INAPPLICABLE TO JUVENILES AND CERTAIN INMATES. (c) The provisions of this chapter not in conflict with Section 508.156 apply to parole of a person from the Texas Juvenile Justice Department or from a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department [~~Youth Commission~~] under that section.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.
Summary of Changes: As amended, Section 508.003(c) of the Government Code clarifies that the TDCJ parole rules that apply to individuals transferred from the Texas Juvenile Justice Department also apply to individuals transferred from the local commitment program in Travis County. This is a cleanup provision relating to the 2013 pilot legislation that authorized local commitment of youth to the Travis County post-adjudication secure correctional facility.

Government Code Sec. 508.156. DETERMINATE SENTENCE PAROLE. (a) Before the release of a person who is transferred under Section 152.0016(g), 152.00161(e), 245.051(c), or 245.151(e), Human Resources Code, to the department for release on parole, a parole panel shall review the person's records and may interview the person or any other person the panel considers necessary to determine the conditions of parole. The panel may impose any reasonable condition of parole on the person that the panel may impose on an adult inmate under this chapter.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.

Summary of Changes: This amendment to Section 508.156(a), Government Code expands TDCJ's requirement to review and impose parole conditions on an individual being transferred from TJJD to TDCJ-Parole so that the same requirements exist when the individual is transferred from the local commitment program in Travis County to TDCJ-Parole.

Government Code Sec. 508.156. DETERMINATE SENTENCE PAROLE. (d) The period of parole for a person released on parole under this section is the term for which the person was sentenced less calendar time served at the Texas Juvenile Justice Department or in the custody of a juvenile board or local juvenile probation department following a commitment under Section 54.04011(c)(2), Family Code, [~~Youth Commission~~] and in a juvenile detention facility in connection with the conduct for which the person was adjudicated.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.
Summary of Changes: In 2013, Travis County was given the authority to commit juveniles to its post-adjudication secure correctional facility in the same manner as a commitment to TJJD. This cleanup provision ensures that the period of parole for an individual transferred to TDCJ from the Travis County local commitment program is calculated in the same way as for an individual transferred from TJJD.

Government Code Sec. 508.156. DETERMINATE SENTENCE PAROLE. (e) If a parole panel revokes the person's parole, the panel may require the person to serve the remaining portion of the person's sentence in the institutional division. The remaining portion of the person's sentence is computed without credit for the time from the date of the person's release to the date of revocation. The panel may not recommit the person to the Texas Juvenile Justice Department or to the custody of a juvenile board or local juvenile probation department [~~Youth Commission~~].

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after December 1, 2013.
Summary of Changes: Section 508.156(e) contains a cleanup amendment to prohibit a Texas Department of Criminal Justice (TDCJ) parole panel from recommitting an individual to the custody of the local commitment program in Travis County just as it is prohibited from recommitting an individual to TJJD.

Health and Safety Code

Health and Safety Code Sec. 62.106. SUSPENSION AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the child's eligibility for health benefits coverage under the child health plan during the period the child is placed in the facility.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for health benefits coverage under the child health plan has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Commentary by John Gonzales

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to suspensions and reinstatements of eligibility of for a child health benefits plan for children placed in and released from juvenile facilities on or after the effective date.
Summary of Changes: Under current law, when a child is placed in any juvenile facility, the Department of Health and Human Services (HHSC) automatically terminates the child's health benefits plan. Upon the child's release, many are without health benefits coverage due to the unpredictable time required to obtain reinstatement. Section 62.106, as added this session, requires HHSC to suspend rather than terminate the child's health benefits coverage in order to prevent any loss of coverage. HHSC must within 48 hours after learning of the child's release from a juvenile facility, reinstate the child's coverage until the end of the original period of eligibility.

Health and Safety Code Sec. 62.107. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 62.106.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is enrolled in the child health plan.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was enrolled in the child health plan.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for health benefits coverage under the child health plan.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, enrolled in the child health plan for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Commentary by John Gonzales

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to child health plan reinstatements of eligibility for children placed in and released from juvenile facilities on or after the effective date.
Summary of Changes: Although changes to Section 62.106 require HHSC to reinstate the child's health benefits within 48 hours of receiving a juvenile facility's notice of the child's release, juvenile facilities now have discretion to act in all aspects of the process. All civil liabilities for not taking action on any notice in this provision are absolved. Juvenile facilities have discretion to give notice to HHSC when a child is placed, whether the child has health coverage at the time of placement or upon release. In the event a juvenile facility notifies HHSC of the placement, the facility is required to do so within 30 days. If the facility provides notice to HHSC of the release, it must also give a copy of the notice to the child's parents or legal guardian along with information that provides for reinstatement of health coverage information. HHSC is also required to provide a mechanism for the juvenile facilities to determine if a child is covered by the child insurance plan.

Health and Safety Code Sec. 574.045. TRANSPORTATION OF PATIENT. (l) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

Commentary by John Gonzales

Source: SB 1129
Effective Date: June 17, 2015
Applicability: Applies to restraints of persons transported for court-ordered mental health services on or after the effective date.
Summary of Changes: Most sheriffs, constables and persons who are authorized to transport a person committed to a mental health facility because of an emergency detention or pursuant a protective custody order are trained on how to execute physical restraints. Current training protocols demonstrate that a physical restraint should allow the person being transported to sit upright and without any bodily difficulty. New Subsection 574.045(l) of the Health and Safety Code codifies what is already recommended, taught and in practice. There are, however, some persons authorized to transport in these situations that prefer the option to keep the person down, if the situation requires it, for the safety of the persons transporting and being transported. This provision does include an exception for transport by ambulance.

Amendment Summary
Controlled Substances Act

Editor's Note: *The statutory language containing chemical substance formulas can often be very lengthy and complicated to readers. We have, therefore, provided only descriptive summaries of the legislative amendments affecting the Texas Controlled Substances Act found in Chapter 481 of the Health and Safety Code.*

Commentary by John Gonzales

Source: Various
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: This session, the Legislature focused on substances known as synthetic marijuana and designer psychedelic drugs like 25-I which have been shown to have similar and in some case more potent effects than natural marijuana, LSD and ecstasy. These substances are very popular among the youth of

Texas and have proven to be very dangerous, if not lethal. The following legislative amendments attempt to capture controlled substance formulations that were not previously described in Texas Controlled Substances Act Penalty Groups, thereby making prosecution very difficult, if not impossible:

SB 172 amends the Health and Safety Code to revise the controlled substances listed in Penalty Groups 1-A and 2 of the Texas Controlled Substances Act. The prosecution of synthetic psychedelics designer drugs including substances that imitate the effects of LSD and ecstasy is difficult due to their ever changing chemical makeup. This legislation will assist with prosecution by adding substances not formerly on the list.

In an attempt to fight the war on synthetic marijuana, **SB 173** amends the list of chemicals in Penalty Group 2-A. The constant changing chemical makeup of synthetic marijuana makes it difficult to identify and prosecute under the Texas Controlled Substances Act. The statutory language regarding the make-up of synthetic marijuana has been changed from “any quantity of a synthetic chemical” to "any material, compound, mixture, or preparation that contains any quantity of certain natural or synthetic chemical substances etc." This change captures most, if not all, substance formulations to allow for a more effective criminal prosecution of synthetic marijuana offenses.

The Health and Safety Code is amended by **SB 236** to include the manufacture, delivery or possession with intent to deliver a controlled substance listed in Penalty Group 1-A of the Texas Controlled Substances Act. This penalty group was inadvertently left out of provisions enhancing the penalties within drug-free zones. The penalties for these offenses may be enhanced to the next higher degree of felony if the person committed the offense on a school bus, in, on, or within 1,000 feet of certain drug free zone areas such as institutions of higher learning, youth centers, playgrounds, or in, on, or within 300 feet of a public swimming pool or video arcade facility.

HB 1212 was enacted in response to many retailers who sell synthetic products packaged for a legal purpose but are abused because they mimic the same effects of certain controlled substances. The amendments to HB 1212 target synthetic marijuana products. The commissioner of the State Health Services is given the authority to designate a consumer commodity as an abusable synthetic substance if certain conditions apply. Any substance determined by the Commissioner as an abusable synthetic substance is subject to enforcement actions. Enforcement actions can include inspection of the premises, product recall, removal and destruction, restraining orders, issuance of administrative and civil penalties and criminal prosecution.

HB 1424 similar to SB 173 expands the list of substances in Penalty Group 2-A to include the increasing types of synthetic cannabinoids. This expansion makes it easier to identify and prosecute new dangerous versions of synthetic marijuana.

Human Resources Code

Human Resources Code Sec. 32.0264. SUSPENSION AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the child's eligibility for medical assistance during the period the child is placed in the facility.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for medical assistance has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Commentary by Kaci Singer

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to a child whose period of placement or release from a juvenile facility begins or after the effective date, regardless of the eligibility determination date.
Summary of Changes: Currently, children eligible for medical assistance are unenrolled from the child health benefits plan when placed in a facility. Getting them re-enrolled frequently takes weeks or months, time during which they are unable to get medication or other medical treatment. Section 32.0264, Human Resources Code provides that, to the extent allowed under federal law, Health and Human Services Commission (HHSC) shall suspend, rather than terminate, the child’s eligibility for medical assistance while the child is in the juvenile facility. If the juvenile facility chooses to notify HHSC of the child’s release, the HHSC must reinstate the child’s eligibility within 48 hours. The period the child was in the facility is not counted toward the amount of time the child was certified as eligible for the assistance. A juvenile facility is any facility in which the child is

detained, placed, or committed under Title 3, Family Code.

Human Resources Code Sec. 32.0265. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 32.0264.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is receiving medical assistance benefits.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was receiving medical assistance benefits.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for medical assistance benefits.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, receiving medical assistance benefits for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Commentary by Kaci Singer

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to a child whose period of placement or release from a juvenile facility begins or after the effective date, regardless of the eligibility determination date.
Summary of Changes: These provisions give the juvenile facility the option to notify HHSC of placement in or release from a facility of a child who was receiving medical assistance benefits. If the facility chooses to give notice of placement, it must do so as soon as possible but not later than the 30th day after the child's placement. If the facility elects to give notice of release, it must do so within 48 hours of the release. The notice may be made electronically or by other appropriate means. The facility must also give the child's guardian or custodian a written copy of the notice and a phone number for contacting HHSC. HHSC is required to establish a way for the facility to determine if a child is or was receiving medical assistance benefits. The juvenile facility is not liable in a civil action for failing to comply with these provisions.

Human Resources Code Sec. 152.0131. ATASCOSA COUNTY. (a) The juvenile board of Atascosa County is composed of the county judge, [~~and~~] the district judges in Atascosa County, and the judge of the County Court at Law of Atascosa County.

Commentary by Nydia Thomas

Source: SB 1139
Effective Date: September 1, 2015
Applicability: Applies to juvenile board composition and operation on or after the effective date.
Summary of Changes: The enabling statutes contained in Chapter 152, Subchapter D of the Human Resources Code outline the powers and membership of local juvenile boards in many counties in Texas. The only mechanism for local juvenile boards to expand or change the composition of the board is through legislative enactment. Since 1989, the Atascosa County Juvenile Board has consisted of the county judge and the district judges. This amendment adds the judge of the county court-at-law of Atascosa County to the juvenile board.

Human Resources Code Sec. 152.06331 JUVENILE BOARDS. (f) Fees for the preparation of a court-ordered child custody evaluation or adoption evaluation [~~social study~~] or any other services provided by the domestic relations office, other than services related to the collection of child support, must be reasonable and imposed on a sliding scale according to the financial resources of the parties using the services.

Commentary by Nydia Thomas

Source: SB 1449
Effective Date: September 1, 2015
Applicability: Applies to a child custody or adoption evaluation in a suit affecting the parent-child relationship filed on or after March 1, 2016.
Summary of Changes This conforming amendment to Section 152.06331(f) of the Human Resources Code changes the reference to the term "social study." This term is now discontinued in connection with court-ordered child custody or adoption evaluations used to obtain information, opinions and recommendations in

contested cases regarding the conservatorship, possession or access to a child in a suit affecting the parent-child relationship. The enabling legislation for the Dallas County Domestic Relations Office is included among the county's juvenile board provisions of Chapter 152 of the Human Resources Code.

Human Resources Code Sec. 152.1872. ORANGE COUNTY CHILD SUPPORT OFFICE AND SUPPORT FEE. (f) Fees collected under this section [~~and Section 152.1873~~] shall be deposited in a separate fund known as the "divorce and contempt fees fund [~~Child Support Fund~~]" by the county treasurer. A record shall be kept of all fees collected and expended. The divorce and contempt fees [~~child support~~] fund is subject to regular audit by the county auditor or other authorized person. An annual report of receipts and expenditures in the account shall be made to the commissioners court by the auditor.

Commentary by Nydia Thomas

Source: HB 884
Effective Date: September 1, 2015
Applicability: Applies to the administration and collection of fees on or after the effective date.
Summary of Changes: This amendment requires the county auditor in Orange County to submit an annual report to the commissioners court of all receipts and expenditures in the newly established divorce and contempt fees fund account. This fund is subject to regular audit.

Human Resources Code Sec. 152.1872. ORANGE COUNTY CHILD SUPPORT OFFICE AND SUPPORT FEE. (g) The Orange County Juvenile Board [~~juvenile board~~] shall administer the fees collected under this section [~~and Section 152.1873~~] to meet the expenses of the juvenile board [~~office~~], including postage, equipment, stationery, office supplies, subpoenas, salaries, and other expenses authorized by the board. The fund shall be supplemented from the general fund or other available funds of the county as necessary.

Commentary by Nydia Thomas

Source: HB 884
Effective Date: September 1, 2015
Applicability: Applies to the administrative duties of the juvenile board on or after the effective date.
Summary of Changes: This provision transfers the duties of the Orange County child support office to the Orange County Juvenile Board, including the responsibility for records, equipment and personnel. Section 152.1872 requires the juvenile board to administer the fees collected to meet the board's operational expenses. The provision also authorizes the allocation of supplemental funds from the county's general fund or other available funding source.

Human Resources Code, Sec. 152.1872. ORANGE COUNTY CHILD SUPPORT OFFICE AND SUPPORT FEE.

The following are repealed:

(1) the heading to Section 152.1872, Human Resources Code; and

(2) Sections 152.1872(a), (b), (c), (d), and (e), Human Resources Code.

Commentary by Nydia Thomas

Source: HB 884
Effective Date: September 1, 2015
Applicability: Applies to the administrative duties of the juvenile board on or after the effective date.
Summary of Changes: The change to Section 152.1872 and related subsections of the Human Resources Code abolishes the Orange County Child Support Office and repeals language that governed the collection of monthly child support fees. This function is now fulfilled by the Office of the Attorney General Child Support Division.

Human Resources Code Sec. 152.1873. DIVORCE [~~ADOPTION~~] AND CONTEMPT FEES IN ORANGE COUNTY. (a) Each person who files a divorce case in Orange County shall pay to the clerk of the district court a filing fee of not less than $5. The fee is taxed, collected, and paid as other costs and is used to assist in maintaining the Orange County Juvenile Board as provided by Subsection (g) [~~child support office~~].

Commentary by Nydia Thomas

Source: HB 884
Effective Date: September 1, 2015
Applicability: Applies to the administration and collection of fees on or after the effective date.
Summary of Changes: The amendment to Section 1552.1873 specifies that divorce and contempt filing fees collected in Orange County shall be designated to assist in maintaining the juvenile board.

Human Resources Code Sec. 152.1873. DIVORCE [~~ADOPTION~~] AND CONTEMPT FEES IN ORANGE COUNTY. (d) A receipt of all disbursements of money paid to [~~into~~] the Orange County Juvenile Board [~~child support office~~] in a matter involving contempt shall be kept on file.

Commentary by Nydia Thomas

Source: HB 884
Effective Date: September 1, 2015
Applicability: Applies to the administration and collection of fees on or after the effective date.

Summary of Changes: This provision requires that the receipts of all disbursements of money paid to the Orange County Juvenile Board be kept on file.

Penal Code

Penal Code, Sec. 20A.04. ACCOMPLICE WITNESS; TESTIMONY AND IMMUNITY. (a) A party to an offense under this chapter may be required to provide evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which the party is required to provide evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury. For purposes of this subsection, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) A conviction under this chapter may be had on the uncorroborated testimony of a party to the offense.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: Applies to a criminal offense committed or a violation that occurs on or after the effective date.
Summary of Changes: Current law allows for a conviction of prostitution to be based on uncorroborated, compelled testimony of accomplices. Section 20A.04 of the Penal Code now makes this strategy available to prosecutors in human trafficking cases and thus enables the investigation and prosecution of large scale trafficking cases. Affording a witness of human trafficking immunity from subsequent criminal prosecution would encourage victims to testify against traffickers. Similarly, immunity for accomplice witness testimony would encourage testimony against larger human trafficking rings and its major actors.

Penal Code Sec. 21.15. INVASIVE [~~IMPROPER PHOTOGRAPHY OR~~] VISUAL RECORDING. (a) In this section:

(1) "Female breast" means any portion of the female breast below the top of the areola.

(2) "Intimate area" means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person.

(3) "Changing room" means a room or portioned area provided for or primarily used for the changing of clothing and includes dressing rooms, locker rooms, and swimwear changing areas.

(4) "Promote"[~~, "promote"~~] has the meaning assigned by Section 43.21.

Commentary by Kyle Dufour

Source: SB 1317
Effective Date: June 18, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Recently, the Texas Court of Criminal Appeals ruled in *Ex parte Ronald Thompson*, that Section 21.15(b)(1) of the Texas Penal Code, to the extent it proscribes the taking of photographs and the recording of visual images, is unconstitutional on its face in violation of the Free Speech clause of the First Amendment. Interested parties report that after this holding, individuals who have had improper and invasive photos taken of them without consent are without legal recourse since the statute was held unconstitutional. The underlying problem lays in the current wording of the statute as it requires the actor's intent to arouse or gratify. The Court held that since privacy interests fade once information appears on public record, protecting someone who appears in public from being the object of sexual thoughts is the sort of paternalistic interest in regulating the defendant's mind that the First Amendment was designed to guard against. As amended, Section 21.15 aims to provide a legal remedy for victims of invasive visual recording while staying in line with the court's ruling in part by specifying intimate areas of the body prone to invasive visual recording.

Penal Code Sec. 21.15. INVASIVE [~~IMPROPER PHOTOGRAPHY OR~~] VISUAL RECORDING. (b) A person commits an offense if, without the other person's consent and with intent to invade the privacy of the other person, the person:

(1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view; [~~another at a location that is not a bathroom or private dressing room:~~

[~~(A) without the other person's consent; and~~

[~~(B) with intent to arouse or gratify the sexual desire of any person;~~]

(2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room [~~another at a location that is a bathroom or private dressing room:~~

[~~(A) without the other person's consent; and~~

[~~(B) with intent to:~~

[~~(i) invade the privacy of the other person; or~~

[~~(ii) arouse or gratify the sexual desire of any person~~]; or

(3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

Commentary by Kyle Dufour

Source: SB 1317
Effective Date: June 18, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Section 21.15 (b), as amended, aims to provide a legal remedy for victims of invasive visual recording while staying in line with the *Ex Parte Thompson* ruling discussed above, in part by replacing "intent to arouse or gratify" with language in terms of an intent to invade privacy without consent.

Penal Code Sec. 21.16. VOYEURISM. (a) A person commits an offense if the person, with the intent to arouse or gratify the sexual desire of the actor, observes another person without the other person's consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy.

(b) Except as provided by Subsection (c) or (d), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of an offense under this section.

(d) An offense under this section is a state jail felony if the victim was a child younger than 14 years of age at the time of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Commentary by Kyle Dufour

Source: HB 207
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: While current law addresses voyeurism-like conduct in three specific circumstances under disorderly conduct, repeat offenses cannot be enhanced beyond a Class C misdemeanor. House Bill 207 establishes a new Penal Code offense of voyeurism which is widely considered by law enforcement to be one of the most common gateway offenses to other sexual crimes, including violent sex crimes. Practitioners have reported that most voyeurism offenses are committed by repeat offenders and since these offenses generally are neither well-documented nor effectively shared by local law enforcement agencies across the state, the process of tracking repeat offenders is compromised. Section 21.16 requires the intent to gratify or arouse the sexual desire of the actor without another's consent and enhances punishment for repeat offenders. The similar Penal Code provision found under disorderly conduct has not been repealed, however, the statute specifies that the actor may be punished under any other law instead of or in addition to voyeurism.

Penal Code Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (a) In this section:

(1) "Intimate parts" means the naked genitals, pubic area, anus, buttocks, or female nipple of a person.

(2) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(3) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.

(4) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(5) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(b) A person commits an offense if:

(1) without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;

(2) the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;

(3) the disclosure of the visual material causes harm to the depicted person; and

(4) the disclosure of the visual material reveals the identity of the depicted person in any manner, including through:

(A) any accompanying or subsequent information or material related to the visual material; or

(B) information or material provided by a third party in response to the disclosure of the visual material.

(c) A person commits an offense if the person intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the actor makes the threat to obtain a benefit:

(1) in return for not making the disclosure; or

(2) in connection with the threatened disclosure.

(d) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.

(e) It is not a defense to prosecution under this section that the depicted person:

(1) created or consented to the creation of the visual material; or

(2) voluntarily transmitted the visual material to the actor.

(f) It is an affirmative defense to prosecution under Subsection (b) or (d) that:

(1) the disclosure or promotion is made in the course of:

(A) lawful and common practices of law enforcement or medical treatment;

(B) reporting unlawful activity; or

(C) a legal proceeding, if the disclosure or promotion is permitted or required by law;

(2) the disclosure or promotion consists of visual material depicting in a public or commercial setting only a person's voluntary exposure of:

(A) the person's intimate parts; or

(B) the person engaging in sexual conduct; or

(3) the actor is an interactive computer service, as defined by 47 U.S.C. Section 230, and the disclosure or promotion consists of visual material provided by another person.

(g) An offense under this section is a Class A misdemeanor.

(h) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Commentary by Kyle Dufour

Source: SB 1135
Effective Date: September 1, 2015
Applicability: Applies to visual material disclosed or promoted, or threatened to be disclosed, on or after the effective date.

Summary of Changes: Currently, there is no law prohibiting a person from posting visual images of another person's intimate body parts or engaged in sexual conduct, that at the time was captured with consent, but that are later disseminated publically without consent of the person captured. Recent rising trends in the promotion of these visual images and recordings being posted online have been noted. Victims of these postings report threats of sex assault, stalking, harassment, loss of employment, relocation and even suicide. In addition, victims are often re-victimized when websites charge fees to remove unconsented postings. Section 21.16, as amended, is an effort to preserve relationship privacy by prohibiting the disclosure of sexually explicit material without the consent of persons depicted in addition to prohibiting owner of other publication forums from promoting material of this nature.

Penal Code Sec. 22.021(b). AGGRAVATED SEXUAL ASSAULT. (2) "Elderly individual" has [~~and "disabled individual" have~~] the meaning [~~meanings~~] assigned by Section 22.04(c).

(3) "Disabled individual" means a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

Commentary by Kyle Dufour

Source: HB 2589
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Section 22.021(b) changes the definition of elderly individual to conform to Sec. 22.04(c) of the Penal Code and adds a definition of disabled individual to mean a person older than 13 years of age who is substantially unable to protect themselves from harm or provide food, shelter or medical care for themselves due to age, disease, defect or injury.

Penal Code Sec. 28.03. CRIMINAL MISCHIEF. (b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than $100 [~~$50~~]; or

(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is $100 [~~$50~~] or more but less than $750 [~~$500~~];

(3) a Class A misdemeanor if:

(A) the amount of pecuniary loss is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~]; or

(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;

(4) a state jail felony if the amount of pecuniary loss is:

(A) $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~];

(B) less than $2,500 [~~$1,500~~], if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(C) less than $2,500 [~~$1,500~~], if the property was a fence used for the production or containment of:

(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or

(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code; or

(D) less than $30,000 [~~$20,000~~] and the actor causes wholly or partly impairment or interruption of public communications, public transportation, public gas or power supply, or other public service, or causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas or power supply;

(5) a felony of the third degree if the amount of the pecuniary loss is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(6) a felony of the second degree if the amount of pecuniary loss is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(7) a felony of the first degree if the amount of pecuniary loss is $300,000 [~~$200,000~~] or more.

(f) An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is $750 or more but less than $30,000 [~~$20,000~~].

(h) An offense under this section is a state jail felony if the amount of the pecuniary loss to real property or to tangible personal property is $750 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~] and the damage or destruction is inflicted on a public or private elementary school, secondary school, or institution of higher education.

(j) Notwithstanding Subsection (b), an offense under this section is a felony of the third degree if:

(1) the tangible property damaged, destroyed, or tampered with is transportation communications equipment or a transportation communications device; and (2) the amount of the pecuniary loss to the tangible property is less than $150,000 [~~$100,000~~].

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Offense levels for most property crimes are established by the value of the property or the pecuniary loss to the owner. The property values were set in 1993 and have not been adjusted since. The failure to keep up with inflation essentially has worked to create a higher level offense than would have existed for the same offense committed years ago. To address this, property values were adjusted in many property crimes, including the offense of Criminal Mischief.

The offense levels established solely based on pecuniary loss were adjusted to the following levels:

Class C misdemeanor:	less than $100
Class B misdemeanor:	$100 or more but less than $750
Class A misdemeanor:	$750 or more but less than $2,500
State jail felony:	$2,500 or more but less than $30,000
3rd degree felony:	$30,000 or more but less than $150,000
2nd degree felony:	$150,000 or more but less than $300,000
1st degree felony:	$300,000 or more

There are offenses that involve pecuniary loss plus certain factors that were also changed. Current law provides it is a state jail felony if the damage was less than $20,000 and caused impairment or interruption of public communications, transportation, or public service, among other things. That threshold was changed to $30,000, consistent with the value changes. Similarly, it is a state jail felony if the pecuniary loss was less than $1,500 and the damage was to a fence used for certain stock or game animals; the $1,500 value was increased to $2,500. The same change was made to an offense in which a firearm or explosive caused less than $1,500 in damage to a habitation. It bears noting that it is also a state jail felony to commit the latter two offenses and cause damage up to $30,000 (formerly $20,000) since that is the value amount for a state jail felony. These changes are consistent with current law, which is that there is no misdemeanor level offense when these elements are present, regardless of the damage caused.

Some changes were made to this statute, however, that did more than simply adjust the value thresholds while keep the offense levels intact. One relates to damage to places of worship or human burial, public monuments, or certain community centers. It is currently it is a state jail felony to cause damage of less than $20,000 to these places. Not only did this bill increase the upper threshold from less than $20,000 to less than $30,000, it

inserted a lower limit of $750 or more in damage caused. Now, only an offense that would have otherwise been a Class A misdemeanor based on the damage amount is increased to a felony because one of these locations was damaged; Class B and C misdemeanors that do not currently exist have been created. A second misdemeanor-related change was made when the damage is caused at a school. Current law provides that it is a state jail felony to cause damage in the amount of $1,500 or more but less than $20,000 at a school; these are the same values for a state jail felony for damage caused elsewhere as well. As such, the changes in law raise the upper limit to $30,000 and by dropping the lower limit to $750 so that now what would be a Class A misdemeanor level elsewhere is a state jail felony if the offense occurs at school.

Penal Code Sec. 28.06. AMOUNT OF PECUNIARY LOSS. (d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c), the amount of loss is deemed to be greater than $750 [~~$500~~] but less than $2,500 [~~$1,500~~].

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The law sets out factors to be used to determine the amount of pecuniary loss for certain offenses. If that loss cannot be ascertained, it is deemed to be an amount consistent with the values for a Class A misdemeanor. The change to Section 28.06 is consistent with other changes to Class A misdemeanors in Chapter 28, Penal Code.

Penal Code Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. (e) An offense under Subsection (b)(2)(B), (b)(2)(C), or (b)(2)(D) is a Class C misdemeanor unless the person causes pecuniary loss of $100 or more, in which event the offense is:

(1) a Class B misdemeanor if the amount of pecuniary loss is $100 [~~$20~~] or more but less than $750 [~~$500~~];

(2) a Class A misdemeanor if the amount of pecuniary loss is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~];

(3) a state jail felony if the amount of pecuniary loss is $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~];

(4) a felony of the third degree if the amount of the pecuniary loss is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(5) a felony of the second degree if the amount of pecuniary loss is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(6) a felony of the first degree if the amount of the pecuniary loss is $300,000 [~~$200,000~~] or more.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This session, property values have been adjusted for the offense of Interference with Railroad Property. The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal Mischief), set out previously.

Penal Code Sec. 28.08. GRAFFITI. (b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class C misdemeanor if the amount of pecuniary loss is less than $100;

(2) a Class B misdemeanor if the amount of pecuniary loss is $100 or more but less than $750 [~~$500~~];

(3) [~~(2)~~] a Class A misdemeanor if the amount of pecuniary loss is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~];

(4) [~~(3)~~] a state jail felony if the amount of pecuniary loss is $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~];

(5) [~~(4)~~] a felony of the third degree if the amount of pecuniary loss is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(6) [~~(5)~~] a felony of the second degree if the amount of pecuniary loss is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(7) [~~(6)~~] a felony of the first degree if the amount of pecuniary loss is $300,000 [~~$200,000~~] or more.

(d) An offense under this section is a state jail felony if:

(1) the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs; and

(2) the amount of the pecuniary loss to real property or to tangible personal property is $750 or more but less than $30,000 [~~$20,000~~].

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This session, the Legislature made comprehensive adjustments to the threshold

amounts of many property crimes, including the offense of Graffiti. The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal Mischief), set out previously.

Under current law, there is no Class C misdemeanor level Graffiti offense. The lowest possible level that may be charged is a Class B misdemeanor. This has been the case since the creation of this offense in 1997. This statute has now been changed to create a Class C misdemeanor offense of Graffiti. Additionally, under current law it is a state jail felony if graffiti causes a pecuniary loss of up to $20,000 and the marking is on a school, place of worship or human burial, public monument, or certain community centers; there is no misdemeanor. Not only does this bill increase the upper limit to be $30,000, which is consistent with the new upper limit for a state jail felony, it creates a lower limit of $750 or more. This means only a Class A misdemeanor level of damage can be enhanced to a state jail felony; the offense level is a Class C or Class B misdemeanor if the damage amount falls in those categories, even if the marking is on one of these enumerated places.

Penal Code Sec. 31.03. THEFT. (e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than $100[~~:~~

[~~(A) $50; or~~

[~~(B) $20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06~~];

(2) a Class B misdemeanor if:

(A) the value of the property stolen is $100[~~:~~

[~~(i) $50~~] or more but less than $750 [~~$500; or~~

[~~(ii) $20 or more but less than $500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06~~];

(B) the value of the property stolen is less than $100[~~:~~

[~~(i) $50~~] and the defendant has previously been convicted of any grade of theft; or

[~~(ii) $20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06; or~~]

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;

(3) a Class A misdemeanor if the value of the property stolen is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~];

(4) a state jail felony if:

(A) the value of the property stolen is $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~], or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of $30,000 [~~$20,000~~];

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;

(C) the property stolen is a firearm, as defined by Section 46.01;

(D) the value of the property stolen is less than $2,500 [~~$1,500~~] and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election; or

(F) the value of the property stolen is less than $20,000 and the property stolen is:

(i) aluminum;

(ii) bronze;

(iii) copper; or

(iv) brass;

(5) a felony of the third degree if the value of the property stolen is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~], or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than $150,000 [~~$100,000~~]; or

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than $150,000 [~~$100,000~~];

(6) a felony of the second degree if:

(A) the value of the property stolen is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(B) the value of the property stolen is less than $300,000 [~~$200,000~~] and the property stolen is an automated teller machine or the contents or components of an automated teller machine; or

(7) a felony of the first degree if the value of the property stolen is $300,000 [~~$200,000~~] or more.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal

Mischief), set out previously. The offense level increases based on prior theft convictions remain unchanged. Under current law, theft by check is a Class C misdemeanor if the amount stolen is less than $20 and a Class B misdemeanor if $20 or more but less than $500. This differs from theft by other means, which uses $50 as the threshold amount between a Class B and Class C misdemeanors. This distinction was eliminated. Now, theft by check or theft by other means have the same threshold amounts. The other thresholds that exist for theft with specific elements present (i.e. theft of firearm, theft from person, theft from grave, theft of certain stock animals, ATM theft, etc.) were changed consistently with the new thresholds; the offense levels that currently exist remain intact with only the monetary value changes.

Penal Code Sec. 31.04. THEFT OF SERVICE. (b) For purposes of this section, intent to avoid payment is presumed if:

(1) the actor absconded without paying for the service or expressly refused to pay for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, campgrounds, recreational vehicle parks, restaurants, and comparable establishments;

(2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment; or

(4) the actor failed to return the property held under a rental agreement:

(A) within five days after receiving notice demanding return, if the property is valued at less than $2,500 [~~$1,500~~]; or

(B) within three days after receiving notice demanding return, if the property is valued at $2,500 [~~$1,500~~] or more.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than $100 [~~$20~~];

(2) a Class B misdemeanor if the value of the service stolen is $100 [~~$20~~] or more but less than $750 [~~$500~~];

(3) a Class A misdemeanor if the value of the service stolen is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~];

(4) a state jail felony if the value of the service stolen is $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~];

(5) a felony of the third degree if the value of the service stolen is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(6) a felony of the second degree if the value of the service stolen is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(7) a felony of the first degree if the value of the service stolen is $300,000 [~~$200,000~~] or more.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Offense levels for most property crimes are established by the value of the property or the pecuniary loss to the owner. The failure to keep up with inflation essentially has worked to create a higher level offense than would have existed for the same offense committed years ago. To address this, property values were adjusted in many property crimes, including the offense of Theft of Service. The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal Mischief), set out previously. The thresholds for presumption of theft when a person fails to return rental property were also changed accordingly.

Penal Code Sec. 31.08. VALUE. (c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~].

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The law sets out factors to be used to determine the amount of pecuniary loss for certain offenses. If that loss cannot be ascertained, it is deemed to be an amount consistent with the values for a Class A misdemeanor. This change is consistent with other changes to Class A misdemeanors in Chapter 31, Penal Code.

Penal Code Sec. 31.16. ORGANIZED RETAIL THEFT. (1) a Class C misdemeanor if the total value of the merchandise involved in the activity is less than $100;

(2) a Class B misdemeanor if the total value of the merchandise involved in the activity is $100 or more but less than $750 [~~$50~~];

(3) [~~(2)~~] a Class A misdemeanor if the total value of the merchandise involved in the activity is $750 [~~$50~~] or more but less than $2,500 [~~$500~~];

(4) [~~(3)~~] a state jail felony if the total value of the merchandise involved in the activity is $2,500 [~~$500~~] or more but less than $30,000 [~~$1,500~~];

(5) [~~(4)~~] a felony of the third degree if the total value of the merchandise involved in the activity is $30,000 [~~$1,500~~] or more but less than $150,000 [~~$20,000~~];

(6) [~~(5)~~] a felony of the second degree if the total value of the merchandise involved in the activity is $150,000 [~~$20,000~~] or more but less than $300,000 [~~$100,000~~]; or

(7) [~~(6)~~] a felony of the first degree if the total value of the merchandise involved in the activity is $300,000 [~~$100,000~~] or more.

(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) [~~(c)(1)-(5)~~] is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b); or

(2) during the commission of the offense, a person engaged in an activity described by Subsection (b) intentionally, knowingly, or recklessly:

(A) caused a fire exit alarm to sound or otherwise become activated;

(B) deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or

(C) used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This amendment adjusts the property values for the offense of Organized Retail Theft. Unlike most of the other offenses impacted by this change, which essentially kept the offense levels intact with adjusted thresholds, Organized Retail Theft was quite substantively changed. This law was created in 2011 with the stated purpose of having higher penalties for those engaging in organized retail theft than the penalties under theft. That was accomplished by taking the general theft threshold amounts and assigning one higher penalty level to those amounts. For example, there was no Class C misdemeanor; if the value was less than $50, the offense was a Class B misdemeanor. The amount required to be a Class A misdemeanor for simple theft constituted a state jail felony for Organized Retail Theft. HB 1396 eliminated these enhancements and placed the offense levels equal to simple theft.

Penal Code Sec. 32.02. VALUE. (c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~].

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The law sets out factors to be used to determine the amount of pecuniary loss for certain offenses. If that loss cannot be ascertained, it is deemed to be an amount consistent with the values for a Class A misdemeanor. This change is consistent with other changes to Class A misdemeanors in Chapter 32, Penal Code.

Penal Code Sec. 32.23. TRADEMARK COUNTERFEITING. (e) An offense under this section is a:

(1) Class C misdemeanor if the retail value of the item or service is less than $100 [~~$20~~];

(2) Class B misdemeanor if the retail value of the item or service is $100 [~~$20~~] or more but less than $750 [~~$500~~];

(3) Class A misdemeanor if the retail value of the item or service is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~];

(4) state jail felony if the retail value of the item or service is $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~];

(5) felony of the third degree if the retail value of the item or service is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(6) felony of the second degree if the retail value of the item or service is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(7) felony of the first degree if the retail value of the item or service is $300,000 [~~$200,000~~] or more.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This amendment adjusts the property values for the offense of Trademark Counterfeiting. The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal Mischief), set out previously.

Penal Code Sec. 33.02. BREACH OF COMPUTER SECURITY. (b-2) An offense under Subsection (b-1) is:

(1) a Class C misdemeanor if the aggregate amount involved is less than $100;

(2) a Class B misdemeanor if the aggregate amount involved is $100 or more but less than $750;

(3) a Class A misdemeanor if the aggregate amount involved is $750 or more but less than $2,500;

(4) [~~(1)~~] a state jail felony if the aggregate amount involved is $2,500 or more but less than $30,000 [~~$20,000~~];

(5) [~~(2)~~] a felony of the third degree if the aggregate amount involved is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(6) [~~(3)~~] a felony of the second degree if:

(A) the aggregate amount involved is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~];

(B) the aggregate amount involved is any amount less than $300,000 [~~$200,000~~] and the computer, computer network, or computer system is owned by the government or a critical infrastructure facility; or

(C) the actor obtains the identifying information of another by accessing only one computer, computer network, or computer system; or

(7) [~~(4)~~] a felony of the first degree if:

(A) the aggregate amount involved is $300,000 [~~$200,000~~] or more; or

(B) the actor obtains the identifying information of another by accessing more than one computer, computer network, or computer system.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This amendment adjusts the property values for the offense of Breach of Computer Security. The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal Mischief), set out previously.

Unlike most offenses impacted by this bill, which had the thresholds raised while keeping the existing offense levels intact, Breach of Computer Security was substantially changed. This statute, created in 2011, makes it an offense to purposefully access a computer, network, or system without the consent of the owner and with the intent to defraud or harm others or to alter, damage, or delete property. It was adopted with the stated purpose of making this conduct a felony and, until now, the lowest level offense was a state jail felony. HB 1396 has now created misdemeanor levels for this offense, effectively making this offense tantamount to criminal mischief or simple theft.

Penal Code, Sec. 33.021. ONLINE SOLICITATION OF A MINOR.(a) (1) "Minor" means:

(A) an individual who is [~~represents himself or herself to be~~] younger than 17 years of age; or

(B) an individual whom the actor believes to be younger than 17 years of age.

Commentary by Kyle Dufour

Source: SB 344
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: In October 2013, the Texas Court of Criminal Appeals struck down as unconstitutional the penal offense of online solicitation of a minor stating that the statute is overbroad because it prohibits a range of constitutionally protected speech and is not drawn narrowly enough to achieve only the legitimate government interest of protecting children from sexual abuse. While aimed to prohibit the conduct of a person who engages in Internet conversations with a minor with the intention to make physical contact, the statute does not expressly require that the actor possessed the intent to meet the minor. The amendment to Section 33.02(a)(1) modifies the definition of minor to no longer include someone representing themselves to be younger than 17.

Penal Code Sec. 33.021. ONLINE SOLICITATION OF A MINOR. (b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure [~~arouse or gratify the sexual desire of any person~~], the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(d) It is not a defense to prosecution under Subsection (c) that[~~:~~

[~~(1)~~] the meeting did not occur[~~;~~

[~~(2) the actor did not intend for the meeting to occur; or~~

[~~(3) the actor was engaged in a fantasy at the time of commission of the offense~~].

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection [~~(b) or~~] (c) was committed:

(1) the actor was married to the minor; or

(2) the actor was not more than three years older than the minor and the minor consented to the conduct.

Commentary by Kyle Dufour

Source: SB 344
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: In October 2013, the Texas Court of Criminal Appeals struck down as unconstitutional the penal offense of online solicitation of a minor, stating that the statute is overbroad because it prohibits a range of constitutionally protected speech and is not drawn narrowly enough to achieve only the legitimate government interest of protecting children from sexual abuse. While aimed to prohibit the conduct of a person who engages in internet conversations with a minor with the intention to make physical contact, the statute does not expressly require that the actor possessed the intent to meet the minor. SB 344 amends the language struck down by the court to now require the specific intent to solicit a minor for physical contact or certain other offenses listed in Article 62.001(5) Code of Criminal Procedure. The language barring a defense to prosecution based on the claim that the actor did not intend for a meeting to occur or that the actor was engaged in fantasy during the conversation has been removed.

Penal Code Sec. 36.06. OBSTRUCTION OR RETALIATION. (a) A person commits an offense if the person [~~he~~] intentionally or knowingly harms or threatens to harm another by an unlawful act:

(1) in retaliation for or on account of the service or status of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime; or

(2) to prevent or delay the service of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime.

(a-1) A person commits an offense if the person posts on a publicly accessible website the residence address or telephone number of an individual the actor knows is a public servant or a member of a public servant's family or household with the intent to cause harm or a threat of harm to the individual or a member of the individual's family or household in retaliation for or on account of the service or status of the individual as a public servant.

(b) In this section:

(1) "Honorably retired peace officer" means a peace officer who:

(A) did not retire in lieu of any disciplinary action;

(B) was eligible to retire from a law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the agency; and

(C) is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

(2) "Informant" means a person who has communicated information to the government in connection with any governmental function.

(3) "Public servant" has the meaning assigned by Section 1.07, except that the term also includes an honorably retired peace officer.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if:

(1) [~~unless~~] the victim of the offense was harmed or threatened because of the victim's service or status as a juror; or

(2) the actor's conduct is described by Subsection (a-1) and results in the bodily injury of a public servant or a member of a public servant's family or household[~~, in which event the offense is a felony of the second degree~~].

(d) For purposes of Subsection (a-1), it is prima facie evidence of the intent to cause harm or a threat of harm to an individual the person knows is a public servant or a member of a public servant's family or household if the actor:

(1) receives a written demand from the individual to not disclose the address or telephone number for reasons of safety; and

(2) either:

(A) fails to remove the address or telephone number from the publicly accessible website within a period of 48 hours after receiving the demand; or

(B) reposts the address or telephone number on the same or a different publicly accessible website, or makes the information publicly available through another medium, within a period of four years after receiving the demand, regardless of whether the individual is no longer a public servant.

Commentary by Kyle Dufour

Source: SB 923
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Current law does not expressly prohibit posting personal information of law enforcement officers and their family online with malicious intent in retaliation against an officer for performing their sanctioned duties. SB 923 expands the penal offense of obstruction or retaliation to include posting on a publically accessible website the address or phone number of a public servant or their family, with the intent to cause harm or threat of harm in retaliation against the public servant's performance of his duties. Section 36.06 enhances the offense level from a third degree to a second degree if bodily injury results. It also incorporates language establishes a prima facie assumption if the actor fails to remove the information within 48 hours of written demand to remove it or makes the information publicly available through another medium within four years after receiving the demand, regardless of whether the person is still a civil servant.

Penal Code Sec. 38.15. INTERFERENCE WITH PUBLIC DUTIES. (d-1) Except as provided by Subsection (d-2), in a prosecution for an offense under Subsection (a)(1), there is a rebuttable presumption that the actor interferes with a peace officer if it is shown on the trial of the offense that the actor intentionally disseminated the home address, home telephone number, emergency contact information, or social security number of the officer or a family member of the officer or any other information that is specifically described by Section 552.117(a), Government Code.

(d-2) The presumption in Subsection (d-1) does not apply to information disseminated by:

(1) a radio or television station that holds a license issued by the Federal Communications Commission; or

(2) a newspaper that is:

(A) a free newspaper of general circulation or qualified to publish legal notices;

(B) published at least once a week; and

(C) available and of interest to the general public.

Commentary by Kyle Dufour

Source: HB 1061
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Current law does not expressly prohibit person from posting personal information of law enforcement officers and their family online regardless of a lack of malicious intent to retaliate against an officer for performing their sanctioned duties. Recent incidents in which private data belonging to employees of certain law enforcement agencies, including social security numbers and passwords, was published online by hackers have been reported. Section 38.15 establishes a rebuttable presumption than a person interferes with public duty when at trial it is shown that the actor intentionally disseminated certain personal information of an officer or their family member. This provision carves out exceptions from criminal liability for information disseminated by qualified TV, radio or newspaper mediums.

Penal Code Sec. 39.02. ABUSE OF OFFICIAL CAPACITY. (c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $100 [~~$20~~];

(2) a Class B misdemeanor if the value of the use of the thing misused is $100 [~~$20~~] or more but less than $750 [~~$500~~];

(3) a Class A misdemeanor if the value of the use of the thing misused is $750 [~~$500~~] or more but less than $2,500 [~~$1,500~~];

(4) a state jail felony if the value of the use of the thing misused is $2,500 [~~$1,500~~] or more but less than $30,000 [~~$20,000~~];

(5) a felony of the third degree if the value of the use of the thing misused is $30,000 [~~$20,000~~] or more but less than $150,000 [~~$100,000~~];

(6) a felony of the second degree if the value of the use of the thing misused is $150,000 [~~$100,000~~] or more but less than $300,000 [~~$200,000~~]; or

(7) a felony of the first degree if the value of the use of the thing misused is $300,000 [~~$200,000~~] or more.

Commentary by Kaci Singer

Source: HB 1396
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after September 1, 2015
Summary of Changes: Offense levels for most property crimes are established by the value of the property or the pecuniary loss to the owner. The amendment to Section 39.02 adjusts the property values for abuse of official capacity. The thresholds for the offense levels tied solely to property value or pecuniary loss are the same as for Penal Code Section 28.03 (Criminal Mischief), set out previously.

Penal Code Sec. 39.06. MISUSE OF OFFICIAL INFORMATION. (a) A public servant commits an offense if, in reliance on information to which the public servant [~~he~~] has access by virtue of the person's [~~his~~] office or employment and that has not been made public, the person [~~he~~]:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a [~~principal of a~~] school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

Commentary by Kyle Dufour

Source: HB 1783
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: As amended, Section 39.06 changes current law relating to the right of school employee to report a crime to law enforcement and to persons prohibited from using coercion to suppress or prevent another from reporting information to law enforcement. The current inclusive but not limiting language to include the more encompassing term of "school administrator" has been inserted in place of the more limiting language of "principal."

Penal Code, Sec. 43.02. PROSTITUTION. (c) An offense under this section is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under this section;

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under this section; or

(3) a felony of the second degree if the person solicited is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense;

(B) represented to the actor as being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: Applies to a criminal offense committed or a violation that occurs on or after the effective date.
Summary of Changes: While current law holds that the penal offense level for soliciting prostitution from a person younger than 18 years of age is felony of the second degree, it does not similarly classify the act of soliciting prostitution from a person who represents themselves as under 18 or who convinces an actor of such. Section 43.02 (c) establishes a second degree felony for such cases where the actor solicits prostitution from a person whom they merely believe to be younger than 18 years old or represents themselves as such, without requiring the person solicited to actually be underage.

Penal Code Sec. 48.01. SMOKING TOBACCO. (a) In this section, "e-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

Commentary by Kyle Dufour

Source: SB 97
Effective Date: October 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Currently, e-cigarettes and vaping products are unregulated in Texas and at the federal level though as of October 2014, 41 states prohibit their sale to minors. Concerns regarding the harmful effects of e-cigarette use continue to grow with their popularity. There is, however, little consensus regarding a comprehensive assessment of health impact because e-cigarettes are new to the market. E-cigarettes contain nicotine, a highly addictive drug and may serve as a point of entry into the use of nicotine. Whether youth who use e-cigarettes later go on to smoke conventional tobacco cigarettes has yet to be determined. Due to their lack of state regulation and influence on minors, this bill establishes comprehensive regulations for these products, including adding a definition of e-cigarette to current statute.

Penal Code Sec. 48.01. SMOKING TOBACCO. (a-1) A person commits an offense if the person [~~he~~] is in possession of a burning tobacco product, [~~or~~] smokes tobacco, or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, [~~or~~] intrastate bus, [~~as defined by Section 541.201, Transportation Code,~~] plane, or train which is a public place.

Commentary by Kyle Dufour

Source: SB 97
Effective Date: October 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Currently, e-cigarettes and vaping products are unregulated in Texas and at the federal level though as of October 2014, 41 states prohibit sales to minors. Section 48.01 of the Penal Code changes the current tobacco use prohibitions to make e-cigarette use illegal in certain circumstances including, but not limited to, a school, elevator, movie theater, or hospital.

Penal Code Sec. 48.01. SMOKING TOBACCO. (c) All conveyances and public places set out in Subsec-

tion (a-1) [~~(a) of Section 48.01~~] shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

Commentary by Kyle Dufour

Source: SB 97
Effective Date: October 1, 2015
Applicability: Applies only to an offense committed on or after the effective date.
Summary of Changes: Currently, e-cigarettes and vaping products are unregulated in Texas and at the federal level though as of October 2014, 41 states prohibit sales to minors. This provision now requires those places where smoking is prohibited to be equipped with a facility for putting out or disposing of tobacco or e-cigarette smoking materials.

Penal Code Sec. 48.01. SMOKING TOBACCO. (d) It is an exception to the application of Subsection (a-1) [~~(a)~~] if the person is in possession of the burning tobacco product, [~~or~~] smokes tobacco, or operates the e-cigarette exclusively within an area designated for smoking tobacco or operating an e-cigarette or as a participant in an authorized theatrical performance.

Commentary by Kyle Dufour

Source: SB 97
Effective Date: October 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Currently, e-cigarettes and vaping products are unregulated in Texas and at the federal level though as of October 2014, 41 states prohibit sales to minors. This provision amends the statute to now afford an exception to criminal liability for e-cigarette use within an area designated for tobacco or e-cigarette use.

Penal Code Sec. 48.01. SMOKING TOBACCO. (e) An area designated for smoking tobacco or operating an e-cigarette on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

Commentary by Kyle Dufour

Source: SB 97
Effective Date: October 1, 2015
Applicability: Applies only to an offense committed on or after the effective date.
Summary of Changes: Currently, e-cigarettes and vaping products are unregulated in Texas and at the Federal level though as of October 2014, 41 states prohibit sales to minors. This provision changes the statute to expand the prohibition of smoking tobacco on a transit bus, plane or train in the area occupied by the operator to now include the smoking of e-cigarettes.

2. Legislation Affecting Education

Education Code Sec. 25.001. ADMISSION (g) A student who was enrolled in a primary or secondary public school before the student entered [~~who is placed in~~] the conservatorship of the Department of Family and Protective Services and who is placed at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

Commentary by Karol Davidson

Source: SB 206
Effective Date: September 1, 2015
Applicability: Applies to the provision and continuation of education services for students in the conservatorship of Department of Family and Protective Services (DFPS) on or after the effective date.
Summary of Changes: Section 25.001 specifies that a student is entitled to continue to attend the school where he or she was enrolled immediately before placement in DFPS conservatorship regardless of whether the student remains in conservatorship for the duration of enrollment in school.

Education Code Sec. 25.001. ADMISSION (g-1) If a student who is in the conservatorship of the department is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of the department, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside the attendance area for that school or outside the school district. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

Commentary by Karol Davidson

Source: SB 206
Effective Date: September 1, 2015
Applicability: Applies to students in the conservatorship of the Department of Family and Protective Services on or after the effective date.
Summary of Changes: As amended, Section 25.001(g-1) permits a student to continue to attend a school, other than the school the student was enrolled at the time of placement in DFPS conservatorship, without paying tuition and until the student graduates.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE. (a) The legislature finds that:

(1) students who are homeless or in substitute care are faced with numerous transitions during their formative years; and

(2) students who are homeless or in substitute care who move from one school to another are faced with special challenges to learning and future achievement.

Commentary by Karol Davidson

Source: SB 1494
Effective Date: June 19, 2015
Applicability: Applies to students who are homeless or in substitute care beginning with the 2015-2016 school year.
Summary of Changes: Section 25.007(a) reflects the Legislature's recognition that students who are homeless face special challenges associated with numerous housing and school changes.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE. (a-1) In this section, "students who are homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a.

Commentary by Karol Davidson

Source: SB 1494
Effective Date: June 19, 2015
Applicability: Applies to students who are homeless or in substitute care beginning with the 2015-2016 school year.
Summary of Changes: The criterion for determining whether a student is homeless can be found under federal law at 42 U.S.C. §11434a, as part of the McKinney-Vento Homeless Assistance Act aimed at ensuring homeless children have "equal access" to the same education as other students.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE. (b) In recognition of the challenges faced by students who are homeless or in

substitute care, the agency shall assist the transition of students who are homeless or in substitute care [~~students~~] from one school to another by:

(1) ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is homeless or in substitute care while enrolled at another school;

(4) promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(5) establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(6) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(7) encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(8) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school previously attended by the student;

(9) requiring school districts to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; and

(G) use of corporal punishment as provided by Section 37.0011; [~~and~~]

(10) developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(11) ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed; [~~and~~]

(12) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit; and

(13) [~~(10)~~] providing other assistance as identified by the agency.

Commentary by Karol Davidson

Source: SB 1494
Effective Date: June 19, 2015
Applicability: Applies to students who are homeless or in substitute care beginning with the 2015-2016 school year.
Summary of Changes: Section 25.007 of the Education Code has been changed to include students who are homeless with students Texas Education Agency (TEA) must assist in transitioning from one school to another. TEA is required to provide the same transition services as provided to students residing in substitute care.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS IN SUBSTITUTE CARE. (b) In recognition of the challenges faced by students in substitute care, the agency shall assist the transition of substitute care students from one school to another by:

(1) ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student in substitute care while enrolled at another school;

(4) promoting practices that facilitate access by a student in substitute care to extracurricular programs, summer programs, credit transfer services, electronic

courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(5) establishing procedures to lessen the adverse impact of the movement of a student in substitute care to a new school;

(6) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(7) encouraging school districts and open-enrollment charter schools to provide services for a student in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(8) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student in substitute care by a school previously attended by the student;

(9) requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; and

(G) use of corporal punishment as provided by Section 37.0011; [~~and~~]

(10) developing procedures for allowing a student in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(11) ensuring that a student in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed; [~~and~~]

(12) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit; and

(13) [~~(10)~~] providing other assistance as identified by the agency.

Commentary by Karol Davidson

Source: HB 1804
Effective Date: September 1, 2015
Applicability: Applies to students who are homeless or in substitute care beginning with the 2015-2016 school year.
Summary of Changes: Section 25.007(b) is amended to include campuses and open-enrollment charter schools to those required to provide notice to the student's educational decision maker and Department of Family and Protective Services (DFPS) caseworker regarding events that might significantly impact the student.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS IN SUBSTITUTE CARE. (b) In recognition of the challenges faced by students in substitute care, the agency shall assist the transition of substitute care students from one school to another by:

(1) ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student in substitute care while enrolled at another school;

(4) promoting practices that facilitate access by a student in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(5) establishing procedures to lessen the adverse impact of the movement of a student in substitute care to a new school;

(6) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(7) encouraging school districts and open-enrollment charter schools to provide services for a student in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(8) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student in substitute care by a school previously attended by the student;

(9) requiring school districts to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; and

(G) use of corporal punishment as provided by Section 37.0011; [~~and~~]

(10) developing procedures for allowing a student in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(11) ensuring that a student in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed; [~~and~~]

(12) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit;

(13) designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(14) [~~(10)~~] providing other assistance as identified by the agency.

Commentary by Karol Davidson

Source: HB 3748
Effective Date: June 17, 2015
Applicability: Applies to school transitional assistance provided by an employee of Department of Family and Protective Services on or after the effective date.
Summary of Changes: In another amendment to Section 25.007(b) of the Education Code, the Texas Education Agency is required to designate a person as a liaison officer for educational issues related to students in conservatorship of the Department of Family and Protective Services.

Education Code Sec. 25.081. OPERATION OF SCHOOLS. (a) Except as authorized under Subsection (b) of this section, Section 25.084, or Section 29.0821, for each school year each school district must operate so that the district provides for at least 75,600 minutes [~~180 days~~] of instruction, including intermissions and recesses, for students.

(b) The commissioner may approve the instruction of students for fewer than the number of minutes [~~days~~] required under Subsection (a) if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools.

(c) If the commissioner does not approve reduced instruction time under Subsection (b), a school district may add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes of instruction lost due to school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(d) The commissioner may adopt rules for the application, on the basis of the minimum minutes of instruction required by Subsection (a), of any provision of this title that refers to a minimum number of days of instruction under this section.

(e) For purposes of this code, a reference to a day of instruction means 420 minutes of instruction.

Commentary by Karol Davidson

Source: HB 2610
Effective Date: June 19, 2015
Applicability: Applies to the operation of schools beginning with the 2015-2016 school year.
Summary of Changes: This provision amends Section 25.081 of the Education Code to require school districts to provide at least 75,600 minutes of instruction, including intermissions and recesses. This replaces the requirement to provide 180 days of instruction. The Commissioner of Education may approve a school providing reduced instructional minutes under certain circumstances causing closure of a school. If the commissioner does not approve reduction of instructional minutes, the school may add additional minutes to the end of the normal school hours as necessary to compensate for minutes lost due to closure. The commissioner may adopt rules for the application provisions referring to minimum number of instructional days. A day of instruction means 420 minutes.

Education Code Sec. 25.0812. LAST DAY OF SCHOOL. (a) Except as provided by Subsection (b), a school district may not schedule the last day of school for students for a school year before May 15.

Commentary by Karol Davidson

Source: HB 2610
Effective Date: June 19, 2015
Applicability: Applies to school district schedules beginning with the 2015-2016 school year.
Summary of Changes: The change to Section 25.0812, specifies that a school district cannot adopt a schedule that would allow the school year to end before May 15.

Education Code Sec. 25.0812. LAST DAY OF SCHOOL. (b) Notwithstanding Subsection (a), a school district that does not offer each grade level from kindergarten through grade 12 and whose prospective or former students generally attend school in another state for the grade levels the district does not offer may schedule the last day of school on any date permitted under Subsection (a) or the law of the other state.

Commentary by Karol Davidson

Source: HB 2610
Effective Date: June 19, 2015
Applicability: Applies to school district schedules beginning with the 2015-2016 school year.
Summary of Changes: A school district that does not offer each grade level and whose prospective or former students generally attend school in another state for the grade levels the school does not offer, may schedule the last day of school on the date allowed by a law of the other state.

Education Code Sec. 25.087. EXCUSED ABSENCES. (b) A school district shall excuse a student from attending school for:

(1) the following purposes, including travel for those purposes:

(A) observing religious holy days;

(B) attending a required court appearance;

(C) appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship;

(D) taking part in a United States naturalization oath ceremony;

(E) serving as an election clerk; or

[~~(F) for a child in the conservatorship of the Department of Family and Protective Services, attending a mental health or therapy appointment or family visitation as ordered by a court under Chapter 262 or 263, Family Code; or~~]

(F) if the student is in the conservatorship of the Department of Family and Protective Services, participating, as determined and documented by the department, in an activity:

(i) ordered by a court under Chapter 262 or 263, Family Code, provided that it is not practicable to schedule the participation outside of school hours; or

(ii) required under a service plan under Subchapter B, Chapter 263, Family Code; or

(2) a temporary absence resulting from an appointment with health care professionals for the student or the student's child if the student commences classes or returns to school on the same day of the appointment

[~~(2) a temporary absence resulting from an appointment with a health care professional if that student commences classes or returns to school on the same day of the appointment~~].

Commentary by Karol Davidson

Source: SB 206
Effective Date: September 1, 2015
Applicability: Applies to the absences of students who are in the conservatorship of the Department of Family and Protective Services on or after the effective date.
Summary of Changes: A student who is in Department of Family and Protective Services (DFPS) conservatorship may have an excused absence from school for days in which DFPS determines the absence is necessary to participate in court-ordered activities or is for an activity required by the student's service plan.

Education Code Sec. 26.009. CONSENT REQUIRED FOR CERTAIN ACTIVITIES. (b) An employee of a school district is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for:

(1) purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;

(2) a purpose related to a cocurricular or extracurricular activity;

(3) a purpose related to regular classroom instruction; [~~or~~]

(4) media coverage of the school; or

(5) a purpose related to the promotion of student safety under Section 29.022.

Commentary by John Gonzales

Source: SB 507
Effective Date: June 19, 2015
Applicability: Applies to audio or videotape surveillance recordings of special education students made on or after the effective date.
Summary of Changes: The current law authorizes video and audio recording of special education student settings including classrooms in the interest of decreasing bullying of special education students. Section 26.009 was

changed to no longer require parental or guardian consent before conducting this type of surveillance recording as long as the sole purpose is the promotion of student safety.

Education Code Sec. 29.022. VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS. (a) In order to promote student safety on request by a parent, trustee, or staff member, a school district or open-enrollment charter school shall provide equipment, including a video camera, to each school in the district or each charter school campus in which a student who receives special education services in a self-contained classroom or other special education setting is enrolled. Each school or campus that receives equipment shall place, operate, and maintain one or more video cameras in each self-contained classroom or other special education setting in which a majority of the students in regular attendance are:

(1) provided special education and related services; and

(2) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day.

(b) A school or campus that places a video camera in a classroom or other special education setting in accordance with Subsection (a) shall operate and maintain the camera in the classroom or setting as long as the classroom or setting continues to satisfy the requirements under Subsection (a).

(c) Video cameras placed under this section must be capable of:

(1) covering all areas of the classroom or other special education setting, except that the inside of a bathroom or any area in the classroom or setting in which a student's clothes are changed may not be visually monitored; and

(2) recording audio from all areas of the classroom or other special education setting.

(d) Before a school or campus places a video camera in a classroom or other special education setting under this section, the school or campus shall provide written notice of the placement to all school or campus staff and to the parents of a student receiving special education services in the classroom or setting.

(e) A school district or open-enrollment charter school shall retain video recorded from a camera placed under this section for at least six months after the date the video was recorded.

(f) A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person for use in placing video cameras in classrooms or other special education settings under this section.

(g) This section does not:

(1) waive any immunity from liability of a school district or open-enrollment charter school, or of district or school officers or employees; or

(2) create any liability for a cause of action against a school district or open-enrollment charter school or against district or school officers or employees.

(h) A school district or open-enrollment charter school may not:

(1) allow regular or continual monitoring of video recorded under this section; or

(2) use video recorded under this section for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education services in a self-contained classroom or other special education setting.

(i) A video recording of a student made according to this section is confidential and may not be released or viewed except as provided by this subsection or Subsection (j). A school district or open-enrollment charter school shall release a recording for viewing by:

(1) a school district employee or a parent or guardian of a student who is involved in an incident documented by the recording for which a complaint has been reported to the district, on request of the employee, parent, or guardian, respectively;

(2) appropriate Department of Family and Protective Services personnel as part of an investigation under Section 261.406, Family Code;

(3) a peace officer, a school nurse, a district administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the board of trustees of the school district or the governing body of the open-enrollment charter school in response to a complaint or an investigation of district or school personnel or a complaint of abuse committed by a student; or

(4) appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.

(j) If a person described by Subsection (i)(3) or (4) who views the video recording believes that the recording documents a possible violation under Subchapter E, Chapter 261, Family Code, the person shall notify the Department of Family and Protective Services for investigation in accordance with Section 261.406, Family Code. If any person described by Subsection (i)(2), (3), or (4) who views the recording believes that the recording documents a possible violation of district or school policy, the person may allow access to the recording to appropriate legal and human resources personnel. A recording believed to document a possible violation of district or school policy may be used as part of a disciplinary action against district or school personnel and shall be released at the request of the student's parent or guardian in a legal proceeding. This subsection does not limit the access of a student's parent to a record regarding the

student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other law.

(k) The commissioner may adopt rules to implement and administer this section, including rules regarding the special education settings to which this section applies.

Commentary by John Gonzales

Source: SB 507
Effective Date: June 19, 2015
Applicability: Applies to requests for equipment made beginning with the school year 2016-2017.
Summary of Changes: Many special education students are abused or bullied by other students on a daily basis and these incidents go unreported or undetected by school staff. Failure to report this type of bullying is due to fear of retaliation against the victim or witness. In an attempt to assist school districts with the prevention of bullying and promotion of student safety, the legislature has paved a path for schools to equip classrooms and other areas used by special education students with audio and video cameras in classrooms and other areas used by special education students. To initiate this process of equipping a classroom, a request by a student, teacher, school staff or trustee must be made. Before placing a camera in a classroom, the school district is required to provide notice of placement to the parents of special education students although a parent's objection will not prohibit the school district from placing the equipment. A school district must maintain the equipment and preserve the recording for at least six months. Recordings are confidential and may only be released to limited persons including the parents or guardian of a student and employee involved in bullying and Department of Family and Protective Services (DFPS). A person who views the video and believes a student is abused or bullied must report the incident to DFPS. The state commissioner of education is required to establish a grant program for purchase and reimbursement of video equipment. Any information obtained by video or audio recordings may only be used for the promotion of student safety.

Education Code Sec. 37.0012. DESIGNATION OF CAMPUS BEHAVIOR COORDINATOR. (a) A person at each campus must be designated to serve as the campus behavior coordinator. The person designated may be the principal of the campus or any other campus administrator selected by the principal.

(b) The campus behavior coordinator is primarily responsible for maintaining student discipline and the implementation of this subchapter.

(c) Except as provided by this chapter, the specific duties of the campus behavior coordinator may be established by campus or district policy. Unless otherwise provided by campus or district policy:

(1) a duty imposed on a campus principal or other campus administrator under this subchapter shall be performed by the campus behavior coordinator; and

(2) a power granted to a campus principal or other campus administrator under this subchapter may be exercised by the campus behavior coordinator.

(d) The campus behavior coordinator shall promptly notify a student's parent or guardian as provided by this subsection if under this subchapter the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. A campus behavior coordinator must comply with this subsection by:

(1) promptly contacting the parent or guardian by telephone or in person; and

(2) making a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian.

(e) If a parent or guardian entitled to notice under Subsection (d) has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a campus behavior coordinator shall mail written notice of the action to the parent or guardian at the parent's or guardian's last known address.

(f) If a campus behavior coordinator is unable or not available to promptly provide notice under Subsection (d), the principal or other designee shall provide the notice.

Commentary by Karol Davidson

Source: SB 107
Effective Date: June 20, 2015
Applicability: Applies to the designation and responsibilities of campus behavior coordinators beginning with the 2015-2016 school year.
Summary of Changes: New Section 37.0012 requires each school campus to have a person designated to serve as the campus behavior coordinator. The person may be the principal for the school or any campus administrator selected by the principal. The coordinator is primarily responsible for maintaining student discipline. The duties of the behavior coordinator may be established by school district policy. If a student is placed in a disciplinary setting or taken into custody by law enforcement, the behavior coordinator must promptly notify the student's parent or guardian in person or by telephone and make a good faith effort to provide to the student written notice of the disciplinary action.

Education Code Sec. 37.002 REMOVAL BY TEACHER. (a) A teacher may send a student to the campus behavior coordinator's [~~principal's~~] office to maintain effective discipline in the classroom. The campus behav-

ior coordinator [~~principal~~] shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the campus behavior coordinator in the student code of conduct.

Commentary by Karol Davidson

Source: SB 107
Effective Date: June 20, 2015
Applicability: Applies to classroom removals beginning with the 2015-2016 school year.
Summary of Changes: A teacher is required to send a student to the campus behavior coordinator to maintain effective classroom discipline. The campus behavior coordinator is required to employ appropriate discipline management techniques consistent with the student code of conduct. If the student's behavior does not improve, the behavior coordinator must use alternative techniques, including progressive discipline provided in the student code of conduct.

Education Code Sec. 37.009. CONFERENCE; HEARING; REVIEW. (a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the campus behavior coordinator [~~principal~~] or other appropriate administrator shall schedule a conference among the campus behavior coordinator [~~principal~~] or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus behavior coordinator, after consideration of the factors under Section 37.001(a)(4), [~~principal~~] shall order the placement of the student for a period consistent with the student code of conduct. Before ordering the suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus behavior coordinator [~~principal~~] or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that[~~:~~

[~~(1)~~] the student is a threat to the safety of other students or to district employees[~~; or~~

[~~(2) extended placement is in the best interest of the student~~].

Commentary by Karol Davidson

Source: SB 107
Effective Date: June 20, 2015
Applicability: Applies to conferences, hearings and reviews with the campus behavior coordinator beginning with the 2015-2016 school year.
Summary of Changes: This amendment to Section 37.009 replaces references to principal with the term "campus behavior coordinator." Before ordering suspension, expulsion, removal to a disciplinary alternative education program or placement in a juvenile justice alternative education program, the behavior coordinator must consider factors related to the student's behavior, regardless of whether the decision concerns mandatory or discretionary action.

Education Code Sec. 37.0811. SCHOOL MARSHALS. (h) If a parent or guardian of a student enrolled at a school inquires in writing, the school district or open-enrollment charter school shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed a school marshal. The notice may not disclose information that is confidential under Subsection (g).

Commentary by John Gonzales

Source: SB 996
Effective Date: June 19, 2015
Applicability: Applies to requests for information regarding school marshals made on or after the effective date.
Summary of Changes: Public schools may employ one school marshal for every 400 students in average daily attendance. All information regarding school marshals

including whether a school has employed one is confidential. Section 37.0811(h) allows a parent to submit a written request for information regarding whether or not the school has employed a school marshal. The school marshal's information remains confidential and cannot be disclosed pursuant to a public information request.

Education Code Sec. 37.0812. TRAINING POLICY: SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. A school district with an enrollment of 30,000 or more students that commissions a school district peace officer or at which a school resource officer provides law enforcement shall adopt a policy requiring the officer to complete the education and training program required by Section 1701.263, Occupations Code.

Commentary by John Gonzales

Source: HB 2684
Effective Date: June 20, 2015
Applicability: Applies to school districts with an enrollment of 30,000 students or more on or after the effective date.
Summary of Changes: A school district that employs a district peace or resource officer must adopt a training policy that requires the officer to complete education and training programs that include training in the specific needs of serving in schools with young children in addition to the requirements of the Texas Commission on Law Enforcement.

Education Code Sec. 37.141. DEFINITIONS. (1) "Child" means a person who is:

(A) a student; and

(B) at least 10 years of age and younger than 18 years of age [~~has the meaning assigned by Article 45.058(h), Code of Criminal Procedure, except that the person must also be a student~~].

Commentary by Karol Davidson

Source: SB 108
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: For purposes of court proceedings arising from the Education Code, the definition of a child means a student who is at least 10 years old and younger than 18.

Education Code Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD. (a) A peace officer, law enforcement officer, or school resource officer may not issue a citation to a child who is alleged to have committed a school offense.

Commentary by Karol Davidson

Source: SB 108
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Law enforcement officers and school resource officers are prohibited from issuing citations to a student alleged to have committed a school offense.

Education Code Sec. 37.146. REQUISITES OF COMPLAINT. (c) A complaint under this subchapter may include a recommendation by a school employee that the child attend a teen court program under Article 45.052, Code of Criminal Procedure, if the school employee believes attending a teen court program is in the best interest of the child.

Commentary by Karol Davidson

Source: SB 108
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: A complaint filed, as permitted by the Education Code court proceedings, may include a recommendation by a school employee that the student attend a teen court program, if the school believes the program is in the best interest of the student.

Education Code Sec. 42.2528. EXCESS FUNDS FOR VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS. (a) Notwithstanding any other provision of law, if the commissioner determines that the amount appropriated for the purposes of the Foundation School Program exceeds the amount to which school districts are entitled under this chapter, the commissioner by rule shall establish a grant program through which excess funds are awarded as grants for the purchase of video equipment, or for the reimbursement of costs for previously purchased video equipment, used for monitoring special education classrooms or other special education settings required under Section 29.022.

(b) In awarding grants under this section, the commissioner shall give highest priority to districts with maintenance and operations tax rates at the greatest rates permitted by law. The commissioner shall also give priority to:

(1) districts with maintenance and operations tax rates at least equal to the state maximum compressed tax rate, as defined by Section 42.101(a), and lowest amounts of maintenance and operations tax revenue per weighted student; and

(2) districts with debt service tax rates near or equal to the greatest rates permitted by law.

(c) The commissioner may adopt rules to implement and administer this section.

Commentary by John Gonzales

Source: SB 507
Effective Date: June 19, 2015
Applicability: Applies to distribution of excess funds beginning 2015-2016 school year.
Summary of Changes: The Commissioner of Education for the Texas Education Agency must determine if there are any excess funds from the Foundation School Program available for the purchase or reimbursement of the video equipment. The Commissioner must adopt rules to implement all provisions of SB 507.

Government Code

Government Code Sec. 552.114. EXCEPTION: CONFIDENTIALITY OF STUDENT RECORDS. (a) In this section, "student record" means:

(1) information that constitutes education records as that term is defined by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g(a)(4)); or

(2) information in a record of an applicant for admission to an educational institution, including a transfer applicant.

(b) Information is confidential and excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue. This subsection does not prohibit the disclosure or provision of information included in an education record if the disclosure or provision is authorized by 20 U.S.C. Section 1232g or other federal law.

(c) [~~(b)~~] A record covered by [~~under~~] Subsection (b) [~~(a)~~] shall be made available on the request of:

(1) educational institution personnel;

(2) the student involved or the student's parent, legal guardian, or spouse; or

(3) a person conducting a child abuse investigation required by Subchapter D, Chapter 261, Family Code.

(d) Except as provided by Subsection (e), an educational institution may redact information covered under Subsection (b) from information disclosed under Section 552.021 without requesting a decision from the attorney general.

(e) If an applicant for admission to an educational institution described by Subsection (b) or a parent or legal guardian of a minor applicant to an educational institution described by Subsection (b) requests information in the record of the applicant, the educational institution shall disclose any information that:

(1) is related to the applicant's application for admission; and

(2) was provided to the educational institution by the applicant.

Commentary by John Gonzales

Source: HB 4046
Effective Date: September 1, 2015
Applicability: Applies to student records and request for student records made on or after the effective date.
Summary of Changes: This amendment to Section 552.114 relating to the Public Information Act clarifies the definition of a student record and adds language to include information of students who applied but did not enroll. Although student records have been and are confidential, it was possible that a person's application for admission or transfer and information provided to the student by the educational institution was subjected to disclosure under federal law. This amendment allows an educational institution to redact student information relating to applications for admission and provided by the educational institution when federal law authorizes disclosure pursuant to a public information request without an attorney general's opinion.

Occupations Code

Occupations Code Sec. 1701.260. TRAINING FOR HOLDERS OF LICENSE TO CARRY CONCEALED HANDGUN; CERTIFICATION OF ELIGIBILITY FOR APPOINTMENT AS SCHOOL MARSHAL. (l) All [~~Identifying~~] information [~~about a person~~] collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Commentary by John Gonzales

Source: SB 996
Effective Date: June 19, 2015
Applicability: Applies to requests for information related to school marshals made on or after the effective date.
Summary of Changes: If a public or charter school chooses to employ a school marshal, all information regarding the school marshal is confidential and not subject to an public information request. The argument for not disclosing this information is to maintain the school marshal's ability to effectively work clandestinely for a safer school district and campuses.

Occupations Code Sec. 1701.262. TRAINING FOR SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. (a) In this section:

(1) "Center" means the Texas School Safety Center at Texas State University.

(2) "Institute" means an institute dedicated to providing training to law enforcement and the development of law enforcement policies, such as the Law Enforcement Management Institute of Texas at Sam Houston State University or the Caruth Police Institute.

(3) "School district peace officer" means a peace officer commissioned under Section 37.081, Education Code.

(4) "School resource officer" has the meaning assigned by Section 1701.601.

(b) The commission, in consultation with an institute or the center, shall create, adopt, and distribute a model training curriculum for school district peace officers and school resource officers.

(c) The curriculum developed under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) de-escalation techniques and techniques for limiting the use of force, including the use of physical, mechanical, and chemical restraints;

(4) the mental and behavioral health needs of children with disabilities or special needs; and

(5) mental health crisis intervention.

(d) Before adopting and distributing any curriculum under this section, the commission shall provide a 30-day period for public comment.

(e) The commission shall provide the curriculum developed under this section and any supplemental education materials created for the curriculum to:

(1) school district police departments;

(2) law enforcement agencies that place peace officers in a school as school resource officers under a memorandum of understanding; and

(3) any entity that provides training to school district peace officers or school resource officers.

(f) The commission shall review curriculum developed and adopted under this section and update subject matter contained in the curriculum as needed at least once every four years.

Commentary by John Gonzales

Source: HB 2684
Effective Date: June 20, 2015
Applicability: Applies to the curriculum created for school district peace and resource officer training on or after the effective date.
Summary of Changes: The Texas Commission on Law Enforcement (TCOLE) is mandated to create, adopt and distribute a model training curriculum for school district peace and resource officers. The training must contain topics that include child and adolescent psychology, de-escalation, use of force, mental health needs and crisis intervention involving children. TCOLE must provide a 30-day public comment before adopting the curriculum and it must be updated every four years.

Occupations Code Sec. 1701.263. EDUCATION AND TRAINING PROGRAM FOR SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. (a) In this section:

(1) "School district peace officer" has the meaning assigned by Section 1701.262.

(2) "School resource officer" has the meaning assigned by Section 1701.601.

(b) The commission by rule shall require a school district peace officer or a school resource officer who is commissioned by or who provides law enforcement at a school district with an enrollment of 30,000 or more students to successfully complete an education and training program described by this section before or within 120 days of the officer's commission by or placement in the district or a campus of the district. The program must:

(1) consist of at least 16 hours of training;

(2) be approved by the commission; and

(3) provide training in accordance with the curriculum developed under Section 1701.262 in each subject area listed in Subsection (c) of that section.

(b-1) Notwithstanding Subsection (b) or a rule adopted under that section, a school district peace officer or school resource officer is not required to successfully complete the education and training program required by this section if the officer has successfully completed the advanced training course conducted by the National Association of School Resource Officers or a training course equivalent to that advanced training course, as determined by the commission.

(c) The education and training program required under this section may not require a peace officer to pass an examination, except that the commission shall administer an examination to qualify officers to provide the education and training to other officers. The examination to qualify officers to provide the education and training must test the officer's knowledge and recognition of the subject areas listed in Section 1701.262(c).

(d) The commission shall issue a professional achievement or proficiency certificate to a peace officer who completes the education and training program under this section.

Commentary by John Gonzales

Source: HB 2684
Effective Date: June 20, 2015
Applicability: Applies to required training and training curriculum for school district peace and resource officers in districts with 30,000 or more students on or after the effective date.
Summary of Changes: New Section 1701.263 of the Occupations Code outlines the new training requirements applicable to school district peace and resource officers who work for a school district with 30,000 or more students. An officer has 120 days to complete 16 hours of training after being hired. Although an officer does not have to pass a test after training, TCOLE must administer

tests to qualify officers who provide training to other officers. Officers who have completed training by the National Association of School Resource Officers or training equivalent as determined by TCOLE are not required to complete this training.

3. Legislation Affecting Justice of the Peace and Municipal Courts

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IMPORTANT NOTE

The information contained below does not include the text of each bill, but rather references the relevant bill by number as enacted during the 84th Legislative Session in 2015. This document was produced by Katie Chancia and is presented in its original format. If you are interested in seeing the full text of the bills outlined in this section, visit the Texas Legislature Online website at:

www.legis.state.tx.us

Municipal and justice courts have original jurisdiction in criminal cases punishable by fine only or punishable by a fine and sanctions not consisting of confinement or imprisonment. See Articles 4.11(a) and 4.14(b), Texas Code of Criminal Procedure. According to the Office of Court Administration's *Annual Statistical Report* of the Texas Judicial System, there were 146,932 fine-only misdemeanor cases filed against children and/or minors in 2014 in Texas municipal and justice courts.* This number consisted of over 31,000 minor alcohol cases charged under Chapter 106 of the Alcoholic Beverage Code; over 9,000 minor tobacco and possession of drug paraphernalia cases charged under the Health and Safety Code; almost 1,900 cases brought under the Education Code relating to school based offenses other than truancy; and almost 70,000 failure to attend school (truancy) cases filed criminally under Section 25.094 of the Education Code. Several bills passed this session will impact the filings in these types of cases filed against children in municipal and justice courts.

*This number merits a caveat: due to changes in monthly reporting, failure of large counties and municipalities to submit their monthly reports, and implementation of legislative changes from the 83rd Legislature regarding filing of school offenses, this number is below previous years' filings.

Changes to Substantive Law

HB 2398, effective September 1, 2015, brings arguably the most change to municipal and justice courts' juvenile dockets. The "truancy bill" repeals the criminal offense of failure to attend school and designates justice and municipal courts as truancy courts to handle school attendance cases as civil matters, albeit with many criminal due process protections. As HB 2398 is discussed at length elsewhere in this newsletter, the provisions of the bill will not be discussed here except to note that it will undoubtedly impact the justice and municipal courts in Texas with significant procedural changes to come.

SB 97 was the 84th Legislature's answer to the issue of "vaping" among minors. The bill, which takes effect October 1, 2015, defines an e-cigarette as "an electronic cigarette or any other device that stimulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes a device described by this [definition] regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description, and a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device." Throughout Chapter 161 of the Health and Safety Code, any provision that relates to tobacco or cigarette products is amended to also apply to e-cigarettes, including those offenses pertaining to the sale or distribution of tobacco products to minors and Section 161.252, which makes it an offense for an individual younger than 18 years of age to possess, purchase, consume, or accept an e-cigarette. The minor in possession of tobacco offense is a fine-only misdemeanor, punishable by a fine not to exceed $250. On conviction, courts shall suspend execution of the sentence and allow the defendant an opportunity to complete a tobacco awareness course that will be updated to contain instruction on e-cigarette use as well. If the defendant timely and successfully completes the course, the court can either dismiss the case altogether or reduce the fine imposed.

School districts must also prohibit the use of e-cigarettes at school-related or school-sanctioned activities on or off school property. Finally, the bill amends Section 48.01 of the Penal Code to provide that a person commits an offense if the person operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library,

museum, hospital, transit system bus, intrastate bus, plane, or train which is a public place. The offense is a Class C misdemeanor.

HB 1396 makes numerous changes throughout the Code of Criminal Procedure, Government Code, and Penal Code. Relevant to justice and municipal courts is the bill's effect on classification of crimes against property in the Penal Code. Effective September 1, 2015, the following offenses are Class C misdemeanors (though not an exhaustive list of those offenses affected) if the value of the property or pecuniary loss is less than $100 (up from $20 or $50):

criminal mischief (Sec. 28.03);
interference with railroad property (Sec. 28.07);
graffiti, unless on school property (Sec. 28.08);
theft, with several enhancements (Sec. 31.03); and
theft of service (Sec. 31.04).

This bill will undoubtedly increase the number of Class C misdemeanor theft cases filed in the justice and municipal courts. As theft is a crime of moral turpitude, and Class C misdemeanor cases against children are often filed in criminal court as opposed to juvenile court, this change deserves attention by juvenile law practitioners.

HB 1396 also adds Section 311.035 to the Government Code to provide that, except for a criminal offense or penalty under the Penal Code or the Texas Controlled Substances Act, a statute or rule that creates or defines a criminal offense or penalty shall be construed in favor of the actor and against the State if any part of the statute or rule is ambiguous on its face or as applied to the case. This will require the judge to resolve ambiguity of a part of a statute or rule, including an element of the offense or the penalty to be imposed.

HB 207, effective September 1, 2015, creates a new Class C misdemeanor offense for voyeurism. The bill adds Section 21.16 to the Penal Code to create an offense if a person, with the intent to arouse or gratify the sexual desire of the actor, observes another person without the other person's consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy. The offense can be enhanced to a Class B misdemeanor with two or more prior convictions. The offense is punishable as a state jail felony if the victim is a child younger than 14 years of age at the time of the offense.

The bill's analysis expresses concern that voyeurism is a type of gateway behavior that can lead to more serious sexual offenses. It is not hard to imagine a child engaging in this type of behavior, and now it is a criminal offense. Unlike the sexting offense, there is no requirement that a charge against a child be referred to juvenile court.

Changes to Procedural Law

SB 108 makes several changes to procedures involving juvenile cases in justice and municipal courts. Article 45.0216 of the Code of Criminal Procedure is amended to provide that records of a child (under 17) relating to a complaint may be expunged if the complaint was dismissed after successful completion of deferred disposition or teen court or if the person was acquitted of the offense. Children, effective September 1, 2015, will be able to get an expunction of non-traffic, non-tobacco, non-alcohol offenses on the first conviction, on dismissal following some form of probation, or on acquittal, but not on a straight dismissal by the State prior to any plea being entered. The new ability to expunge acquittals will apply to files and records created before, on, or after September 1.

The bill also redefines "child" for purposes of school offenses and the procedures for such under Chapter 37 of the Education Code. Child means a person who is a student and is at least 10 years of age and younger than 18 years of age (up from 17). Peace officers, law enforcement officers, and school resource officers may not issue citations to children who are alleged to have committed a school offense. Charges are instead brought by sworn complaint (under the procedures passed by the 83rd Legislature). SB 108 provides that a complaint may include a recommendation by a school employee that the child attend a teen court program if the employee believes that it is in the best interest of the child.

Finally, SB 108 amends Article 45.052 of the Code of Criminal Procedure (teen court) to allow a child to participate in such a program every year instead of every two years.

HB 642 seeks to increase awareness of the dangers of drug and alcohol abuse. The bill, effective September 1, 2015, amends Article 45.051 of the Code of Criminal Procedure (deferred disposition) to allow the judge, during the deferral period, to require the defendant to participate in an alcohol or drug abuse treatment or education program, such as a drug education program approved by the Department of State Health Services or an alcohol awareness program described in Section 106.115 of the Alcoholic Beverage Code. Section 106.115 is amended to require the court, on placing a minor on deferred disposition, to order an alcohol awareness program, a drug education program, or a drug and alcohol awareness program. Section 106.071 is also amended to allow community service to be related to

education about or prevention of misuse of drugs in addition to alcohol.

HB 2945, effective as of June 17, 2015, amends Article 102.0174 to expand permissible uses for the juvenile case manager fund funded from court costs on criminal convictions in justice and municipal courts. The employing court, if there is excess money in the fund after using the fund to finance salary, benefits, training, travel, office supplies, and other necessary expenses, may authorize the juvenile case manager to direct the remaining money to be used to implement programs directly related to the duties of the juvenile case manager, including alcohol and substance abuse programs, educational and leadership programs, and other projects designed to prevent or reduce the number of juvenile referrals.

HB 1786 transfers oversight of driver and traffic safety education from the Texas Education Agency to the Texas Department of Licensing and Regulation. The bill makes conforming changes to the driving safety course statute under Article 45.0511 of the Code of Criminal Procedure.

SB 1116 adds Chapter 80 to the Government Code to provide that a court, justice, judge, magistrate, or clerk may send any notice or document, under civil or criminal law, using mail or electronic mail. If the court chooses to send electronically, the court shall use the registered email address if the recipient is registered with the State's e-filing system, or the email address provided by the recipient if either the court or recipient does not use the e-filing system. Electronic mail does not include fax, instant messaging, messages on social media networks, telegraphs, telephone messages, text messages, or videoconferencing.

Mail, under these provisions, means first class mail, and does not include: certified mail; mail that requires proof of delivery, signature, or confirmation; carrier or courier mail; express mail; or personal service or hand delivery.

The author's statement of intent provides that the new provisions do not apply if an existing statute requires proof of delivery. Presumably, the bill does not prohibit faxing or personal delivery if otherwise allowed by individual statute. It is important to note that cases involving children necessarily involve the court sending several notices to both the defendant and the parent(s).

HB 1386, effective September 1, 2015, repeals the prohibition against more than one counsel for either the State or defense in a criminal prosecution.

SB 287 and SB 740 both affect the assessment and collection of court costs. SB 287 requires that a bill of costs – essentially an itemized receipt showing each cost assessed against the defendant – be produced and provided to the defendant before the cost is due and collectible. SB 740 provides that only one set of court costs can be assessed in a single criminal action. Both bills provide an exception for justice and municipal courts, or fine-only misdemeanors, from the new provisions. Thus, it is important to note that neither SB 287 nor SB 740 have an impact on practice in the justice and municipal courts.

HB 121 and SB 873 / SB 1139 all affect the execution of capias pro fines. Article 45.045(b) of the Code of Criminal Procedure provides that a capias pro fine may not be issued for an individual convicted of an offense committed before the individual's 17th birthday unless the individual is 17 years of age or older; the court finds that the issuance of a capias pro fine is justified after considering the sophistication and maturity of the individual, the criminal record and history of the individual, and the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and the court has proceeded under Article 45.050 (juvenile contempt) to compel the individual to discharge the judgment. Thus, capias pro fines for the arrest of an individual who was charged with an offense as a child do get issued.

HB 121 amends Article 103.0025 of the Code of Criminal Procedure to allow a court to adopt a procedure under which a peace officer who executes a capias pro fine or who knows that the defendant has an outstanding capias pro fine may inform the defendant of the possibility of making immediate payment of the fine and costs with a credit or debit card and of available alternatives to making immediate payment, and then accept, on behalf of the court, the defendant's payment. This bill took effect June 15, 2015 and was purported to be a way to both reduce jail flow and provide a convenience to defendants to avoid custodial arrest.

SB 873 (and an analogous provision in SB 1139) add Article 45.045(a-1) and Article 45.056(d) to the Code of Criminal Procedure to allow an arresting officer to take a defendant arrested on a capias pro fine to another justice court or county criminal law magistrate court with jurisdiction over Class C misdemeanors located in the same county if the justice court that issued the capias pro fine is unavailable, or another municipal court in the same municipality if the municipal court that issued the capias pro fine is unavailable.

4. Legislation Affecting Open Government

Government Code Sec. 551.053. DISTRICT OR POLITICAL SUBDIVISION EXTENDING INTO FOUR OR MORE COUNTIES: NOTICE TO PUBLIC, SECRETARY OF STATE, AND COUNTY CLERK; PLACE OF POSTING NOTICE. (a) The governing body of a water district or other district or political subdivision that extends into four or more counties shall:

(1) post notice of each meeting at a place convenient to the public in the administrative office of the district or political subdivision;

(2) provide notice of each meeting to the secretary of state; and

(3) either provide notice of each meeting to the county clerk of the county in which the administrative office of the district or political subdivision is located or post notice of each meeting on the district's or political subdivision's Internet website.

(c) A county clerk shall post a [~~the~~] notice provided to the clerk under Subsection (a)(3) on a bulletin board at a place convenient to the public in the county courthouse.

Commentary by Karol Davidson

Source: HB 3357
Effective Date: September 1, 2015
Applicability: Applies to notice for a meeting held on or after the effective date.
Summary of Changes: Section 551.053(a)(3) and (c) modifies the requirements of the Texas Open Meetings Act to permit a governing body that extends into four or more counties the authority to post notice of board meetings on the Internet website for the governing body instead of providing the meeting notice to the county clerk.

Government Code Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175;

(7) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(8) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(9) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code, regardless of whether the current or former officer complies with Section 552.024 or 552.1175; or

(10) a current or former employee [~~employees~~] of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175.

Commentary by Karol Davidson

Source: HB 1311
Effective Date: June 16, 2015
Applicability: Applies to the confidentiality of personal information concerning certain current or former employees in the juvenile justice system on or after the effective date.
Summary of Changes: This provision protects from public disclosure the personal information of current or former Texas Juvenile Justice Department (TJJD) emg-

ployees and certain juvenile justice system personnel, including the home address, home telephone number, emergency contact information, social security number, or information that may make known whether the person has family members. A governmental entity that employs the individual can withhold the information regardless of whether the individual made an election for the information to remain confidential.

Government Code Sec. 552.1175. CONFIDENTIALITY OF CERTAIN PERSONAL IDENTIFYING INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, EMPLOYEES OF CERTAIN CRIMINAL OR JUVENILE JUSTICE AGENCIES OR OFFICES, AND FEDERAL AND STATE JUDGES. (a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code;

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;

(4) commissioned security officers as defined by Section 1702.002, Occupations Code;

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);

(7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(8) police officers and inspectors of the United States Federal Protective Service;

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement; [~~and~~]

(10) current or former juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(11) current or former employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code; [~~and~~]

(12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department; and

(13) [~~(10)~~] federal judges and state judges as defined by Section 13.0021, Election Code.

Commentary by Karol Davidson

Source: HB 1311
Effective Date: June 16, 2015
Applicability: Applies to the confidentiality of personal information concerning current or former employees involved in the juvenile justice system on or after the effective date.
Summary of Changes: This provision of the Public Information Act protects from public disclosure the home address, home telephone number, emergency contact information, social security number, and family information of TJJD and certain juvenile justice personnel that may be maintained by a governmental entity, such as a county juvenile probation department or state juvenile justice agency. An entity that holds the information can withhold it from public disclosure regardless of whether the individual elected for the information to remain confidential.

Government Code Sec. 552.156. EXCEPTION: CONFIDENTIALITY OF CONTINUITY OF OPERATIONS PLAN. (a) Except as otherwise provided by this section, the following information is excepted from disclosure under this chapter:

(1) a continuity of operations plan developed under Section 412.054, Labor Code; and

(2) all records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan developed under Section 412.054, Labor Code.

(b) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under Section 412.054, Labor Code, are public information subject to disclosure under this chapter.

(c) A governmental body may disclose or make available information that is confidential under this section to another governmental body or a federal agency.

(d) Disclosing information to another governmental body or a federal agency under this section does not waive or affect the confidentiality of that information.

Commentary by Karol Davidson

Source: HB 1832
Effective Date: June 19, 2015.
Applicability: Applies to the confidentiality requirements for state agency continuity of care plans on or after the effective date.
Summary of Changes: As amended, Section 552.156 of the Government Code excepts from public disclosure all records and information relating to a continuity of care plan developed by a state agency under Section 412.054, Labor Code. The release of the information to another state or federal agency does not waive the confidentiality of the information.

Government Code Sec. 552.221. APPLICATION FOR PUBLIC INFORMATION; PRODUCTION OF PUBLIC INFORMATION. (b-1) In addition to the methods of production described by Subsection (b), an officer for public information for a political subdivision of this state complies with Subsection (a) by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the political subdivision and accessible to the public if the requested information is identifiable and readily available on that website. If the person requesting the information prefers a manner other than access through the URL, the political subdivision must supply the information in the manner required by Subsection (b).

(b-2) If an officer for public information for a political subdivision provides by e-mail an Internet location or uniform resource locator (URL) address as permitted by Subsection (b-1), the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail, as provided by Subsection (b).

Commentary by Karol Davidson

Source: HB 685
Effective Date: September 1, 2015
Applicability: Applies to the methods of producing public information under the Public Information Act on or after the effective date.
Summary of Changes: This provision allows a public information officer for a political subdivision such as a county, municipality or city, to respond to a request for public information by referring a requestor to an exact Internet location maintained on the governing entity's website. If the website address is provided by email, the email must include a statement that the requestor may ask for the information to be provided in a manner as otherwise required by the Public Information Act. If the requestor prefers receiving the information in another manner, the information must be provided in a manner as otherwise required under the Act.

Government Code Sec. 552.222. PERMISSIBLE INQUIRY BY GOVERNMENTAL BODY TO REQUESTOR. (f) Except as provided by Subsection (g), if [~~If~~] the requestor's request for public information included the requestor's physical or mailing address, the request may not be considered to have been withdrawn under Subsection (d) unless the governmental body, officer for public information, or agent, as applicable, sends the request for clarification or discussion under Subsection (b) or the written request for additional information under Subsection (c) to that address by certified mail.

(g) If the requestor's request for public information was sent by electronic mail, the request may be considered to have been withdrawn under Subsection (d) if:

(1) the governmental body, officer for public information, or agent, as applicable, sends the request for clarification or discussion under Subsection (b) or the written request for additional information under Subsection (c) by electronic mail to the same electronic mail address from which the original request was sent or to another electronic mail address provided by the requestor; and

(2) the governmental body, officer for public information, or agent, as applicable, does not receive from the requestor a written response or response by electronic mail within the period described by Subsection (d).

Commentary by Karol Davidson

Source: HB 2134
Effective Date: September 1, 2015
Applicability: Applies to requests for clarification by a governmental body regarding requests submitted by electronic mail on after the effective date.
Summary of Changes: If a governmental body sends a request for clarification of a request for information by email, the request is considered withdrawn if the requestor does not submit a written reply within 61 days from the date the request for clarification was sent. The request for clarification must be sent to the requestor at the same email address from which the original request for information was sent or another email address provided by the requestor.

5. Legislation Affecting Sex Offenders, Human Trafficking and Victims

Civil Practice and Remedies Code

Civil Practice and Remedies Code Section 16.0045. [~~FIVE YEAR~~] LIMITATIONS PERIOD FOR CLAIMS ARISING FROM CERTAIN OFFENSES. (a) A person must bring suit for personal injury not later than 15 [~~five~~] years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

(1) Section 22.011(a)(2) [~~22.011~~], Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B) [~~22.021~~], Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of young child or children);

(4) Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or Section 20A.02(a)(8), Penal Code, involving an activity described by Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or sexual conduct with a child trafficked in the manner described by Section 20A.02(a)(7) [~~20A.02~~], Penal Code (certain sexual trafficking of a child [~~persons~~]); [~~or~~]

(5) Section 43.05(a)(2) [~~43.05~~], Penal Code (compelling prostitution by a child); or

(6) Section 21.11, Penal Code (indecency with a child).

(b) A person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

(1) Section 22.011(a)(1), Penal Code (sexual assault);

(2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault);

(3) Section 20A.02, Penal Code (trafficking of persons), other than conduct described by Subsection (a)(4); or

(4) Section 43.05(a)(1), Penal Code (compelling prostitution).

(c) In an action for injury resulting in death arising as a result of conduct described by Subsection (a) or (b), the cause of action accrues on the death of the injured person.

(d) A [~~(c) The~~] limitations period under this section is tolled for a suit on the filing of a petition by any person in an appropriate court alleging that the identity of the defendant in the suit is unknown and designating the unknown defendant as "John or Jane Doe." The person filing the petition shall proceed with due diligence to discover the identity of the defendant and amend the petition by substituting the real name of the defendant for "John or Jane Doe" not later than the 30th day after the date that the defendant is identified to the plaintiff. The limitations period begins running again on the date that the petition is amended.

Commentary by Jill Mata

Source: HB 1491
Effective Date: September 1, 2015
Applicability: Applies to statute of limitations for a suit for personal injury arising from certain offenses constituting sexual abuse of a child or for certain sexual assault offenses. Section 16.0045, Civil Practice and Remedies Code applies only to a cause of action that accrues on or after the effective date.
Summary of Changes: HB 1491 was originally filed to remove the statute of limitations for all sexual assault and aggravated sexual assault offenses in the Code of Criminal Procedure, based on reasoning that the seriousness of the crimes and the special circumstances that may limit when these victims are ready to outcry warrant removing barriers to prosecution. In the final version of the bill, however, Section 16.0045 was amended to change the statute of limitations for filing a civil suit for personal injury under the Civil Practices and Remedies Code, from 5 years to 15 years for conduct arising from certain offenses constituting sexual abuse of a child. Conduct includes sexual assault of a child, aggravated and continuous sexual abuse of a child and human sexual trafficking of a child. The statute of limitations for civil suits arising out of sexual assault claims involving adult victims of these crimes has not changed.

Civil Practice and Remedies Code Sec. 98.0025. SHAREHOLDER AND MEMBER LIABILITY. (a) This section applies to a legal entity governed by Title 2, 3, or 7, Business Organizations Code.

(b) Notwithstanding any provision of the Business Organizations Code, if a legal entity described by Subsection (a) is liable under Section 98.002, a shareholder or member of that entity is jointly and severally liable with the entity to the person trafficked for damages arising from the trafficking of that person if the person demonstrates that the shareholder or member caused the entity to be used for the purpose of trafficking that person and did traffic that person for the direct personal benefit of the shareholder or member.

Commentary by Jill Mata

Source: HB 968
Effective Date: June 1, 2015
Applicability: Applies to a cause of action that accrues on or after the effective date.

Summary of Changes: This legislation closes a loophole in current law that allows human traffickers to use shell businesses as a means to avoid fiscal liability. Current law provides a civil cause of action for trafficking victims; however, while it provides the right to sue a corporate entity that has directly engaged in trafficking, it does not provide the right to sue the owner or shareholder of such a corporate entity. What typically happens is that the business closes but is re-established by the owner under another corporate identity, thereby taking all the assets from the entity that might be sued under current law. Section 98.0025 adds language to attach liability to the actual owners and shareholders, effectively closing this loophole and creating actual recourse for victims.

Code of Criminal Procedure

Code of Criminal Procedure Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. (a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;

(2) a person who is the victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1);

(4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or

(5) a prosecuting attorney acting on behalf of a person described by Subdivision (1), [~~or~~] (2), (3), or (4).

Commentary by Kaci Singer

Source: HB 1447/SB 630
Effective Date: September 1, 2015
Applicability: Applies to a victim of criminally injurious conduct for which a judgment of conviction is entered or a grant of deferred adjudication is made on or after the effective date.
Summary of Changes: Certain people may file an application for a protective order without regard to the relationship between the applicant and alleged offender. The amendments to Article 7A.01 modifies the law so that the victim of continuous trafficking of persons may apply for a protective order and so that the prosecuting attorney can file an application on behalf of a parent or guardian acting on behalf of a child victim. The age a person is considered a child is determined by the offense for which the protective order is requested.

Code of Criminal Procedure Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING. (d) This subsection applies only to a victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072, or 43.05, Penal Code. In addition to the rights enumerated in Article 56.02 and, if applicable, Subsection (a) of this article, a victim described by this subsection or a parent or guardian of the victim is entitled to the following rights within the criminal justice system:

(1) the right to request that the attorney representing the state, subject to the Texas Disciplinary Rules of Professional Conduct, file an application for a protective order under Article 7A.01 on behalf of the victim;

(2) the right to be informed:

(A) that the victim or the victim's parent or guardian, as applicable, may file an application for a protective order under Article 7A.01;

(B) of the court in which the application for a protective order may be filed; and

(C) that, on request of the victim or the victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state may file the application for a protective order;

(3) if the victim or the victim's parent or guardian, as applicable, is present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the court the information described by Subdivision (2) and, if the court has jurisdiction over applications for protective orders that are filed under Article 7A.01, the right to file an application for a protective order immediately following the defendant's conviction or placement on deferred adjudication community supervision; and

(4) if the victim or the victim's parent or guardian, as applicable, is not present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the attorney representing the state the information described by Subdivision (2).

Commentary by Kaci Singer

Source: HB 1447/SB 630
Effective Date: September 1, 2015
Applicability: Applies to a victim of criminally injurious conduct for which a judgment of conviction is entered or a grant of deferred adjudication is made on or after the effective date.
Summary of Changes: The change to Article 56.021 provides rights to victims of abuse, stalking, or trafficking in addition to sexual assault. These rights include the right to receive information about who may and where to file an application for protective order and the right to request that the prosecutor file an application for a protective order on behalf of the victim.

Code of Criminal Procedure Art. 56.06. FORENSIC MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS. (a) If a sexual assault is reported to a law enforcement agency within 96 hours of the assault, the law enforcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a forensic medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a forensic medical examination under this subsection only if the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and if there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a), on receiving the consent described by that subsection the law enforcement agency may request a forensic medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

(c) A law enforcement agency that requests a forensic medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by Section 420.003, Government Code.

(d) A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of the forensic medical examination or manner in which it was performed.

(f) The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with Section 323.004, Health and Safety Code.

Commentary by Kaci Singer

Source: HB 1446
Effective Date: September 1, 2015
Applicability: Applies to medical costs incurred on or after the effective date.
Summary of Changes: The attorney general's office may now pay the reasonable costs for forensic medical examinations of victims of alleged sexual assault. This statute applies to a victim who has previously reported the alleged sexual assault to law enforcement.

Code of Criminal Procedure Art. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS NOT REPORTED ASSAULT; COSTS. (k) The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with Section 323.004, Health and Safety Code.

Commentary by Kaci Singer

Source: HB 1446
Effective Date: September 1, 2015
Applicability: Applies to medical costs incurred on or after the effective date.
Summary of Changes: This amendment makes changes to certain requirements for forensic medical examinations of victims of alleged sexual assault so that the attorney general's office may pay the reasonable costs for medical care provided to the victim. This statute applies to a victim who has not yet reported the alleged sexual assault to law enforcement.

Code of Criminal Procedure Art. 56.32. DEFINITIONS. (a) (9) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred as a result of personal injury or death for:

(A) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;

(B) actual loss of past earnings and anticipated loss of future earnings and necessary travel expenses because of:

(i) a disability resulting from the personal injury;

(ii) the receipt of medically indicated services related to the disability resulting from the personal injury; or

(iii) participation in or attendance at investigative, prosecutorial, or judicial processes related to the criminally injurious conduct and participation in or attendance at any post-conviction or post-adjudication proceeding relating to criminally injurious conduct;

(C) care of a child or dependent;

(D) funeral and burial expenses, including, for an immediate family member or household member of the victim, the necessary expenses of traveling to and attending the funeral;

(E) loss of support to a dependent, consistent with Article 56.41(b)(5);

(F) reasonable and necessary costs of cleaning the crime scene;

(G) reasonable replacement costs for clothing, bedding, or property of the victim seized as evidence or rendered unusable as a result of the criminal investigation;

(H) reasonable and necessary costs for relocation and housing rental assistance payments [~~,~~] as provided by Article 56.42(d)[~~, incurred by a victim of family violence or a victim of sexual assault who is~~

~~assaulted in the victim's place of residence for relocation and housing rental assistance payments~~];

(I) for an immediate family member or household member of a deceased victim, bereavement leave of not more than 10 work days; and

(J) reasonable and necessary costs of traveling to and from a place of execution for the purpose of witnessing the execution, including one night's lodging near the place at which the execution is conducted.

Commentary by Kaci Singer

Source: HB 1446
Effective Date: September 1, 2015
Applicability: Applies to relocation costs relating to a crime committed on or after effective date.
Summary of Changes: Article 56.42(d), Code of Criminal Procedure allows monetary assistance for relocation costs to a victim of family violence, trafficking, or sexual assault who is assaulted in their place of residence. The definition of pecuniary loss in Article 56.32 was not consistent with that as it did not include trafficking victims. Article 56.42 was amended in this bill to also include stalking victims. Rather than reiterate those additional changes here, the reference to the victim was removed so that a reference to the statute remains. This eliminates the potential for inconsistency.

Code of Criminal Procedure, Art. 56.32. DEFINITIONS.(a) (14) "Trafficking of persons" means any offense that results in a person engaging in forced labor or services, including sexual conduct, and that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, Penal Code.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: Applies to a criminal offense committed or a violation that occurs on or after the effective date.
Summary of Changes: In 2009, the Texas Legislature created the Texas Human Trafficking Prevention Task Force designed to collaborate with the state and federal government in efforts to prevent human trafficking, increase data collection, provide public education and victim services, and provide training for various state actors. According to a 2014 human trafficking report issued by the Department of Public Safety, sex trafficking is the fastest-growing business of organized crime and the third-largest criminal enterprise in the world. Further, the report states that Texas was the second-largest source of tips to a national human trafficking hotline in 2013. The current definition of trafficking of persons does not clearly specify language that encompasses sexual conduct. This amendment expands the definition of trafficking of persons found in the Code of Criminal Procedure to include forced sexual conduct as a type of forced labor or service.

Code of Criminal Procedure, Art. 56.41. APPROVAL OF CLAIM. (b-1) Subsection (b)(3) does not apply to a claimant or victim who seeks compensation for criminally injurious conduct that is:

(1) in violation of Section 20A.02 (a) (7), Penal Code; or

(2) trafficking of persons, other than an offense described by Subdivision (1), if the criminally injurious conduct the claimant or victim participated in was the result of force, fraud, or coercion.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: Applies to a criminal offense or a violation that occurs on or after the effective date.
Summary of Changes: Recent reports suggest that Texas was the second-largest source of tips to a national human trafficking hotline in 2013. Current law authorizes crime victims to apply to the Texas Attorney General for compensation for injury or loss resulting from criminally injurious conduct if certain criteria are met. The Attorney General is required to deny an application for compensation if the claimant or victim knowingly participated in the criminally injurious conduct. The changes in Article 56.41 exempt from mandated denial those applications for compensation from a claimant or victim who knowingly participated in trafficking, if they are a child victim or if the victim was trafficked as a result of force, fraud, or coercion.

Code of Criminal Procedure Art. 56.42. LIMITS ON COMPENSATION. (d) A victim who is a victim of stalking, family violence, or [~~a victim of~~] trafficking of persons, or a victim of sexual assault who is assaulted in the victim's place of residence, may receive a onetime-only assistance payment in an amount not to exceed:

(1) $2,000 to be used for relocation expenses, including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and for out-of-state moves, transportation, lodging, and meals; and

(2) $1,800 to be used for housing rental expenses.

Commentary by Kaci Singer

Source: HB 1446
Effective Date: September 1, 2015
Applicability: Applies to the victim of a criminal offense committed on or after the effective date.
Summary of Changes: This change allows victims of stalking to receive assistance payments to help with relocation and housing rental expenses.

Code of Criminal Procedure, Art. 56.45. DENIAL OR REDUCTION OF AWARD. (a) The attorney general may deny or reduce an award otherwise payable:

(1) if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency;

(2) if the claimant or victim bears a share of the responsibility for the act or omission giving rise to the claim because of the claimant's or victim's behavior;

(3) to the extent that pecuniary loss is recouped from a collateral source; or

(4) if the claimant or victim was engaging in an activity that at the time of the criminally injurious conduct was prohibited by law or a rule made under law.

(b) Subsection (a)(4) does not apply to a claimant or victim who seeks compensation for criminally injurious conduct that is:

(1) in violation of Section 20A.02(a)(7), Penal Code; or

(2) trafficking of persons, other than an offense described by Subdivision (1), if the activity the claimant or victim engaged in was the result of force, fraud, or coercion.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: Applies to a criminal offense or a violation that occurs on or after the effective date.
Summary of Changes: Current law authorizes crime victims to apply to the Texas Attorney General for compensation for injury or loss resulting from criminally injurious conduct if certain criteria are met. Article 56.45 exempts from discretionary denial or amount reduction, those applications for compensation from a claimant or victim who knowingly participated in trafficking, if they are a child victim or if the victim was trafficked as a result of force, fraud, or coercion.

Code of Criminal Procedure Art. 56.54. FUNDS. (k) The attorney general may use the compensation to victims of crime fund to:

(1) reimburse a law enforcement agency for the reasonable costs of a forensic medical examination that are incurred by the agency under Article 56.06 or 56.065; and

(2) make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided under Article 56.06 or 56.065 in accordance with Section 323.004, Health and Safety Code.

Commentary by Kaci Singer

Source: HB 1446
Effective Date: September 1, 2015
Applicability: Applies to medical expenses incurred on or after the effective date.
Summary of Changes: This is a conforming change to allow the attorney general to use the compensation to victims of crime fund to reimburse law enforcement agencies for the reasonable costs of a forensic medical examination and to reimburse victims of sexual assault for the costs of medical care incurred.

Code of Criminal Procedure CHAPTER 57A. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF VICTIMS OF STALKING.

Art. 57A.01. DEFINITIONS. In this chapter:

(1) "Name" means the legal name of a person.

(2) "Pseudonym" means a set of initials or a fictitious name chosen by a victim to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings.

(3) "Public servant" has the meaning assigned by Section 1.07(a), Penal Code.

(4) "Victim" means a person who is the subject of:

(A) an offense that allegedly constitutes stalking under Section 42.072, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by Section 3.01, Penal Code, as an offense under Section 42.072, Penal Code.

Commentary by Jill Mata

Source: HB 1293
Effective Date: September 1, 2015
Applicability: Applies to victim information and disclosures of information on or after the effective date.
Summary of Changes: The amendment to Article 57A, Code of Criminal Procedure relates to the confidentiality of identifying information of victims of stalking, and creates a criminal penalty for improper disclosure of such information. This provision specifically allows a victim of an alleged stalking offense to choose to use a pseudonym instead of the person's name in public files and records concerning the offense. These records would include police summary reports, press releases, and records of judicial proceedings.

Code of Criminal Procedure Art. 57A.02. CONFIDENTIALITY OF FILES AND RECORDS. (a) The office of the attorney general shall develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim.

(b) A victim may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim who elects to use a

pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

(c) A victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense may not be required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.

(d) A completed and returned pseudonym form is confidential and may not be disclosed to any person other than the victim identified by the pseudonym form, a defendant in the case, or the defendant's attorney, except on an order of a court of competent jurisdiction. The court finding required by Subsection (g) is not required to disclose the confidential pseudonym form to the victim identified by the pseudonym form, the defendant in the case, or the defendant's attorney.

(e) If a victim completes and returns a pseudonym form to a law enforcement agency under this article, the law enforcement agency receiving the form shall:

(1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;

(2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym;

(3) provide to the victim a copy of the completed pseudonym form showing that the form was returned to the law enforcement agency; and

(4) maintain the form in a manner that protects the confidentiality of the information contained on the form.

(f) An attorney for the state who receives notice that a victim has elected to be designated by a pseudonym shall ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.

(g) A court of competent jurisdiction may order the disclosure of a victim's name, address, and telephone number only if the court finds that:

(1) the information is essential in the trial of the defendant for the offense;

(2) the identity of the victim is in issue; or

(3) the disclosure is in the best interest of the victim.

(h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57A.01(4).

Commentary by Jill Mata

Source: HB 1293
Effective Date: September 1, 2015
Applicability: Applies to victim information and disclosures of information on or after the effective date.
Summary of Changes: Section 57A.02 relates to the confidentiality of identifying information of victims of stalking, and creates a criminal penalty for improper disclosure of such information. This provision allows a victim of an alleged stalking offense to choose to use a pseudonym instead of the person's name in public files and records concerning the offense. These records would include police summary reports, press releases, and records of judicial proceedings. To elect to use a pseudonym, a victim would have to complete a form developed by the attorney general and return the form to the law enforcement agency investigating the offense. The attorney general is required to develop by October 1, 2015 a pseudonym form for victims to use. Victims who returned the form could not be required to disclose their name, address, or phone number in connection with the investigation or prosecution of the crime. The forms would be confidential and could not be disclosed to anyone other than the victim, a defendant in the case, or the defendant's attorney, unless required by a court. Courts could order disclosure of the victim's name and other information only if they found that the information was essential in the trial for the offense, the identity of the victims was in issue, or the disclosure was in the best interest of the victim.

Code of Criminal Procedure Art. 57A.03. OFFENSE. (a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen a pseudonym under this chapter commits an offense if the public servant knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

(b) Unless the disclosure is required or permitted by other law, a public servant or other person commits an offense if the person:

(1) has access to or obtains the name, address, or telephone number of a victim younger than 17 years of age; and

(2) knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the

defendant's attorney, or a person specified in an order of a court of competent jurisdiction.

(c) It is an affirmative defense to prosecution under Subsection (b) that the actor is:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57A.01(4).

(d) An offense under this article is a Class C misdemeanor.

Commentary by Jill Mata

Source: HB 1293
Effective Date: September 1, 2015
Applicability: Applies to victim information and disclosures of information on or after the effective date.
Summary of Changes: Article 57A.01 relates to the confidentiality of identifying information of victims of stalking, and creates a criminal penalty for improper disclosure of such information. This section allows a victim of an alleged stalking offense to choose to use a pseudonym instead of the person's name in public files and records concerning the offense. These records would include police summary reports, press releases, and records of judicial proceedings. To elect to use a pseudonym, a victim would have to complete a form developed by the attorney general and return the form to the law enforcement agency investigating the offense. Prosecutors receiving notice of the use of a pseudonym would have to ensure that the victim was designated by the pseudonym in all legal proceedings. Except as allowed by other laws or a court order, public servants or others with access to the name and other information of a stalking victim younger than 17, could not release the information to anyone who was not assisting in the investigation, prosecution, or defense of the case. This would not apply to the release of information by victims or their parents or guardians, unless the parent or guardians allegedly committed the stalking. Public servants with access to the name and other information of victims 17 years old or older who chose to use a pseudonym would commit a class C misdemeanor (maximum fine of $500) if they knowingly disclosed the name, address, or telephone number of the victim to anyone who was not assisting in the investigation or prosecution of the offense or to anyone other than defendants, their attorneys, or anyone in a court order.

Code of Criminal Procedure Art. 57A.04. EFFECT ON OTHER LAW. This chapter does not affect:

(1) a victim's responsibility to provide documentation of stalking under Section 92.0161, Property Code; or

(2) a person's power or duty to disclose the documented information as provided by Subsection (j) of that section.

Commentary by Jill Mata

Source: HB 1293
Effective Date: September 1, 2015
Applicability: Applies to victim information and disclosures of information on or after the effective date.
Summary of Changes: Article 57A.04 relates to the confidentiality of identifying information of victims of stalking, and creates a criminal penalty for improper disclosure of such information. This provision allows a victim of an alleged stalking offense to choose to use a pseudonym instead of the person's name in public files and records concerning the offense. These records include police summary reports, press releases, and records of judicial proceedings. The change does not affect a stalking victim's responsibility to provide certain information to landlords when seeking to terminate a lease. In these situations, the pseudonym report will have to be provided to landlords if law enforcement reports identify a victim by a pseudonym.

Code of Criminal Procedure Art. 62.001. DEFINITIONS. (5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c)(3) of that section;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), or (K);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), or (K), but not if the violation results in a deferred adjudication;

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; or

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of Persons), Penal Code.

Commentary by Kyle Dufour

Source: HB 10
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Under current law, a conviction or adjudication, including an adjudication of delinquent conduct, resulting from a defendant involved in prostitution is only considered a "reportable conviction or adjudication" under Chapter 62 of the Code of Criminal Procedure (Sex Offender Registration Program) when the actor is convicted of compelling prostitution under Section 43.05, Penal Code. This provision amends those terms to include a conviction or adjudication of prostitution where the person solicited is younger than 18 years of age. The sex offender registry is designed to help protect the public by making offender information available online and by making the offender information available online. This bill would place these offenders in the state's sex offender registry with similar offenders already required to register.

Code of Criminal Procedure Art. 63.009. LAW ENFORCEMENT REQUIREMENTS. (a) Local law enforcement agencies, on receiving a report of a missing child or a missing person, shall:

(1) if the subject of the report is a child and the [~~well-being of the~~] child is at a high risk of harm or is otherwise in danger or if the subject of the report is a person who is known by the agency to have or is reported to have chronic dementia, including Alzheimer's dementia, whether caused by illness, brain defect, or brain injury, immediately start an investigation in order to determine the present location of the child or person;

(2) if the subject of the report is a child or person other than a child or person described by Subdivision (1), start an investigation with due diligence in order to determine the present location of the child or person;

(3) immediately, but not later than two hours after receiving the report, enter the name of the child or person into the clearinghouse, the national crime information center missing person file if the child or person meets the center's criteria, and the Alzheimer's Association Safe Return crisis number, if applicable, with all available identifying features such as dental records, fingerprints, other physical characteristics, and a description of the clothing worn when last seen, and all available information describing any person reasonably believed to have taken or retained the missing child or missing person; and

(4) inform the person who filed the report of the missing child or missing person that the information will be entered into the clearinghouse, the national crime information center missing person file, and the Alzheimer's Association Safe Return crisis number, if applicable.

Commentary by Jill Mata

Source: HB 1793
Effective Date: September 1, 2015
Applicability: Applies to a missing child report received by a law enforcement agency on or after the effective date.
Summary of Changes: The amendment to Article 63.009, Code of Criminal Procedure relates to reports of certain missing children and to the administration of missing or exploited children prevention grants. Every year, approximately 800,000 children go missing in the United States, many of whom become vulnerable to child sex trafficking. Recently, the Texas Legislature sought to provide law enforcement agencies better tools to identify children who were at high risk for trafficking and other exploitative crimes. These law enforcement agencies have expressed the need to refine the parameters for data collection to include children younger than 14 years of age categorized as being at high risk for such crimes. Specifically the bill amends this statute and uses the term "high risk" instead of "endangered" to be consistent with other law enforcement reporting requirements.

Code of Criminal Procedure Art. 63.0091. LAW ENFORCEMENT REQUIREMENTS REGARDING REPORTS OF CERTAIN MISSING CHILDREN. (a) The public safety director of the Department of Public Safety shall adopt rules regarding the procedures for a local law enforcement agency on receiving a report of a missing child who:

(1) had been reported missing on four or more occasions in the 24-month period preceding the date of the current report; [~~or~~]

(2) is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report; or

(3) is under 14 years of age and otherwise determined by the local law enforcement agency or the Department of Public Safety to be at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision.

(b) The rules adopted under this article must require that in entering information regarding the report into the national crime information center missing person file as required by Article 63.009(a)(3) for a missing child described by Subsection (a), the local law enforcement agency shall indicate, in the manner specified in the rules, that the child is at a high risk of harm [~~endangered~~] and include relevant information regarding any [~~the~~] prior occasions on which the child was reported missing.

(c) If, at the time the initial entry into the national crime information center missing person file is made, the local law enforcement agency has not determined that the requirements of this article apply to the report of the missing child, the information required by Subsection (b) must be added to the entry promptly after the agency investigating the report or the Department of Public Safety determines that the missing child is described by Subsection (a).

Commentary by Jill Mata

Source: HB 1793
Effective Date: September 1, 2015
Applicability: Applies to a missing child report that is received by a law enforcement agency and the administration of grants on or after the effective date.
Summary of Changes: This provision relates to reports of certain missing children and to the administration of missing or exploited children prevention grants. Every year, approximately 800,000 children go missing in the United States, many of whom become vulnerable to child sex trafficking. Recently, the Texas Legislature sought to provide law enforcement agencies better tools to identify children who were at high risk for trafficking and other exploitative crimes. These law enforcement agencies have expressed the need to refine the parameters for data collection to include children younger than 14 years of age categorized as being at high risk for such crimes. Specific to this statute, the bill mandates law enforcement to consider age as a factor and report accordingly. The age "under 14" has been added to reflect current criteria set for the amber alert reporting system and the age under which there cannot be a defense to sexual assault of a child. The ability to report based on age will more accurately identify high risk children.

Code of Criminal Procedure Art. 63.0092. OPTION TO DESIGNATE MISSING CHILD AS HIGH RISK. (a) This article applies to a report of a missing child who is at least 14 years of age and who a local law enforcement agency or the Department of Public Safety determines is at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision.

(b) In entering information regarding a report described by Subsection (a) into the national crime information center missing person file as required by Article 63.009(a)(3), the local law enforcement agency may indicate that the child is at a high risk of harm and may include any other relevant information.

Commentary by Jill Mata

Source: HB 1793
Effective Date: September 1, 2015
Applicability: Applies to a missing child report that is received by a law enforcement agency and the administration of grants on or after the effective date.
Summary of Changes: This change relates to reports of certain missing children and to the administration of missing or exploited children prevention grants. Every year, approximately 800,000 children go missing in the United States, many of whom become vulnerable to child sex trafficking. Recently, the Texas Legislature sought to provide law enforcement agencies better tools to identify children who were at high risk for trafficking and other exploitative crimes. These law enforcement agencies have expressed the need to refine the parameters for data collection to include children younger than 14 years of age categorized as being at high risk for such crimes. Specifically, the bill substitutes the term "high risk" in the statute instead of "endangered," which is consistent with other law enforcement reporting requirements.

Family Code

Family Code Sec. 54.0326 DEFERRAL OF ADJUDICATION AND DISMISSAL OF CERTAIN CASES ON COMPLETION OF TRAFFICKED PERSONS PROGRAM. (b) A juvenile court may defer adjudication proceedings under Section 54.03 until the child's 18th birthday and require a child to participate in a pro-

gram established under Section 152.0017 [~~152.0016~~], Human Resources Code, if the child:

(1) is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code; and

(2) presents to the court an oral or written request to participate in the program.

Commentary by Jill Mata

Source: SB 1296
Effective Date: September 1, 2015
Applicability: This provision makes non-substantive recodification changes.
Summary of Changes: Section 54.0326 of the Family Code makes various non-substantive revisions to more than 18 different statutory codes by making corrections, conforming the codes of previous legislatures, and properly organizing and numbering certain sections. For example, last session, two different bills created sections with the same number 152.0016, therefore SB 1296 corrected that oversight.

Family Code Sec. 58.004. REDACTION OF VICTIM'S PERSONALLY IDENTIFIABLE INFORMATION. (a) Notwithstanding any other law, before disclosing any juvenile court record or file of a child as authorized by this chapter or other law, the custodian of the record or file must redact any personally identifiable information about a victim of the child's delinquent conduct or conduct indicating a need for supervision who was under 18 years of age on the date the conduct occurred.

(b) This section does not apply to information that is:

(1) necessary for an agency to provide services to the victim;

(2) necessary for law enforcement purposes; or

(3) shared within the statewide juvenile information and case management system established under Subchapter E.

Commentary by Jill Mata

Source: HB 4003
Effective Date: September 1, 2015
Applicability: Applies to information and documents relating to juvenile court cases without regard to whether the conduct that is the basis of the case occurred before, on, or after the effective date.
Summary of Changes: The Juvenile Justice Information System consists of information relating to delinquent conduct committed by a juvenile offender. Records required to be retained include information relating to the prosecution of the juvenile offender and the conduct for which the juvenile was taken into custody, detained, or referred. Often contained in the description of the offense information about the victim of the juvenile's delinquent conduct is disclosed. Juvenile victims of another juvenile's delinquent conduct should not be subject to further inconvenience or disclosure. This bill amends Title 3 of the Juvenile Justice Code to require that the custodian of any juvenile court record or other file with the juvenile justice system redact any personally identifiable information about a victim who was a legal minor at the time of the offense to ensure victims are not subject to public disclosure. This record redaction does not apply to records that are disclosed to law enforcement or to an agency that are providing necessary services to the victim. Records provided to defense counsel should not be redacted in order to properly comply with discovery and the Michael Morton Act, which requires the defense receive all relevant evidence and all potentially exculpatory and mitigating evidence.

Family Code, Sec. 71.0021. DATING VIOLENCE.(a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim or applicant for a protective order:

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

Commentary by Kaci Singer

Source: SB 817
Effective Date: September 1, 2015
Applicability: Applies to a request for a protective order filed on or after the effective date.
Summary of Changes: The definition of dating violence is amended to include acts committed against the victim as well as an applicant for a protective order. One of the stated reasons for this change was that some judges are reluctant to or will not issue a protective order until the perpetrator has been convicted, believing that a person is not a "victim" until that happens. This change is a clarification and does not mean that a conviction is required for a person to be considered a victim of the specific conduct.

Family Code Sec. 71.004. FAMILY VIOLENCE. "Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury,

assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), [~~and~~] (G), (H), (I), (J), and (K), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Commentary by Kaci Singer

Source: SB 817
Effective Date: September 1, 2015
Applicability: Applies to a request for a protective order filed on or after the effective date.
Summary of Changes: The definition of family violence has been amended to include abuse as defined in Family Code Sections 261.001(1)(H), (I), (J), and (K) in addition to (C), (E), and (G). The relevant definitions are now:

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including conduct that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; and

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.

Family Code Sec. 153.005. APPOINTMENT OF SOLE OR JOINT MANAGING CONSERVATOR. (a) In a suit, except as provided by Section 153.004, the court:

(1) may appoint a sole managing conservator or may appoint joint managing conservators; and

(2) if[~~. If~~] the parents are or will be separated, [~~the court~~] shall appoint at least one managing conservator.

(c) In making an appointment authorized by this section, the court shall consider whether, preceding the filing of the suit or during the pendency of the suit:

(1) a party engaged in a history or pattern of family violence, as defined by Section 71.004;

(2) a party engaged in a history or pattern of child abuse or child neglect; or

(3) a final protective order was rendered against a party.

Commentary by Kaci Singer

Source: SB 817
Effective Date: September 1, 2015
Applicability: Applies to a suit affecting the parent-child relationship filed on or after the effective date.
Summary of Changes: This change to Section 153.005, Family Code requires the court to consider any history or pattern of family violence or child abuse or neglect as well as whether a final protective order was rendered against a party when making an appointment of sole or joint managing conservator in a suit affecting the parent-child relationship.

Family Code Sec. 261.001. DEFINITIONS. (1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable dis-

cipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner [~~conduct~~] that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b) [~~43.02(a)(2)~~], Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

Commentary by Kyle Dufour

Source: HB 825
Effective Date: September 1, 2015
Applicability: Applies to allegations of abuse on or after the effective date.
Summary of Changes: The statutory definition of the various types of abuse have been amended in Section 261.001 of the Family Code to conform to the new language added under the Penal Code offense of prostitution.

Family Code Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME OR SECURE AGENCY FOSTER GROUP HOME. A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with Section 42.0531, Human Resources Code, if the court finds that:

(1) the placement is in the best interest of the child; and

(2) the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Section 20A.02 or 20A.03, Penal Code.

Commentary by Jill Mata

Source: HB 418
Effective Date: September 1, 2015
Applicability: Applies to information and documents relating to juvenile court cases without regard to whether the conduct that is the basis of the case occurred before, on, or after the effective date.
Summary of Changes: HB 418 relates to child victims of trafficking who are placed in secure foster homes. Currently, emergency possession of a child is authorized without a court order in certain limited situations, including situations involving an immediate danger to the physical health and safety of a child, the sexual abuse of a child, or a danger to a child because the child's parent is under the influence of illegal drugs. Concerned parties assert that this authority does not include a situation involving a child who is a victim of human trafficking. Noting that child victims of human trafficking or sex trafficking are frequently conditioned by their handlers to run away from police officers or child protective services workers, if given the opportunity, concerned parties assert that there is a need for police officers and child protective services workers to have the authority to act quickly in a situation involving a child who is a victim of human trafficking in order to provide the child with a safe refuge and specialized services.

This legislation seeks to better protect the health and safety of child victims of human trafficking by authorizing a court in an emergency, initial, or full adversary hearing conducted in a child protection suit to order that the child who is the subject of the hearing be placed in a verified secure agency foster home or secure agency foster group home if the court finds that the placement is in the best interest of the child and that the child's physical health or safety is in danger because the

child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act that constitutes a trafficking or continuous trafficking offense.

Family Code, 262.104. TAKING POSSESSION OF A CHILD IN AN EMERGENCY WITHOUT A COURT ORDER. (a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;

(4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code; or

(5) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child.

Commentary by John Gonzales

Source: HB 418
Effective Date: September 1, 2015
Applicability: Applies to emergency removals of children on or after the effective date.
Summary of Changes: This section of the Family Code provides a list of emergency situations that authorize Children's Protective Services (CPS), law enforcement and juvenile probation officers to take possession of a child without a court order. Authorized persons must make the decision to take possession of a child based on personal knowledge of facts and or information from another person that corroborates the person's reason to believe the child is in immediate danger. This amendment adds children who are believed to be victims of human trafficking to the subsection relating to children believed to be victims of sexual abuse. Taking possession of children believed to be victims of sexual abuse or human trafficking may be executed regardless of whether there is immediate danger to the child.

Family Code, Section 262.107. STANDARD FOR DECISION AT INITIAL HEARING AFTER TAKING POSSESSION OF A CHILD WITHOUT A COURT ORDER. (a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

(1) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child or the evidence shows that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;

(2) continuation of the child in the home would be contrary to the child's welfare; and

(3) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Commentary by John Gonzales

Source: HB 418
Effective Date: September 1, 2015
Applicability: Applies to orders rendered on or after the effective date.
Summary of Changes: When a child has been removed by Children's Protective Services (CPS) or another authorized person under exigent circumstances listed in Family Code Section 262.104, a hearing must be held within one to three working days from the time the child was removed. A court may order child victims of human trafficking to remain in the custody of CPS if the judge believes at this initial hearing that the child was in fact a victim of human trafficking and would be at risk of continuous human trafficking if returned to the person who has the legal right to possession of the child.

Family Code, Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE COURT. (b) At the conclusion of the full adversary hearing, the

court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

Commentary by John Gonzales

Source: SB 418
Effective Date: September 1, 2015
Applicability: Applies to hearings held on or after the effective date.
Summary of Changes: After an emergency removal of a child, a full adversarial hearing is required within 14 days from the time the child was removed. At that time the judge will decide based on sufficient evidence presented whether the court agrees with the person who removed the child who was believed to be a victim of human trafficking. If the judge finds that the child removed was a victim of human trafficking and would be at risk of further human trafficking if returned to the person who has the legal right to possession of the child and caused the child to be a victim of human trafficking, the court must order that the child remain in the custody of Children's Protective Services.

Government Code

Government Code Sec. 21.010 FINANCIAL INTEREST IN PRIVATE CORRECTIONAL AND REHABILITATION FACILITIES PROHIBITED. (b) A justice or judge is considered to have a significant interest in a business entity described by Subsection (a) for purposes of this section if:

(1) the justice or judge owns any voting stock or share or has a direct investment in the business entity [~~that represents the lesser of at least 10 percent or $15,000 of the fair market value of the business entity~~]; or

(2) the justice or judge receives money from the business entity.

Commentary by Kaci Singer

Source: HB 257
Effective Date: January 1, 2017
Applicability: Applies to a significant interest that exists on or after the effective date.
Summary of Changes: Prior to 2013, there were no statutes prohibiting judges from having a financial interest in businesses tied to private correctional or rehabilitation facilities. In 2013, HB 62 was passed to prohibit judges from having a significant interest in a business entity that owns, manages, or operates a community residential facility, a correctional or rehabilitation facility, or any other facility intended to provide a service to a person convicted of a crime or found to have engaged in delinquent conduct who is housed in the facility. The examples given in support of the change were the "Kids for Cash" scandal in Pennsylvania as well as an alleged scheme in a Texas county that alleged bribes and kickbacks involving some county officials and a private federal prison. In that bill and in current law, significant interest is defined as owning any voting stock or share or having a direct investment that represents the lesser of $15,000 or at least 10% of the fair market value of the business entity. During the House Judiciary and Civil Prudence hearing regarding HB 62 in 2013, Representative Farney and others indicated that perhaps judges should be prohibited from having any interest in institutions as it was a conflict of interest. Representative Farney is the author of HB 257, which eliminates the financial threshold so that any direct investment amount is considered a significant interest.

Government Code SUBCHAPTER F. TASK FORCE TO PROMOTE UNIFORMITY IN COLLECTION AND REPORTING OF INFORMATION ON FAMILY VIOLENCE, SEXUAL ASSAULT, STALKING, AND HUMAN TRAFFICKING

Government Code Sec. 72.101. DEFINITIONS. In this subchapter:

(1) "Dating violence" has the meaning assigned by Section 71.0021, Family Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Task force" means the task force established under this subchapter to promote uniformity in the collection and reporting of information relating to family violence, sexual assault, stalking, and human trafficking.

Government Code Sec. 72.102. TASK FORCE MEMBERSHIP. (a) The task force consists of:

(1) one member from the office, appointed by the director;

(2) 16 members appointed by the presiding officer of the task force as follows:

(A) one member from the bureau of identification and records of the Department of Public Safety;

(B) one member from a statewide family violence advocacy organization;

(C) one member from a statewide sexual assault advocacy organization;

(D) one member who is a prosecuting attorney with experience in obtaining protective orders in cases involving family violence, sexual assault, stalking, or human trafficking;

(E) one member who is a magistrate with experience in issuing orders for emergency protection under Article 17.292, Code of Criminal Procedure;

(F) one member who is a judge or an associate judge with experience in issuing protective orders in cases involving family violence, sexual assault, stalking, or human trafficking;

(G) one member from The University of Texas School of Law Domestic Violence Clinic;

(H) one member who is from an organization that receives federal funding under the legal assistance for victims grant program and who has expertise in issues related to family violence, sexual assault, or stalking;

(I) two members from a law enforcement agency, including one member who is a constable;

(J) one member from the Texas Center for the Judiciary;

(K) one member from the Texas Municipal Courts Education Center;

(L) one member from the Texas Justice Court Training Center;

(M) one member from the County and District Clerks' Association of Texas;

(N) one member from the child support division of the office of the attorney general; and

(O) one member from the Texas Education Agency; and

(3) any other member whom the presiding officer determines to be appropriate and who consents to serve on the task force.

(b) The presiding officer of the task force is the member who represents the office.

(c) Appointed members of the task force serve at the will of the appointing authority. A vacancy on the task force must be filled in the same manner as the original appointment.

Government Code Sec. 72.103. MEETINGS; COMPENSATION. (a) The task force shall meet at the call of the presiding officer.

(b) Members of the task force serve without compensation or reimbursement for expenses.

Government Code Sec. 72.104. DUTIES. (a) The task force shall:

(1) solicit and receive reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations, including:

(A) survivors of family violence, sexual assault, stalking, or human trafficking;

(B) law enforcement officials whose duties include submitting information to the Texas Crime Information Center;

(C) individuals with technical expertise in and familiarity with the programming and maintenance of the database maintained by the Texas Crime Information Center;

(D) individuals with technical expertise in and familiarity with the office's database on family violence; and

(E) individuals with expertise in issues related to family violence, sexual assault, stalking, or human trafficking; and

(2) develop policy recommendations and best practices guidelines for the uniform collection and reporting of information relating to:

(A) family violence, sexual assault, stalking, and human trafficking; and

(B) the implementation of dating violence training and awareness education in public schools under Section 37.0831, Education Code.

(b) In developing policy recommendations and best practices guidelines under Subsection (a)(2), the task force shall examine best practices regarding uniform data collection and reporting and any studies or reports that the task force considers relevant.

Government Code Sec. 72.105. REPORT. Not later than September 1, 2016, the task force shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the legislature a report that includes:

(1) a description of the activities of the task force;

(2) the findings and recommendations of the task force, including the policy recommendations and best practices guidelines developed by the task force under Section 72.104(a)(2); and

(3) any other matter that the task force considers appropriate.

Government Code Sec. 72.106. ADMINISTRATIVE SUPPORT. The office shall provide reasonably necessary administrative and technical support for the activities of the task force.

Government Code Sec. 72.107. ASSISTANCE WITH RECOMMENDATIONS. The office shall seek the assistance of the task force before the office makes any recommendation as a result of the work done by the task force.

Government Code Sec. 72.108. EXPIRATION DATE. The task force is abolished and this subchapter expires on September 1, 2017.

Commentary by Kaci Singer

Source: HB 2455
Effective Date: June 16, 2015
Applicability: Applies to the Task Force created on or after the effective date.
Summary of Changes: Family violence, sexual assault, stalking, and human trafficking are offenses that are frequently reported in Texas. However, state and local agencies across Texas conduct data collection and reporting in varying ways and responsibility for capturing the data is split across several state agencies. As a result of this lack of clarity and split of duties, the numbers for these offenses are likely not accurate, which makes it more difficult for the state to protect victims by addressing the crimes efficiently and effectively. HB 2455 adds new Sections 72.101 through 72.108 of the Family Code, to address this issue by requiring the Department of Public Safety (DPS) to create a task force to promote uniformity in the collection and reporting of this information. No later than September 1, 2016, the task force is required to submit a report to the legislature with its recommendations.

Government Code Sec. 103.0292. ADDITIONAL MISCELLANEOUS FEES AND COSTS: GOVERNMENT [~~HEALTH AND SAFETY~~] CODE. A nonrefundable program fee for a commercially sexually exploited persons court [~~prostitution prevention~~] program established under Chapter 126 [~~Section 169A.002, Health and Safety Code,~~] shall be collected under Section 126.006 [~~169A.005, Health and Safety Code,~~] in a reasonable amount based on the defendant's ability to pay and not to exceed $1,000, which includes:

(1) a counseling and services fee in an amount necessary to cover the costs of counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the total fee; and

(3) a law enforcement training fee in an amount equal to five percent of the total fee.

Commentary by Kaci Singer

Source: SB 536
Effective Date: June 16, 2015
Applicability: This is a non-substantive change that makes no changes to existing law.
Summary of Changes: These are conforming changes related to renaming the prostitution prevention program and transferring the statutes from the Health and Safety Code to the Government Code.

~~Health and Safety Code~~ GOVERNMENT CODE CHAPTER 126. COMMERCIALLY SEXUALLY EXPLOITED PERSONS COURT [~~169A. PROSTITUTION PREVENTION~~] PROGRAM

Commentary by Kaci Singer

Source: SB 536
Effective Date: June 16, 2015
Applicability: This is a non-substantive change that makes no changes to existing law.
Summary of Changes: Prior legislation created the prostitution prevention program within the Health and Safety Code's public health provisions for individuals charged with prostitution. Since then, extensive legislative review of the commercial sex trade has resulted in a determination that many individuals associated with the commercial sex trade are victims in need of assistance and guidance. Interested parties assert that it is important for people to acknowledge the reality of the commercial sex trade. The parties recommended that the prostitution prevention program be renamed the commercially sexually exploited persons court program and be relocated from the Health and Safety Code so that it falls under the provisions in the Government Code related to specialty courts. The following statutes were transferred and the term “prostitution prevention program” was amended to “commercially sexually exploited persons court program”: Health and Safety Code Section 169A.001 is now Government Code Section 126.001; Health and Safety Code Section 169A.002 is now Government Code Section 126.002; Health and Safety Code Section 169A.0025 is now Government Code Section 126.003; Health and Safety Code Section 169A.003 is now Government Code Section 126.004; Health and Safety Code Section 169A.004 is now Government Code Section 126.005; Health and Safety Code Section 169A.005 is now Government Code Section 126.006; Health and Safety Code Section 169A.0055 is now Government Code Section 126.007; and Health and Safety Code Section 169A.006 is now Government Code Section 126.008.

Government Code Sec. 402.035 HUMAN TRAFFICKING PREVENTION TASK FORCE. (c) The task force is composed of the following:

(1) the governor or the governor's designee;

(2) the attorney general or the attorney general's designee;

(3) the executive commissioner of the Health and Human Services Commission or the executive commissioner's designee;

(4) the commissioner of the Department of Family and Protective Services or the commissioner's designee;

(5) the commissioner of the Department of State Health Services or the commissioner's designee;

(6) the public safety director of the Department of Public Safety or the director's designee;

(7) one representative from each of the following state agencies, appointed by the chief administrative officer of the respective agency:

(A) the Texas Workforce Commission;

(B) the Texas Department of Criminal Justice;

(C) the Texas Juvenile Justice Department [~~Youth Commission;~~

[~~(D) the Texas Juvenile Probation Commission~~]; and

(D) [~~(E)~~] the Texas Alcoholic Beverage Commission; and

(8) as appointed by the attorney general:

(A) a chief public defender employed by a public defender's office, as defined by Article 26.044(a), Code of Criminal Procedure, or an attorney designated by the chief public defender;

(B) an attorney representing the state;

(C) a representative of:

(i) a hotel and motel association;

(ii) a district and county attorneys association; [~~and~~]

(iii) a state police association; and

(iv) a statewide medical association;

(D) representatives of sheriff's departments;

(E) representatives of local law enforcement agencies affected by human trafficking; and

(F) representatives of nongovernmental entities making comprehensive efforts to combat human trafficking by:

(i) identifying human trafficking victims;

(ii) providing legal or other services to human trafficking victims;

(iii) participating in community outreach or public awareness efforts regarding human trafficking;

(iv) providing or developing training regarding the prevention of human trafficking; or

(v) engaging in other activities designed to prevent human trafficking.

Commentary by Jill Mata

Source: HB 188
Effective Date: May 28, 2015
Applicability: Applies to the duties and responsibilities of the task force on or after the effective date.
Expiration: The duties of the task force will expire on September 1, 2017.
Summary of Changes: HB 188 relates to the composition, duties and continuation of the human trafficking prevention task force. Several years ago the Texas Legislature created the Human Trafficking Prevention Task Force in an effort to create a statewide partnership between law enforcement agencies, nongovernmental organizations, legal representatives, and state agencies that are fighting against the crime of human trafficking. The task force has worked to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes as well as propose legislative recommendations that better protect both adult and child victims. Section 402.035 continues that work and makes non-substantive name changes for Texas Juvenile Justice Department.

Government Code Sec. 402.035 HUMAN TRAFFICKING PREVENTION TASK FORCE.
(d) The task force shall:

(1) collaborate, as needed to fulfill the duties of the task force, with:

(A) United States attorneys for the districts of Texas; and

(B) special agents or customs and border protection officers and border patrol agents of:

(i) the Federal Bureau of Investigation;

(ii) the United States Drug Enforcement Administration;

(iii) the Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iv) United States Immigration and Customs Enforcement; or

(v) the United States Department of Homeland Security;

(2) collect, organize, and periodically publish statistical data on the nature and extent of human trafficking in this state, including data described by Subdivisions (4)(A), (B), (C), (D), and (E);

(3) solicit cooperation and assistance from state and local governmental agencies, political subdivisions of the state, nongovernmental organizations, and other persons, as appropriate, for the purpose of collecting and organizing statistical data under Subdivision (2);

(4) ensure that each state or local governmental agency and political subdivision of the state and each state or local law enforcement agency, district attorney, or county attorney that assists in the prevention of human trafficking collects statistical data related to human trafficking, including, as appropriate:

(A) the number of investigations concerning, arrests and prosecutions for, and convictions of:

(i) the offense of trafficking of persons; [~~and~~]

(ii) the offense of forgery or an offense under Chapter 43, Penal Code, if the offense was committed as part of a criminal episode involving the trafficking of persons; and

(iii) an offense punishable under Section 43.02(c)(3), Penal Code, regardless of whether the offense was committed as part of a criminal episode involving the trafficking of persons;

(B) demographic information on persons who are convicted of offenses described by Paragraph (A) and persons who are the victims of those offenses;

(C) geographic routes by which human trafficking victims are trafficked, including routes by which victims are trafficked across this state's international border, and geographic patterns in human trafficking, including the country or state of origin and the country or state of destination;

(D) means of transportation and methods used by persons who engage in trafficking to transport their victims; and

(E) social and economic factors that create a demand for the labor or services that victims of human trafficking are forced to provide;

(5) work with the Texas Commission on Law Enforcement [~~Officer Standards and Education~~] to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking;

(6) work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:

(A) develop a list of key indicators that a person is a victim of human trafficking;

(B) develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(C) train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(D) develop and conduct training for personnel from the Department of Family and Protective Services and the Health and Human Services Commission on methods for identifying children in foster care who may be at risk of becoming victims of human trafficking; and

(E) develop a process for referring identified human trafficking victims and individuals at risk of becoming victims to appropriate entities for services;

(7) on the request of a judge of a county court, county court at law, or district court or a county attorney, district attorney, or criminal district attorney, assist and train the judge or the judge's staff or the attorney or the attorney's staff in the recognition and prevention of human trafficking;

(8) examine training protocols related to human trafficking issues, as developed and implemented by federal, state, and local law enforcement agencies;

(9) collaborate with state and local governmental agencies, political subdivisions of the state, and nongovernmental organizations to implement a media awareness campaign in communities affected by human trafficking;

(10) develop recommendations on how to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, and prosecute human trafficking offenders; [~~and~~]

(11) examine the extent to which human trafficking is associated with the operation of sexually oriented businesses, as defined by Section 243.002, Local Government Code, and the workplace or public health concerns that are created by the association of human trafficking and the operation of sexually oriented businesses; and

(12) develop recommendations for addressing the demand for forced labor or services or sexual conduct involving victims of human trafficking, including recommendations for increased penalties for individuals who engage or attempt to engage in prostitution with victims younger than 18 years of age.

Commentary by Jill Mata

Source: HB 188
Effective Date: May 28, 2015
Applicability: Applies to the duties and responsibilities of the task force on or after the effective date.
Expiration: The duties of the task force will expire on September 1, 2017.
Summary of Changes: HB 188 relates to the composition, duties and continuation of the human trafficking prevention task force. Several years ago the Texas Legislature created the Human Trafficking Prevention Task Force in an effort to create a statewide partnership between law enforcement agencies, nongovernmental organizations, legal representatives, and state agencies that are fighting against the crime of human trafficking. The task force has worked to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes as well as propose legislative recommendations that better protect both adult and child victims. Section 402.035 continues that work by adding a new category to the data collection requirement for law enforcement and specifically requires the task force to

develop recommendations for addressing the demand for illegal services to include increased penalties.

Government Code Sec. 402.035 HUMAN TRAFFICKING PREVENTION TASK FORCE. (h) This section expires September 1, 2017 [~~2015~~].

Commentary by Jill Mata

Source: HB 188
Effective Date: May 28, 2015
Applicability: Applies to the duties and responsibilities of the task force on or after the effective date.
Expiration: The duties of the task force will expire on September 1, 2017.
Summary of Changes: This bill relates to the composition, duties and continuation of the human trafficking prevention task force. Several years ago the Texas Legislature created the Human Trafficking Prevention Task Force in an effort to create a statewide partnership between law enforcement agencies, nongovernmental organizations, legal representatives, and state agencies that are fighting against the crime of human trafficking. The task force has worked to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes as well as propose legislative recommendations that better protect both adult and child victims. This bill continues that work until the new expiration date of September 1, 2017.

Government Code Sec. 411.0208. STATEWIDE PROGRAM FOR THE PREVENTION AND DETECTION OF CERTAIN CRIMINAL OFFENSES. (a) The department may establish a program throughout this state for preventing and detecting:

(1) the unlawful possession or the unlawful and imminent movement or transfer between this state and an adjacent state or the United Mexican States of:

(A) firearms, in violation of Section 46.14, Penal Code;

(B) controlled substances, in violation of Chapter 481, Health and Safety Code; or

(C) currency, in violation of Section 34.02, Penal Code; and

(2) the commission or imminent commission of the offenses of smuggling of persons under Section 20.05, Penal Code, and trafficking of persons under Section 20A.02, Penal Code, occurring in this state or involving travel between this state and an adjacent state or the United Mexican States.

(b) A peace officer participating in a program established under this section must have reasonable suspicion or probable cause to believe that firearms, controlled substances, or currency are unlawfully possessed or being unlawfully and imminently moved or transferred between this state and an adjacent state or the United Mexican States or that an offense described by Subsection (a)(2) has been committed or imminently will be committed, as applicable, before exercising the officer's authority under the program, including stopping a person or vehicle or coming into contact with a person.

(c) In developing the program, the department shall establish:

(1) clear guidelines and procedures to mitigate any unnecessary negative impact on the flow of trade, commerce, or daily business activities in locations where the program is implemented; and

(2) protocols, standards, and guidelines to minimize any intrusion on a person in an encounter with a peace officer exercising the officer's authority under the program.

(d) The department shall implement the program established under this section in conjunction with federal and local law enforcement agencies.

(e) The director shall adopt rules as necessary to implement and administer a program established under this section.

Commentary by Kaci Singer

Source: SB 1853
Effective Date: September 1, 2015
Applicability: Applies to the program created on or after the effective date.
Summary of Changes: The Department of Public Safety is authorized in Section 411.0208 of the Government Code to establish a program aimed at preventing and detecting crimes, particularly cartel-related crimes, which involve trafficking people or moving or transferring items between Texas and Mexico.

Government Code Sec. 508.1862. SEX OFFENDER TREATMENT. A parole panel shall require as a condition of release on parole or to mandatory supervision that a releasee participate in a sex offender treatment program developed by the department if:

(1) the releasee:

(A) was serving a sentence for an offense under Chapter 21, Penal Code; or

(B) is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) immediately before release, the releasee is participating in a sex offender treatment program established under Section 499.054.

Commentary by Jill Mata

Source: HB 3387
Effective Date: September 1, 2015
Applicability: Applies to a decision of a parole panel made on or after the effective date.
Summary of Changes: HB 3387 relates to sex offender treatment as a condition of parole or mandatory supervi-

sion for certain releasees. Government Code, Ch. 508 governs parole and mandatory supervision, a type of release for inmates being released from state correctional facilities. Ch. 508, Subch. F governs required conditions of parole and mandatory supervision, and Subch. G governs discretionary conditions of the two. Specifically, the bill *requires* parole panels to mandate that offenders released on parole or mandatory supervision participate in a sex offender treatment program if the offender was serving a sentence for sex offense listed in Penal Code, Ch. 21, was required to register as a sex offender or immediately before release was participating in a sex offender treatment program while incarcerated.

Government Code Sec. 508.228. SEX OFFENDER TREATMENT. A parole panel may require as a condition of release on parole or to mandatory supervision that a releasee participate in a sex offender treatment program as specified by the parole panel if:

(1) the releasee:

(A) was serving a sentence for an offense under Chapter 21, Penal Code; or

(B) is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) a designated agent of the board after conducting a hearing that allows the releasee to contest the evidence, on evidence that a sex offense occurred during the commission of the offense for which the releasee was serving a sentence, makes an affirmative finding that, regardless of the offense for which the releasee was serving a sentence, the releasee constitutes a threat to society because of the releasee's lack of sexual control.

Commentary by Jill Mata

Source: HB 3387
Effective Date: September 1, 2015
Applicability: Applies to a decision of a parole panel made on or after the effective date.
Summary of Changes: This bill relates to sex offender treatment as a condition of parole or mandatory supervision for certain releasees. Government Code, Ch. 508 governs parole and mandatory supervision, a type of release for inmates being released from state correctional facilities. Ch. 508, Subch. F governs required conditions of parole and mandatory supervision, and Subch. G governs discretionary conditions of the two. Specifically here, the bill *authorizes* parole panels to require as a condition of release on parole or mandatory supervision that offenders participate in a sex offender treatment program if the offender was serving a sentence for sex offense listed in Penal Code, Ch. 21, or an agent of the Board of Pardons and Paroles made an affirmative finding that the offender constituted a threat to society because of the offender's lack of sexual control, regardless of the crime for which the individual was convicted.

Government Code Sec. 772.0061. SPECIALTY COURTS ADVISORY COUNCIL. (2) "Specialty court" means:

(A) a commercially sexually exploited persons court [~~prostitution prevention~~] program established under Chapter 126 or former law [~~Chapter 169A, Health and Safety Code~~];

(B) a family drug court program established under Chapter 122 or former law;

(C) [~~(B)~~] a drug court program established under Chapter 123 or former law;

(D) [~~(C)~~] a veterans court program established under Chapter 124 or former law; and

(E) [~~(D)~~] a mental health court program established under Chapter 125 or former law.

Commentary by Kaci Singer

Source: SB 536
Effective Date: June 16, 2015
Applicability: This is a non-substantive change that does not change existing law.
Summary of Changes: These are conforming changes related to renaming the prostitution prevention program and transferring the statutes from the Health and Safety Code to the Government Code.

Government Code Sec. 772.0063. GOVERNOR'S PROGRAM FOR VICTIMS OF CHILD SEX TRAFFICKING. (a) The governor shall establish and implement a program to provide comprehensive, individualized services to address the rehabilitation and treatment needs of child victims of an offense under Section 20A.02(a)(7) or (8), Penal Code.

(b) The governor shall appoint a director of the program to serve at the pleasure of the governor.

(c) The director of the program shall coordinate with state and local law enforcement agencies, state agencies, and service providers to identify victims of child sex trafficking who are eligible to receive services under the program.

(d) For each victim of child sex trafficking identified by the director, the program shall immediately facilitate the assignment of a caseworker to the victim to coordinate with local service providers to create a customized package of services to fit the victim's immediate and long-term rehabilitation and treatment needs. Services provided under the program must address all aspects of the medical, psychiatric, psychological, safety, and housing needs of victims.

Commentary by Kaci Singer

Source: HB 1446
Effective Date: September 1, 2015
Applicability: Applies to the establishment and implementation of a program to on or after the effective date.

Summary of Changes: This statute requires the governor to establish and implement a program to provide comprehensive, individual services to address the rehabilitation and treatment needs of child victims of sex trafficking. The program must coordinate with state and local law enforcement agencies, state agencies, and service providers to identify child victims of sex trafficking who are eligible to receive services under the program. The program must immediately facilitate the assignment of a caseworker for each identified child victim of sex trafficking. The caseworker is to coordinate with local service providers to create a customized package of services to fit the victim's immediate and long-term treatment needs. The services must address all aspects of the medical, psychiatric, psychological, safety, and housing needs of victims.

Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses
An Act

SECTION 1. TASK FORCE ON IMPROVING OUTCOMES FOR JUVENILES ADJUDICATED OF SEXUAL OFFENSES. (a) In this Act:

(1) "Juvenile sex offender" means a person subject to the jurisdiction of a juvenile court for conduct that constitutes an offense for which registration as a sex offender is required under Chapter 62, Code of Criminal Procedure.

(2) "Task force" means the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses.

(b) The Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses is established. The purpose of the task force is to make policy recommendations to improve the outcomes for juvenile sex offenders after studying:

(1) the adjudication and disposition processes and programs for juvenile sex offenders;

(2) counseling, mental health, or other services provided by the state or local juvenile probation departments to juvenile sex offenders;

(3) the sex offender registration process for juveniles; and

(4) any other issue related to improving the outcomes for juvenile sex offenders.

(c) The task force is composed of the following members:

(1) the executive director of the Texas Juvenile Justice Department or the executive director's designee;

(2) the commissioner of the Department of Family and Protective Services or the commissioner's designee;

(3) one representative designated by the Crime Records Service of the Department of Public Safety who has experience with the department's sex offender registry;

(4) one representative designated by the Council on Sex Offender Treatment;

(5) one representative designated by Children's Advocacy Centers of Texas;

(6) one representative designated by the Texas Association for the Protection of Children;

(7) one representative designated by Texans Care for Children;

(8) one private provider of juvenile sex offender treatment from a rural county and one private provider of juvenile sex offender treatment from an urban county, appointed by the governor;

(9) one judge from a rural county and one judge from an urban county, appointed by the governor;

(10) one law enforcement official from a rural county and one law enforcement official from an urban county, appointed by the governor;

(11) one prosecutor from a rural county and one prosecutor from an urban county, appointed by the governor;

(12) one juvenile probation officer from a rural county and one juvenile probation officer from an urban county, appointed by the governor;

(13) one juvenile public defender from a rural county and one juvenile public defender from an urban county, appointed by the governor; and

(14) one academic researcher from an accredited university who specializes in juvenile justice, appointed by the governor.

(d) The governor shall designate a member of the task force to serve as presiding officer.

(e) The presiding officer may designate additional experts to serve as advisors to the task force.

(f) A person designated to make an appointment of a member of the task force shall make the appointment not later than the 60th day after the effective date of this Act. The designated person shall fill a vacancy in the task force or a vacancy in the position of presiding officer of the task force by the appointment of another person with the same qualifications as the original appointee.

(g) The presiding officer shall call the initial meeting of the task force on or before December 1, 2015. The task force shall meet at the times and places that the presiding officer determines are appropriate.

(h) A member of the task force is not entitled to compensation but may receive reimbursement for the member's actual and necessary expenses incurred in attending meetings of the task force and performing other official duties authorized by the presiding officer of the task force, if funding is available.

(i) The task force may request meeting facilities, data, clerical assistance, and other assistance from any

department, agency, institution, office, or political subdivision of this state.

(j) The task force may consult with any relevant experts and stakeholders, including:

(1) juvenile sex offenders;

(2) family members of juvenile sex offenders;

(3) mental health experts;

(4) public school district administrators; and

(5) higher education administrators.

(k) State funds may not be appropriated for purposes of the task force. The task force may apply for, receive, and accept grants of funds or other contributions as appropriate to assist in the performance of its duties. The task force may contract for consultants or technical assistance.

(l) The task force is not subject to Chapter 2110, Government Code.

SECTION 2. DUTIES OF TASK FORCE. (a) The task force shall:

(1) solicit and review information and hear testimony relevant to the purposes of the task force from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(2) review the adjudication and disposition processes and programs for juvenile sex offenders, including:

(A) the consistency in adjudication and disposition processes across the state;

(B) the training provided to judges, law enforcement officers, parole and probation officers, and other juvenile service providers on the differences between juvenile and adult sex offenders regarding the potential for rehabilitation through treatment; and

(C) training provided to judges, law enforcement officers, parole and probation officers, and other juvenile service providers regarding the most effective way to protect the community by reducing recidivism rates among juvenile sex offenders;

(3) review juvenile sex offender registration, including:

(A) the effectiveness of juvenile sex offender registration in reducing recidivism rates;

(B) statistical information regarding juveniles required to register as sex offenders;

(C) the impact of juvenile sex offender registration on a juvenile, including a juvenile's ability to access education, obtain housing, and gain employment; and

(D) the impact of labeling a juvenile as a juvenile sex offender on the family of the juvenile;

(4) review counseling, mental health, or other services provided to juvenile sex offenders, including:

(A) the effectiveness of the services in the rehabilitation of juvenile sex offenders and the reduction of recidivism rates; and

(B) the current shortage of juvenile sex offender service providers; and

(5) review statistical information regarding the frequency of juvenile sex offenders being victims of abuse or neglect or witnesses to family violence.

(b) The task force shall adopt rules necessary to fulfill the task force's duties under this Act.

SECTION 3. REPORT. (a) The task force shall prepare a report that includes:

(1) a description of the activities of the task force;

(2) the findings and recommendations of the task force, including proposed policy recommendations related to:

(A) the provision of coordinated support services to juvenile sex offenders; and

(B) the most effective strategy to reduce recidivism rates and improve outcomes for juvenile sex offenders; and

(3) any related proposals for legislation or other matters the task force considers appropriate.

(b) Not later than December 1, 2016, the task force shall deliver the report of the task force's findings and recommendations to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the standing committees of each house of the legislature with primary jurisdiction over criminal justice matters;

(5) the executive director of the Texas Department of Criminal Justice;

(6) the executive director of the Texas Juvenile Justice Department;

(7) each state agency and nonprofit organization represented on the task force; and

(8) any other appropriate agency of this state.

SECTION 4. EXPIRATION. The task force is abolished and this Act expires September 1, 2017.

SECTION 5. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Commentary by Jill Mata

Source: HB 1144
Effective Date: June 17, 2015
Applicability: Applies to the duties and responsibilities of the task force on or after the effective date.
Expiration: The duties of the task force will expire on September 1, 2017.
Summary of Changes: HB 1144 establishes a task force appointed by the governor, to examine the adjudication, disposition and registration of juvenile sex offenders. Interested parties observe that the arrest of a juvenile for a sex offense is often a one-time event and that many

juvenile sex offenders report they were sexually or physically abused as children. Some experts believe that it is important to view juvenile sex offenders differently than adults charged with sex crimes. Inconsistencies are also noted in how juveniles accused of sexual offenses are adjudicated and prosecuted for their crimes and the support services provided them to aid in rehabilitation. The task force is required to make policy recommendations to improve outcomes for juveniles adjudicated for these crimes and report those recommendations to the governor no later than December 1, 2016.

Health and Safety Code

Health and Safety Code Sec. 126.005 [~~169A.004~~]. DOCUMENTATION REGARDING INSUFFICIENT FUNDING. [~~OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of prostitution prevention programs established under this chapter.~~

[~~(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a prostitution prevention program established under this chapter.~~

[~~(c)~~] A legislative committee may require a county that does not establish a commercially sexually exploited persons court [~~prostitution prevention~~] program under this chapter due to a lack of sufficient funding, as provided by Section 126.007(c) [~~169A.0055(c)~~], to provide the committee with any documentation in the county's possession that concerns federal or state funding received by the county.

[~~(d) A prostitution prevention program established under this chapter shall:~~

[~~(1) notify the criminal justice division of the governor's office before or on implementation of the program; and~~

[~~(2) provide information regarding the performance of the program to the division on request.~~]

Commentary by Kaci Singer

Source: SB 536
Effective Date: June 16, 2015
Applicability: This is a non-substantive changes that does not change existing law.
Summary of Changes: Along with renaming the prostitution prevention program and transferring the statutes from the Health and Safety Code to the Government Code, the law was changed to eliminate legislative oversight of the program since it is now a specialty court. A county who fails to adopt a commercially sexually exploited persons court program due to a lack of sufficient funding may be required to provide a legislative committed with documentation regarding state or federal funds received by the county.

Health and Safety Code Sec. 169.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) The commissioners court of a county or governing body of a municipality may establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02(b) [~~43.02(a)(2)~~], Penal Code[~~, in which the defendant offered or agreed to hire a person to engage in sexual conduct~~].

Commentary by Kyle Dufour

Source: HB 825
Effective Date: September 1, 2015
Applicability: Applies to program eligibility on or after the effective date.
Summary of Changes: This bill amends the Health and Safety Code to conform to the new language added under the Penal Code offense of prostitution.

Health and Safety Code 169A.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) The commissioners court of a county or governing body of a municipality may establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a) [~~43.02(a)(1)~~], Penal Code[~~, in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee~~].

Commentary by Kyle Dufour

Source: HB 825
Effective Date: September 1, 2015
Applicability: Applies to program eligibility on or after the effective date.
Summary of Changes: HB 825 amends the Health and Safety Code to conform to the new language added under the Penal Code offense of prostitution.

Human Resources Code

Human Resources Code Sec. 42.0462. WAIVER OF NOTICE AND HEARING REQUIREMENTS. To protect the safety and well-being of residents and employees of a general residential operation that provides comprehensive residential services to children who are victims of trafficking, the department shall waive the notice and hearing requirements imposed under Section 42.0461 for an applicant who submits to the department an application to provide trafficking victim services at the applicant's general residential operation.

Commentary by Kaci Singer

Source: HB 2070
Effective Date: September 1, 2015
Applicability: Applies to notices and hearings on or after the effective date.
Summary of Changes: Statistics indicate that in 2014, almost 10 percent of all calls received by the National Human Trafficking Resource Center were from Texas. In the last few years, general residential operations like foster group homes or family homes have opened for the specific purpose of addressing the needs of trafficking victims. Current law requires that before any general residential operation may be opened in a county that has 300,000 or fewer residents, it must disclose its location through a public notice and in a public hearing. This change in law requires DFPS to waive the notice and hearing requirement for intended "safe houses" for trafficking victims.

Human Resources Code, Sec. 42.0531. SECURE AGENCY FOSTER HOMES AND SECURE AGENCY FOSTER GROUP HOMES. (a) The commissioners court of a county or governing body of a municipality may contract with a child-placing agency to verify a secure agency foster home or secure agency foster group home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking.

(b) A child-placing agency may not verify a secure agency foster home or secure agency foster group home to provide services under this section unless the child-placing agency holds a license issued under this chapter that authorizes the agency to provide services to victims of trafficking in accordance with department standards adopted under this chapter for child-placing agencies.

(c) A secure agency foster home or secure agency foster group home verified under this section must provide:

(1) mental health and other services specifically designed to assist children who are victims of trafficking under Section 20A.02 or 20A.03, Penal Code, including:

(A) victim and family counseling;

(B) behavioral health care;

(C) treatment and intervention for sexual assault;

(D) education tailored to the child's needs;

(E) life skills training;

(F) mentoring; and

(G) substance abuse screening and treatment as needed;

(2) individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;

(3) 24-hour services; and

(4) appropriate security through facility design, hardware, technology, and staffing.

Commentary by John Gonzales

Source: SB 418
Effective Date: September 1, 2015
Applicability: Applies to contracts entered into by governmental entities for verification of secure agency foster and foster group homes for child victims of human trafficking on or after the effective date.
Summary of Changes: When children are removed for being victims of human trafficking, this section requires placement in a secure foster home or group home that specializes in the special needs required for their protection and rehabilitation. The foster home must be licensed to provide individualized services designed for child victims of human trafficking. The services must be available on a 24 hours basis and focus on the child's needs as determined by a comprehensive assessment. The physical design of the facility must meet certain security requirements. Not later than May 1, 2016, the executive commissioner of the Health and Human Services Commission shall adopt standards and the Department of Family and Protective Services shall establish the verification procedures necessary to implement the changes made by this legislation.

Penal Code

Penal Code Sec. 20.05. SMUGGLING OF PERSONS. (a) A person commits an offense if the person, with the intent to obtain a pecuniary benefit, knowingly:

(1) [~~intentionally~~] uses a motor vehicle, aircraft, [~~or~~] watercraft, or other means of conveyance to transport an individual with the intent to:

(A) [~~(1)~~] conceal the individual from a peace officer or special investigator; or

(B) [~~(2)~~] flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; or

(2) encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection.

(b) An [~~Except as provided by Subsection (c), an~~] offense under this section is [~~a state jail felony.~~

[~~(c) An offense under this section is~~] a felony of the third degree, except that [~~if the actor commits~~] the offense is:

(1) a felony of the second degree if:

(A) the actor commits the offense [~~for pecuniary benefit; or~~

[~~(2)~~] in a manner that creates a substantial likelihood that the smuggled [~~transported~~] individual will suffer serious bodily injury or death; or

(B) the smuggled individual is a child younger than 18 years of age at the time of the offense; or

(2) a felony of the first degree if:

(A) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(B) the smuggled individual suffered serious bodily injury or death.

(c) [~~(d)~~] It is an affirmative defense to prosecution of an offense under this section, other than an offense punishable under Subsection (b)(1)(A) or (b)(2), that the actor is related to the smuggled [~~transported~~] individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(d) [~~(e)~~] If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

Commentary by Kaci Singer

Source: HB 11
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: These changes increase the offense of smuggling of persons to be no less than a third degree felony and create new elements for the offense. It is now a second degree offense to smuggle a child younger than 18 years of age and a first degree felony if the person became a victim of sexual assault or suffered serious bodily injury or death.

Penal Code Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person commits an offense if, during a period that is 10 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20.05.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20.05 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 10 or more days in duration, engaged two or more times in conduct that constitutes an offense under Section 20.05.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, a defendant may not be convicted of the offense under Section 20.05 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20.05:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20.05 is alleged to have been committed against the same victim.

(e) Except as provided by Subsections (f) and (g), an offense under this section is a felony of the second degree.

(f) An offense under this section is a felony of the first degree if:

(1) the conduct constituting an offense under Section 20.05 is conducted in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; or

(2) the smuggled individual is a child younger than 18 years of age at the time of the offense.

(g) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years, if:

(1) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(2) the smuggled individual suffered serious bodily injury or death.

Commentary by Kaci Singer

Source: HB 11
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The new offense of Continuous Smuggling of Persons is committed if a person engages in conduct defined by Section 20.05, Penal Code (Smuggling of Persons), two or more times in a period that is 10 days or more in duration. The offense is a second degree felony except it is a first degree felony if the conduct creates a substantial likelihood of serious bodily injury or death or the individual is a child younger than 18 years of age and is a first degree felony with a sentence of life or 25 to 99 years if the smuggled person became a victim of sexual assault or suffered serious bodily injury or death.

Penal Code Sec. 22.04 INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (c)(3) "Disabled individual" means a person:

(A) with one or more of the following:

(i) autism spectrum disorder, as defined by Section 1355.001, Insurance Code;

(ii) developmental disability, as defined by Section 112.042, Human Resources Code;

(iii) intellectual disability, as defined by Section 591.003, Health and Safety Code;

(iv) severe emotional disturbance, as defined by Section 261.001, Family Code; or

(v) traumatic brain injury, as defined by Section 92.001, Health and Safety Code; or

(B) [~~older than 14 years of age~~] who otherwise by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self [~~himself~~] from harm or to provide food, shelter, or medical care for the person's self [~~himself~~].

Commentary by Kyle Dufour

Source: HB 1286
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Current law defines a disabled individual as a person older than 14 years of age who by reason of age, physical, mental disease, defect or injury is substantially unable to protect themselves from harm or to provide food, shelter or medical care for themselves. Practitioners have suggested that the definition should encompass additional people who would not otherwise meet this definition. Section 22.04 expands the definition of disabled individuals to include disabilities, disorders and injuries defined in other codes and removes the over 14 age limitation.

Penal Code Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (l) It is an affirmative defense to prosecution under this section:

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) for a person charged with an act of omission causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a nondisabled or disabled child at the time of the offense.

Commentary by Kyle Dufour

Source: HB 1286
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Section 22.04 amends the affirmative defense that may be raised n circumstances where the actor is not more than three years older than the victim to clarify that the victim may be either nondisabled or disabled, but must be a child at the time of the offense.

Penal Code Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (m) It is an affirmative defense to prosecution under Subsections (a)(1), (2), and (3) for injury to a disabled individual that the person did not know and could not reasonably have known that the individual was a disabled individual, as defined by Subsection (c), at the time of the offense.

Commentary by Kyle Dufour

Source: HB 1286
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This provision creates an affirmative defense to prosecution for injury to a disabled person if the actor could not have reasonably known the victim was disabled.

Penal Code Sec. 43.02. PROSTITUTION. (a) A person commits an offense if, in return for receipt of a fee, the person knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct [~~for a fee~~]; or

(2) solicits another in a public place to engage with the actor [~~person~~] in sexual conduct for hire.

(b) A person commits an offense if, based on the payment of a fee by the actor or another person on behalf of the actor, the person knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct; or

(2) solicits another in a public place to engage with the actor in sexual conduct for hire.

(b-1) An offense is established under Subsection (a) regardless of [~~(a)(1)~~] whether the actor is offered or actually receives the [~~is to receive or pay a~~] fee. An offense is established under Subsection (b) regardless of [~~(a)(2)~~] whether the actor or another person on behalf of the actor offers or actually pays the fee [~~solicits a person to hire the actor or offers to hire the person solicited~~].

(c) An offense under Subsection (a) [~~this section~~] is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (a) [~~this section~~]; or

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (a).

(c-1) An offense under Subsection (b) is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (b);

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (b) [~~this section~~]; or

(3) a felony of the second degree if the person solicited is younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense.

(d) It is a defense to prosecution for an offense under Subsection (a) [~~under this section~~] that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 or 43.05.

Commentary by Kyle Dufour

Source: SB 825
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Current prohibition language for the penal offense of prostitution does not appear to provide a distinction between the person paying for sexual conduct and the person providing sexual conduct. Proponents state that the measure of individuals paying for sexual conduct is a valuable measurement of the demand for commercial sex and is thus important to distinguish the roles of purchasers and providers. Section 43.02 seeks to make the distinction by amending language in an effort to prohibit conduct applicable specifically to the provider of sexual conduct, regardless of whether the actor is offered or actually receives the fee. The bill also seeks to make the distinction by amending language in an effort to prohibit conduct applicable specifically to the purchaser of sexual conduct, regardless of whether the actor offers or actually pays the fee. An offense under both subsections is a Class B misdemeanor but is enhanced to a Class A if previously convicted one or two times and enhanced to a state jail felony if convicted three or more times.

Penal Code Sec. 43.05. COMPELLING PROSTITUTION. (c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

Commentary by Kyle Dufour

Source: HB 825
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This provision amends the Penal Code offense of Compelling Prostitution to allow for conduct that constitutes compelling prostitution to be prosecuted under that statute or any other statute in which the same conduct would constitute an offense. Specifically, see Legislation Affecting Sex Offenders, Human Trafficking and Victims in this newsletter for the prohibitions on conduct that would also constitute compelling prostitution and be capable of being prosecuted under both scenarios.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5)unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 or 20.06; or

(18) any offense classified as a felony under the Tax Code.

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; [~~or~~]

(2) life or for any term of not more than 99 years or less than 30 years if the most serious offense is an offense under Section 20.06 that is punishable under Subsection (g) of that section; or

(3) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1) or (2).

Commentary by Kaci Singer

Source: HB 11
Effective Date: September 1, 2015
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The offense of engaging in organized criminal activity was amended to include the newly created offense of continuous smuggling of persons, which results in a one category increase in the offense level. However, if the smuggled person becomes a victim of sexual assault or suffers serious bodily injury or death, then the punishment is life or any term between 30 and 99 years.

6. Legislation Affecting Texas Juvenile Justice Department & Juvenile Facilities

Family Code

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (c) A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

(1) for temporary detention in a jail or lockup pending juvenile court hearing or disposition under conditions meeting the requirements of Section 51.12;

(2) after transfer for prosecution in criminal court under Section 54.02, unless the juvenile court orders the detention of the child in a certified juvenile detention facility under Section 54.02(h); [~~or~~]

(3) after transfer from the Texas Juvenile Justice Department under Section 245.151(c), Human Resources Code; or

(4) after transfer from a post-adjudication secure correctional facility, as that term is defined by Section 54.04011.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Generally, Section 51.13(c), Family Code prohibits the commitment or transfer of a juvenile to an adult penal institution or other facility and sets forth specific exceptions. This amendment adds in Subdivision (c)(4) an exception for circumstances when a juvenile is sent to the Texas Department of Criminal Justice (TDCJ) after transfer from the local post-adjudication secure correction facility in Travis County. This also applies to the transfer of a juvenile who has been committed to TJJD under(c)(3).

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (d) An adjudication under Section 54.03 that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to the Texas Juvenile Justice Department under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) or commitment to a post-adjudication secure correctional facility under Section 54.04011 for conduct that occurred on or after December 1, 2013, is a final felony conviction only for the purposes of Sections 12.42(a), (b), and (c)(1) or Section 12.425, Penal Code.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: In 2013, Travis County was given the authority to commit juveniles to its local post-adjudication secure correctional facility in the same manner as a commitment to the Texas Juvenile Justice Department (TJJD). Unfortunately, not every law that should have been amended was changed. This is a cleanup provision to clarify that commitment to a post-adjudication secure correctional facility for conduct that occurred on or after December 1, 2013, is a final felony conviction for punishment enhancement in adult cases. This is identical to a commitment to TJJD except for those purposes, the offense date is January 1, 1996. Only proceedings involving juveniles committed to the local commitment program in Travis County for offenses occurring on or after December 1, 2013, can result in commitment.

Family Code Sec. 53.045. OFFENSES ELIGIBLE FOR DETERMINATE SENTENCE. (d) If the grand jury approves of the petition, the fact of approval shall be certified to the juvenile court, and the certification shall be entered in the record of the case. For the purpose of the transfer of a child to the Texas Department of Criminal Justice as provided by Section 152.00161(c) or 245.151(c), Human Resources Code, as applicable, a juvenile court petition approved by a grand jury under this section is an indictment presented by the grand jury.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: This provision specifies that a grand jury approval of a determinate sentence petition is considered an indictment when a juvenile who has been committed the local post-adjudication secure correctional facility in Travis County is transferred to TDCJ. A similar provision applies to the transfer of a youth from TJJD to TDCJ.

Family Code Sec. 54.04. DISPOSITION HEARING. (d) If the court or jury makes the finding specified

in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable foster home;

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by the Texas Juvenile Justice Department; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Juvenile Justice Department;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony, the court or jury made a special commitment finding under Section 54.04013, and [~~if~~] the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Juvenile Justice Department under Section 54.04013, or a post-adjudication secure correctional facility under Section 54.04011(c)(1), as applicable, without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Juvenile Justice Department or a post-adjudication secure correctional facility under Section 54.04011(c)(2) with a possible transfer to the Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003;

(5) the court may place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standards for the facility as provided by Section 51.126; or

(6) if applicable, the court or jury may make a disposition under Subsection (m) or Section 54.04011(c)(2)(A).

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2017
Applicability: Applies to offenses committed on or after September 1, 2017.
Summary of Changes: Current law allows for an indeterminate commitment to TJJD or to the Travis County post-adjudication secure correctional facility for a felony offense. This change provides that an indeterminate commitment may only be made if the court makes a "special commitment finding" under new Section 54.04013, Family Code.

Sec. 54.04013. SPECIAL COMMITMENT TO TEXAS JUVENILE JUSTICE DEPARTMENT. Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2017
Applicability: Applies to offenses committed on or after September 1, 2017.
Summary of Changes: As part of the continuing reforms aimed at reducing the number of juveniles committed to the Texas Juvenile Justice Department (TJJD), this change has the stated purpose of limiting who may be committed to TJJD or the Travis County post-adjudication secure correctional facility. In order to commit a juvenile with an indeterminate sentence, the juvenile must have committed a felony and the court must make a "special commitment finding," which is essentially an affirmative finding, that the child has behavioral health or other special needs that cannot be met with the resources available in the community. In making its determination, the court should, but is not required to, consider the findings of a validated risk and needs assessment and any other professional assessments available to the court. The "special commitment finding" is not required to be made for a determinate sentence commitment. Since

one of the elements that must be found is that the child's needs "cannot be met with the resources available in the community," it is unclear whether Travis County will be able to commit indeterminate sentence offenders to its local commitment program since such a child's needs would be met in the community. It bears noting that this provision only requires the "special commitment finding" to be made in a disposition hearing under Section 54.04, Family Code; it was not extended to a modification hearing under Section 54.05, Family Code. This is likely a drafting oversight. Therefore, courts should consider making this finding for every indeterminate commitment, whether it is a direct commitment or a commitment as a result of a modification hearing.

Family Code Sec. 54.11. RELEASE OR TRANSFER HEARING. (a) On receipt of a referral under Section 244.014(a), Human Resources Code, for the transfer to the Texas Department of Criminal Justice of a person committed to the Texas Juvenile Justice Department under Section 54.04(d)(3), 54.04(m), or 54.05(f), on receipt of a request by the Texas Juvenile Justice Department under Section 245.051(d), Human Resources Code, for approval of the release under supervision of a person committed to the Texas Juvenile Justice Department under Section 54.04(d)(3), 54.04(m), or 54.05(f), or on receipt of a referral under Section 152.0016(g) or (j), Human Resources Code, the court shall set a time and place for a hearing on the possible transfer or release of the person, as applicable.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: The change to Section 54.11(a) specifies that a court hearing for a determinate sentence offender in Travis County's local commitment program can be for either a request for transfer to prison or a request for release on parole. Juveniles committed to the Texas Juvenile Justice Department are also provided an opportunity for this procedural hearing.

Family Code Sec. 54.11. RELEASE OR TRANSFER HEARING. (b) The court shall notify the following of the time and place of the hearing:

(1) the person to be transferred or released under supervision;

(2) the parents of the person;

(3) any legal custodian of the person, including the Texas Juvenile Justice Department or a juvenile board or local juvenile probation department if the child is committed to a post-adjudication secure correctional facility;

(4) the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings;

(5) the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family; and

(6) any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Section 54.11(b) requires the juvenile board or juvenile probation department to be notified of the time and place of a release hearing or a transfer hearing for a juvenile committed to the local post-adjudication secure correctional facility in Travis County.

Family Code Sec. 54.11. RELEASE OR TRANSFER HEARING. (d) At a hearing under this section the court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, [~~or~~] employees of the Texas Juvenile Justice Department, or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses. On or before the fifth day before the date of the hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court. All written matter is admissible in evidence at the hearing.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: This provision allows written reports of employees of the Travis County local post-adjudication secure correctional facility to be considered in the release hearing or transfer hearing.

Family Code Sec. 54.11. RELEASE OR TRANSFER HEARING. (o) In this section, "post-adjudication

secure correctional facility" has the meaning assigned by Section 54.04011.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: The definition in Section 54.11 is clarified to mean the Travis County post-adjudication secure correctional facility. In this statute, Section 54.04011 refers to a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code. The cross-reference applies to a county with a population of more than one million and less than 1.5 million. Only Travis County fits that description.

Family Code Sec. 58.0053. INTERAGENCY SHARING OF JUVENILE PROBATION RECORDS. (a) On request by the Department of Family and Protective Services, a juvenile probation officer shall disclose to the department the terms of probation of a child in the department's conservatorship.

(b) To the extent of a conflict between this section and another law of this state applicable to confidential information held by a governmental agency, this section controls.

(c) This section does not affect the confidential status of the information being shared. The information may be released to a third party only as directed by a court order or as otherwise authorized by law. Personally identifiable information disclosed to the Department of Family and Protective Services under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(d) The Department of Family and Protective Services shall enter into a memorandum of understanding with the Texas Juvenile Justice Department to adopt procedures for handling information requests under this section.

Commentary by Nydia Thomas

Source: SB 206
Effective Date: September 1, 2015
Applicability: Applies to information exchanges on or after the effective date.
Summary of Changes: This provision adds new Section 58.0053 relating to Interagency Sharing of Juvenile Probation Records. It requires a juvenile probation officer to disclose to the Department of Family and Protective Services information on the terms and conditions of probation of a child in DFPS conservatorship. This appears to be a clarifying amendment that reiterates the authority of juvenile service providers to exchange this information under Section 58.0052. The Texas Juvenile Justice Department and the Department of Family and Protective Services are required to develop a Memorandum of Understanding to provide further guidance on these information exchanges.

Family Code Sec. 58.352. INFORMATION POSTED ON COUNTY WEBSITE. (a) A juvenile court judge in a county to which this subchapter applies shall post a report on the Internet website of the county in which the court is located. The report must include:

(1) the total number of children committed by the judge to:

(A) a correctional facility operated by the Texas Juvenile Justice Department [~~Youth Commission~~]; or

(B) a post-adjudication secure correctional facility as that term is defined by Section 54.04011; and

(2) for each child committed to a facility described by Subdivision (1):

(A) a general description of the offense committed by the child or the conduct of the child that led to the child's commitment to the facility;

(B) the year the child was committed to the facility; and

(C) the age range, race, and gender of the child.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Section 58.352 of the Family Code requires all counties of a certain size to post information on the county's website relating to the number of juveniles committed to the Texas Juvenile Justice Department. This change requires Travis County to post the same information regarding juveniles committed to its local commitment program.

Family Code Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME OR SECURE AGENCY FOSTER GROUP HOME. A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with Section 42.0531, Human Resources Code, if the court finds that:

(1) the placement is in the best interest of the child; and

(2) the child's physical health or safety is in danger because the child has been recruited, harbored,

transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Section 20A.02 or 20A.03, Penal Code.

Commentary by Jill Mata

Source: HB 418
Effective Date: September 1, 2015
Applicability: Applies to information and documents relating to juvenile court cases without regard to whether the conduct that is the basis of the case occurred before, on, or after the effective date.
Summary of Changes: House Bill 418 relates to child victims of trafficking who are placed in secure foster homes. Currently, emergency possession of a child is authorized without a court order in certain limited situations, including situations involving an immediate danger to the physical health and safety of a child, the sexual abuse of a child, or a danger to a child because the child's parent is under the influence of illegal drugs. Concerned parties assert that this authority does not include a situation involving a child who is a victim of human trafficking. Noting that child victims of human trafficking or sex trafficking are frequently conditioned by their handlers to run away from police officers or child protective services workers, if given the opportunity, concerned parties assert that there is a need for police officers and child protective services workers to have the authority to act quickly in a situation involving a child who is a victim of human trafficking in order to provide the child with a safe refuge and specialized services. The provisions of this bill seek to better protect the health and safety of child victims of human trafficking by authorizing a court in an emergency, initial, or full adversary hearing conducted in a child protection suit to order that the child who is the subject of the hearing be placed in a verified secure agency foster home or secure agency foster group home if the court finds that the placement is in the best interest of the child and that the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act that constitutes a trafficking or continuous trafficking offense.

Code of Criminal Procedure

Code of Criminal Procedure Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES [~~FOLLOWING CERTAIN ARRESTS~~]. (a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or the [~~an~~] arrest, during a judicial proceeding or initial period of confinement following the arrest, or during the person's confinement after a conviction or adjudication resulting from the arrest [~~commission of that offense~~] causes the person's bodily fluids to come into contact with a peace officer, a magistrate, or an employee of a correctional facility where the person is confined [~~to come into contact with the person's bodily fluids~~] shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer, magistrate, or correctional facility employee. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall notify the peace officer, magistrate, or correctional facility employee, as appropriate, of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

Commentary by Kyle Dufour

Source: HB 1595
Effective Date: June 17, 2015
Applicability: Applies to a motion by the court or request of a magistrate or correctional facility employee made on or after the effective date, regardless of whether the offense for which the person was arrested or the applicable contact with bodily fluids occurred before, on, or after that date.
Summary of Changes: Current law authorizes a court, on its own motion or upon request, to test a detainee for communicable diseases when a peace officer comes in contact with the detainee's bodily fluid. This bill authorizes a magistrate to now require testing of a detainee if the detainee's bodily fluids come into contact with a magistrate or a correctional facility employee. This change extends the same protections to magistrates and correctional staff since they are also in close proximity with detainees.

Code of Criminal Procedure Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES [~~FOLLOWING CERTAIN ARRESTS~~]. (b) Testing under this article shall be conducted in accordance with written infectious disease control protocols adopted by the Department [~~Texas Board~~] of State Health Services that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the arrested person and the peace officer, magistrate, or correctional facility employee.

d) In this article, "correctional facility" means:

(1) any place described by Section 1.07(a)(14), Penal Code; or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Commentary by Kyle Dufour

Source: HB 1595
Effective Date: June 17, 2015
Applicability: Applies to a motion by the court or request of a magistrate or correctional facility employee made on or after the effective date regardless of whether the offense for which the person was arrested or the applicable contact with bodily fluids occurred before, on, or after that date.
Summary of Changes: This bill requires testing to be conducted in accordance with the Department of State Health Services, instead of the Texas Board of Health, that establish clear criteria and guidelines for testing that respect the rights of the arrested person and the peace officer, magistrate or correctional facility employee. By defining correctional staff in reference to Section 51.02 Family Code, the bill expands who may request a detainee to be tested to include an employee of a secure juvenile correctional facility or a secure juvenile detention facility.

Code of Criminal Procedure Art. 61.10. TEXAS VIOLENT GANG TASK FORCE. (f) The task force shall consist of:

(1) a representative of the Department of Public Safety designated by the director of that agency;

(2) two representatives of the Texas Department of Criminal Justice, including a representative of the parole division, designated by the executive director of that agency;

(3) a representative of the office of the inspector general of the Texas Department of Criminal Justice designated by the inspector general;

(4) two representatives [~~a representative~~] of the Texas Juvenile Justice Department [~~Youth Commission~~] designated by the executive director of that agency;

(5) [~~a representative of the Texas Juvenile Probation Commission designated by the executive director of that agency;~~

[~~(6)~~] a representative of the office of the attorney general designated by the attorney general;

(6) [~~(7)~~] six representatives who are local law enforcement officers or local community supervision personnel, including juvenile probation personnel, designated by the governor; [~~and~~]

(7) [~~(8)~~] two representatives who are local prosecutors designated by the governor; and

(8) a representative of the Texas Alcoholic Beverage Commission designated by the executive director of that agency.

Commentary by Nydia Thomas

Source: SB 2019
Effective Date: June 19, 2015
Applicability: Applies to the composition and responsibilities of the Texas Violent Gang Task Force on or after the effective date.
Summary of Changes: Section 61.10 of the Code of Criminal Procedure governs the Texas Violent Gang Task Force (TVGTF). The TVGTF is a strategic partnership, comprised of representatives of various state and federal agencies as well as gubernatorial appointees, whose aim is to track gang activity through the collection and dissemination of gang intelligence in the State of Texas. Since its inception in 1999, the TVGTF Advisory Board has included statutorily designated representatives of the former juvenile justice agencies Texas Juvenile Probation Commission and the Texas Youth Commission. Subsection (f), as amended, updates the agency name reference to the Texas Juvenile Justice Department and retains two members to represent the unique perspectives and interests of juvenile probation and juvenile state institutions. This bill also adds a representative of the Texas Alcoholic Beverage Commission. The task force leverages the expertise and training resources of each of the participating agencies.

Human Resources Code

Human Resources Code Sec. 32.0264. SUSPENSION AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the child's eligibility for medical assistance during the period the child is placed in the facility.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for medical assistance has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Commentary by Kaci Singer

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to a child whose period of placement and release from a juvenile facility begins on or after the effective date, regardless of the date the child was determined eligible for child health plan coverage.
Summary of Changes: Currently, children eligible for medical assistance are unenrolled from the program when

placed in a facility. Getting them re-enrolled frequently takes weeks or months, time during which they are unable to get medication or other medical treatment. This statute provides that, to the extent allowed under federal law, the Health and Human Services Commission (HHSC) shall suspend rather than terminate the child's eligibility for medical assistance while the child is in the juvenile facility. If the juvenile facility chooses to notify HHSC of the child's release, the HHSC must reinstate the child's eligibility within 48 hours. The period the child was in the facility is not counted toward the amount of time the child was certified as eligible for the assistance. A juvenile facility is any facility in which the child is detained, placed, or committed under Title 3, Family Code.

Human Resources Code Sec. 32.0265. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 32.0264.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is receiving medical assistance benefits.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was receiving medical assistance benefits.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for medical assistance benefits.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, receiving medical assistance benefits for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Commentary by Kaci Singer

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to a child whose period of placement and release from a juvenile facility begins on or after the effective date, regardless of the date the child was determined eligible for child health plan coverage.
Summary of Changes: The provisions contained in Section 32.0265 give a juvenile facility the option to notify the Health and Human Services Commission (HHSC) of placement in or release from a facility of a child who was receiving medical assistance benefits. If the facility chooses to give notice of placement, it must do so as soon as possible but not later than the 30th day after the child's placement. If the facility chooses to give notice of release, it must do so within 48 hours of the release. The notice may be made electronically or by other appropriate means. The facility must also give the child's guardian or custodian a written copy of the notice and a phone number for contacting HHSC. HHSC is required to establish a way for the facility to determine if a child is or was receiving medical assistance benefits. The juvenile facility is not liable in a civil action for failing to comply with these provisions.

Human Resources Code Sec. 62.106. SUSPENSION AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the child's eligibility for health benefits coverage under the child health plan during the period the child is placed in the facility.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for health benefits coverage under the child health plan has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Commentary by Kaci Singer

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to a child whose period of placement and release from a juvenile facility begins on or after the effective date, regardless of the date the child was determined eligible for child health plan coverage.
Summary of Changes: This statute language contains that is identical to changes made in Chapter 32, Human

Resources Code discussed in earlier commentaries. Section 62.106 provides that, to the extent allowed under federal law HHSC shall suspend rather than terminate the child's eligibility for medical assistance while the child is in the juvenile facility. If the juvenile facility chooses to notify HHSC of the child's release, the HHSC must reinstate the child's eligibility within 48 hours. The period the child was in the facility is not counted toward the amount of time the child was certified as eligible for the assistance. A juvenile facility is any facility in which the child is detained, placed, or committed under Title 3, Family Code.

Human Resources Code Sec. 62.107. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 62.106.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is enrolled in the child health plan.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was enrolled in the child health plan.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for health benefits coverage under the child health plan.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, enrolled in the child health plan for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Commentary by Kaci Singer

Source: HB 839
Effective Date: June 18, 2015
Applicability: Applies to a child whose period of placement and release from a juvenile facility begins on or after the effective date, regardless of the date the child was determined eligible for child health plan coverage.
Summary of Changes: The amendments to Section 62.107, Human Resources Code give the juvenile facility the option to notify the Health and Human Services Commission (HHSC) of placement in or release from a facility of a child who was receiving medical assistance benefits. If the facility chooses to give notice of placement, it must do so as soon as possible but not later than the 30th day after the child's placement. If the facility chooses to give notice of release, it must do so within 48 hours of the release. The notice may be made electronically or by other appropriate means. The facility must also give the child's guardian or custodian a written copy of the notice and a phone number for contacting HHSC. HHSC is required to establish a way for the facility to determine if a child is or was receiving medical assistance benefits. The juvenile facility is not liable in a civil action for failing to comply with these provisions.

Human Resources Code Sec. 152.00011. DEFINITION. In this chapter, "post-adjudication secure correctional facility" means a facility operated by or under contract with a juvenile board or local juvenile probation department under Section 152.0016.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: This section defines the post-adjudication secure correctional facility mentioned in Chapter 152 of the Human Resources Code to refer only to the Travis County facility.

Human Resources Code Sec. Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION. Section 152.0016 (b), Human Resources Code, as added by Chapter 1323 (SB 511), Acts of the 83rd Legislature, Regular Session, 2013, is repealed.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: In 2013, Travis County was given the authority to commit juveniles to its post-

adjudication secure correctional facility in the same manner as a commitment to TJJD. Section 152.0016(b) currently contains the definition of post-adjudication secure correctional facility for this purpose. Since the term was redefined and moved to Section 152.00011, this subsection was repealed. There is no substantive change to the definition.

Human Resources Code Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION. (f-1) After a child has completed the minimum length of stay established under Subsection (f), the juvenile board or local juvenile probation department shall:

(1) discharge the child from the custody of the juvenile board or local juvenile probation department;

(2) release the child under supervision as provided by Subsection (c)(2); or

(3) extend the child's length of stay in the custody of the juvenile board or local juvenile probation department.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: In 2007, SB 103 required the Texas Juvenile Justice Department (TJJD), then TYC, to decide at the end of an indeterminate sentence offender's initial minimum length of stay whether that youth should be released on parole, discharged, or have his or her stay extended in a TJJD facility. This change requires Travis County to do the same for indeterminate sentence offenders committed to its local commitment program.

Human Resources Code Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION (f-2) A child's length of stay may only be extended under Subsection (f-1)(3) on the basis of clear and convincing evidence that:

(1) the child is in need of additional rehabilitation from the juvenile board or local juvenile probation department; and

(2) the post-adjudication secure correctional facility will provide the most suitable environment for that rehabilitation.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: The Texas Juvenile Justice Department (TJJD) may only extend a youth's stay beyond the initial minimum length of stay upon a finding, on the basis of clear and convincing evidence, that the youth is in need of further rehabilitation and TJJD will provide the most suitable environment for that rehabilitation. If no such finding is made, the youth must be paroled or discharged. This change extends that same standard and protection to juveniles committed to the local commitment program in Travis County.

Human Resources Code Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION (g-1) The juvenile board or local juvenile probation department may request the approval of the court under Subsection (g) at any time.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Section 152.0016(g) of the Human Resources Code, prohibits the juvenile probation department in Travis County from releasing a determinate sentence offender on parole without court approval unless the juvenile has served the statutory prescribed minimum length of stay. The addition in subsection (g-1) clarifies that Travis County's juvenile board or local juvenile probation department may request the court approval at any time. This is identical to the statutes that apply to determinate sentence offenders committed to TJJD.

Human Resources Code Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION. (h) The juvenile board or local juvenile probation department may release a child who has been committed to a post-adjudication secure correctional facility with a determinate sentence under Section 54.04011(c)(2), Family Code, under supervision without approval of the juvenile court that entered the order of commitment if not more than nine months remain before the child's discharge as provided by Section 152.00161(b) [~~245.051(g)~~].

Commentary by Kaci Singer

Source: SB 1149

Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: In 2013, Travis County was given the authority to commit juveniles to its post-adjudication secure correctional facility in the same manner as a commitment to TJJD. This change replaces a statutory reference that is applicable only to TJJD (Section 245.051(g), Human Resources Code) and replaces it with a reference to newly created Section 152.00161(b), which is applicable to Travis County.

Human Resources Code Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION. (i) The juvenile board or local juvenile probation department may resume the care and custody of any child released under supervision at any time before the final discharge of the child in accordance with the rules governing the Texas Juvenile Justice Department regarding resumption of care. Sections 243.051 and 245.051(f) apply only to a child who has been committed to a post-adjudication secure correctional facility under Section 54.04011(c), Family Code, and who has either escaped or violated the conditions of release under supervision. A hearing examiner who conducts a revocation under this subsection has the same subpoena authority as a hearing officer at the Texas Juvenile Justice Department, as provided under Section 203.008.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: While Travis County was given authority to resume care, it did not have explicit authority to revoke parole and had no authority to issue a directive to apprehend or to detain pending a revocation hearing. This change gives that authority. It also gives a hearing examiner conducting a parole revocation hearing the same subpoena authority as exists for a TJJD hearing examiner.

Human Resources Code Sec. 152.00161. TERMINATION OF CONTROL. (a) Except as provided by Subsections (b) and (c), if a person is committed to a post-adjudication secure correctional facility under a determinate sentence under Section 54.04011(c)(2), Family Code, the juvenile board or local juvenile probation department may not discharge the person from custody.

(b) The juvenile board or local juvenile probation department shall discharge without a court hearing a person committed to the department for a determinate sentence under Section 54.04011(c)(2), Family Code, who has not been transferred to the Texas Department of Criminal Justice under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent in the custody of the juvenile board or local juvenile probation department under the order of commitment equals the period of the sentence.

(c) The juvenile board or local juvenile probation department shall transfer to the Texas Department of Criminal Justice a person who is the subject of an order under Section 152.0016(j) transferring the person to the custody of the Texas Department of Criminal Justice for the completion of the person's sentence.

(d) Except as provided by Subsection (e), the juvenile board or local juvenile probation department shall discharge from its custody a person not already discharged on the person's 19th birthday.

(e) The juvenile board or local juvenile probation department shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04011(c)(2), Family Code, or who has been returned to the juvenile board or local juvenile probation department under Section 54.11(i)(1), Family Code, to the custody of the Texas Department of Criminal Justice on the person's 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Nothing in the 2013 legislation that authorized Travis County to pilot a local commitment program required the county to discharge juveniles at a certain age nor did anything prohibit it from discharging a determinate sentence offender prior to the expiration of the sentence. This section sets out in statute the discharge requirements for juveniles committed to the Travis County program. A determinate sentence offender may be discharged only when: the sentence expires or the person is transferred to adult prison. If the determinate sentence offender has not been transferred to prison or discharged due to completion of the sentence, at age 19 the person is transferred to the Texas Department of Criminal Justice (TDCJ) parole. An indeterminate sentence offender may be discharged earlier under other statutes but must be discharged no later than the 19th birthday as required by Subsection (d).

Human Resources Code Sec. 152.00162. DETERMINATE SENTENCE PAROLE. (a) Not later than the 90th day before the date the juvenile board or local juvenile probation department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole supervision under Section 152.0016(g) or 152.00161(e), the juvenile board or local juvenile probation department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

(1) the juvenile court judgment;

(2) the circumstances of the person's offense;

(3) the person's previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the department;

(6) a record of the sentence time served by the person at the juvenile board or local juvenile probation department as a result of a commitment under Section 54.04011(c)(2), Family Code, and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the juvenile board or local juvenile probation department, local officials, family members of the person, victims of the offense, or the general public.

(b) The juvenile board or local juvenile probation department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs provided by the juvenile board or local juvenile probation department. The juvenile boards and local juvenile probation departments and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person in the custody of a juvenile board or local juvenile probation department and in a juvenile detention facility, as recorded by the board or department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Section 152.00163 requires the Travis County juvenile board or juvenile probation department to provide certain information to TDCJ prior to transferring a juvenile for release on parole. Travis County is required to provide information about its programs to TDCJ and is required to enter into a Memorandum of Understanding with TDCJ to administer that information sharing. TDCJ must give a transferred juvenile credit on his or her sentence for all time served in the custody of the probation department after commitment, to include time on parole, as well as time spent in juvenile detention prior to the commitment.

Human Resources Code Sec. 152.00163. CHILD WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) A juvenile board or local juvenile probation department shall accept a child with a mental illness or an intellectual disability who is committed to the custody of the board or department.

(b) Unless a child is committed to the custody of a juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code, the juvenile board or local juvenile probation department shall discharge a child with a mental illness or an intellectual disability from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the juvenile board or local juvenile probation department determines that the child is unable to progress in the rehabilitation programs provided by the juvenile board or local juvenile probation department because of the child's mental illness or intellectual disability.

(c) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 152.00164(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge is effective immediately. If the child is receiving mental health services outside the child's home county, the juvenile board or local juvenile probation department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the 30th day after the date that the referral is made under Section 152.00164(c).

(f) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge is effective immediately.

(g) If a child with a mental illness or an intellectual disability is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: The Texas Juvenile Justice Department is required to accept the commitment of juveniles that have mental illness or an intellectual disability. It is required to discharge an indeterminate sentence offender who has completed the minimum length of stay if the child is unable to progress in the rehabilitation program due to that mental illness or intellectual disability. This section applies that requirement to children committed to Travis County's local commitment program. It also sets out requirements to ensure continued services as appropriate.

Human Resources Code Sec. 152.00164. EXAMINATION BEFORE DISCHARGE. (a) A juvenile board or local juvenile probation department shall establish a system that identifies children with mental illnesses or intellectual disabilities who are in the custody of the juvenile board or local juvenile probation department.

(b) Before a child who is identified as having a mental illness is discharged from the custody of the juvenile board or local juvenile probation department under Section 152.00163(b), the juvenile board or local juvenile probation department shall arrange for a psychiatrist to examine the child. The juvenile board or local juvenile probation department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the juvenile board or local juvenile probation department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child has a mental illness and the child meets at least one of the criteria listed in Section 574.034, Health and Safety Code.

(c) Before a child who is identified as having an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the custody of a juvenile board or local juvenile probation department under Section 152.00163(b), the department shall refer the child for intellectual disability services if the child is not receiving intellectual disability services.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: Prior to discharging a juvenile due to mental illness or intellectual disability, TJJD must have the child examined and ensure appropriate services for the child. This section places the same requirements on Travis County.

Human Resources Code Sec. 152.00165. TRANSFER OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES FOR MENTAL HEALTH SERVICES. (a) A juvenile board or local juvenile probation department may petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code.

(b) A petition made by a juvenile board or local juvenile probation department shall be treated as a motion under Section 55.11, Family Code, and the juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) A juvenile board or local juvenile probation department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child's commitment to a juvenile board or local juvenile probation department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to a juvenile board or local juvenile probation department. The juvenile court may transfer the child to the custody of the juvenile board or local juvenile probation department,

transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

Commentary by Kaci Singer

Source: SB 1149
Effective Date: September 1, 2015
Applicability: Applies to proceedings involving juveniles committed to the Travis County local post-adjudication secure correctional facility for offenses occurring on or after December 1, 2013.
Summary of Changes: The Texas Juvenile Justice Department (TJJD) is required to discharge an indeterminate sentence offender who has completed a minimum length of stay but cannot progress in the rehabilitation program due to mental illness or intellectual disabilities. Determinate sentence offenders, however, cannot be discharged due to the nature of having a sentence for a term of years. TJJD has statutory authority to petition the juvenile court for the initiation of mental health commitment proceedings when appropriate for such youth. This section extends that provision to Travis County.

Human Resources Code Sec. 202.010.SUNSET PROVISION. The Texas Juvenile Justice Board and the Texas Juvenile Justice Department are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished September 1, 2021 [~~2017~~].

Commentary by Nydia Thomas

Source: SB 1630
Effective Date: September 1, 2015
Applicability: Applies to the operations of the Texas Juvenile Justice Department on or after the effective date.
Summary of Changes: Nearly every state agency is subject to the Sunset review process on a 10 to 12- year cycle as required by the Texas Sunset Act. (Chapter 325 of the Government Code). The sunset process refers to the formal method used by the Texas Legislature to assess the continuing need for a state agency to exist. Courts and universities are not subject to review, however, certain agencies, such as the Board of Pardons and Parole, may be reviewed but not abolished. An agency undergoing sunset review by the Sunset Commission is automatically abolished unless a bill authorizes its continued existence. The Legislature can change the review date of any agency at any time. In 2011, Senate Bill 653 provided that the Texas Juvenile Justice Department (TJJD) would undergo a sunset review in 2017. As amended this session, Section 202.010, Human Resources Code extends the sunset review date for TJJD from 2017 to 2021.

Human Resources Code Sec. 203.017. REGIONALIZATION PLAN. (a) The department shall develop and the board shall adopt a regionalization plan for keeping children closer to home in lieu of commitment to the secure facilities operated by the department under Subtitle C.

(b) The department shall consult with juvenile probation departments in developing a regionalization plan, including the identification of:

(1) post-adjudication facility capacity that may be dedicated to support the plan; and

(2) resources needed to implement the plan.

(c) The regionalization plan must define regions of the state to be served by facilities operated by juvenile probation departments, counties, halfway houses, or private operators, based on the post-adjudication facilities identified as being available for the purpose of the plan.

(d) The department shall ensure that each region has defined, appropriate, research-based programs for the target populations under the regionalization plan.

(e) The regionalization plan must:

(1) include a budget review, redirection of staff, and funding mechanisms necessary to support the plan;

(2) create a new division of the department responsible for administering the regionalization plan and monitoring program quality and accountability;

(3) include sufficient mechanisms to divert at least:

(A) 30 juveniles from commitment to secure facilities operated by the department for the state fiscal year beginning September 1, 2015; and

(B) 150 juveniles from commitment to secure facilities operated by the department for the state fiscal year beginning September 1, 2016; and

(4) for the state fiscal year beginning September 1, 2017, and each subsequent state fiscal year, include any savings that are generated by the decreases in the population of the secure facilities operated by the department under Subtitle C that exceed the cost of implementing the plan.

(f) The division created under Subsection (e)(2) shall:

(1) approve plans and related protocols to administer the developed regional model;

(2) provide training on best practices for all local probation departments affected by the regionalization plan;

(3) assist in research-based program development;

(4) monitor contract and program measures for the regionalization plan;

(5) analyze department data to provide clear guidance to local probation departments on outcome measures; and

(6) report on performance of specific programs and placements to assist in implementing best practices and maximize the impact of state funds.

(g) A region is eligible for funding to support evidence-based, intensive in-home services only if the region meets the performance standards established by the department and adopted in contracts for placement and services.

(h) The department shall adopt rules to allow the local probation departments implementing the regionalization plan to access the data submitted by those departments in the state juvenile case management system for planning and research purposes.

(i) The regionalization plan developed under this section must be finalized not later than August 31, 2016.

(j) For the state fiscal years beginning September 1, 2015, and September 1, 2016, the legislature shall appropriate funds necessary to develop and initiate the implementation of the regionalization plan. Funds appropriated for this purpose may not be offset by projected savings generated by the decreases in the population of the secure facilities operated by the department under Subtitle C. This subsection and Subsection (i) expire September 1, 2017.

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2015
Applicability: Applies to the operations of the Texas Juvenile Justice Department on or after the effective date.
Summary of Changes: Section 203.010 requires the Texas Juvenile Justice Department (TJJD) and its governing board to develop and adopt a regionalization plan for keeping juveniles closer to home as an alternative to commitment to the TJJD state secure correctional facilities. TJJD must consult with juvenile probation departments in developing the plan to identify post-adjudication facility capacity that may be dedicated to support the plan and to identify the resources necessary for implementation at the local level.

Subsection (c) specifies that the plan must define regions of the state to be served by facilities operated by juvenile probation departments, counties, halfway houses, or private operators, based on the post-adjudication facilities identified as being available for the purposes of the plan. TJJD is required in Subsection (d) to ensure that each region has defined, appropriate, research-based programs for the target populations under the regionalization plan.

Subsection (e) requires the plan to include a budget review, redirection of staff, and funding mechanisms necessary to support the plan. TJJD must modify its organizational structure to add new division that will be responsible for administering the regionalization plan and monitoring program quality and accountability. This new division is required to: 1) approve plans and related protocols to administer the regionalization plan; 2) provide training on best practices for all local probation departments affected by the regionalization plan; 3) assist in research-based program development; 4) monitor contract and program measures for the developed regional model; 5) analyze department data to provide clear guidance to local probation departments on outcome measures; and 6) report on performance of specific programs and placements to assist in implementing best practices and maximize the impact of state funds.

Subsection (e) also requires the plan to include sufficient mechanisms for diverting at least 30 juveniles from commitment to TJJD for FY 2016 and 150 for state fiscal year 2016. Beginning with FY 2018 and each subsequent fiscal year, the plan must include any savings that are generated by the decreases in the population of TJJD secure facilities that exceed the cost of implementing the plan. The plan must be finalized no later than August 31, 2016. For fiscal years 2016 and 2017, the Legislature shall appropriate funds necessary to develop and initiate the implementation of the plan. Funds appropriated for this purposes may not be offset by projected saving generated by the decreases in the population of TJJD secure facilities.

Sec. 203.018. SPECIALIZED PROGRAMS AND SPECIAL PROJECTS. (a) The department shall develop specialized programs for children with a determinate sentence and children committed under Section 54.04013, Family Code. The programs must ensure safety and security for committed children and provide developmentally appropriate program strategies.

(b) The department shall establish performance-based goals related to improved outcomes that:

(1) must include measures to reduce recidivism; and

(2) shall include other well-being outcome measures.

(c) The department shall use case review strategies to identify children in department facilities who can safely and appropriately be transferred to alternative local placements or halfway houses, placed on parole, or discharged from the department.

(d) The department shall study and report to the board on the potential for repurposing existing secure facilities for the confinement of children with a determinate sentence or children committed under Section 54.04013, Family Code, or for other purposes.

(e) The department or any local probation department may not use or contract with a facility that was constructed or previously used for the confinement of adult offenders.

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2015
Applicability: Applies to contracts entered into on or after the effective date.

Summary of Changes: The most substantive portion of this section is Subsection (e), which prohibits the Texas Juvenile Justice Department (TJJD) and local juvenile probation departments from using or contracting to use a facility that was either constructed for the confinement of adult offenders or was previously used for the confinement of adult offenders. The rest of this section requires certain actions by TJJD, the majority of which are already required by statute or otherwise being followed by TJJD, such as specialized treatment for committed juveniles and identification of alternative placements for committed juveniles. This section also requires TJJD to establish performance-based goals related to improved outcomes that include measures to reduce recidivism and other well-being outcome measures and to report to the TJJD report on the possibilities of repurposing its existing facilities.

Human Resources Code Sec. 221.003. RULES CONCERNING MENTAL HEALTH SCREENING INSTRUMENT AND RISK AND NEEDS ASSESSMENT INSTRUMENT; ADMISSIBILITY OF STATEMENTS. (b-1) Any risk and needs assessment instrument or process that is provided or approved by the department for a juvenile probation department to use under Subsection (b) must be a validated instrument or process.

Commentary by Nydia Thomas

Source: SB 1630
Effective Date: September 1, 2015
Applicability: Applies to risk and needs assessments administered on or after the effective date.
Summary of Changes: In 2009, the Legislature mandated the use of a risk and needs assessment (sometimes called "RANA") on each child under the jurisdiction of the juvenile probation department. The statute requires the risk assessment to be administered to every juvenile prior to disposition of the juvenile's case. Subsection (b) requires the use of a "validated" risk and needs assessment instrument or process approved by the TJJD. A screening tool is considered validated upon a determination that the instrument measures what it is intended to measure regarding a target population. Newly added Subsection (b-1) clarifies that any risk and needs assessment instrument or process that is provided or approved by TJJD for the use by a juvenile probation department must be a validated instrument or process. In addition to other disposition purposes, the assessment will be utilized to identify the behavioral health or special needs of juveniles in order for the court or jury to make the special commitment findings required under Section 54.04(d) of the Family Code as amended this session. Subsection (d), however, contains language regarding jury findings that may have been a legislative oversight. It is important to note that under Texas law, juries are not permitted in juvenile cases, other than for determinate sentencing, to make dispositional findings.

Human Resources Code Sec. 223.001. DETERMINATION OF AMOUNT OF STATE AID. (a) The department shall annually allocate funds for financial assistance to juvenile boards to provide juvenile services according to current estimates of the number of juveniles in each county, a basic probation funding formula for departments that clearly defines what basic probation entails and which services are provided, and other factors the department determines are appropriate.

(b) The legislature may appropriate the amount of state aid necessary to supplement local funds to maintain and improve statewide juvenile services that comply with department standards and to initiate and support the regionalization plan under Section 203.017 so that savings are generated by decreases in the population of department facilities operated under Subtitle C.

(c) The department shall [~~may~~] set aside a portion of the funds appropriated to the department for discretionary state aid to fund programs designed to address special needs or projects of local juvenile boards, including projects dedicated to specific target populations based on risk and needs, and with established recidivism reduction goals. The department shall develop discretionary grant funding protocols based on documented, data-driven, and research-based practices.

(d) The department shall reimburse counties for the placement of children in the regional specialized program at a rate that offers a savings to the state in relation to the average cost per day for confining a child in a department facility operated under Subtitle C.

(e) The department may not adversely impact the state aid for a juvenile board or a juvenile probation department that does not enter into a contract to serve youth from other counties, or does not act as a regional facility.

(f) A juvenile board or juvenile probation department may not be required to accept a child for placement in a post-adjudication correctional facility, unless the child is subject to an order issued by a juvenile court served by that board or department.

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2015
Applicability: State aid beginning in Fiscal Year 2015
Summary of Changes: Family Code Section 223.001(a) provides that the Texas Juvenile Justice Department's (TJJD) determination of state aid to counties is to be based on the current juvenile population estimates in the county as well as other factors determined appropriate by TJJD. SB 1630 amends this to also require it be based on a "basic probation funding formula for departments that clearly defines what basic probation entails and what services are provided."

Subsection (b) is amended so that, in addition to being permitted to appropriate the amount of state aid necessary to supplement local funds to maintain and improve statewide juvenile services that comply with TJJD standards, the legislature is also permitted to appropriate the amount of state aid necessary to initiate and support the regionalization plan so that savings are generated by decreases in the population of TJJD facilities.

The statute currently permits, but does not require TJJD to set aside a portion of state aid funds to address special needs or projects of juvenile boards. Subsection (c) has been amended to now require TJJD to set aside this money for what is now referred to as "discretionary state aid" for special needs or projects. This includes "projects dedicated to specific target populations based on risk and needs, and with established recidivism reduction goals." TJJD is further required to develop discretionary grant-funding protocols based on documented, data-driven, and research-based practices.

While SB 1630 includes no requirements that the counties participate in the regionalization plan, it does include a funding incentive to do so. This funding incentive is in Family Code Section 223.001(d), which requires TJJD to reimburse counties for the placement of children in the regional specialized program at a rate that offers a savings to the state in relation to the average cost per day for confining a child in a TJJD facility. In order to implement this funding incentive, it will be necessary for TJJD to define which children have been diverted from commitment as a result of the "regional specialized program."

Not only does SB 1630 include no requirement for counties to participate in the regionalization plan, Family Code Subsection 223.001(e) specifically prohibits TJJD from adversely impacting the state aid for a juvenile board or probation department either does not enter into a contract to serve youth from other counties or that does not act as a regional facility. Subsection (f) provides that no juvenile board or juvenile probation department may be required to accept a child for placement in a post-adjudication facility unless the juvenile court with jurisdiction in that county orders it.

Human Resources Code Sec. 242.009. JUVENILE CORRECTIONAL OFFICERS; STAFFING. (b) The department shall provide competency-based training to each juvenile correctional officer employed by the department, which must include on-the-job training. Each officer must complete at least 300 hours of training in the officer's first year of employment, with at least 240 [~~300~~] hours of training [~~, which must include on the job training,~~] before the officer independently commences the officer's duties at the facility. The officer must demonstrate competency in the trained subjects as required by the department. The training must provide the officer with information and instruction related to the officer's duties, including information and instruction concerning:

(1) the juvenile justice system of this state, including the juvenile correctional facility system;

(2) security procedures;

(3) the supervision of children committed to the department;

(4) signs of suicide risks and suicide precautions;

(5) signs and symptoms of the abuse, assault, neglect, and exploitation of a child, including sexual abuse, sexual assault, and human trafficking, and the manner in which to report the abuse, assault, neglect, or exploitation of a child;

(6) the neurological, physical, and psychological development of adolescents;

(7) department rules and regulations, including rules, regulations, and tactics concerning the use of force;

(8) appropriate restraint techniques;

(9) the Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601, et seq.);

(10) the rights and responsibilities of children in the custody of the department;

(11) interpersonal relationship skills;

(12) the social and cultural lifestyles of children in the custody of the department;

(13) first aid and cardiopulmonary resuscitation;

(14) counseling techniques;

(15) conflict resolution and dispute mediation, including de-escalation techniques;

(16) behavior management;

(17) mental health issues;

(18) employee rights, employment discrimination, and sexual harassment; and

(19) trauma-informed care.

Commentary by Nydia Thomas

Source: HB 2372
Effective Date: September 1, 2015
Applicability: Applies to correctional officers hired on or after the effective date.
Summary of Changes: Under current law, Section 242.009 of the Human Resources Code requires the Texas Juvenile Justice Department to provide all juvenile correctional officers with 300 hours of training, including on-the-job training, before the officer can independently assume the duties of a correctional officer. In the seven years since the major juvenile justice reforms of SB 107 were enacted, the TJJD Juvenile Justice Training Academy has been established to provide enhanced curriculum and a structured plan for orientation and professional development for juvenile correctional officers in state institutions. Most notably, the 300 hours of training required under the current provision has posed practical impediments to agency training providers and has im-

pacted the ability to supervise youth while the correctional officer continues to receive on-the-job-training. The mandatory training includes 18 topics outlined in agency administrative rules and applies to full-time and part-time officers employed by the Texas Juvenile Justice Department (TJJD).

This amendment retains the current minimum 300-hour basic training requirement for TJJD juvenile correctional officers (JCO) mandated in Human Resources Code Section 242.009 (a) and clarifies that each officer must complete at least 240 hours of training before independently beginning duties at a facility. TJJD must develop and provide competency-based training to fulfill the requirements of this bill. Each correctional officer must complete at least 300 hours of training in the first year of employment and demonstrate competency in the trained subject.

Human Resources Code Sec. 261.101. DUTIES AND POWERS. (a) The independent ombudsman shall:

(1) review the procedures established by the board and evaluate the delivery of services to children to ensure that the rights of children are fully observed;

(2) review complaints filed with the independent ombudsman concerning the actions of the department and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;

(3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that:

(A) a child committed to the department or the child's family may be in need of assistance from the office; or

(B) a systemic issue in the department's provision of services is raised by a complaint;

(4) review or inspect periodically the facilities and procedures of any institution or residence in which a child has been placed by the department, whether public or private, to ensure that the rights of children are fully observed;

(5) provide assistance to a child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child;

(6) review court orders as necessary to fulfill its duties;

(7) recommend changes in any procedure relating to the treatment of children committed to the department;

(8) make appropriate referrals under any of the duties and powers listed in this subsection;

(9) supervise assistants who are serving as advocates in their representation of children committed to the department in internal administrative and disciplinary hearings;

(10) review reports received by the department relating to complaints regarding juvenile probation programs, services, or facilities and analyze the data contained in the reports to identify trends in complaints; [~~and~~]

(11) report a possible standards violation by a local juvenile probation department to the appropriate division of the department; and

(12) immediately report the findings of any investigation related to the operation of a post-adjudication correctional facility in a county to the chief juvenile probation officer and the juvenile board of the county.

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2015
Applicability: Actions of the Office of Independent Ombudsman occurring on or after September 1, 2015
Summary of Changes: If the Office of Independent Ombudsman investigates allegations occurring in a post-adjudication secure correctional facility, the Office must report the findings to the chief juvenile probation officer and juvenile board of the county in which the facility is located.

Human Resources Code Sec. 261.101. DUTIES AND POWERS. (e) Notwithstanding any other provision of this chapter, the powers of the office include:

(1) [~~are limited to~~] facilities operated and services provided by the department under Subtitle C;

(2) post-adjudication correctional facilities under Section 51.125, Family Code;

(3) any other residential facility in which a child adjudicated as having engaged in conduct indicating a need for supervision or delinquent conduct is placed by court order; and

(4) the investigation of complaints alleging a violation of the rights of the children placed in a facility described by Subdivision (2) or (3).

Commentary by Kaci Singer

Source: SB 1630
Effective Date: September 1, 2015
Applicability: Actions of the Office of Independent Ombudsman occurring on or after September 1, 2015
Summary of Changes: The Office of Independent Ombudsman (OIO) currently has responsibilities and authority limited to Texas Juvenile Justice Department (TJJD) facilities, contract facilities, and programs serving juveniles committed to TJJD. In 2013 and 2014, allegations surfaced regarding conduct occurring at other facilities, specifically a facility not operated or regulated by TJJD but that accepted juveniles who had been placed there by a juvenile court as a term of probation. Several bills and various language iterations circulated throughout the

session in an effort to extend the authority of the OIO beyond TJJD facilities. Some have argued that an independent office that parents and children could contact and that could come to facilities with a different purpose than regulatory entities would serve to enhance the safety of children. Opponents argued that there is sufficient oversight and cited concerns about duplicative work. This is the version that ultimately passed. It provides that the powers of the OIO include the investigation of complaints alleging a violation of the rights of the children placed in a post-adjudication correctional facility regulated by TJJD or placed in any other residential facility as a term of probation.

It bears noting that legislation did not expressly extend the authority of the Ombudsman to include the same responsibilities and authorities as exist with TJJD facilities and services. For example, Section 261.102, Human Resources Code, which protects TJJD employees from retaliation for cooperating with the Ombudsman, was not extended to employees of the newly added facilities. Additionally, Sections 261.151 and 261.152, which allow the Ombudsman access to governmental and private provider records involving TJJD youth were not extended to include the records of youth on probation at the newly added facilities. Further, Section 261.056, which provides that the communication between a TJJD youth and the Ombudsman is privileged and confidential, was not extended to communication between the Ombudsman and a child on probation. Also not extended was the requirement that the Ombudsman report to the governor, lieutenant governor, speaker of the house, state auditor and office of inspector general any particularly serious or flagrant case of abuse or injury, problem concerning the administration of a TJJD program or operation, problem concerning the delivery of services in a facility, or interference by TJJD with an investigation. Although these changes were not made, testimony at hearings and a review of bill analyses suggests that the legislative intent was likely for the Ombudsman to have the same authority and responsibilities with regard to children in facilities as a condition of probation that exists for children committed to TJJD.

Health and Safety Code

Health and Safety Code, Sec. 532.0131. FORENSIC WORK GROUP. (a) In this section, "forensic patient" and "forensic services" have the meanings assigned by Section 532.013.

(b) The commissioner shall establish a work group of experts and stakeholders to make recommendations concerning the creation of a comprehensive plan for the effective coordination of forensic services.

(c) The work group must have not fewer than nine members, with the commissioner selecting the total number of members at the time the commissioner establishes the work group.

(d) The executive commissioner of the Health and Human Services Commission shall appoint as members of the work group:

(1) a representative of the department;

(2) a representative of the Texas Department of Criminal Justice;

(3) a representative of the Texas Juvenile Justice Department;

(4) a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(5) a representative of the Sheriff's Association of Texas;

(6) a superintendent of a state hospital with a maximum security forensic unit;

(7) a representative of a local mental health authority;

(8) a representative of the protection and advocacy system of this state established in accordance with 42 U.S.C. Section 15043, appointed by the administrative head of that system; and

(9) additional members as needed to comply with the number of members selected by the commissioner, who must be recognized experts in forensic patients or persons who represent the interests of forensic patients, and who may be advocates, family members, psychiatrists, psychologists, social workers, psychiatric nurses, or representatives of hospitals licensed under Chapter 241 or 577.

(e) In developing recommendations, the work group may use information compiled by other work groups in the state, especially work groups for which the focus is mental health issues.

(f) Not later than July 1, 2016, the work group established under this section shall send a report describing the work group's recommendations to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives with primary jurisdiction over forensic services.

(g) The executive commissioner of the Health and Human Services Commission may adopt rules as necessary to implement this section.

(h) The work group established under this section is dissolved and this section expires November 1, 2019.

Commentary by John Gonzales

Source: HB 1507
Effective Date: May 28, 2015
Applicability: Applies to the Forensic Work Group created on or after the effective date.
Summary of Changes: In an attempt to improve statewide mental health services, the Legislature added two sections to the newly re-titled Health and Safety Code Chapter 532, Organization of the Texas Health

Services. The commissioner of the Health State Services is to appoint a forensic director who is responsible for an array of duties to coordinate and oversee statewide forensic services and identify issues so that they may be address. The commissioner shall by appointment form a workgroup of stakeholders to make recommendations for a comprehensive plan to improve forensic services statewide and file a report by July 1, 2015. The Texas Juvenile Justice Department is required to be a part of the workgroup. A "forensic patient" means a person with mental illness who is examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure, Incompetency to Stand Trial, which applies in juvenile cases. If a juvenile is determined to be unfit to stand trial, the person becomes a forensic patient as defined by this amendment and would be ordered to undergo forensic services which include competency determination, restoration and other mental health services provided by community or state facilities.

Penal Code

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY. (a) An official of a correctional facility or juvenile facility, an employee of a correctional facility or juvenile facility, a person other than an employee who works for compensation at a correctional facility or juvenile facility, a volunteer at a correctional facility or juvenile facility, or a peace officer commits an offense if the person intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility [~~Youth Commission~~], employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the offense is committed against:

(1) an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility [~~Youth Commission~~]; or

(2) a juvenile offender detained in or committed to a correctional facility [~~the operation of which is financed primarily with state funds~~].

Commentary by Kaci Singer

Source: SB 183
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: It is a Class A misdemeanor for an official, employee, contract employee, or volunteer of a correctional facility to deny or impede the civil rights of a person in custody. It is also a violation of law for those individuals to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with a person in custody. Under current law, the offending conduct is a state jail felony but the offense classification and may be enhanced to a second degree felony if the person is in the custody of the Texas Juvenile Justice Department (TJJD) or is a juvenile offender detained in or committed to a correctional facility, the operation of which was financed primarily with state funds. This means that it is a second degree felony to engage in sexual activity with some juveniles and a state jail felony to do so with others; the only distinction between the two was whether the facility in which they are housed is primarily financed with state dollars or county dollars. This session, subsection (b) was amended to eliminate this distinction. It is now a second degree felony for an official, employee, contract employee, or volunteer of any juvenile facility to engage in sexual contact, sexual intercourse or deviate sexual intercourse with an individual in the custody of TJJD or placed in a juvenile facility. Another disparity between offenses based on where a juvenile is in custody exists with regard to the ~~current~~ elements of subsection (a)(2), which provides that it is an offense for an individual to employ, authorize, or induce an individual in the custody of TJJD to engage in sexual conduct or sexual performance; this was changed to include an individual placed in a juvenile facility.

It should be noted that the change in the definition of correctional facility ~~to~~ no longer includes a juvenile facility (as discussed below). In addition, the fact that it is unlawful to detain a juvenile offender in an adult correctional facility renders subsection (b)(2) meaningless now. This does not pose an issue, though, because all juvenile offenders in custody are covered by subsection (b)(1).

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY. (e) [~~(A)~~] any place described by Section 1.07(a)(14)[~~; or~~

[~~(B) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code~~].

(2) "Custody" means the detention, arrest, or confinement of an adult offender, [~~or~~] the detention of a

juvenile offender, or the commitment of a juvenile offender to a correctional facility or juvenile facility [~~operated by or under a contract with the Texas Youth Commission or a facility operated by or under contract with a juvenile board~~].

(2-a) "Juvenile facility" means a facility for the detention or placement of juveniles under juvenile court jurisdiction and that is operated wholly or partly by the Texas Juvenile Justice Department, a juvenile board, or another governmental unit or by a private vendor under a contract with the Texas Juvenile Justice Department, juvenile board, or governmental unit.

Commentary by Kaci Singer

Source: SB 183
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date
Summary: Under the current law, a correctional facility in Section 39.04, Penal Code, included, by definition, a juvenile detention facility and post-adjudication secure correctional facility. During the session, some policymakers were unclear whether this statute covered juvenile facilities. Therefore, juvenile facility was separately defined. This has no substantive impact on this statute.

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY. (f) An employee of the Texas Department of Criminal Justice, the Texas Juvenile Justice Department [~~Youth Commission~~], a juvenile facility, or a local juvenile probation department commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who the employee knows is under the supervision of the Texas Department of Criminal Justice, Texas Juvenile Justice Department [~~department, commission~~], or probation department but not in the custody of the Texas Department of Criminal Justice, Texas Juvenile Justice Department [~~department, commission~~], or probation department.

Commentary by Kaci Singer

Source: SB 183
Effective Date: September 1, 2015
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Despite the heading of this statute, which refers to people in custody, in certain circumstances it is a violation of law to engage in sexual contact or sexual intercourse with persons not in custody. It is currently a state jail felony for an employee of the Texas Department of Criminal Justice (TDCJ), the Texas Juvenile Justice Department (TJJD), or a local juvenile probation department to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with a person under the supervision of TDCJ, TJJD, or the juvenile probation department but not in custody. This change extends the applicability of this offense to an employee of a juvenile facility since not all employees of juvenile facilities are employees of juvenile probation departments. It bears noting that while it is an offense for a contract employee or volunteer to engage in sexual activity with a person in custody; the violation involving persons under supervision but not in custody does not apply to those individuals.

Juvenile Records Advisory Committee

AN ACT relating to the creation of an advisory committee to examine and recommend revisions to any state laws pertaining to juvenile records.

SECTION 1. DEFINITIONS. In this Act:

(1) "Advisory committee" means the Juvenile Records Advisory Committee appointed under Section 2 of this Act.

(2) "Board" means the Texas Juvenile Justice Board.

SECTION 2. JUVENILE RECORDS ADVISORY COMMITTEE. Not later than December 1, 2015, the board shall appoint an advisory committee to develop a plan for studying, reorganizing, and comprehensively revising Chapter 58, Family Code, and any other relevant laws pertaining to juvenile records.

SECTION 3. APPOINTMENTS; PRESIDING OFFICER. (a) In making appointments to the advisory committee, the board shall include members who are interested parties, including:

(1) chief juvenile probation officers;
(2) juvenile prosecutors;
(3) juvenile defense attorneys;
(4) juvenile court judges;
(5) justice court or municipal court judges;
(6) court administrators or court clerks;
(7) peace officers;
(8) representatives of the Department of Public Safety;
(9) representatives of the Department of Family and Protective Services;
(10) representatives of the Texas Juvenile Justice Department;
(11) juvenile justice advocates;
(12) individuals with expertise in federal records and federal immigration policy;
(13) members of the public; and
(14) any other individuals that the board considers necessary to accomplish the duties of the advisory committee.

(b) The board shall designate one of the members as presiding officer of the advisory committee.

SECTION 4. REPORT. (a) Not later than November 1, 2016, the advisory committee shall submit to

the legislature and the board the recommendations for revisions to Chapter 58, Family Code, and any other relevant laws pertaining to juvenile records and a copy of the plan developed by the committee under Section 2 of this Act to produce those recommendations.

(b) The advisory committee may submit:

(1) preliminary recommendations at any time before submitting the report required under Subsection (a) of this section; and

(2) follow-up recommendations at any time after submitting the report required under Subsection (a) of this section.

SECTION 5. COMPENSATION. Members of the advisory committee serve without compensation and are not entitled to reimbursement for expenses.

SECTION 6. APPLICATION OF LAWS GOVERNING ADVISORY COMMITTEES. The advisory committee is not subject to Chapter 2110, Government Code.

SECTION 7. EXPIRATION DATE. The advisory committee is abolished and this Act expires December 31, 2018.

SECTION 8. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Commentary by Nydia Thomas

Source: HB 431
Effective Date: May 28, 2015
Applicability: Applies to the appointment and fulfillment of the responsibilities of the Juvenile Records Advisory Committee on or after the effective date.
Expiration: The work of the advisory committee will expire on December 31, 2018.
Summary of Changes: In 2013, the Texas Legislature established a Fingerprint Advisory Committee under SB 1769 to examine the fingerprinting practices of juvenile offenders in Texas. The advisory committee recommendations contained in *SB 1769: A Report on the Fingerprinting Juvenile Fingerprinting Practices in Texas*, resulted in the enactment of SB 409, which limits the disclosure of certain misdemeanor records in the Juvenile Justice Information System (JJIS) records repository and HB 431, which establishes a practitioner workgroup to conduct a comprehensive examination of Chapter 58 of the Family Code.

HB 431 requires the Texas Juvenile Justice Department (TJJD) to establish an advisory committee that will be responsible for developing a plan to study, reorganize and comprehensively revise Chapter 58 of the Family Code. The bill requires the TJJD to identify and appoint a cross-section of juvenile justice stakeholders by December 1, 2015 to the Juvenile Justice Records Advisory Committee. The committee will be required to submit a report of recommendations and any preliminary or follow-up report to the legislature and the TJJD board by November 1, 2016. Participants will not be paid or reimbursed for expenses associated with service on the committee and will not be subject to state laws governing advisory committees. The Juvenile Records Advisory Committee and the responsibilities outlined in the Act will expire on December 31, 2018.

Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses

AN ACT relating to establishing a task force to examine the adjudication, disposition, and registration of juvenile sex offenders.

SECTION 1. TASK FORCE ON IMPROVING OUTCOMES FOR JUVENILES ADJUDICATED OF SEXUAL OFFENSES. (a) In this Act:

(1) "Juvenile sex offender" means a person subject to the jurisdiction of a juvenile court for conduct that constitutes an offense for which registration as a sex offender is required under Chapter 62, Code of Criminal Procedure.

(2) "Task force" means the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses.

(b) The Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses is established. The purpose of the task force is to make policy recommendations to improve the outcomes for juvenile sex offenders after studying:

(1) the adjudication and disposition processes and programs for juvenile sex offenders;

(2) counseling, mental health, or other services provided by the state or local juvenile probation departments to juvenile sex offenders;

(3) the sex offender registration process for juveniles; and

(4) any other issue related to improving the outcomes for juvenile sex offenders.

(c) The task force is composed of the following members:

(1) the executive director of the Texas Juvenile Justice Department or the executive director's designee;

(2) the commissioner of the Department of Family and Protective Services or the commissioner's designee;

(3) one representative designated by the Crime Records Service of the Department of Public Safety who has experience with the department's sex offender registry;

(4) one representative designated by the Council on Sex Offender Treatment;

(5) one representative designated by Children's Advocacy Centers of Texas;

(6) one representative designated by the Texas Association for the Protection of Children;

(7) one representative designated by Texans Care for Children;

(8) one private provider of juvenile sex offender treatment from a rural county and one private provider of juvenile sex offender treatment from an urban county, appointed by the governor;

(9) one judge from a rural county and one judge from an urban county, appointed by the governor;

(10) one law enforcement official from a rural county and one law enforcement official from an urban county, appointed by the governor;

(11) one prosecutor from a rural county and one prosecutor from an urban county, appointed by the governor;

(12) one juvenile probation officer from a rural county and one juvenile probation officer from an urban county, appointed by the governor;

(13) one juvenile public defender from a rural county and one juvenile public defender from an urban county, appointed by the governor; and

(14) one academic researcher from an accredited university who specializes in juvenile justice, appointed by the governor.

(d) The governor shall designate a member of the task force to serve as presiding officer.

(e) The presiding officer may designate additional experts to serve as advisors to the task force.

(f) A person designated to make an appointment of a member of the task force shall make the appointment not later than the 60th day after the effective date of this Act. The designated person shall fill a vacancy in the task force or a vacancy in the position of presiding officer of the task force by the appointment of another person with the same qualifications as the original appointee.

(g) The presiding officer shall call the initial meeting of the task force on or before December 1, 2015. The task force shall meet at the times and places that the presiding officer determines are appropriate.

(h) A member of the task force is not entitled to compensation but may receive reimbursement for the member's actual and necessary expenses incurred in attending meetings of the task force and performing other official duties authorized by the presiding officer of the task force, if funding is available.

(i) The task force may request meeting facilities, data, clerical assistance, and other assistance from any department, agency, institution, office, or political subdivision of this state.

(j) The task force may consult with any relevant experts and stakeholders, including:

(1) juvenile sex offenders;

(2) family members of juvenile sex offenders;

(3) mental health experts;

(4) public school district administrators; and

(5) higher education administrators.

(k) State funds may not be appropriated for purposes of the task force. The task force may apply for, receive, and accept grants of funds or other contributions as appropriate to assist in the performance of its duties. The task force may contract for consultants or technical assistance.

(l) The task force is not subject to Chapter 2110, Government Code.

SECTION 2. DUTIES OF TASK FORCE. (a) The task force shall:

(1) solicit and review information and hear testimony relevant to the purposes of the task force from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(2) review the adjudication and disposition processes and programs for juvenile sex offenders, including:

(A) the consistency in adjudication and disposition processes across the state;

(B) the training provided to judges, law enforcement officers, parole and probation officers, and other juvenile service providers on the differences between juvenile and adult sex offenders regarding the potential for rehabilitation through treatment; and

(C) training provided to judges, law enforcement officers, parole and probation officers, and other juvenile service providers regarding the most effective way to protect the community by reducing recidivism rates among juvenile sex offenders;

(3) review juvenile sex offender registration, including:

(A) the effectiveness of juvenile sex offender registration in reducing recidivism rates;

(B) statistical information regarding juveniles required to register as sex offenders;

(C) the impact of juvenile sex offender registration on a juvenile, including a juvenile's ability to access education, obtain housing, and gain employment; and

(D) the impact of labeling a juvenile as a juvenile sex offender on the family of the juvenile;

(4) review counseling, mental health, or other services provided to juvenile sex offenders, including:

(A) the effectiveness of the services in the rehabilitation of juvenile sex offenders and the reduction of recidivism rates; and

(B) the current shortage of juvenile sex offender service providers; and

(5) review statistical information regarding the frequency of juvenile sex offenders being victims of abuse or neglect or witnesses to family violence.

(b) The task force shall adopt rules necessary to fulfill the task force's duties under this Act.

SECTION 3. REPORT. (a) The task force shall prepare a report that includes:

(1) a description of the activities of the task force;

(2) the findings and recommendations of the task force, including proposed policy recommendations related to:

(A) the provision of coordinated support services to juvenile sex offenders; and

(B) the most effective strategy to reduce recidivism rates and improve outcomes for juvenile sex offenders; and

(3) any related proposals for legislation or other matters the task force considers appropriate.

(b) Not later than December 1, 2016, the task force shall deliver the report of the task force's findings and recommendations to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the standing committees of each house of the legislature with primary jurisdiction over criminal justice matters;

(5) the executive director of the Texas Department of Criminal Justice;

(6) the executive director of the Texas Juvenile Justice Department;

(7) each state agency and nonprofit organization represented on the task force; and

(8) any other appropriate agency of this state.

SECTION 4. EXPIRATION. The task force is abolished and this Act expires September 1, 2017.

SECTION 5. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Commentary by Kaci Singer

Source: HB 1144
Effective Date: June 17, 2015
Applicability: Applies to the appointment and fulfillment of the responsibilities of the task force on or after the effective date.
Summary of Changes: This creates a task force for improving outcomes of juveniles adjudicated for sex offenses. The task force is composed of a variety of stakeholders including a representative from the Texas Juvenile Justice Department. The task force is responsible is required to deliver a report of findings and recommendations, including legislative proposals, to certain entities by December 1, 2016.

House Bill 1549
Extensive Bill Text Omitted

AN ACT relating to non-substantive corrections in statutes to references to the Texas Youth Commission and Texas Juvenile Probation Commission.

Commentary by Nydia Thomas

Source: HB 1549
Effective Date: September 1, 2015
Applicability: This bill makes non-substantive and conforming corrections.
Summary of Changes: During the 82nd Legislative Session, the Texas Juvenile Probation Commission (TJPC) and the Texas Youth Commission (TYC) were abolished in accordance with SB 653. In December 1, 2011, the operations and responsibilities of the two former agencies were transferred to the Texas Juvenile Justice Department (TJJD). House Bill 1549 updates agency name references to various codes such as the Family Code, Education Code, Code of Criminal Procedure, and the Government Code. Only a few the references to TJJD were amended in statute in 2013. This session, the Legislature made comprehensive updates and conforming revisions to the agency name. House Bill 1549 also amends Section 104.001 of the Civil Practice and Remedies Code to clarify that the state is required to indemnify persons who performed services under contract with TJJD, the Texas Department of Criminal Justice and the former TJPC and TYC agencies when the act or omission on which damages are based occurred.

7. Legislation Affecting Truancy Reform and School Attendance

The 2015 Truancy Reform Bill – House Bill 2398

Ted Wood
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IMPORTANT NOTE

The article below is part of a comprehensive report produced by Ted Wood of the Office of Court Administration to accompany the commentary of HB 2398 enacted during the 84th Legislative Session in 2015. This segment will also be available as embedded hyperlinks in the electronic version of this newsletter. Flowcharts containing a visual representation of the procedures envisioned in the new legislation as well as explanatory commentary can be accessed online at the Office of Court Administration website at:

www.txcourts.gov/publications-training/training-materials/truancy-reform.aspx

Background

Children in Texas are legally obligated to attend school.[1] While a smattering of people may disagree with the idea of compulsory school attendance, the concept is not particularly controversial. Requiring children to attend school is an accepted public policy.

Another well-established idea is that dropping out of school is not a good thing. Accordingly, most people would probably agree that society should take actions to try to keep kids in school. And most people would likely say that children should face some sort of consequences for habitually missing school.

But the question of what these consequences should be has been an area of considerable discussion. In recent years, the most common consequence in Texas for missing too much school has been a criminal conviction. Some people objected to the idea of criminal convictions for missing school and these voices found receptive audiences in high places. Earlier this year, Chief Justice Nathan Hecht of the Supreme Court of Texas addressed this issue in his state-of-the-judiciary address:

> The [school ticketing] reforms last Session did not extend to truancy and attendance laws, which, while intended to keep kids in school, often operate to keep them out. The theory is that the threat of punishment will incentivize attendance. But when almost 100,000 criminal truancy charges are brought each year against Texas schoolchildren, one has to think, this approach may not be working. Playing hooky is bad, but is it criminal? A better, more effective solution may be for schools and courts alike to provide prevention and intervention services for at-risk children to actually achieve the goal: getting them back in school. This has led the Texas Judicial Council, a policy-making body for the Judiciary, to call for decriminalizing the failure to attend school. The stakes are high. Our children are our most precious treasures and our future. Education is the key to their success.[2]

Consistent with Chief Justice Hecht's entreaty, eight separate bills were filed in the Texas Legislature during the 84th Session that sought to decriminalize truancy.[3] The leading decriminalization bill turned out to be Senate Bill 106 filed by Senator John Whitmire. Senate Bill 106 passed the Senate, but failed to survive a vote in the House Juvenile Justice and Family Issues Committee. However, near the end of the session, the text of Senate Bill 106 was added to House Bill 2398 filed by Representative James White. Identical versions of House Bill 2398 were eventually passed by the House and the Senate. Governor Greg Abbott signed the bill into law on June 18, 2015. The provisions of HB 2398 will go into effect on September 1, 2015.

[1] *See* Tex. Educ. Code § 25.085 (West 2012).

[2] The State of the Judiciary Address in Texas, Chief Justice Nathan L. Hecht, presented to the 84th Legislature, February 18,
2015. Available online at http://www.txcourts.gov/media/857636/state-of-the-judiciary-2015.pdf.

[3] The eight bills were HB 93, HB 297, HB 378, HB 1490, HB 2362, HB 2821, SB 106, and SB 285.

Treatment of Truancy Matters Under Current Law

Under current law,[4] truancy matters can be handled in two entirely separate ways.

First, the cases can be handled as criminal cases.[5] With a couple of exceptions,[6] these criminal cases are handled by justice courts and municipal courts.[7] In these proceedings, children may actually be convicted of the Class C misdemeanor offense of "failure to attend school" created under Education Code, Section 25.094. The offense is not technically known as "truancy," although this term is sometimes incorrectly used. The convictions in these cases are the criminal convictions that HB 2398 seeks to eliminate.

Second, the cases can be handled as civil cases in the juvenile courts.[8] In these proceedings, children may be found to have engaged in "truancy" which constitutes conduct indicating a need for supervision (CINS).[9] Such findings are not criminal convictions.

Regardless of which way the truancy matter is handled, the conduct giving rise to the case is exactly the same. The conduct in question is (1) failing to attend school on 10 or more days or parts of days within a six-month period in the same school year; or (2) failing to attend school on three or more days or parts of days within a four-week period.[10]

Although there are two different ways in which truancy matters can be handled, as a practical matter only the first way is used. In Fiscal Year 2014, 69,052 failure to attend school cases were filed in justice and municipal courts in Texas.[11] (This number does not include the failure to attend school cases filed in the constitutional county court in Dallas County.) By contrast, only 596 CINS petitions were filed in our state's juvenile courts during the same fiscal year.[12] And there is no indication as to how many of the CINS cases were for truancy. Even if all 596 CINS petitions were filed for the offense of truancy,[13] failure to attend-school cases outnumber truancy cases 115 to 1.[14]

There is no published research as to why truancy matters are handled primarily as criminal cases instead of as juvenile matters. School districts refer truancy matters to the court system. The case statistics above show that the referral of truancy matters to the justice and municipal courts is standard operating procedure in most school districts. Thus, the handling of truancy matters by justice and municipal courts may have more to do with custom and tradition than with anything else. Some believe that juvenile courts are so focused on more serious forms of juvenile delinquency[15] that truancy cases tend to fall through the cracks. This

[4] "Current law" means the law before House Bill 2398 becomes effective on September 1, 2015.

[5] *See generally* Tex. Educ. Code Ann. § 25.094(a)(3) (West 2012).

[6] The first exception concerns constitutional county courts in counties with populations of 1.75 million or more. Such constitutional county courts have jurisdiction to hear failure to attend school cases. Tex. Gov't Code Ann. § 26.045(d) (West Supp. 2014). The relevant time period for determining the population of a county for purposes of statutory interpretation is the 2010 census. *See* Tex. Gov't Code Ann. § 312.011(20) (West 2005). At the time of the 2010 census, there were only three Texas counties with populations of 1.75 million or more – Dallas County, Harris County and Tarrant County. In these counties, the constitutional county judge is authorized to appoint magistrates to hear failure to attend school cases. Tex. Gov't Code Ann. § 54.1172 (West 2013). But as a matter of current practice, only in Dallas County does the county judge appoint magistrates to hear failure to attend school cases.

The second exception concerns counties with populations of more than 585,000 that are contiguous to a county with a population of at least 4 million. *See* Tex. Gov't Code Ann. § 54.1951 (West 2013). Only Fort Bend County fits in this category. In Fort Bend County, the constitutional county court does not have jurisdiction to hear failure to attend school cases. However, the constitutional county judge is authorized to appoint magistrates to hear failure to attend school cases that are referred to the magistrates by courts having jurisdiction over the cases. Tex. Gov't Code Ann. § 54.1952 (West 2013). In Fort Bend County, magistrates have traditionally been appointed to hear failure to attend school cases.

[7] Tex. Educ. Code Ann. § 25.094(b) (West 2012).

[8] *See generally* Tex. Fam. Code Ann. § 51.03(b)(2) (West 2014). Juvenile courts are simply district courts and county-level courts that have been designated to act as juvenile courts. *See* Tex. Fam. Code Ann. § 51.04 (West 2014).

[9] *See* Tex. Fam. Code Ann. §§ 51.03(b)(2), 54.021 (West 2014).

[10] *See* Tex. Educ. Code § 25.094(a)(3) (West 2012) for the criminal offense of failure to attend school. *See* Tex. Fam. Code § 51.03(b)(2) (West 2014) for the conduct indicating a need for supervision known as "truancy" under Section 54.021 of the Family Code.

[11] Texas Judicial System Annual Statistical Report for Fiscal Year 2014. Statistics on Fiscal Year 2014 activity in the justice court are available online at http://www.txcourts.gov/media/725116/3-Justice_Court_Activity_Detail-2014.pdf. Statistics on Fiscal Year 2014 activity in the municipal courts are available online at http://www.txcourts.gov/media/728073/3-Municipal-Court-Activity-FY-2014.pdf.

[12] Texas Judicial System Annual Statistical Report for Fiscal Year 2014. Statistics on Fiscal Year 2014 juvenile activity in the district and county-level courts are available online at http://www.txcourts.gov/media/713320/2-Statewide-Juvenile-Activity-FY-2014.pdf.

[13] This is a very doubtful supposition given all of the possible acts that constitute conduct indicating a need for supervision. *See* Tex. Fam. Code Ann. § 51.03(b) (West 2014).

[14] 69,052/596 = 115.85906

[15] These more serious forms of juvenile delinquency are those actions that constitute "delinquent conduct." *See* Tex. Fam. Code Ann. § 51.03(a) (West 2014). These actions would generally constitute Class A and B misdemeanors and felonies if committed by adults.

may or may not be accurate. Whatever the reason, justice and municipal courts have been the courts handling most of the truancy matters in Texas for a number of years.

Current law permits judges handling failure to attend school cases to do much more than simply convict a child for failing to attend school. Judges are authorized to enter remedial orders in connection with failure to attend school convictions that aim to keep kids in school. These remedial orders are detailed in Article 45.054 of the Code of Criminal Procedure.[16]

Judges may order children to attend school, attend preparatory classes for the high school equivalency exam, or take the high school equivalency exam.[17] Judges may also order children to attend special programs aimed at remedying school non-attendance issues. Such programs include alcohol and drug abuse programs, self-improvement counseling programs, and programs in self-esteem and leadership.[18] Other such programs include training in manners, violence avoidance, sensitivity training and advocacy.[19]

Judges may also direct children to perform community service.[20] Another alternative is to require children to participate in tutorial programs covering relevant academic subjects. And judges are also authorized to order the child and the child's parents to attend a class for students who are at risk of dropping out of school.[21]

Separate and apart from the offense of failure to attend school, a criminal offense exists which is known as "parent contributing to nonattendance [of school]." This offense is called for by Section 25.093 of the Education Code and is an offense committed by the parent of a truant child.[22] These parent-contributing-to-nonattendance cases are Class C misdemeanors and are commonly handled by justice and municipal courts. In Fiscal Year 2014, there were 68,061 of these cases filed in the justice and municipal courts.[23] This is very close to the number of failure to attend school cases filed in the justice and municipal courts.[24] When a failure to attend school case is filed against a child, a parent-contributing-to-nonattendance case is often filed against the child's parent.

As mentioned earlier, the current system of handling truancy cases has come under criticism. The primary concern has been the criminal convictions of children. The criminal convictions of adults (for parent contributing to nonattendance) have not been a concern.

The Aims of the Truancy Reforms

The chief objective of the truancy reforms was to do away with the criminal offense of failure to attend school. In other words, the main goal was to decriminalize truancy. But this was not the only objective. The legislators behind the reforms did not want to give students a pass for missing school. Quite to the contrary, the reformers sought to replace the current system of criminal prosecution with a new legal framework. This new framework would continue to hold students accountable for missing school. And the new framework would keep justices of the peace and municipal court judges in charge of truancy cases.

Significantly, the reformers aimed to give judges the same remedial options to deal with truant children as exist under current law.[25] Also, they wanted to keep the crime of parent-contributing-to-nonattendance in place. Thus, parents would be just as susceptible to prosecution for contributing to their child's nonattendance under the new law as under the current law.

At bottom, the reformers aimed to keep the good parts of the current truancy system while eliminating the taint associated with criminal convictions.

Repealing Section 25.094 is not a Complete Solution

House Bill 2398 repeals Section 25.094 of the Education Code – the statute making failure to attend school a crime.[26] Repealing Section 25.094 – and thereby decriminalizing truancy – was easy. The challenge was to establish a new legal framework for handling truancy cases.

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[16] Tex. Crim. Proc. Code Ann. art. 45.054 (West Supp. 2014).
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Tex. Educ. Code Ann. § 25.093 (West 2012).
[23] Texas Judicial System Annual Statistical Report for Fiscal Year 2014. There were 63,682 parent-contributing-to-nonattendance cases filed in the justice courts and 4,379 such cases filed in the municipal courts. Statistics on Fiscal Year 2014 activity in the justice court are available online at http://www.txcourts.gov/media/725116/3-Justice_Court_Activity_Detail-2014.pdf. Statistics on Fiscal Year 2014 activity in the municipal courts are available online at http://www.txcourts.gov/media/728073/3-Municipal-Court-Activity-FY-2014.pdf.
[24] 69,052 failure to attend school cases were filed in the justice and municipal courts. *See* text accompanying footnote 11.
[25] *See* text accompanying footnotes 16 – 21.
[26] Act of May 30, 2015, 84th Leg., House Bill 2398, SECTION 42. (Hereinafter the bill will be cited as HB 2398, SECTION ___.)

Please note that the repeal of Section 25.094 by itself ends only the first way of dealing with truancy matters under current law.[27] The repeal of Section 25.094 does nothing to affect the second way of handling truancy matters under current law.[28] Thus, if lawmakers had repealed Section 25.094 but had done nothing else, existing law would still have provided a way to process truancy cases. Juvenile courts could hear truancy matters as juvenile cases involving conduct indicating a need for supervision [CINS].

But this second way of dealing with truancy issues was not thought to be an acceptable alternative going forward. Our state's juvenile courts would not be able to keep up with nearly 70,000 new truancy cases.[29] Justice and municipal courts – the courts currently handling the truancy caseload – would be unable to assist with the juvenile cases. This is because under current law, justice and municipal courts are not juvenile courts and are therefore without jurisdiction to hear juvenile cases.

Even if juvenile courts could accept this huge influx of new cases, handling truancy matters as juvenile cases is largely unworkable. In juvenile cases, attorneys must be appointed to represent all children who cannot afford their own attorney.[30] By contrast, in failure to attend school cases in the justice and municipal courts, there is no such requirement. Attorneys are generally not appointed. The cost of requiring the government to pay for the appointment of attorneys in truancy cases would be prohibitive.

Additionally, the detailed procedures called for in juvenile cases[31] are not an especially good fit for the majority of truancy cases. The system of separate detention hearings,[32] adjudication hearings,[33] and disposition hearings[34] seems ill-suited for relatively simple and straightforward truancy matters. Forcing truancy cases to fit into the procedural structure of juvenile cases would be undesirable. Both the time and expense of processing truancy cases would increase without much likelihood of a concomitant improvement in school attendance.

As noted above, there are multiple reasons why truancy matters are not well-suited for the juvenile courts. These reasons may well be partly why most truancy matters are processed in our justice and municipal courts today instead of in our juvenile courts.[35]

One thing was abundantly clear to the legislators behind the efforts to decriminalize truancy – simply repealing Section 25.094 would not be enough. The existing statutes allowing juvenile courts to handle truancy cases were not a panacea. Further changes would have to be made to truly reform truancy in Texas.

Making Justice and Municipal Courts into Juvenile Courts – A Good Idea with a few Drawbacks

As noted above, more is needed to be done than to simply repeal Section 25.094. One idea involved designating justice and municipal courts as juvenile courts for the limited purpose of hearing truancy matters. The idea was to expand the definition of juvenile courts in Family Code, Section 51.04 to include justice and municipal courts. The new juvenile courts would only serve as juvenile courts only in truancy cases.

This concept had a distinct advantage over simply repealing Section 25.094. The advantage would be that the justice and municipal courts would still be handling truancy matters. There would be no need to move a mountain of truancy cases to juvenile courts with little capacity for tens of thousands of new cases. And the judges most adept at handling truancy matters and interfacing with truant teens (justices of the peace and municipal judges) would continue to do so.

But the concept also had drawbacks. Some of the same problems that would have plagued juvenile courts if they were tasked with hearing truancy cases would necessarily raise their ugly heads. Attorneys would have to be appointed. Overly-complex procedures would need to be employed. Thus, the costs of processing truancy cases would increase as would the time for courts to process the cases.

So the idea of designating justice and municipal courts as juvenile courts and having these courts utilize existing juvenile procedures was not ideal. A better idea would be to designate these courts as juvenile courts for limited purposes and to limit the juvenile procedures that applied to them.

For example, Section 51.10 of the Family Code calls for the appointment of attorneys. That statute could have been rewritten to make an exception to an attorney-appointment requirement in truancy cases. This

[27] *See* text accompanying footnotes 5–7.
[28] *See* text accompanying footnotes 8–9.
[29] 69,052 new failure to attend school cases were initiated in Texas in Fiscal year 2014. *See* footnote 11.
[30] Tex. Fam. Code Ann. § 51.10 (West 2014).
[31] The procedures in juvenile cases are set out in Title 3 of the Family Code which consists of Chapters 51 through 61. Title 3 is known as the Juvenile Justice Code.
[32] Tex. Fam. Code Ann. § 54.01 (West 2014).
[33] Tex. Fam. Code Ann. § 54.03 (West 2014).
[34] Tex. Fam. Code Ann. § 54.04 (West 2014).
[35] *See* full paragraph of text accompanying footnote 15.

approach would have tailored the Juvenile Justice Code provisions to read one way for regular juvenile cases and another way for truancy cases.

The idea certainly had promise. But the theory would have involved taking as many as 100 different statutes and dividing each of them into two parts. One part would have been applicable to regular juvenile cases while the other part would have been applicable to juvenile cases involving truancy. The implementation of the theory would likely have made a mishmash of the Juvenile Justice Code. One wishing to read the provisions applicable to truancy cases would have to wade through a multitude of material applicable only in regular juvenile cases. And users of the Juvenile Justice Code would suddenly have exceptions of all sorts (for the truancy cases) interjected into familiar Family Code provisions.

Because of the aforementioned drawbacks, the idea of designating justice and municipal courts as juvenile courts never made its way into Senate Bill 106. Instead, Senate Bill 106 (which was later incorporated into House Bill 2398) took a slightly different, outside-the-box approach.

Title 3A – Truancy Courts and Truant Conduct

Senator John Whitmire is the author of Senate Bill 106 (which was adopted into House Bill 2398 by Representative James White). House Bill 2398 is the vehicle that carried the 2015 truancy reforms into reality. We will refer to the new truancy reform legislation as House Bill 2398 from this point forward.

As mentioned earlier, because of perceived drawbacks, House Bill 2398 did not propose truancy case revisions via changes to Title 3 of the Family Code.[36] Rather, the bill proposed a brand new Family Code title denominated as Title 3A that would deal with truancy.

House Bill 2398 consists of 44 separate sections. Section 27 of the bill contains the entirety of the new Title 3A which comprises over 30 of the bill's 79 pages. While the other sections are important (for example, Section 41 repeals Section 25.094 of the Education Code), clearly Section 27 is the key section.

Title 3A consists of just one chapter – Chapter 65 of the Family Code. This one chapter creates an entirely new type of court, an entirely new classification of conduct, and a freestanding set of procedures. The new procedures are to be used by the new courts in proceedings involving the new classification of conduct.

The new courts in question are known as truancy courts.[37] These courts are not actually new in the sense that there are no new courtrooms and no new judges. Rather, truancy courts are simply certain existing courts authorized to exercise a special area of jurisdiction. Thus, truancy courts are very much like juvenile courts which are actually selected district and county-level courts designated locally to exercise juvenile jurisdiction.[38]

Unlike juvenile courts, however, no local designations are necessary for certain courts to become truancy courts.[39] Rather, the Legislature has declared that certain courts are automatically truancy courts – no designation by a local governing board is necessary.[40]

The courts designated as truancy courts are: (1) constitutional county courts in counties with a population of 1.75 million or more;[41] (2) all justice courts; and (3) all municipal courts.[42] Even if a particular justice court, municipal court, or constitutional county court does not actually hear truancy cases, the court is a truancy court. Truancy court judges receive no extra compensation for their service. They simply exercise a special kind of jurisdiction when (figuratively) wearing their truancy court hats.

Having discussed the new type of court (truancy court), we turn now to the new type of conduct created under Title 3A. The new type of conduct is known as "truant conduct." Section 65.003(a)[43] defines truant conduct in the following way:

A child engages in truant conduct if the child is required to attend school under Section 25.085, Education Code, and fails to attend on 10 or more days or

[36] Title 3 of the Family Code is known as the Juvenile Justice Code.

[37] *See* HB 2398, SECTION 27, Sec. 65.002(4), Sec. 65.004.

[38] *See* Tex. Fam. Code Ann. § 51.04(b) (West 2014) ("In each county, the county's juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court . . . .").

[39] *See id.* Not all district courts and county-level courts are juvenile courts. A county juvenile board must designate a district court or a county-level court to act as a juvenile court.

[40] *See* HB 2398, SECTION 29, Sec. 65.004(a)(2), (3).

[41] As mentioned in footnote 6, three counties meet this population requirement – Dallas County, Harris County, and Tarrant County.

[42] Both municipal courts of record and municipal courts that are not courts of record are statutorily designated as truancy courts.

[43] All references to sections within Chapter 65 mean Chapter 65 of the Family Code as added by House Bill 2398. As mentioned earlier, Chapter 65 is the sole chapter contained in new Title 3A of the Family Code.

parts of days within a six-month period in the same school year.[44]

This is the type of conduct over which truancy courts will exercise exclusive original jurisdiction when House Bill 2398 becomes effective on September 1st.[45] Juvenile courts will no longer have jurisdiction of this conduct. House Bill 2398 amends Section 51.03(b), Family Code to eliminate this conduct from the list of acts constituting conduct indicating a need for supervision [CINS].[46] In essence, HB 2398 has created a new form of conduct that is similar to delinquent conduct and conduct indicating a need for supervision. The juvenile courts will continue to handle delinquent conduct and CINS cases. But the juvenile courts will no longer hear cases involving allegations of truant conduct. Truant conduct cases will be handled (exclusively) by the new truancy courts.

We have now discussed the new type of court (truancy court) and the new type of conduct (truant conduct). Thus, we are ready to move on to a discussion of the new set of freestanding court procedures. These procedures will apply to cases involving allegations of truant conduct that will be handled by our new truancy courts.

Truancy Court Procedures

One of the consequences of decriminalizing truancy is that the Code of Criminal Procedure no longer applies to truancy cases. Similarly, a consequence of eliminating truancy from the universe of conduct indicating a need for supervision is that the Juvenile Justice Code no longer applies. Thus, an entirely new set of procedures is needed to govern truancy cases.

To accentuate this point, consider the following simple question: Is there such a thing as a jury trial in a truancy case? Well, the answer is not going to be found in the provisions in the Code of Criminal Procedure dealing with juries.[47] The Code of Criminal Procedure does not apply. Nor is the answer going to be found in the Family Code provisions making up the Juvenile Justice Code.[48] The Juvenile Justice Code no longer applies either. In fact, the answer is not going to be found in any law existing prior to the passage of HB 2398.

In order to answer this simple question about jury trials, one must look to an entirely new set of laws. This new set of laws is contained in the new Title 3A (Chapter 65) of the Family Code. Title 3A is the 30 pages of new procedures in truancy cases set out in Section 27 of House Bill 2398. No wonder Title 3A is 30 pages long. And no wonder House Bill 2398 consists of 79 pages. The bill does more than just decriminalize truancy and remove truancy from the realm of conduct indicating a need for supervision. The bill actually creates entirely new procedures (Title 3A) for handling entirely new conduct (truant conduct) in entirely new court (truancy courts).

Returning to the question about juries in truancy cases, the answer is found in Section 65.007. "A child alleged to have engaged in truant conduct is entitled to a jury trial."[49] Section 65.007 goes on to say that the number of jurors in a truant conduct case is six.[50] The statute further details that both the State and the child are entitled to three peremptory challenges.[51] No fee is to be paid for a jury trial.[52]

The point in discussing jury trials in truancy cases at this juncture is not to delve in to these particular details. Rather, the purpose is to illustrate that House Bill 2398 creates an entirely new set of court procedures.

Many of the new procedures are borrowed from the Juvenile Justice Code. For example, the new Chapter 65 contains a provision authorizing truancy courts to appoint a guardian ad litem for a child in certain situations.[53] The provision is clearly based on Family Code, Section 51.11.[54] Some of phraseology is exactly the same.

But not all Juvenile Justice Code provisions have been brought over to Title 3A. In fact, only selected provisions show up in the new truancy law. A con-

[44] Please note that the definition of truant conduct does not include the failure of a child to attend school on three or more days or parts of days within a four-week period. This act of nonattendance would constitute failure to attend school under Section 25.094, Education Code. This act would also constitute conduct indicating a need for supervision under Section 51.03(b)(2), Family Code. *See* text accompanying footnote 10. House Bill 2398 eliminates both of these provisions. *See* HB 2398, SECTION 18 (amending Section 51.03(b)(2), Family Code) and HB 2398, SECTION 41 (repealing Section 25.094, Education Code). The truancy reforms envision no court action for a child's absence on three or more days within a four-week period. This is a significant change.

[45] *See* HB 2398, SECTION 44 (effective date of HB 2398 is September 1, 2015.)

[46] HB 2398, SECTION 18.

[47] *See e.g.*, Tex. Crim. Proc. Code Ann. art. 45.025 – 45.036 (West 2006).

[48] *See* Tex. Fam. Code Ann. § 54.03(c) (West 2014).

[49] HB 2398, SECTION 29, Sec. 65.007(a).

[50] HB 2398, SECTION 29, Sec. 65.007(b).

[51] *Id.*

[52] HB 2398, SECTION 29, Sec. 65.007(c).

[53] HB 2398, SECTION 29, Sec. 65.061.

[54] Section 51.11 of the Family Code is part of the Juvenile Justice Code and is applicable to juvenile cases.

siderable number of Juvenile Justice Code provisions do not appear in Title 3A. Basically, the truancy court provisions may be considered a sort of "juvenile light."

While the new truancy provisions borrow many Juvenile Justice Code provisions, certain concepts from the Code of Criminal Procedure also make an appearance. A good example is Section 65.059 which allows a court to appoint an attorney for a child in certain situations. This provision is quite similar to Article 1.051 of the Code of Criminal Procedure which permits appointments of attorneys in the interest of justice. Justices of the peace and municipal judges have power to appoint attorneys to represent defendants under Article 1.051, although the power is rarely utilized.[55] Had Section 65.059 not been put in the new truancy provisions, then interest–of-justice appointments would not be authorized in truancy cases. This is because Article 1.051 applies only to criminal cases and under House Bill 2398 the truancy cases will no longer be criminal cases.

As indicated above, many of the truancy court procedures are borrowed from existing statutes. But some of the procedures are entirely new. For example, prosecutors must file petitions alleging truant conduct within 45 days of a child's last absence giving rise to the act of truant conduct.[56] This is an extremely short limitations period that has no precedent in Texas law. But given the goal to get children back in school as soon as possible, a very quick timeline for court intervention seems desirable.

The new truancy procedures set out in the new Chapter 65 of the Family Code are a mix of existing laws and new ideas. This article does not attempt to detail all of the new procedures. But a flowchart has been prepared that provides an in-depth guide to the new court procedures. This *Truancy Court Procedures Flowchart* can be accessed online via the Office of Court Administration website and by clicking here *Flowchart 1*. A commentary accompanying the flowchart is also available online at the OCA website and by clicking here *Flowchart 1 Steps*.

The Rest of House Bill 2398

Section 27 of House Bill 2398 comprises 30 pages and sets out the court procedures in truancy cases. But the entire bill is 79 pages long and consists of 44 sections. The other 49 pages and 44 sections of the bill do not detail court procedures. Of course, this does not mean these other sections are unimportant. In fact, they are critical to the overall objective of keeping kids in school.

Many of the other sections detail different directives to school districts and school personnel. For example, Section 9 of the bill makes significant amendments to Education Code, Section 25.0915 dealing with truancy prevention measures.[57] Section 12 amends Education Code, Section 25.095 dealing with certain school district notifications by school districts to parents of children who have missed school.[58] And Section 13 requires school districts to refer students to truancy courts when a student has failed to attend ten days of school in the same school year.[59]

These provisions will not be detailed in this document either. The article is not meant to be an exhaustive analysis of House Bill 2398. Rather, this article focuses on the reasons that House Bill 2398 came to be and the reasons an entirely new procedure was created. But a second flowchart has been prepared that systematically outlines procedures and requirements aimed at keeping kids in school. These procedures and requirements deal with children before they have (if they ever will be) been referred to truancy court. The *School Responsibilities Regarding Truancy Flowchart* is available online via the Office of Court Administration (OCA) website and by clicking here *Flowchart 2* . An accompanying commentary can be found online at the OCA website and by clicking here *Flowchart 2 Steps*

Other sections of the bill deal with neither truancy court procedures nor school district requirements. But these sections most definitely have a connection to truancy issues. One such section is Section 31 of the bill which establishes judicial donation trust funds.[60] These funds come from gifts and donations. The money realized can be used to assist needy children or families who appear before county, justice or municipal courts. The assistance comes in the form of "resources and services that eliminate barriers to school attendance or that seek to prevent criminal behavior."[61]

Another such section is Section 36 which concerns reporting requirements to the Office of Court Administration. In light of a new type of court and a new type of conduct, changes needed to be made to the statute mandating the reporting of court activity.[62]

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[55] For a comprehensive article on interest-of-justice appointments in municipal courts, *see* Ryan Kellus Turner, *The Oversimplification of the Assistance of Counsel in the Adjudication of Class C Misdemeanors in Texas,* Volume 18, No. 3 Municipal Court Recorder 1 (2009).

[56] HB 2398, SECTION 29, Sec. 65.055.

[57] HB 2398, SECTION 9.

[58] HB 2398, SECTION 12. These amendments serve to conform Section 25.095 to the new provisions in Title 3A of the Family Code.

[59] HB 2398, SECTION 13.

[60] HB 2398, SECTION 31.

[61] HB 2398, SECTON 31, Sec. 36.002.

[62] HB 2398, SECTION 36.

The various sections of the bill outside of Section 27 (which creates Title 3A) will not be detailed in this paper. But the content of all sections is detailed in a section-by-section commentary available in this newsletter.

Summary

While much has changed in the world of truancy, a great many things have remained the same. Justices of the peace and municipal judges still oversee cases involving children who habitually miss school. The remedies available to these judges to deal with truant children under current law will be available under the new law. The concept of making children responsible for attending school is still key. The overarching aim of keeping kids in school and facilitating their graduation from high school remains the goal.

But while much remains the same, the decriminalization of truancy has been achieved. New procedures have been put in place for the courts to handle the cases in this new decriminalized world. There is great promise that courts can utilize these procedures to keep children in school without saddling them with a criminal record.

Truancy Reform and School Attendance HB 2398

Code of Criminal Procedure

Code of Criminal Procedure Art. 4.14. JURISDICTION OF MUNICIPAL COURT. (g) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a); and

(2) cases that arise under Section 821.022, Health and Safety Code[~~, or Section 25.094, Education Code~~].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This existing municipal court jurisdictional provision drops its reference to Section 25.094, Education Code. This is because of the repeal of Section 25.094 in Section 41 of HB 2398. This provision now has no application to truancy cases. But municipalities may still enter into the type of agreement authorized by Article 4.14 pursuant to HB 2398's amendment to Section 29.003(i), Government Code.

Code of Criminal Procedure Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS. (f) The court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) [~~51.03(b)(8)~~], Family Code, while the person was a child.

(g) This article does not apply to any offense otherwise covered by:

(1) Chapter 106, Alcoholic Beverage Code; or

(2) Chapter 161, Health and Safety Code[~~; or~~ [~~(3) Section 25.094, Education Code~~]].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Article 45.0216 concerns expunctions generally in justice and municipal courts. The current statute explicitly states that it does not apply to Section 25.094, Education Code. Because Section 41 of HB 2398 repeals Section 25.094, the reference to Section 25.094 must be eliminated. As amended, Article 45.0216 still only concerns criminal convictions. The amended statute does not apply to truancy cases.

Code of Criminal Procedure Art. 45.0531. DISMISSAL OF PARENT CONTRIBUTING TO NONATTENDANCE CHARGE. Notwithstanding any other law, a county, justice, or municipal court, at the court's discretion, may dismiss a charge against a defendant alleging the defendant committed an offense under Section 25.093, Education Code, if the court finds that a dismissal would be in the interest of justice because:

(1) there is a low likelihood of recidivism by the defendant; or

(2) sufficient justification exists for the failure to attend school.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: While the offense of failure to attend school is repealed by Section 41 of HB 2398, the offense of Parent Contributing to Nonattendance still exists. Article 45.0531 is a new statute that gives the courts handling parent contributing to nonattendance cases greater leeway in dismissing such cases.

Code of Criminal Procedure Art. 45.0541. EXPUNCTION OF FAILURE TO ATTEND SCHOOL RECORDS. (a) In this article, "truancy offense" means an offense committed under the former Section 25.094, Education Code.

(b) An individual who has been convicted of a truancy offense or has had a complaint for a truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or complaint expunged.

(c) Regardless of whether the individual has filed a petition for expunction, the court in which the individual was convicted or a complaint for a truancy offense

was filed shall order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the individual's record. After entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This new statute applies to convictions for failure to attend school that occurred under the law prior to the effective date of HB 2398. The statute also applies to complaints for failure to attend school that were ultimately dismissed. Courts that handled failure to attend school cases are directed to order the records in the cases to be expunged. This includes records held by school districts and law enforcement agencies. While a petition seeking an expunction order can be filed, courts appear to have a duty to order expunctions even in the absence of a petition. The consequence of the order is that the individual who is the subject of the order is "released from all disabilities resulting from the conviction or complaint." A question has arisen as to whether unpaid fines and court costs are no longer owed by the beneficiary of an expunction. The literal language of this statute would appear to call for an affirmative answer.

Another question is whether any effect should be given to this statute at all in light of the applicability provision of HB 2398. *See* "Applicability" above. The bill is to apply only to an offense committed, or conduct that occurs, on or after the effective date of the bill. The convictions that courts are directed to expunge will all have necessarily occurred prior to the effective date of the bill.

Code of Criminal Procedure Art. 45.056. JUVENILE CASE MANAGERS. (a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians;

(2) employ one or more juvenile case managers who:

(A) shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases; and

(B) may provide:

(i) prevention services to a child considered at risk of entering the juvenile justice system; and

(ii) intervention services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses; or

(3) agree in accordance with Chapter 791, Government Code, with any appropriate governmental entity to jointly employ a case manager or to jointly contribute to the costs of a case manager employed by one governmental entity to provide services described by Subdivisions (1) and (2).

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute concerns juvenile case managers. Given that truancy cases are no longer handled as juvenile or criminal cases, there is a question whether this statute applies in truancy cases. The actual amendment to the statute allows a governmental entity to jointly contribute to the costs of a juvenile case manager with another governmental entity.

Code of Criminal Procedure Art. 102.014. COURT COSTS FOR CHILD SAFETY FUND IN MUNICIPALITIES. (d) A person convicted of an offense under Section 25.093 [~~or 25.094~~], Education Code, shall pay as taxable court costs $20 in addition to other taxable court costs. The additional court costs under this subsection shall be collected in the same manner that other fines and taxable court costs in the case are collected.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Article 102.014 calls for a $20 court cost upon conviction of the offense of failure to attend school. With the repeal of the offense by HB 2398, there will obviously no longer be any need for the court cost. The bill does away with the $20 court cost in failure to attend school cases. The court cost remains in

parent contributing to nonattendance cases because that particular criminal act is not repealed.

Education Code

Education Code Sec. 7.111. HIGH SCHOOL EQUIVALENCY EXAMINATIONS. (a) The board shall provide for the administration of high school equivalency examinations.

(b) Section 7.111(a-1), Education Code, is amended to conform to the amendment of Section 7.111(a), Education Code, by Chapter 1217 (SB 1536), Acts of the 83rd Legislature, Regular Session, 2013, and is further amended to read as follows:

(a-1) A person who does not have a high school diploma may take the examination in accordance with rules adopted by the board if the person is:

(1) over 17 years of age;

(2) 16 years of age or older and:

(A) is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.), and its subsequent amendments;

(B) a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination; or

(C) is enrolled in the Texas Military Department's [~~adjutant general's department's~~] Seaborne Challenge Corps; or

(3) required to take the examination under a court order issued under Section 65.103(a)(3), Family Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute concerns high school equivalency examinations. The amendment recognizes that truancy courts may order children to take the high school equivalency exam under Section 65.103, Family Code.

Education Code Sec. 25.085. COMPULSORY SCHOOL ATTENDANCE. (b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 19th [~~18th~~] birthday shall attend school.

(e) A person who voluntarily enrolls in school or voluntarily attends school after the person's 19th [~~18th~~] birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087, except a school district may not revoke the enrollment of a person under this subsection on a day on which the person is physically present at school. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 65.003(a), Family Code, does not apply [~~25.094 applies~~] to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

(g) After the third unexcused absence of a person described by Subsection (e), a school district shall issue a warning letter to the person that states the person's enrollment may be revoked for the remainder of the school year if the person has more than five unexcused absences in a semester.

(h) As an alternative to revoking a person's enrollment under Subsection (e), a school district may impose a behavior improvement plan described by Section 25.0915(a-1)(1).

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute is our state's compulsory school attendance law. The statute is amended in a significant way. Specifically, 18-year-olds will now be required to attend school. Prior to the amendment, school attendance was not required after a person's 18th birthday. With this change, subsection (e) of the statute is also changed. Subsection (e) addresses persons who voluntarily attend school after the age at which they are legally required to attend. Such voluntary attenders become legally obligated to attend school. Two changes have been made to Subsection (e). First, there is a recognition that only upon turning 19 does the concept of voluntary attendance become relevant. Second, the subsection now declares that a school district may not revoke a voluntary attender's enrollment on a day that the person is physically present at school.

Subsection (f) is also amended. This subsection authorizes school districts to adopt policies to require voluntary school attenders to attend school until the end

of the school year. The subsection said a voluntary attender could commit the offense of failure to attend school under a school district policy. The amendment changes things. The amendment says voluntary attenders cannot be found to have engaged in truant conduct. A school district may still enact a policy requiring voluntary attenders to attend school until the end of the school year. But the failure of a voluntary attender to attend cannot constitute truant conduct.

Subsections (g) and (h) are new and concern voluntary attenders who have more than five unexcused absences in a semester. Subsection (g) permits school districts to revoke such a voluntary attender's school enrollment. Subsection (h) authorizes school districts to require the voluntary attender to participate in a behavior improvement plan instead of revoking a voluntary attender's enrollment.

Education Code Sec. 25.091. POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS. (a) A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the student to a truancy court [~~juvenile court or filing a complaint against the student in a county, justice, or municipal court~~] if the student has unexcused absences for the amount of time specified under Section 65.003(a) [~~25.094 or under Section 51.03(b)(2)~~], Family Code; or

(ii) filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record; and

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent[~~; and~~

[~~(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process~~].

(b) An attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the student to a truancy court [~~juvenile court or filing a complaint against the student in a county, justice, or municipal court~~] if the student has unexcused absences for the amount of time specified under Section 65.003(a) [~~25.094 or under Section 51.03(b)(2)~~], Family Code; and

(ii) filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence; and

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements[~~; and~~

[~~(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process~~].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: There are two major changes to Section 25.091. The first change concerns the parts of the statute allowing school attendance officers to refer truant students to court. The law prior to HB 2398 called for referring a student to a juvenile court or filing a complaint against a student in a county, justice or municipal court. The changes authorize attendance officers to refer truant students to the new truancy courts. The second change prohibits school attendance officers from taking students into custody. Prior to the amendment, officers could take truant students into custody pursuant to a court-ordered legal process. This will no longer be allowed.

Education Code Sec. 25.0915. TRUANCY PREVENTION MEASURES[~~; REFERRAL AND FILING REQUIREMENT~~]. (a) A school district shall adopt truancy prevention measures designed to:

(1) address student conduct related to truancy in the school setting before the student engages in conduct described by Section 65.003(a), Family Code; and

(2) minimize the need for referrals to truancy [~~juvenile~~] court for conduct described by Section 65.003(a) [~~51.03(b)(2)~~], Family Code[~~; and~~

[~~(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094~~].

(a-1) As a truancy prevention measure under Subsection (a), a school district shall take one or more of the following actions:

(1) impose:

(A) a behavior improvement plan on the student that must be signed by an employee of the school, that the school district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes:

(i) a specific description of the behavior that is required or prohibited for the student;

(ii) the period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; or

(iii) the penalties for additional absences, including additional disciplinary action or the referral of the student to a truancy court; or

(B) school-based community service; or

(2) refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

(a-2) A referral made under Subsection (a-1)(2) may include participation by the child's parent or guardian if necessary.

(a-3) A school district shall offer additional counseling to a student and may not refer the student to truancy court if the school determines that the student's truancy is the result of:

(1) pregnancy;

(2) being in the state foster program;

(3) homelessness; or

(4) being the principal income earner for the student's family.

(a-4) If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Section 25.0951(a), the school district shall initiate truancy prevention measures under this section on the student.

(b) Each referral to truancy [~~juvenile~~] court for conduct described by Section 65.003(a) [~~51.03(b)(2)~~], Family Code, [~~or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094~~] must:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied the truancy prevention measures adopted under Subsection (a) or (a-4) to the student; and

(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and

(2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

(c) A truancy court shall dismiss a petition filed by a truant conduct prosecutor under Section 65.054, Family Code, if the court determines that the school district's referral:

(1) does [~~complaint or referral made by a school district under this section that is~~] not comply [~~made in compliance~~] with Subsection (b);

(2) does not satisfy the elements required for truant conduct;

(3) is not timely filed, unless the school district delayed the referral under Section 25.0951(d); or

(4) is otherwise substantively defective.

(d) Except as provided by Subsection (e), a school district shall employ a truancy prevention facilitator or juvenile case manager to implement the truancy prevention measures required by this section and any other effective truancy prevention measures as determined by the school district or campus. At least annually, the truancy prevention facilitator shall meet to discuss effective truancy prevention measures with a case manager or other individual designated by a truancy court to provide services to students of the school district in truancy cases.

(e) Instead of employing a truancy prevention facilitator, a school district may designate an existing district employee or juvenile case manager to implement the truancy prevention measures required by this section and any other effective truancy prevention measures as determined by the school district or campus.

(f) The agency shall adopt rules:

(1) creating minimum standards for truancy prevention measures adopted by a school district under this section; and

(2) establishing a set of best practices for truancy prevention measures.

(g) The agency shall adopt rules to provide for sanctions for a school district found to be not in compliance with this section.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Since 2011, the Education Code has required that school districts adopt "truancy prevention measures." These measures are designed to address student conduct related to truancy in the school setting. The goal of the measures is to minimize the need to refer students to court for truancy. Under the law prior to HB 2398, each complaint for failure to attend school had to be accompanied by a statement from the student's school. Each referral to juvenile court also had to be accompanied by a statement from the student's school. The statement had to certify that the school applied the district's truancy prevention measures to the student in question. The statement also had to certify that the truancy prevention measures failed to meaningfully address the student's attendance issues. The complaint also had to specify whether the student is eligible for, or receives, special education services under Subchapter A, Chapter 29, Education Code. If the complaint did not make the required certifications or specify the special education information, then the court would have to dismiss the complaint.

The amendments to Section 25.0915 do not affect the basic idea that was in place prior to the amendments. No longer are complaints filed in justice and municipal courts for the criminal offense of failure to attend school. In addition, referrals are no longer made to juvenile courts. But referrals are made to the new truancy courts. A petition based on the referral must be accompanied by a statement containing the certifications described above. The petition must also contain the specification described above. If the petition is not accompanied by these things, then the truancy court is required to dismiss the petition.

While the amended version of Section 25.0915 operates very much like the previous version of the statute, there are some very significant additions. Subsections (a-1), (a-2), (a-3), (a-4), (d), (e), (f), and (g) have been added to the statute. Additionally, Subsection (c) has been substantially amended. Each of these subsections will be discussed in turn.

Subsection (a-1) gives school districts specific direction concerning the truancy prevention measures that they must adopt. Prior to Subsection (a), there was just a general directive for school districts to adopt truancy prevention measures. There was no specific direction on what the truancy prevention measures needed to be. Under Subsection (a-1), school districts must take at least one of the following actions as a truancy prevention measures:

(1) Impose a behavior improvement plan on the student. The plan should ideally include (a) a specific description of the behavior that is required or prohibited; (b) the period for which the plan will be effective; or (c) the penalties for additional absences including referral of the student to a truancy court. At least one of the aforementioned three things must be included in the plan.

(2) Impose school-based community services on the student.

(3) Refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

Subsection (a-2) states that a referral under (3) above may include participation by the student's parent or guardian.

Subsection (a-3) declares that a school district may not refer a student to truancy court if the school determines that the student's truancy is the result of: (1) pregnancy; (2) being in the state foster program; (3) homelessness; or (4) being the principal income earner for the family. Subsection (a-4) speaks to the point in time at which school districts are required to initiate truancy prevention measures. That time is when a student fails to attend school without excuse on three or more days or partial days within a four-week period.

As amended, Subsection (c) requires a truancy court to dismiss a petition that does not contain the required statements and specifications required under Subsection (b). But the new Subsection (c) also specifies other deficiencies in the school district's referral that will mandate dismissal of a petition alleging truant conduct. Specifically, a petition based on a referral that does not satisfy the elements required for truant conduct must be dismissed. Also, a petition based on a referral

that is not timely filed must be dismissed. And a petition based on a referral that is "otherwise substantively defective must be dismissed.

Subsection (d) requires, as a general rule, that a school district employ a truancy prevention facilitator or a juvenile case manager. The truancy prevention facilitator or the juvenile case manager is to implement the truancy prevention measures that are the subject of Section 25.0915. Subsection (e) creates an exception to Subsection (d). Instead of employing a truancy prevention facilitator, a school district may designate an existing employee to implement the truancy prevention measures.

Subsection (f) directs the Texas Education Agency (TEA) to adopt rules setting out minimum standards for the truancy prevention measures that school districts must adopt. The TEA must also adopt rules establishing a set of best practices for truancy prevention measures. Subsection (g) direct the TEA to adopt rules providing for sanctions for a school district found to be not in compliance with Section 25.0915.

Education Code Sec. 25.0916. UNIFORM TRUANCY POLICIES IN CERTAIN COUNTIES. (a) This section applies to a county with two or more courts hearing truancy cases and two or more school districts[~~:~~

[~~(1) with a population greater than 1.5 million; and~~

[~~(2) that includes at least:~~

[~~(A) 15 school districts with the majority of district territory in the county; and~~

[~~(B) one school district with a student enrollment of 50,000 or more and an annual dropout rate spanning grades 9-12 of at least five percent, computed in accordance with standards and definitions adopted by the National Center for Education Statistics of the United States Department of Education~~].

(c) Unless the county has already adopted a uniform truancy policy under this section, not [~~Not~~] later than January [~~September~~] 1, 2016 [~~2013~~], the county judge or the county judge's designee and the mayor of the municipality in the county with the greatest population or the mayor's designee shall each appoint one member to serve on the committee as a representative of each of the following:

(1) a juvenile [~~district~~] court;

(2) a municipal court;

(3) the office of a justice of the peace;

(4) the superintendent or designee of an independent school district;

(5) an open-enrollment charter school, if one exists in the county;

(6) the office of the prosecutor with original truancy jurisdiction in the county [~~district attorney~~]; and

(7) the general public.

(c-1) In addition to the members listed in Subsection (c), the chief juvenile probation officer or the officer's designee serves on the committee. The county judge or the county judge's designee and the mayor of the municipality in the county with the greatest population or the mayor's designee may make additional appointments as needed.

(f) Unless a county has already adopted a uniform truancy policy under this section, not [~~Not~~] later than May [~~September~~] 1, 2016 [~~2014~~], the committee shall recommend:

(1) a uniform process for filing truancy cases with truancy courts [~~the judicial system~~];

(2) uniform administrative procedures;

(3) uniform deadlines for processing truancy cases;

(4) a local plan with strategies to address truancy, including effective prevention, intervention, and diversion methods to reduce truancy and referrals to a truancy [~~county, justice, or municipal~~] court;

(5) a system for tracking truancy information and sharing truancy information among school districts, [~~and~~] open-enrollment charter schools, truancy courts, juvenile courts, and juvenile probation departments in the county; and

(6) any changes to statutes or state agency rules the committee determines are necessary to address truancy.

(h) The committee's presiding officer shall issue a report not later than December 1, 2017 [~~2015~~], to the county judge and mayor of the municipality with the greatest population in the county on the implementation of the recommendations and compliance with state truancy laws by a school district located in the county.

(i) This section expires January 1, 2018 [~~2016~~].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 25.0916 was passed in 2013. The statute called for the creation of a committee in counties with populations of over 1.5 million that also met other requirements. The statute was designed with Bexar County in mind. Committees created under this statute were charged with recommending uniform truancy policies for each school district in the county.

HB 2398 amends this statute in multiple ways. As an initial matter, the new Section 25.0916 greatly expands the universe of counties that must create a committee. Now the statute will apply to any county "with two or more courts hearing truancy cases and two or more school districts."

Subsection (c) requires counties to create committees by January 1, 2016. Counties that have already adopted a uniform truancy policy (*i.e.,* Bexar County) are exempt from the requirement. Under the original version of this subsection, the county judge and the mayor of the county's largest municipality make the appointments to the committee. The amended subsection allows a designee of each of those officer to make the appointments.

Subsection (c-1) is new. This statute adds the county's chief juvenile probation officer (or that officer's designee) to the committee. The county judge and the mayor (or their designees who make appointments) are authorized to make additional appointments beyond the designated committee members set out in Subsection (c).

Subsection (f) sets a May 1st deadline for county committees to make their recommendations. Subsection (f) calls for the presiding officer of the committee to issue a report on the implementation of the recommendations by December 1, 2017.

Education Code Sec. 25.093. PARENT CONTRIBUTING TO NONATTENDANCE. (a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 65.003(a), Family Code [~~25.094~~], the parent commits an offense.

(c) An offense under Subsection (a) is a [~~Class C~~] misdemeanor, punishable by fine only, in an amount not to exceed:

(1) $100 for a first offense;
(2) $200 for a second offense;
(3) $300 for a third offense;
(4) $400 for a fourth offense; or
(5) $500 for a fifth or subsequent offense.

(c-1) Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: HB 2398 decriminalizes truancy by repealing the statute making failure to attend school a crime (Section 25.094, Education Code). But the bill does not repeal Section 25.093 which creates the offense of parent contributing to nonattendance. While HB 2398 does not repeal Section 25.093, the bill does change the amount of the fine for a conviction. Under the old law, the offense of parent contributing to nonattendance was a Class C misdemeanor. The maximum fine in a Class C misdemeanor case is $500. The amended version of the statute no longer classifies parent contributing to nonattendance as a Class C misdemeanor. Rather, the amended statute just refers to the offense as a misdemeanor. This allows the penalty to be changed from the general fine amount applicable to all Class C misdemeanors to another amount. Here, the amount of the fine is set at an amount not to exceed $100 for a first offense. The fine amount increases in stair-step fashion for subsequent parent contributing to nonattendance offenses.

Education Code Sec. 25.095. WARNING NOTICES. (a) A school district or open-enrollment charter school shall notify a student's parent in writing at the beginning of the school year that if the student is absent from school on 10 or more days or parts of days within a six-month period in the same school year [~~or on three or more days or parts of days within a four-week period~~]:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to [~~prosecution under Section 25.094 or to~~] referral to a truancy [~~juvenile~~] court [~~in a county with a population of less than 100,000~~] for truant conduct under Section 65.003(a), Family Code [~~that violates that section~~].

(b) A school district shall notify a student's parent if the student has been absent from school, without excuse under Section 25.087, on three days or parts of days within a four-week period. The notice must:

(1) inform the parent that:

(A) it is the parent's duty to monitor the student's school attendance and require the student to attend school; and

(B) the student [~~parent~~] is subject to truancy prevention measures [~~prosecution~~] under Section 25.0915 [~~25.093~~]; and

(2) request a conference between school officials and the parent to discuss the absences.

(c) The fact that a parent did not receive a notice under Subsection (a) or (b) does not create a defense [~~to prosecution~~] under Section 25.093 or under Section 65.003(a), Family Code [~~25.094~~].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 25.095 concerns warning notices that are sent to parents concerning truancy.

The amendments to the statute reflect the more limited definition of truant conduct under HB 2398. Absence from school on three or more days or parts of days in a four-week period no longer constitutes truancy.

Education Code Sec. 25.0951. SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL. (a) If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall within 10 school days of the student's 10th absence[~~:~~

[~~(1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or~~

[~~(2)~~] refer the student to a truancy [~~juvenile~~] court for truant conduct [~~indicating a need for supervision~~] under Section 65.003(a) [~~51.03(b)(2)~~], Family Code.

(b) If a student fails to attend school without excuse as specified by Subsection (a), a school district may file a complaint against the student's parent in a county, justice, or municipal court for an offense under Section 25.093 if the school district provides evidence of the parent's criminal negligence [~~If a student fails to attend school without excuse on three or more days or parts of days within a four week period but does not fail to attend school for the time described by Subsection (a), the school district may:~~

[~~(1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or~~

[~~(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code~~].

[~~(c)~~] In this subsection [~~section~~], "parent" includes a person standing in parental relation.

(c) [~~(d)~~] A court shall dismiss a complaint [~~or referral~~] made by a school district under Subsection (b) [~~under this section~~] that:

(1) does [~~is~~] not comply [~~made in compliance~~] with this section;

(2) does not allege the elements required for the offense;

(3) is not timely filed, unless the school district delayed the referral under Subsection (d); or

(4) is otherwise substantively defective.

(d) Notwithstanding Subsection (a), a school district may delay a referral of a student for truant conduct, or may choose to not refer a student for truant conduct, if the school district:

(1) is applying truancy prevention measures to the student under Section 25.0915; and

(2) determines that the truancy prevention measures are succeeding and it is in the best interest of the student that a referral be delayed or not be made.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This is a very significant statute. The process of a truancy court handling a truant conduct case is initiated by a school district referring a student to the court. A school district must make a referral "[i]f a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year." The referral must be made within 10 school days of the student's 10th absence.

If a student fails to attend school as indicated above, the relevant school district may also file a complaint against the student's parent. The complaint is for the offense of parent contributing to nonattendance. The complaint is to be filed in a county, justice, or municipal court. (Please note that most county courts will not have jurisdiction over parent contributing to nonattendance cases.) Typically, the complaint is filed with the court that is handling the truant conduct case against the parent's child. The court will not be acting as a truancy court when handling a parent contributing to nonattendance case. Rather, the court will be acting in its regular capacity. For example, a justice court will hear the Class C misdemeanor offense of parent contributing to nonattendance under the court's general jurisdiction. *See* Tex. Const. art. V, §19 ("Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only . . . ."). Similarly, municipal courts will be acting in their normal capacity as courts with jurisdiction over Class C misdemeanor cases. *See* Tex. Gov't Code Ann. §§29.003(b), 30.00005(a) (West Supp. 2014). In counties with a population of 1.75 million or more, the constitutional county court has jurisdiction of parent contributing to nonattendance cases. Tex. Gov't Code Ann. § 26.045(d) (West Supp. 2014). The constitutional county judge in these counties may appoint one or more magistrates to hear parent contributing to nonattendance cases. Tex. Gov't Code Ann. § 54.1172 (West 2013).

As amended, this statute permits complaints to be filed for parent contributing to nonattendance only "if the school district provides evidence of the parent's criminal negligence. For a parent to be convicted of the offense, the parent must have "with criminal negligence" failed to require the child to attend school. This has

been a longstanding part of the statute. But the requirement that the school district provide evidence of the parent's criminal negligence is a new provision. The new provision may serve to reduce the number of complaints filed for parent contributing to nonattendance.

Subsection (c) details the circumstances under which a court may dismiss a school district's complaint against a parent for parent contributing to nonattendance. Subsection (d) is entirely new. (A previous Subsection (d) has become Subsection (c).) This subsection creates an exception to the general rule that school districts must refer students to truancy court if the student engaged in truant conduct. Specifically, a school district is permitted to "delay a referral" if the school district does three things. First, the district must apply truancy prevention measures to the student. Second, the district must determine that the truancy prevention measures are succeeding. Third, the district must determine that the delay of a referral is in the best interest of the student.

Education Code Sec. 25.0952. PROCEDURES APPLICABLE TO PARENT CONTRIBUTING TO NONATTENDANCE OFFENSE [~~SCHOOL ATTENDANCE RELATED OFFENSES~~]. In a proceeding based on a complaint under Section 25.093 [~~or 25.094~~], the court shall, except as otherwise provided by this chapter, use the procedures and exercise the powers authorized by Chapter 45, Code of Criminal Procedure.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The amendment to this statute merely reflects the fact that the offense of failure to attend school has been repealed. Accordingly, the procedures and powers set out in Chapter 45 of the Code of Criminal Procedure will no longer apply in truancy cases. But Chapter 45 will continue to apply in parent contributing to nonattendance cases.

Education Code Sec. 29.087. HIGH SCHOOL EQUIVALENCY PROGRAMS. (d) A student is eligible to participate in a program authorized by this section if:

(1) the student has been ordered by a court under Section 65.103, Family Code [~~Article 45.054, Code of Criminal Procedure, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001~~], or by the Texas Juvenile Justice Department [~~Youth Commission~~] to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under Section 7.111; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is a student at risk of dropping out of school, as defined by Section 29.081;

(C) the student and the student's parent or guardian agree in writing to the student's participation;

(D) at least two school years have elapsed since the student first enrolled in ninth grade and the student has accumulated less than one third of the credits required to graduate under the minimum graduation requirements of the district or school; and

(E) any other conditions specified by the commissioner.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: High school equivalency programs prepare eligible students to take a high school equivalency examination. Subsection (d) explains which students are eligible to participate in such a program. Amendments to Subsection (d) simply recognize that the court ordering a student to participate in one of these programs is the truancy court. Additionally, the amendments substitute the Texas Juvenile Justice Department for the Texas Youth Commission.

Education Code Sec. 33.051. DEFINITIONS. (2) "Missing child" means a child whose whereabouts are unknown to the legal custodian of the child and:

(A) the circumstances of whose absence indicate that the child did not voluntarily leave the care and control of the custodian and that the taking of the child was not authorized by law; or

(B) the child has engaged in conduct indicating a need for supervision under Section 51.03(b)(2) [~~51.03(b)(3)~~], Family Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code

Family Code Sec. 51.02. DEFINITIONS. (15) "Status offender" means a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:

(A) [~~truancy under Section 51.03(b)(2);~~

[~~(B)~~] running away from home under Section 51.03(b)(2) [~~51.03(b)(3)~~];

(B) [~~(C)~~] a fineable only offense under Section 51.03(b)(1) transferred to the juvenile court under Section 51.08(b), but only if the conduct constituting the offense would not have been criminal if engaged in by an adult;

[~~(D) failure to attend school under Section 25.094, Education Code;~~]

(C) [~~(E)~~] a violation of standards of student conduct as described by Section 51.03(b)(4) [~~51.03(b)(5)~~];

(D) [~~(F)~~] a violation of a juvenile curfew ordinance or order;

(E) [~~(G)~~] a violation of a provision of the Alcoholic Beverage Code applicable to minors only; or

(F) [~~(H)~~] a violation of any other fineable only offense under Section 8.07(a)(4) or (5), Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 51.02 defines the term "status offender." The term no longer includes a child who is accused or convicted of the offense of failure to attend school. HB 2398 repealed the statute making failure to attend school a criminal offense. Additionally, the term no longer includes a child who is accused of (or adjudicated for) truancy. Truancy constituted conduct indicating a need for supervision under the law prior to HB 2398.

It should be noted, however, that a status offender, by definition, is a child who is accused of, adjudicated for, or convicted for conduct that would not be a crime if committed by an adult. This change deletes both truancy under Section 51.03(b)(2) of Family Code and failure to attend school under Section 25.094 of the Education Code from the list of specifically enumerated status offenses. The newly created civil offense of truant conduct under Section 65.003 was not added to the list. However, this is not an exhaustive list and the failure to specifically include truant conduct does not change the fact that it meets the definition of a status offense as derived from the federal Juvenile Justice and Delinquency Prevention. It is a violation of the law to fail to attend school because of the person's status of as a child. An adult cannot commit this offense.

It is important to be aware that truant conduct is a status offense. The primary reason relates to the fact that contempt cases may be referred to juvenile court based on a violation of an underlying truant conduct order. These status offense-based contempt referrals often present detention issues and may impose other restrictions on the permissibility, hearing requirements and length of detention outlined in Section 54.011 of the Family Code. This provision is consistent with federal law and still applies to contempt matters based on truant conduct.

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION. (a) Delinquent conduct is:

(1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

(A) a justice or municipal court; [~~or~~]

(B) a county court for conduct punishable only by a fine; or

(C) a truancy court;

(3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) [~~the absence of a child on 10 or more days or parts of days within a six month period in the same school year or on three or more days or parts of days within a four week period from school;~~

[~~(3)~~] the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(3) [~~(4)~~] conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(4) [~~(5)~~] an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;

(5) [~~(6)~~] conduct that violates a reasonable and lawful order of a court entered under Section 264.305;

(6) [~~(7)~~] notwithstanding Subsection (a)(1), conduct described by Section 43.02(a)(1) or (2), Penal Code; or

(7) [~~(8)~~] notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

(e) For the purposes of Subsection (b)(2) [~~(b)(3)~~], "child" does not include a person who is married, divorced, or widowed.

(f) Conduct [~~Except as provided by Subsection (g), conduct~~] described under Subsection (b)(1) does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 51.03 defines the terms "delinquent conduct" and "conduct indicating a need for supervision." The amendment removes the act of truancy from the list of conduct indicating a need for supervision. This effectively means that juvenile courts no longer have jurisdiction over truancy cases.

Additionally, the statute is amended to slightly expand the definition of delinquent conduct. Before the amendment, delinquent conduct included conduct in violation of a lawful order of selected courts that would constitute contempt of court. The selected courts were justice courts, municipal courts, and county court handling criminal cases punishable by fine only. The amendment adds truancy courts to this list.

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (e) A finding that a child engaged in conduct indicating a need for supervision as described by Section 51.03(b)(7) [~~51.03(b)(8)~~] is a conviction only for the purposes of Sections 43.261(c) and (d), Penal Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) If a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) [~~51.03(b)(8)~~], the juvenile court may enter an order requiring the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 54.05. HEARING TO MODIFY DISPOSITION. (b) Except for a commitment to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility under Section 54.04011[~~, a disposition under Section 54.0402,~~] or a placement on determinate sentence probation under Section 54.04(q), all dispositions automatically terminate when the child reaches the child's 18th birthday.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 54.05 concerns hearings to modify juvenile dispositions. Subsection (b) contained a reference to a disposition under Section 54.0402 which is a dispositional order for truancy under Section 51.03(b)(2). HB 2398 eliminates truancy as an act constituting conduct indicating a need for supervision. Accordingly, the reference to Section 54.0402 in Section 54.05 needed to be eliminated.

Family Code Sec. 58.0022. FINGERPRINTS OR PHOTOGRAPHS TO IDENTIFY RUNAWAYS. A law enforcement officer who takes a child into custody with probable cause to believe that the child has engaged in conduct indicating a need for supervision as described by Section 51.03(b)(2) [~~51.03(b)(3)~~] and who after reasonable effort is unable to determine the identity of the child, may fingerprint or photograph the child to estab-

lish the child's identity. On determination of the child's identity or that the child cannot be identified by the fingerprints or photographs, the law enforcement officer shall immediately destroy all copies of the fingerprint records or photographs of the child.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 58.003. SEALING OF RECORDS. (c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court, on the court's own motion and without a hearing, shall order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~] or taken into custody to determine whether the child engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~]. This subsection Applies to records related to conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 58.106. CONFIDENTIALITY. (a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency;

(4) to the Texas Juvenile Justice Department [~~Youth Commission and the Texas Juvenile Probation Commission~~] for analytical purposes;

(5) to the office of independent ombudsman of the Texas Juvenile Justice Department [~~Youth Commission~~]; and

(6) to a county, justice, or municipal court exercising jurisdiction over a juvenile[~~, including a court exercising jurisdiction over a juvenile under Section 54.021~~].

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The amendments to this statute recognize that the Texas Youth Commission and the Texas Juvenile Probation Commission are now collectively the Texas Juvenile Justice Department. Additionally, the amendments remove the reference to the exercise of a juvenile court over a juvenile in a truancy case.

Family Code Sec. 59.003. SANCTION LEVEL ASSIGNMENT MODEL. (a) Subject to Subsection (e), after a child's first commission of delinquent conduct or conduct indicating a need for supervision, the probation department or prosecuting attorney may, or the juvenile court may, in a disposition hearing under Section 54.04 or a modification hearing under Section 54.05, assign a child one of the following sanction levels according to the child's conduct:

(1) for conduct indicating a need for supervision, other than conduct described in Section 51.03(b)(3) or (4) [~~51.03(b)(4) or (5)~~] or a Class A or B misdemeanor, the sanction level is one;

(2) for conduct indicating a need for supervision under Section 51.03(b)(3) or (4) [~~51.03(b)(4) or (5)~~] or a Class A or B misdemeanor, other than a misdemeanor involving the use or possession of a firearm, or for delinquent conduct under Section 51.03(a)(2), the sanction level is two;

(3) for a misdemeanor involving the use or possession of a firearm or for a state jail felony or a felony of the third degree, the sanction level is three;

(4) for a felony of the second degree, the sanction level is four;

(5) for a felony of the first degree, other than a felony involving the use of a deadly weapon or causing serious bodily injury, the sanction level is five;

(6) for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or for a capital felony, the sanction level is six; or

(7) for a felony of the first degree involving the use of a deadly weapon or causing serious bodily injury, for an aggravated controlled substance felony, or

for a capital felony, if the petition has been approved by a grand jury under Section 53.045, or if a petition to transfer the child to criminal court has been filed under Section 54.02, the sanction level is seven.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The change in the statutory reference in this statute has nothing to do with truancy reform. The change is necessitated by the deletion of the statutory provision making truancy a form of conduct indicating a need for supervision.

Family Code Sec. 61.002. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:

(1) for payment of probation fees under Section 54.061;

(2) for restitution under Sections 54.041(b) and 54.048;

(3) for payment of graffiti eradication fees under Section 54.0461;

(4) for community service under Section 54.044(b);

(5) for payment of costs of court under Section 54.0411 or other provisions of law;

(6) requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);

(7) enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);

(8) ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);

(9) [~~requiring a parent or guardian of a child found to be truant to participate in an available program addressing truancy under Section 54.041(f);~~

[~~(10)~~] requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);

(10) [~~(11)~~] requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);

(11) [~~(12)~~] requiring payment of deferred prosecution supervision fees under Section 53.03(d);

(12) [~~(13)~~] requiring a parent or other eligible person to attend a court hearing under Section 51.115;

(13) [~~(14)~~] requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r);

(14) [~~(15)~~] requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title;

(15) [~~(16)~~] for payment of fees under Section 54.0462; or

(16) [~~(17)~~] for payment of the cost of attending an educational program under Section 54.0404.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The amendment to this statute removes a reference to a juvenile court order affecting parents and others in a case involving conduct indicating a need for supervision known as truancy. Truancy no longer constitutes conduct indicating a need for supervision.

Family Code
Title 3A

Subchapter A. General Provisions

Family Code Sec. 65.001. SCOPE AND PURPOSE. (a) This chapter details the procedures and proceedings in cases involving allegations of truant conduct.

(b) The purpose of this chapter is to encourage school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences.

(c) The best interest of the child is the primary consideration in adjudicating truant conduct of the child.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The decriminalization of truancy by the Texas Legislature does not mean that legislators did not want to continue to hold children accountable for missing school. On the contrary, legislators know the importance of keeping kids in school. They know that having negative consequences for missing school can serve to encourage school attendance. So, the legislators added a brand new title to the Family Code. Section 65.001(b) explicitly states that the goal of the new title is to hold children accountable for missing school. Section 65.001(b) also recognizes that courts

will have a major role in this accountability. Accordingly, Title 3A is created to set out the procedures courts will use in effectuating this accountability. The act of missing school will no longer result in a criminal conviction. But make no mistake, the courts will continue to hold children accountable for missing school.

Family Code Sec. 65.002. DEFINITIONS. In this chapter:

(1) "Child" means a person who is 12 years of age or older and younger than 19 years of age.

(2) "Juvenile court" means a court designated under Section 51.04 to exercise jurisdiction over proceedings under Title 3.

(3) "Qualified telephone interpreter" means a telephone service that employs licensed court interpreters, as defined by Section 157.001, Government Code.

(4) "Truancy court" means a court designated under Section 65.004 to exercise jurisdiction over cases involving allegations of truant conduct.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The language contained in Section 65.002 highlights that truancy courts are not the same thing as juvenile courts. Truancy courts are the courts that will exercise jurisdiction over cases involving allegations of truant conduct. More details about truancy courts are contained in Section 65.004. Juvenile courts, on the other hand, exercise jurisdiction over cases under Title 3 of the Family Code. Truant conduct cases do not fall under Title 3. Rather, truant conduct cases fall under new Title 3A.

Section 65.002 sets out the definitions used in the new statute. Of interest is that the definition of a "child" for truancy is a person 12 years or older and younger than 19 years of age. Interestingly, in 2011, SB 1489 (82nd R.S.) changed the failure to attend school statute (now repealed Section 25.094, Education Code), which allowed persons aged 10 and older who were enrolled in school, including those aged 18 to 20 who were voluntarily enrolled, to be charged with failure to attend school so that the offense applied only to students aged 12 and up but not yet 18. The definition of child in the Family Code, however, was unchanged so that the CINS offense of truancy applied to those who were 10 and not yet 17. This had the impact of allowing 10 and 11 year-olds engaging in truancy to be handled only in juvenile court. The new definition of child in truant conduct cases means that while 18-year-olds can once again be sent to court for non-attendance, there is no longer a mechanism for addressing 10 and 11 year-old truants in court.

Family Code Sec. 65.003. TRUANT CONDUCT. (a) A child engages in truant conduct if the child is required to attend school under Section 25.085, Education Code, and fails to attend school on 10 or more days or parts of days within a six-month period in the same school year.

(b) Truant conduct may be prosecuted only as a civil case in a truancy court.

(c) It is an affirmative defense to an allegation of truant conduct that one or more of the absences required to be proven have been excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute truant conduct. The burden is on the child to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The concepts of "delinquent conduct" and "conduct indicating a need for supervision" are a familiar part of juvenile law. *See* Tex. Fam. Code Ann. § 51.03 (West 2014). "Truant conduct" is a similar concept. Section 65.003(a) defines truant conduct. Subsection (b) declares that the act of truant conduct may be prosecuted only as a civil case in a truancy court. This subsection makes it clear that truant conduct is not a criminal offense. The subsection also clarifies that there is only one type of court in which truant conduct can be prosecuted – a truancy court.

Truant conduct occurs when a person who is required to attend school "fails to attend school on 10 or more days or parts of days within a six-month period in the same school year." This exact same conduct constituted the criminal offense of failure-to-attend-school. *See* Tex. Educ. Code Ann. § 25.094 (Vernon 2012). Under Title 3 of the Family Code, conduct with the same elements constituted "truancy" which was a form of conduct indicating a need for supervision (CINS). *See* Tex. Fam Code Ann. §§ 51.03(b)(2), 54.021 (Vernon 2014). The absence of a child from school "on three or more days or parts of days within a four-week period" does not constitute truant conduct. But this kind of absence did constitute the criminal offense of failure to attend school. *See* Tex. Educ. Code Ann. § 25.094

(Vernon 2012). And this conduct did constitute "truancy" which was a form of CINS. *See* Tex. Fam Code Ann. §§ 51.03(b)(2), 54.021 (Vernon 2014).

It should be noted, however, that the new definition of truant conduct does not require that the 10 or more absences be unexcused. It seems clear that the definition of truant conduct should have an element that requires the absences to be unexcused just as the Education Code sections that address a school's ability to refer a child and a parent to court for truant conduct include, in multiple places, a definition that requires the absences to be unexcused. However, the fact that this element is missing from the statute that actually defines the "offense" provides an argument that the prosecutor has no burden to prove the absences were unexcused; proof of the absence is sufficient. As a result, the burden is shifted to the student in the form of an affirmative defense.

Subsection (c) sets out an affirmative defense to allegations that a student has engaged in truant conduct. Additionally, it provides that it is an affirmative defense if the absences have been excused or are involuntary, provided there are not still a sufficient number of unexcused or voluntary absences remaining to constitute the offense. The child must prove the affirmative defense by a preponderance of the evidence standard.

Family Code Sec. 65.004. TRUANCY COURTS; JURISDICTION. (a) The following are designated as truancy courts:

(1) in a county with a population of 1.75 million or more, the constitutional county court;

(2) justice courts; and

(3) municipal courts.

(b) A truancy court has exclusive original jurisdiction over cases involving allegations of truant conduct.

(c) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a truancy case is brought as if the municipal court were located in the municipality in which the case arose.

(d) A truancy court retains jurisdiction over a person, without regard to the age of the person, who was referred to the court under Section 65.051 for engaging in truant conduct before the person's 19th birthday, until final disposition of the case.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.004 creates truancy courts that heretofore have not existed. While the courts are new, there are no new courtrooms and no new judges. Rather, truancy courts are simply certain existing courts authorized to exercise a special area of jurisdiction. Thus, truancy courts are very much like juvenile courts which are actually selected district and county-level courts designated locally to exercise juvenile jurisdiction.

Subsection (b) details the cases over which these new truancy courts may exercise subject matter jurisdiction. The grant of jurisdiction is exceedingly simple; there is only one kind of case over which truancy courts are given jurisdiction. That kind of case is a case involving allegations of truant conduct. A truancy court has jurisdiction over no other type of case. Subsection (b) also makes clear the fact that the jurisdiction of truancy courts over truancy cases is exclusive and original. Thus, while other types of courts may hear appeals from truant conduct cases, no other court may hear truant conduct cases originally.

Subsection (a) declares that three types of courts are truancy courts. The courts designated as truancy courts are: (1) constitutional county courts in counties with a population of 1.75 million or more; (2) all justice courts; and (3) all municipal courts. No local designation by a juvenile board (or any other governmental entity) is necessary to make these courts truancy courts. The named courts are automatically truancy courts by virtue of Subsection (a). Subsection (c) authorizes agreements between certain municipalities in regard to the handling of truant conduct cases. Subsection (d) declares that truancy courts retain jurisdiction over students even after they turn 19. The jurisdiction remains in the truancy court until the case is finally disposed.

Family Code Sec. 65.005. COURT SESSIONS. A truancy court is considered to be in session at all times.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: There are no terms of court associated with truancy courts. The courts are always considered be in session.

Family Code Sec. 65.006. VENUE. Venue for a proceeding under this chapter is the county in which the school in which the child is enrolled is located or the county in which the child resides.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Typically, a child will attend a school in the county in which he or she live. But this is not always the case. Section 65.006 permits truant conduct cases to be filed in the county in which the student's school is located. The statute also permits truant conduct cases to be filed in the county in which the student lives.

Family Code Sec. 65.007. RIGHT TO JURY TRIAL. (a) A child alleged to have engaged in truant conduct is entitled to a jury trial.

(b) The number of jurors in a case involving an allegation of truant conduct is six. The state and the child are each entitled to three peremptory challenges.

(c) There is no jury fee for a trial under this chapter.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Neither civil rules nor the Code of Criminal Procedure apply to truant conduct cases. Thus, provisions in those rules and statutes concerning juries do not apply in truant conduct cases. If there are to be any provisions concerning juries in truant conduct cases, his provisions must necessarily be part of title 3A (*i.e.*, Chapter 65.)

Section 65.007 gives those persons accused of having engaged in truant conduct the right to a jury trial. The number of jurors in such a trial is six. Three peremptory strikes are allotted to each side. Unlike regular civil cases, no fee is to be charged for a jury. *Cf.* Tex.Gov't Code Ann. § 51.604 (West 2013).

Family Code Sec. 65.008. WAIVER OF RIGHTS. A right granted to a child by this chapter or by the constitution or laws of this state or the United States is waived in proceedings under this chapter if:

(1) the right is one that may be waived;

(2) the child and the child's parent or guardian are informed of the right, understand the right, understand the possible consequences of waiving the right, and understand that waiver of the right is not required;

(3) the child signs the waiver;

(4) the child's parent or guardian signs the waiver; and

(5) the child's attorney signs the waiver, if the child is represented by counsel.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.008 permits a child to waive any rights that may be waived. This begs the question: what rights may be waived? Section 65.008 does not say. There are no specific provisions in Chapter 65 saying that certain rights may not be waived. So we proceed on the understanding that any right may be waived unless a statute or constitutional provision declares otherwise.

While just about any right may be waived, Section 65.008 does not allow a child to unilaterally waive any right. One of the child's parents or the child's guardian must also agree to the waiver. And agreement by a child, parent, or guardian to waive any right can only be accomplished if these individuals: (1) have been informed of the right; (2) understand the right; (3) understand the possible consequences of waiving the right; and (4) understand that waiver of the right is not required. Additionally, if the child is represented by an attorney, a right may only be waived if the attorney signs the waiver.

Family Code Sec. 65.009. EFFECT OF ADJUDICATION. (a) An adjudication of a child as having engaged in truant conduct is not a conviction of crime. An order of adjudication does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication of a child as having engaged in truant conduct may not be used in any subsequent court proceedings, other than for the purposes of determining an appropriate remedial action under this chapter or in an appeal under this chapter.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.009(a) emphasizes the fact that a court's adjudication that a particular student has engaged in truant conduct is not a conviction of a crime. HB 2398 has decriminalized truancy; the court proceedings set out in Title 3A will never result in a criminal conviction.

Subsection (b) sets out a general rule that the adjudication of a person of having engaged in truant conduct is never to be used in any later court proceedings.

For example, consider a student who later in life is charged as an adult with committing a crime. The fact that the student was once found to have engaged in truant conduct is not to be mentioned. There are two exceptions to the general rule. First, a person's truant conduct adjudication can be raised for the purposes of determining an appropriate remedial action under Chapter 65. Second, such an adjudication can be mentioned on appeal.

Family Code Sec. 65.010. BURDEN OF PROOF. A court or jury may not return a finding that a child has engaged in truant conduct unless the state has proved the conduct beyond a reasonable doubt.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Because neither criminal rules nor juvenile rules apply, Title 3A must establish procedure and standards for use in truant conduct cases. The burden of proof is one of these standards. The burden of proof in these cases is established as "beyond a reasonable doubt." This is also the standard in criminal cases, of course. But there is no reason this standard cannot also be the standard in truant conduct cases. As a matter of comparison, this is the same standard used in juvenile cases. *See* Tex. Fam. Code Ann. § 54.03 (West 2014).

Family Code Sec. 65.011. APPLICABLE STATUTES REGARDING DISCOVERY. Discovery in a proceeding under this chapter is governed by Chapter 39, Code of Criminal Procedure, other than Articles 39.14(i) and (j).

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Just as an applicable burden of proof must be established, applicable discovery rules must be put in place. Title 3A does not attempt to reinvent the wheel and create an entirely new set of discovery rules. Rather, Title 3A simply adopts the discovery rules set out in Chapter 39, Code of Criminal Procedure. There are two particular provisions in Chapter 39 – Articles 39.14(i) and (j) that have not been made part of the truancy court procedures. This is similar to the practice in juvenile cases. The Juvenile Justice Code states that discovery in juvenile cases is governed by the Code of Criminal Procedure. *See* Tex. Fam. Code Ann. § 51.17(b) (West 2014).

Family Code Sec. 65.012. PROCEDURAL RULES. The supreme court may promulgate rules of procedure applicable to proceedings under this chapter, including guidelines applicable to the informal disposition of truancy cases.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This section authorizes (but does not require) the Supreme Court to establish procedures applicable to cases handled by truancy courts. Since the statutory procedures governing truancy courts are brand new, there may be gaps in the rules where a particular issue is not addressed. This provision allows the Supreme Court to fill in any gaps in the rules that may come to light.

Family Code Sec. 65.013. INTERPRETERS. (a) When on the motion for appointment of an interpreter by a party or on the motion of the court, in any proceeding under this chapter, the court determines that the child, the child's parent or guardian, or a witness does not understand and speak English, an interpreter must be sworn to interpret for the person. Articles 38.30(a), (b), and (c), Code of Criminal Procedure, apply in a proceeding under this chapter. A qualified telephone interpreter may be sworn to provide interpretation services if an interpreter is not available to appear in person before the court.

(b) In any proceeding under this chapter, if a party notifies the court that the child, the child's parent or guardian, or a witness is deaf, the court shall appoint a qualified interpreter to interpret the proceedings in any language, including sign language, that the deaf person can understand. Articles 38.31(d), (e), (f), and (g), Code of Criminal Procedure, apply in a proceeding under this chapter.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: An interpreter is to be appointed any time a child, a parent, a guardian, or a witness needs the services of an interpreter. Subsection (a) provides for the appointment of foreign language interpreters. Subchapter (b) provides for the appointment of interpreters for the deaf.

Family Code Sec. 65.014. SIGNATURES. Any requirement under this chapter that a document be signed or that a document contain a person's signature, including the signature of a judge or a clerk of the court,

is satisfied if the document contains the signature of the person as captured on an electronic device or as a digital signature.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.014 explicitly declares that any requirements for signatures under Chapter 65 may be satisfied with electronic signatures.

Family Code Sec. 65.015. PUBLIC ACCESS TO COURT HEARINGS. (a) Except as provided by Subsection (b), a truancy court shall open a hearing under this chapter to the public unless the court, for good cause shown, determines that the public should be excluded.

(b) The court may prohibit a person from personally attending a hearing if the person is expected to testify at the hearing and the court determines that the person's testimony would be materially affected if the person hears other testimony at the hearing.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: As a general rule, truancy court hearings must be open to the public. There is an exception to the general rule for "good cause shown." Subsection (b) authorizes truancy courts to prohibit a person from personally attending a hearing if the person is expected to testify. The court can order such a prohibition only upon finding that the person's testimony would be materially affected by hearing other testimony.

Family Code Sec. 65.016. RECORDING OF PROCEEDINGS. (a) The proceedings in a truancy court that is not a court of record may not be recorded.

(b) The proceedings in a truancy court that is a court of record must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Truancy courts are essentially justice courts, municipal courts, and (some) county-level courts exercising special jurisdiction over allegations of truant conduct. These underlying courts are a mix of courts of record and courts that are not courts of record.

County-level courts are courts of record. Municipal courts of record are (obviously) courts of record. Justice courts are not courts of record. Municipal courts that are not courts of record are (again rather obviously) not courts of record.

Proceedings in courts of record are recorded. Proceedings in courts that are not courts of record are not recorded. In enacting Title 3A, the Legislature did not want to require courts that are not courts of record to record proceedings. The intent was that courts that are not courts of record be able to conduct truancy proceedings without court reporters. On the other hand, legislators wanted courts of record to continue to record proceedings. The result is Section 65.016 which calls for the recording of proceedings in courts of record but not in non-record courts.

Family Code Sec. 65.017. JUVENILE CASE MANAGERS. A truancy court may employ a juvenile case manager in accordance with Article 45.056, Code of Criminal Procedure, to provide services to children who have been referred to the truancy court or who are in jeopardy of being referred to the truancy court.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: One main focus of HB 2398, the truancy reform legislation, is to prevent truant conduct before it occurs. Juvenile case managers put much of their focus on providing help to students who are in jeopardy of being referred to truancy court. Section 65.017 authorizes truancy courts to employ juvenile case managers.

Subchapter B. Initial Procedures

Family Code Sec. 65.051. INITIAL REFERRAL TO TRUANCY COURT. When a truancy court receives a referral under Section 25.0915, Education Code, and the court is not required to dismiss the referral under that section, the court shall forward the referral to a truant conduct prosecutor who serves the court.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.

Summary of Changes: Section 65.051 is the first section in Subchapter B of Chapter 65. Subchapter B is entitled "Initial Procedures." This is a reference to the initial procedures to be taken by a truancy court in an individual truancy case.

A truancy case is actually initiated by a school district referring a student to a truancy court for the student's truant conduct. This referral is required by Section 25.0915, Education Code. Section 65.051 directs the truancy court as to what should be done upon receiving a referral. Specifically, the truancy court is required to forward the referral to a truant conduct prosecutor who serves the court. Every referral must be forwarded to the truant conduct prosecutor.

The statute suggests that the truancy court is not to forward a referral if the court is required to dismiss the referral under Section 25.0915. But Section 25.0915 does not provide grounds for the court to dismiss a school district referral before forwarding the referral to a prosecutor.

Family Code Sec. 65.052. TRUANT CONDUCT PROSECUTOR. In a justice or municipal court or a constitutional county court that is designated as a truancy court, the attorney who represents the state in criminal matters in that court shall serve as the truant conduct prosecutor.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Prosecutors in underlying justice, municipal and county courts, serve as "truant conduct prosecutors" in cases heard by those courts in their capacity as truancy courts.

Family Code Sec. 65.053. REVIEW BY PROSECUTOR. (a) The truant conduct prosecutor shall promptly review the facts described in a referral received under Section 65.051.

(b) The prosecutor may, in the prosecutor's discretion, determine whether to file a petition with the truancy court requesting an adjudication of the child for truant conduct. If the prosecutor decides not to file a petition requesting an adjudication, the prosecutor shall inform the truancy court and the school district of the decision.

(c) The prosecutor may not file a petition for an adjudication of a child for truant conduct if the referral was not made in compliance with Section 25.0915, Education Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Every referral a school district makes to a truancy court for truant conduct is forwarded by the court to a truant conduct prosecutor. Subsection (a) requires prosecutors to look at each referral promptly. In every case, the prosecutor is to determine if the referral complies with Section 25.0915, Education Code. If the referral does not comply, the prosecutor may not file a petition for adjudication of the child for truant conduct. Even if the referral does comply with Section 25.0915, the prosecutor has discretion to decline to file a petition with the court.

Family Code Sec. 65.054. STATE'S PETITION. (a) A petition for an adjudication of a child for truant conduct initiates an action of the state against a child who has allegedly engaged in truant conduct.

(b) The proceedings shall be styled "In the matter of _____, Child," identifying the child by the child's initials only.

(c) The petition may be on information and belief.

(d) The petition must state:

(1) with reasonable particularity the time, place, and manner of the acts alleged to constitute truant conduct;

(2) the name, age, and residence address, if known, of the child who is the subject of the petition;

(3) the names and residence addresses, if known, of at least one parent, guardian, or custodian of the child and of the child's spouse, if any; and

(4) if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

(e) Filing fees may not be charged for the filing of the state's petition.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: A case of truant conduct is not initiated by a school district's filing of a referral with a truancy court. Rather, a case of truant conduct is initiated by the filing of a petition with a truancy court by a truant conduct prosecutor. Section 65.054 provides very specific direction as to the things a petition alleging

truant must contain. Subsection (e) clarifies that no filing fees are to be charged upon the filing of a petition.

Family Code Sec. 65.055. LIMITATIONS PERIOD. A petition may not be filed after the 45th day after the date of the last absence giving rise to the act of truant conduct.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The handling of truant conduct cases is meant to be accomplished swiftly. School districts are to make truant conduct referrals to truancy courts "within 10 school days of the student's 10th absence." *See* Section 25.0951(a), Education Code. The referrals go to the truancy court which is to forward the referral to a truant conduct prosecutor. *See* Section 65.051. As we learn here in Section 65.055, truant conduct prosecutors must prepare a petitions alleging truant conduct quickly. Truant conduct petitions must be filed not later than the 45th day after the date of the student's last absence. Schools that delay a referral to court in order to implement truancy prevention measures should be mindful of this statute of limitations, as should courts and prosecutors receiving delayed referrals.

Family Code Sec. 65.056. HEARING DATE. (a) After the petition has been filed, the truancy court shall set a date and time for an adjudication hearing.

(b) The hearing may not be held on or before the 10th day after the date the petition is filed.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute instructs truancy courts to set a date and time for an adjudication hearing upon the filing of a petition alleging truant conduct. The hearing must be no earlier than the 11th day after the petition is filed. This gives time for the accused child, parents, guardians, and others time to prepare for the hearing.

Family Code Sec. 65.057. SUMMONS. (a) After setting the date and time of an adjudication hearing, the truancy court shall direct the issuance of a summons to:

(1) the child named in the petition;

(2) the child's parent, guardian, or custodian;

(3) the child's guardian ad litem, if any; and

(4) any other person who appears to the court to be a proper or necessary party to the proceeding.

(b) The summons must require the persons served to appear before the court at the place, date, and time of the adjudication hearing to answer the allegations of the petition. A copy of the petition must accompany the summons. If a person, other than the child, required to appear under this section fails to attend a hearing, the truancy court may proceed with the hearing.

(c) The truancy court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing.

(d) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Once a petition has been filed and a hearing has been set, the child must be notified of the charge and the hearing. Section 65.057 directs that this notice is to be accomplished by means of a summons with the petition attached. The child' parent guardian, or custodian is also to be notified. Any guardian ad litem for the child must also be notified. Significantly, the summons may order the person having custody of the child to bring the child to the hearing. Subsection (b) authorizes courts to proceed with hearings in the absence of a person, other than the child, who has been ordered to attend.

Family Code Sec. 65.058. SERVICE OF SUMMONS. (a) If a person to be served with a summons is in this state and can be found, the summons shall be served on the person personally or by registered or certified mail, return receipt requested, at least five days before the date of the adjudication hearing.

(b) Service of the summons may be made by any suitable person under the direction of the court.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This section sets out the permissible methods of serving a summons. The summons can be served on a child (Or another) in person, but this is not required. Service by registered or certified mail is permissible. Service must be effectuated at least five days before the adjudication hearing. If service is not

effectuated by the date required, the adjudication hearing will have to be delayed.

Family Code Sec. 65.059. REPRESENTATION BY ATTORNEY. (a) A child may be represented by an attorney in a case under this chapter. Representation by an attorney is not required.

(b) A child is not entitled to have an attorney appointed to represent the child, but the court may appoint an attorney if the court determines it is in the best interest of the child.

(c) The court may order a child's parent or other responsible person to pay for the cost of an attorney appointed under this section if the court determines that the person has sufficient financial resources.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Attorneys are not required in truant conduct cases. But this is not to say attorneys may not represent accused children in truancy court. Section 65.059 allows (but does not require) a truancy court to appoint an attorney for a child in certain circumstances. This provision is very similar to Article 1.051 of the Code of Criminal Procedure which permits appointments of attorneys in the interest of justice. Justices of the peace and municipal judges have power to appoint attorneys to represent defendants under Article 1.051, although the power is rarely used. Had Section 65.059 not been included in these new truancy provisions, then interest-of-justice appointments would not be authorized in truancy cases. This is because Article 1.051 Applies to criminal cases and under House Bill 2398, truancy cases are no longer criminal cases.

Although this section states that the child is not entitled to an attorney, Section 65.101 requires the judge to advise of the child's "right to be represented by an attorney if the child is not already represented." The language in Section 65.059 implies that the lawmakers did not intend to require court-appointed attorneys. This may, however, create an apparent conflict in laws that would likely have to be resolved through a legal challenge or future legislative clarification. A child's parent (or other responsible person) may be ordered to pay for the cost of an appointed attorney. But such an order can be made only of the court first determines that the person has sufficient financial resources.

Family Code Sec. 65.060. CHILD'S ANSWER. After the petition has been filed, the child may answer, orally or in writing, the petition at or before the commencement of the hearing. If the child does not answer, a general denial of the alleged truant conduct is assumed.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: As with other petitions that serve to initiate court cases, the respondent (in this case the child) is expected to answer. The answer may be oral or written. The answer may be made before the hearing or at the commencement of the hearing. And if the child does not answer at all, the default situation is that a general denial of the alleged truant conduct is assumed.

Family Code Sec. 65.061. GUARDIAN AD LITEM. (a) If a child appears before the truancy court without a parent or guardian, or it appears to the court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under this chapter, the court may appoint a guardian ad litem to protect the interests of the child in the proceedings.

(b) An attorney for a child may also be the child's guardian ad litem. A law enforcement officer, probation officer, or other employee of the truancy court may not be appointed as a guardian ad litem.

(c) The court may order a child's parent or other person responsible to support the child to reimburse the county or municipality for the cost of the guardian ad litem. The court may issue the order only after determining that the parent or other responsible person has sufficient financial resources to offset the cost of the child's guardian ad litem wholly or partly.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.061 authorizes truancy courts to appoint a guardian ad litem for children accused of engaging in truant conduct. But there are only two situations in which a court is authorized to make such an appointment. The first situation is when a child appears before a truancy court without a parent or guardian. The second is when a child's parent or guardian appears to be incapable or unwilling to make decisions in the child's best interest. A court may order a child's parent (or other responsible person) to pay for the guardian ad litem. This order may be made only if the court finds the person is financially able to do so.

Family Code Sec. 65.062. ATTENDANCE AT HEARING. (a) The child must be personally present at the adjudication hearing. The truancy court may not proceed with the adjudication hearing in the absence of the child.

(b) A parent or guardian of a child and any court-appointed guardian ad litem of a child is required to attend the adjudication hearing.

(c) Subsection (b) does not apply to:

(1) a person for whom, for good cause shown, the court excuses attendance;

(2) a person who is not a resident of this state; or

(3) a parent of a child for whom a managing conservator has been appointed and the parent is not a conservator of the child.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: A child must always be in attendance at a truancy court hearing. In fact, a truancy court hearing may not take place in the absence of the accused child. Parents and guardians are also required to attend truancy hearings. But a hearing can take place in the absence of any parent or guardian.

Family Code Sec. 65.063. RIGHT TO REEMPLOYMENT. (a) An employer may not terminate the employment of a permanent employee because the employee is required under Section 65.062(b) to attend a hearing.

(b) Notwithstanding any other law, an employee whose employment is terminated in violation of this section is entitled to return to the same employment that the employee held when notified of the hearing if the employee, as soon as practical after the hearing, gives the employer actual notice that the employee intends to return.

(c) A person who is injured because of a violation of this section is entitled to:

(1) reinstatement to the person's former position;

(2) damages not to exceed an amount equal to six times the amount of monthly compensation received by the person on the date of the hearing; and

(3) reasonable attorney's fees in an amount approved by the court.

(d) It is a defense to an action brought under this section that the employer's circumstances changed while the employee attended the hearing and caused reemployment to be impossible or unreasonable. To establish a defense under this subsection, an employer must prove that the termination of employment was because of circumstances other than the employee's attendance at the hearing.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This provision is nearly identical to Section 51.116, Family Code, which is applicable in juvenile cases. The purpose of the statute is to protect persons who are required to attend truancy hearings from negative employment repercussions.

Family Code Sec. 65.064. SUBPOENA OF WITNESS. A witness may be subpoenaed in accordance with the procedures for the subpoena of a witness under the Code of Criminal Procedure.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.064 allows for witnesses to be subpoenaed and borrows the relevant procedures from the Code of Criminal Procedure.

Family Code Sec. 65.065. CHILD ALLEGED TO BE MENTALLY ILL. (a) A party may make a motion requesting that a petition alleging a child to have engaged in truant conduct be dismissed because the child has a mental illness, as defined by Section 571.003, Health and Safety Code. In response to the motion, the truancy court shall temporarily stay the proceedings to determine whether probable cause exists to believe the child has a mental illness. In making a determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) observe the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall dismiss the petition. If the court determines that evidence does not exist to support a finding that the child has a mental illness, the court shall dissolve the stay and continue with the truancy court proceedings.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.

Summary of Changes: This statute details the procedures if a child accused of engaging in truant conduct possibly has a mental illness. Upon a motion suggesting that the child has a mental illness, the truancy court is required to temporarily stay the proceedings. Once the proceedings are stayed, the court must determine whether there is probable cause to believe the child has a mental illness. Upon finding probable cause, the court can do only one thing – dismiss the petition.

Subchapter C. Adjudication Hearing and Remedies

Family Code Sec. 65.101. ADJUDICATION HEARING; JUDGMENT. (a) A child may be found to have engaged in truant conduct only after an adjudication hearing conducted in accordance with the provisions of this chapter.

(b) At the beginning of the adjudication hearing, the judge of the truancy court shall explain to the child and the child's parent, guardian, or guardian ad litem:

(1) the allegations made against the child;

(2) the nature and possible consequences of the proceedings;

(3) the child's privilege against self-incrimination;

(4) the child's right to trial and to confrontation of witnesses;

(5) the child's right to representation by an attorney if the child is not already represented; and

(6) the child's right to a jury trial.

(c) Trial is by jury unless jury is waived in accordance with Section 65.008. Jury verdicts under this chapter must be unanimous.

(d) The Texas Rules of Evidence do not apply in a truancy proceeding under this chapter except:

(1) when the judge hearing the case determines that a particular rule of evidence applicable to criminal cases must be followed to ensure that the proceedings are fair to all parties; or

(2) as otherwise provided by this chapter.

(e) A child alleged to have engaged in truant conduct need not be a witness against nor otherwise incriminate himself or herself. An extrajudicial statement of the child that was obtained in violation of the constitution of this state or the United States may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of truant conduct unless it is corroborated wholly or partly by other evidence.

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether the child has engaged in truant conduct. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to have not engaged in truant conduct and no finding that a child has engaged in truant conduct may be returned unless the state has proved the conduct beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in truant conduct beyond a reasonable doubt.

(g) If the court or jury finds that the child did not engage in truant conduct, the court shall dismiss the case with prejudice.

(h) If the court or jury finds that the child did engage in truant conduct, the court shall proceed to issue a judgment finding the child has engaged in truant conduct and order the remedies the court finds appropriate under Section 65.103. The jury is not involved in ordering remedies for a child who has been adjudicated as having engaged in truant conduct.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Subsection (a) states that a child may be found to have engage in truant conduct only after an adjudication hearing. This means that a child may not simply plead true to the allegations and avoid showing up in court.

Subsection (b), requires the truancy court judge to provide certain admonishments to the child, including advising the child of his or her rights at the hearing. The rights listed are the same as those for a child in a juvenile case, including the right against self-incrimination, right to confront witnesses, and the right to representation by an attorney if not already represented. The provision giving the child the right to an attorney appears to conflict with Section 65.059, which provides the child is permitted but not entitled to an attorney. The language in Section 65.059 implies that the Legislature did not intend to require court-appointed attorneys. This may, however, create an apparent conflict in laws that would likely have be resolved through a legal challenge or future legislative clarification.

Subsection (c) explicitly guarantees the accused child the right to have a jury trial. *See also* Section 65.007. But this right can be waived under the conditions set out in Section 65.008. Subsection (d) says that, as a general rule, the Texas Rules of Evidence do not apply in a truancy court proceeding.

Subsection (e) states that a child accused of engaging in truant conduct need not be a witness against herself. The applicability of subsection (e) to civil truancy cases is unclear. It provides that an extra-judicial statement of the child obtained in violation of the U.S. or Texas constitution may not be used in the hearing. However, since truancy is no longer a criminal offense and the child is not arrested or taken into custody, it would follow that *Miranda* rights do not apply in these matters. Further, though not a constitutional right and thus not

technically covered by this prohibition, it bears noting that there is no statute requiring a child in a truancy matter to be magistrated as is required in a juvenile matter, so that provision is also inapplicable. Therefore, it does not seem that there is any way within a truant conduct matter to obtain a statement in violation of the U.S. or Texas Constitution or even in violation of state law.

Subsection (f) discusses the ultimate decision for the finder of fact (whether judge or jury) in a truancy case. The question is whether the child has engaged in truant conduct. The reasonable-doubt standard is repeated here. *See also* Section 65.010. And, of course, the burden of proof belongs to the State. Subsection (g) requires the truancy court to dismiss any case in which the judge or jury did not engage in truant conduct. Subsection (h) discusses the nests step for a court in which a child is found to have engaged in truant conduct. Specifically, the court must issue a judgment. The judgment must state that the child engaged in truant conduct. The judgment must also list the remedies the court finds to be appropriate under Section 65.103. This subsection also limits the role of the jury to making the determination as to whether the child has engaged in truant conduct. The jury has no role in fashioning remedial orders.

Family Code Sec. 65.102. REMEDIAL ACTIONS. (a) The truancy court shall determine and order appropriate remedial actions in regard to a child who has been found to have engaged in truant conduct.

(b) The truancy court shall orally pronounce the court's remedial actions in the child's presence and enter those actions in a written order.

(c) After pronouncing the court's remedial actions, the court shall advise the child and the child's parent, guardian, or guardian ad litem of:

(1) the child's right to appeal, as detailed in Subchapter D; and

(2) the procedures for the sealing of the child's records under Section 65.201.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The main purpose of a finding that a child has engaged in truant conduct is to authorize a judge to order remedial actions that will serve to keep the child n school. The judge must announce the remedial actions in the child's presence. The remedial actions are to be made part of the court's written order. Subsection (c) requires the trial court to advise the child and the child' parent, guardian, or guardian ad litem of the child's right to appeal. The judge must also detail the procedures for the sealing of the child's records.

Family Code Sec. 65.103. REMEDIAL ORDER. (a) A truancy court may enter a remedial order requiring a child who has been found to have engaged in truant conduct to:

(1) attend school without unexcused absences;

(2) attend a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is unlikely to do well in a formal classroom environment due to the individual's age;

(3) if the child is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code, if that is in the best interest of the child;

(4) attend a nonprofit, community-based special program that the court determines to be in the best interest of the child, including:

(A) an alcohol and drug abuse program;

(B) a rehabilitation program;

(C) a counseling program, including a self-improvement program;

(D) a program that provides training in self-esteem and leadership;

(E) a work and job skills training program;

(F) a program that provides training in parenting, including parental responsibility;

(G) a program that provides training in manners;

(H) a program that provides training in violence avoidance;

(I) a program that provides sensitivity training; and

(J) a program that provides training in advocacy and mentoring;

(5) complete not more than 50 hours of community service on a project acceptable to the court; and

(6) participate for a specified number of hours in a tutorial program covering the academic subjects in which the child is enrolled that are provided by the school the child attends.

(b) A truancy court may not order a child who has been found to have engaged in truant conduct to:

(1) attend a juvenile justice alternative education program, a boot camp, or a for-profit truancy class; or

(2) perform more than 16 hours of community service per week under this section.

(c) In addition to any other order authorized by this section, a truancy court may order the Department of Public Safety to suspend the driver's license or permit of a child who has been found to have engaged in truant

conduct. If the child does not have a driver's license or permit, the court may order the Department of Public Safety to deny the issuance of a license or permit to the child. The period of the license or permit suspension or the order that the issuance of a license or permit be denied may not extend beyond the maximum time period that a remedial order is effective as provided by Section 65.104.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Subsection (a) sets forth a long list of remedial actions that truancy courts may order upon a finding that a child has engaged in truant conduct. These remedies are almost word-for-word the same as the remedies available to the courts handing the criminal failure-to-attend-school cases. *See* Tex. Crim. Proc. Code Ann. art. 45.054(a) (West Supp. 2014) (repealed by Section 41 of HB 2398 effective 09/01/15). So although truancy has been decriminalized, the remedies that were available to judges handling failure-to-attend-school cases are still available. Subsection (b) prohibits a truancy court from ordering a child to attend certain programs including any for-profit truancy class. This is a new provision. Subsection (c) authorizes a truancy court to suspend a child's driver's license.

Family Code Sec. 65.104. MAXIMUM TIME REMEDIAL ORDER IS EFFECTIVE. A truancy court's remedial order under Section 65.103 is effective until the later of:

(1) the date specified by the court in the order, which may not be later than the 180th day after the date the order is entered; or

(2) the last day of the school year in which the order was entered.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The remedial orders issued by a truancy court effectively come with an expiration date. A truancy court's remedial orders are of no force and effect after the 180th day after the remedial orders are entered.

Family Code Sec. 65.105. ORDERS AFFECTING PARENTS AND OTHERS. (a) If a child has been found to have engaged in truant conduct, the truancy court may:

(1) order the child and the child's parent to attend a class for students at risk of dropping out of school that is designed for both the child and the child's parent;

(2) order any person found by the court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's truant conduct to do any act that the court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the court determines to be injurious to the child's welfare;

(3) enjoin all contact between the child and a person who is found to be a contributing cause of the child's truant conduct, unless that person is related to the child within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;

(4) after notice to, and a hearing with, all persons affected, order any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation;

(5) order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is ordered to participate if the court finds the child's parent or person responsible for the child's support is able to pay the costs;

(6) order the child's parent to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the child's unexcused absences and in developing strategies for resolving those problems; and

(7) order the child's parent to perform not more than 50 hours of community service with the child.

(b) A person subject to an order proposed under Subsection (a) is entitled to a hearing before the order is entered by the court.

(c) On a finding by the court that a child's parents have made a reasonable good faith effort to prevent the child from engaging in truant conduct and that, despite the parents' efforts, the child continues to engage in truant conduct, the court shall waive any requirement for community service that may be imposed on a parent under this section.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: When a truancy court finds that a child has engaged in truant conduct, the court is not restricted to making remedial orders to the child alone. Rather, the court may make remedial orders affecting parents and others. This is also the way things work in the juvenile courts. In fact, Section 65.105 is in large

part a copy of the Section 54.041, Family Code. Subsection (b) envisions a "proposed" order coming out of a hearing concerning whether the child in question has engaged in truant conduct. A truancy court must give the parent or other person the right to have a special hearing on the proposed remedial measures before entering those measures in an order. One of the remedial measures that a truancy court may impose upon a parent or other person is a requirement to perform up to 50 hours of community service with the child. But Subsection (c) allows for this community service requirement placed upon a parent to be waived if certain findings are made.

In addition, the court may issue an order enjoining contact between the child and a person found to have been a contributing cause of the child's truant conduct. If the person is related to the child within the third degree of consanguinity or affinity, no injunction may be entered but the Department of Family and Protective Services (DFPS) may be contacted. Consanguinity refers to direct relations to the child through blood or adoption, including the spouse of the person related to the child. Affinity refers to direct relations to the child as well as direct relations to the child's spouse, if the child is married. First degree encompasses parents, spouses, and children. Second degree encompasses: siblings, grandparents, and grandchildren. Third degree encompasses: great grandparents, aunts and uncles, and nieces and nephews. The definitions can be found in Chapter 573, Government Code.

Family Code Sec. 65.106. LIABILITY FOR CLAIMS ARISING FROM COMMUNITY SERVICE. (a) A municipality or county that establishes a program to assist children and their parents in rendering community service under this subchapter may purchase an insurance policy protecting the municipality or county against a claim brought by a person other than the child or the child's parent for a cause of action that arises from an act of the child or parent while rendering the community service. The municipality or county is not liable for the claim to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute.

(b) The liability of the municipality or county for a claim that arises from an action of the child or the child's parent while rendering community service may not exceed $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury or death, and $10,000 for a single occurrence of property damage. Liability may not extend to punitive or exemplary damages.

(c) This section does not waive a defense, immunity, or jurisdictional bar available to the municipality or county or its officers or employees, nor shall this section be construed to waive, repeal, or modify any provision of Chapter 101, Civil Practice and Remedies Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This section is nearly a word-for-word adoption of the same law in juvenile cases. *See* Tex. Fam. Code Ann. § 54.044(d). The law lets cities and counties purchase insurance to protect against liability for the possible bad acts of persons performing community service.

Family Code Sec. 65.107. COURT COST. (a) If a child is found to have engaged in truant conduct, the truancy court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a court cost of $50 to the clerk of the court.

(b) The court's order to pay the $50 court cost is not effective unless the order is reduced to writing and signed by the judge. The written order to pay the court cost may be part of the court's order detailing the remedial actions in the case.

(c) The clerk of the court shall keep a record of the court costs collected under this section and shall forward the funds to the county treasurer, municipal treasurer, or person fulfilling the role of a county treasurer or municipal treasurer, as appropriate.

(d) The court costs collected under this section shall be deposited in a special account that can be used only to offset the cost of the operations of the truancy court.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The criminal offense of failure to attend school calls for the payment of court costs upon conviction. Of course, House Bill 2398 repeals the offense of failure to attend school. Thus, there is no longer any basis for the assessment of criminal court costs in truancy cases.

Section 65.107 does call for the assessment of a new court costs in truancy courts. The cost is $50 and is generally to be assessed upon a finding that the child has engaged in delinquent conduct. But there is a rather large exception to the assessment of the court cost. If a

child or parent is not financially able to pay the $50 cost, then the court is not authorized to assess the cost.

Truancy courts must provide the child or parent an opportunity to be heard in regard to the person's financial ability to pay the court cost. And the court must determine that the child or parent is financially able to pay the cost. If either of those things does not happen, the court is without authority to assess the cost. Subsection (b) requires that any order to pay the $50 court cost be reduced to writing and may be part of the court's judgment. The court cost is to be deposited in a special account maintained by the county or the city. No part of the collected court costs goes to the State. The money collected may only be used to offset the operation of the truancy court.

Family Code Sec. 65.108. HEARING TO MODIFY REMEDY. (a) A truancy court may hold a hearing to modify any remedy imposed by the court. A remedy may only be modified during the period the order is effective under Section 65.104.

(b) There is no right to a jury at a hearing under this section.

(c) A hearing to modify a remedy imposed by the court shall be held on the petition of the state, the court, or the child and the child's parent, guardian, guardian ad litem, or attorney. Reasonable notice of a hearing to modify disposition shall be given to all parties.

(d) Notwithstanding any other law, in considering a motion to modify a remedy imposed by the court, the truancy court may consider a written report from a school district official or employee, juvenile case manager, or professional consultant in addition to the testimony of witnesses. The court shall provide the attorney for the child and the prosecuting attorney with access to all written matters to be considered by the court. The court may order counsel not to reveal items to the child or to the child's parent, guardian, or guardian ad litem if the disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(e) The truancy court shall pronounce in court, in the presence of the child, the court's changes to the remedy, if any. The court shall specifically state the new remedy and the court's reasons for modifying the remedy in a written order. The court shall furnish a copy of the order to the child.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.108 explains that a truancy court's remedial order can be modified. The concept is not an entirely new one. The same idea exists in juvenile cases. *See* Tex. Fam. Code Ann. § 54.05 (West 2014) ("Hearing to Modify Disposition"). Generally, Section 65.108 creates a procedure for a hearing to modify a remedy imposed by the truancy court. The language in this section tracks with the statute regarding the hearing to modify disposition in juvenile court. However, it is clear in juvenile court that the reason the prosecutor would file a motion to modify is because the juvenile has violated the terms of probation. Given that violating a court order in truancy court results in a contempt proceeding, it is unclear when a modification hearing would be requested in truancy court.

Subsection (d) allows for the admission of written reports from school district officials or employees, juvenile case managers, or professional consultants. It provides that the prosecutor and attorney for the child shall be given access to the written matters and that the court may order counsel not to reveal items to the child or the child's parent, guardian, or ad litem if the disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future. This language exists in juvenile court proceedings and works because there is always a defense attorney in a juvenile proceeding. As the child is not entitled to an attorney in truancy court proceedings (presumably; for greater discussion see analysis of Sections 65.059 and 65.101) but is entitled to evidence to be used against him or her, this section presents an issue. Presumably, the child's due process rights would trump and the court would give to an unrepresented child access to the information even if the court would have ordered the attorney not to share it with the child.

Subsection (e) requires the court to pronounce in court and in the presence of the child the court's changes to the remedy. The court must also specifically state the new remedy and reasons for the modification in a written order and give a copy to the child. The statute gives no guidance as to what new remedies may be issued, nor does it address the length of time for such new remedy.

Family Code Sec. 65.109. MOTION FOR NEW TRIAL. The order of a truancy court may be challenged by filing a motion for new trial. Rules 505.3(c) and (e), Texas Rules of Civil Procedure, apply to a motion for new trial.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The new truancy provisions consist of new procedures and borrowed procedures. This statute is an example of a borrowed procedure.

Motions for new trial are permitted in truant conduct cases. But House Bill 2398 makes no attempt to create an entirely new motion-for-new-trial procedure. Rather, the applicable rules for motions for new trials will be Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure.

Specifically, Rule 505.3(c) requires the motion to be filed within 14 days, requires service on the other party, and provides the judge may grant a new trial on a showing that justice was not done. Each party is limited to only one grant of a new trial. Rule 505.3(e) provides that if the judge has not ruled on the motion by the 21st day after the judgment was signed, the motion is denied by operation of law.

Subchapter D. Appeal

Family Code Sec. 65.151. RIGHT TO APPEAL. (a) The child, the child's parent or guardian, or the state may appeal any order of a truancy court. A person subject to an order entered under Section 65.105 may appeal that order.

(b) An appeal from a truancy court shall be to a juvenile court. The case must be tried de novo in the juvenile court. This chapter applies to the de novo trial in the juvenile court. On appeal, the judgment of the truancy court is vacated.

(c) A judgment of a juvenile court in a trial conducted under Subsection (b) may be appealed in the same manner as an appeal under Chapter 56.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: An appeal from an order of a truancy court is possible. All appeals go to the juvenile court. And all appeals are handled on a "de novo" basis. In other words, the juvenile court tries the case over again. Once an appeal is made, the judgment of the truancy court is vacated. This statute calls into question the rationale for Section 65.016 which requires the recording of the proceedings in truancy courts that are courts of record. The primary purpose for recording court proceedings is to create a record for appeal. But if all appeals from truancy courts are de novo, there would appear to be no reason for creating a record.

The child, the child's parent or guardian, or the state may appeal any order of a truancy court. Additionally, a person subject to an order entered under Section 65.105 (Orders Affecting Parents and Others) may appeal that order. The appeal from a truancy court is to a juvenile court. Presumably, the procedures in Title 3, Family Code, would be followed by the court except to the extent there is a conflict with Rule 506, Texas Rules of Civil Procedure (Section 65.152), with the exception being that there is no right to an attorney, simply a provision that one is allowed (Section 65.153).

Subsection (c) provides that an appeal of the juvenile court order would be taken in the same manner as an appeal under Chapter 56, Family Code, which applies to all other juvenile court appeals. Chapter 56 does provide that a child is entitled to an attorney for an appeal. It is unclear if the language in Section 65.153, which allows for but does not create a right for an attorney, applies to only an appeal *to* juvenile court or if it also applies to an appeal *from* juvenile court.

Family Code Sec. 65.152. GOVERNING LAW. Rule 506, Texas Rules of Civil Procedure, applies to the appeal of an order of a truancy court to a juvenile court in the same manner as the rule applies to an appeal of a judgment of a justice court to a county court, except an appeal bond is not required.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute explains that Rule 506 of the Texas Rules sets out the procedures involved in appealing a truancy court order to the juvenile court. There is one exception to the provisions in Rule 506 – no appeal bond is required.

Family Code Sec. 65.153. COUNSEL ON APPEAL. (a) A child may be represented by counsel on appeal.

(b) If the child and the child's parent, guardian, or guardian ad litem request an appeal, the attorney who represented the child before the truancy court, if any, shall file a notice of appeal with the court that will hear the appeal and inform that court whether that attorney will handle the appeal.

(c) An appeal serves to vacate the order of the truancy court.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: As in cases originally before the truancy court, a person appealing the order of a truancy court may be represented by an attorney. But there is no requirement that an attorney be appointed to represent the appellant. *See* Section 65.059. This permissive language signals that the child is not entitled to an attorney

on appeal. However, some have argued that it is not clear if Subsection (a) is applicable only to an appeal *to* juvenile court or if it is also applicable to an appeal *from* juvenile court. This may be an issue because Chapter 56, Family Code, entitles a child to an attorney for an appeal *from* juvenile court and Section 65.151 provides that an appeal from juvenile court is governed by Chapter 56.

Both subsections (b) and (c) specifically reference the appeal from a truancy court *to* the juvenile court and make no reference to an appeal *from* the juvenile court. It is likely that Section 65.153 applies to appeals *to* the juvenile court. The specific mention of the appeal from the truancy court and the absence of a reference to an appeal from the juvenile court suggest that Section 65.153 applies only to the appeal from truancy court *to* juvenile court and not to the appeal *from* juvenile court to the appropriate Court of Appeals. Under this interpretation, a child appealing from the juvenile court would be entitled to an attorney just like any other child appealing from juvenile court. This is an outstanding issue juvenile courts or the Legislature will likely need to resolve.

Subchapter E. Records

Family Code Sec. 65.201. SEALING OF RECORDS. (a) A child who has been found to have engaged in truant conduct may apply, on or after the child's 18th birthday, to the truancy court that made the finding to seal the records relating to the allegation and finding of truant conduct held by:

(1) the court;

(2) the truant conduct prosecutor; and

(3) the school district.

(b) The application must include the following information or an explanation of why one or more of the following is not included:

(1) the child's:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) the dates on which the truant conduct was alleged to have occurred; and

(3) if known, the cause number assigned to the petition and the court and county in which the petition was filed.

(c) The truancy court shall order that the records be sealed after determining the child complied with the remedies ordered by the court in the case.

(d) All index references to the records of the truancy court that are ordered sealed shall be deleted not later than the 30th day after the date of the sealing order.

(e) A truancy court, clerk of the court, truant conduct prosecutor, or school district shall reply to a request for information concerning a child's sealed truant conduct case that no record exists with respect to the child.

(f) Inspection of the sealed records may be permitted by an order of the truancy court on the petition of the person who is the subject of the records and only by those persons named in the order.

(g) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this chapter. Any statement that the person has never been found to have engaged in truant conduct may not be held against the person in any criminal or civil proceeding.

(h) On or after the fifth anniversary of a child's 16th birthday, on the motion of the child or on the truancy court's own motion, the truancy court may order the destruction of the child's records that have been sealed under this section if the child has not been convicted of a felony.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.201 only concerns truancy cases in which the child has been found to have engaged in truant conduct. If a truancy case results in something other than such a finding (*i.e.*, a dismissal), then this statute does not apply. As a general rule, the records of cases in which a child has been found to have engaged in truant conduct are confidential. *See* Commentary on Section 65.202 below. Section 65.201 authorizes the sealing of truancy case records. If the records are sealed, then persons and entities able to see the case records under Section 65.202 would be unable to view the records.

The records are not sealed automatically. Rather, as explained in Subsection (a), a child must make a motion to have the records sealed. The child may not make such a motion until he or she turns 18. Subsection (a) also states that any sealing order does not only apply to records held by the truancy court. An order sealing records also applies to records held by truant conduct prosecutors and records held by school districts. Subsection (b) details the information that is required to be listed in a motion to seal. Subsection (c) requires the child to have complied with the remedies ordered by the court in the case in order to obtain a sealing order. A child who has not complies with the court's remedial order is ineligible to obtain a sealing order.

Subsection (d) requires truancy court index records to be sealed within 30 days of the sealing order. Subsection (e) instructs those receiving requests for information concerning a truancy case that has been sealed as to how they should respond. The proper response is to say that no record exists with respect to the child in question. Subsection (f) allows very limited inspection of truancy court records that have been sealed. The person who is the subject of the records (*i.e.*, the child) may petition the court for certain persons to see the sealed records. The court may (but is not required to) grant the petition.

Subsection (g) authorizes persons who obtain a sealing order to state that he or she has never been the subject of a truancy court proceeding. Such a statement may be made in response to an application for employment, information, or licensing. In effect, this provision provides persons whose truant conduct adjudications have been sealed some of the same benefits of orders of nondisclosure and expunctions. Subsection (h) discusses an act that is one step beyond sealing the records of a truancy case. This subsection deals with the actual, physical destruction of truancy court records. When a person turns 21, he or she can make a motion that previously-sealed records be destroyed. The truancy court can also make such a motion. The judge has the discretion to grant such a motion only if the child has not been convicted of a felony. The judge is not required to grant the motion – even if the movant has never been convicted of a felony.

Family Code Sec. 65.202. CONFIDENTIALITY OF RECORDS. Records and files created under this chapter may be disclosed only to:

(1) the judge of the truancy court, the truant conduct prosecutor, and the staff of the judge and prosecutor;

(2) the child or an attorney for the child;

(3) a governmental agency if the disclosure is required or authorized by law;

(4) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(5) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;

(6) the agency; or

(7) with leave of the truancy court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: As a general rule, records in truant conduct cases are confidential. This section creates confidentiality for truancy court records. It does so by restating most of the language from Family Code Section 58.005. Under this new section, the following may have access to the truancy court records: the judge and prosecutor, and their staff; the child or an attorney for the child; a governmental agency if the disclosure is required or authorized by law; a person or entity to whom the child is referred for treatment or services (if there is a written confidentiality agreement); TDCJ or TJJD for statistical records of recidivism or diagnosis and classification; with leave of the truancy court, any other person with a legitimate interest in the work of the court; and "the agency." This reference to the "agency" seems to be a drafting error from cutting and pasting Section 58.005. In Section 58.005, "the agency" means the agency to which the records referenced in Section 58.005 apply as that section is specific to the records of an agency providing supervision of or services to a child as required by a juvenile court. Since this does not apply to the records of a specific "agency", the reference can likely be disregarded.

As it relates to the truant conduct provisions, it is interesting to note that the law applicable to all Class C misdemeanor records of children (which until HB 2398 included failure to attend school records) provided greater confidentially than do these new provisions. Article 45.0217, Code of Criminal Procedure, as modified in 2013 by HB 528, provides that all records related to a child who is charged with, convicted of, found not guilty of, had a charge dismissed for, or granted deferred disposition for a Class C misdemeanor (other than a traffic offense) are confidential and may not be disclosed to the public. The records may be shared if required by Article 15.27, Code of Criminal Procedure, and may be inspected by judges or court staff, a criminal justice agency for a criminal justice purpose, the Department of Public Safety (DPS), an attorney for a party to the proceeding, the child defendant, and the parent. There is no mechanism for any other "interested party" to have access via a court order. Since truant conduct is not a fine-only misdemeanor, this statute is no longer applicable; the now applicable statute allows more entities to have access to the truant conduct records than could access the Failure to Attend School records.

Family Code Sec. 65.203. DESTRUCTION OF CERTAIN RECORDS. A truancy court shall order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor if

a prosecutor decides not to file a petition for an adjudication of truant conduct after a review of the referral under Section 65.053.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This provision applies to situations in which a truant conduct prosecutor: (1) has been forwarded by the truancy court a school district's referral of a student for truant conduct; (2) reviews the referral; and (3) decides not to file a petition seeking an adjudication of truant conduct. In such a situation, the truant conduct prosecutor is required to inform the truancy court and the school district of his or her decision. *See* Section 65.053(b). Upon receiving this information from the prosecutor, the truancy court must issue the order envisioned by Section 65.203. Specifically, this section requires the truancy court to "order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor." If the records are destroyed, then obviously they will not be available for inspection by anyone.

Subchapter F. Enforcement of Orders

Family Code Sec. 65.251. FAILURE TO OBEY TRUANCY COURT ORDER; CHILD IN CONTEMPT OF COURT. (a) If a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct contempt of court, the truancy court, after providing notice and an opportunity for a hearing, may hold the child in contempt of court and order either or both of the following:

(1) that the child pay a fine not to exceed $100; or

(2) that the Department of Public Safety suspend the child's driver's license or permit or, if the child does not have a license or permit, order that the Department of Public Safety deny the issuance of a license or permit to the child until the child fully complies with the court's orders.

(b) If a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt of court on two or more previous occasions, the truancy court, after providing notice and an opportunity for a hearing, may refer the child to the juvenile probation department as a request for truancy intervention, unless the child failed to obey the truancy court order or was in direct contempt of court while 17 years of age or older.

(c) On referral of the child to the juvenile probation department, the truancy court shall provide to the juvenile probation department:

(1) documentation of all truancy prevention measures taken by the originating school district;

(2) documentation of all truancy orders for each of the child's previous truancy referrals, including:

(A) court remedies and documentation of the child's failure to comply with the truancy court's orders, if applicable, demonstrating all interventions that were exhausted by the truancy court; and

(B) documentation describing the child's direct contempt of court, if applicable;

(3) the name, birth date, and last known address of the child and the school in which the child is enrolled; and

(4) the name and last known address of the child's parent or guardian.

(d) The juvenile probation department may, on review of information provided under Subsection (c):

(1) offer further remedies related to the local plan for truancy intervention strategies adopted under Section 25.0916, Education Code; or

(2) refer the child to a juvenile court for a hearing to be conducted under Section 65.252.

(e) A truancy court may not order the confinement of a child for the child's failure to obey an order of the court issued under Section 65.103(a).

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Subchapter F is the sixth and final subchapter of the new Chapter 65. The subchapter addresses the enforcement of truancy court orders. Section 65.251 is the first of nine sections within the subchapter. Subsection (a) authorizes a truancy court to hold a child in contempt in two situations. The first situation occurs when a child who has been found to have engaged in truant conduct fails to obey the truancy court's remedial order. The second situation occurs when a child commits an act of direct contempt.

A truancy court can only hold a child in contempt after providing notice and an opportunity for a hearing. Subsection (a) provides two explicit actions that a truancy court can take upon finding a child in contempt. First, the court can order the child to pay a fine of up to $100. Second, the court can order the Department of Public Safety (DPS) to suspend a child's driver's license or permit until the child fully complies with the court's remedial orders. The truancy court continues to be prohibited from ordering a child to be confined for failure to obey a court order.

Subsection (b) provides an additional option for dealing with contempt if the contemnor has twice previously been found to be in contempt of court. Specifical-

ly, a truancy court may refer the child to the county's juvenile probation department. The juvenile probation department is then to participate in truancy prevention measures. This additional option is available only if the child in question committed the act of contempt while 17 or older. Some practitioners have noted that the requirement of the truancy court to provide notice and opportunity for a hearing prior to the referral to the juvenile probation department presents an issue. If the truancy court makes a finding of contempt prior to referral, there is no remaining conduct to refer to juvenile court. Conceivably, the referral may essentially present a double jeopardy or, at a minimum, a collateral estoppel issue. Another potential issue is that while indirect contempt is defined as delinquent conduct, which is what gives the juvenile court jurisdiction over it, direct contempt is not defined as either delinquent conduct or conduct indicating a need for supervision (CINS); thus, there is a question regarding the juvenile court's jurisdiction with regard to direct contempt.

Subsection (c) instructs truancy courts concerning the documents they send to the juvenile probation department if the court refers a child to the juvenile probation department under Subsection (b). After reviewing the information, the juvenile probation department may offer further remedies related to the local plan for truancy intervention strategies that was adopted by the school district or may refer the child to the juvenile court for a hearing to be conducted under Section 65.252 (see that section for a description). Assuming that no procedural issues are raised, the juvenile probation departments should ensure that the intake staff is trained on the contempt rules, procedures and the limited options that are available to the probation department to deal with truant conduct contempt than exists for other contempt referrals.

Subsection (d) details the options a juvenile probation department has upon receiving a referral under Subsection (b). The juvenile probation department may offer further remedies related to the local plan for truancy intervention strategies. As such, the juvenile probation department intake officers should be familiar with the truancy intervention strategies for each school district within the county. It is important to note, however, that the statute requires the juvenile probation department to make recommendations regarding failed school interventions that have previously been determined unsuccessful on multiple occasions. The juvenile probation department's other option is to refer the contempt to juvenile court for a hearing under Section 65.252.The truancy court does not direct which options the juvenile probation department is to choose. The decision as to which option to employ is solely the decision of the juvenile probation department. Additionally, it is unclear whether these recommendations for school truancy interventions will appropriately address direct contempt. Subsection (e) makes it clear that a truancy court may not order a child confined to jail for contempt of court.

Family Code Sec. 65.252. PROCEEDINGS IN JUVENILE COURT. (a) After a referral by the local juvenile probation department, the juvenile court prosecutor shall determine if probable cause exists to believe that the child engaged in direct contempt of court or failed to obey an order of the truancy court under circumstances that would constitute contempt of court. On a finding that probable cause exists, the prosecutor shall determine whether to request an adjudication. Not later than the 20th day after the date the juvenile court receives a request for adjudication from the prosecutor, the juvenile court shall conduct a hearing to determine if the child engaged in conduct that constitutes contempt of the order issued by the truancy court or engaged in direct contempt of court.

(b) If the juvenile court finds that the child engaged in conduct that constitutes contempt of the order issued by the truancy court or direct contempt of court, the juvenile court shall:

(1) enter an order requiring the child to comply with the truancy court's order;

(2) forward a copy of the order to the truancy court within five days; and

(3) admonish the child, orally and in writing, of the consequences of subsequent referrals to the juvenile court, including:

(A) a possible charge of delinquent conduct for contempt of the truancy court's order or direct contempt of court; and

(B) a possible detention hearing.

(c) If the juvenile court prosecutor finds that probable cause does not exist to believe that the child engaged in direct contempt or in conduct that constitutes contempt of the order issued by the truancy court, or if the juvenile probation department finds that extenuating circumstances caused the original truancy referral, the juvenile court shall enter an order requiring the child's continued compliance with the truancy court's order and notify the truancy court not later than the fifth day after the date the order is entered.

(d) This section does not limit the discretion of a juvenile prosecutor or juvenile court to prosecute a child for conduct under Section 51.03.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute concerns the proceedings in juvenile court that will occur if: (1) a child has been found to be in contempt of court for a third (or

fourth, or fifth, etc,) time; (2) the truancy court chooses to refer the child to the county's juvenile probation department; and (3) the juvenile probation department elects to refer the child to juvenile court. Section 65.252 outlines the juvenile court proceedings when the juvenile probation department has referred a contempt referral to the court. The prosecutor must first make a finding of probable cause with regard to the direct or indirect contempt allegation (note: there is a likely legal issue with regard to these allegations if they have already been found to be true by the truancy court). If the prosecutor finds probable cause, the prosecutor must then decide whether to request an adjudication. If the prosecutor requests an adjudication, the court must have hearing no later than the 20th day after receiving such request.

Subsection (b) sets out what the juvenile court must do if it makes a finding that the child engaged in direct or indirect contempt. The court is required to enter an order requiring the child to comply with the truancy court's order, forward a copy of that order to the truancy court within 5 days, and admonish the child of the consequences of subsequent referrals to juvenile court, including a possible charge of delinquent conduct for contempt of the truancy court's order or direct contempt of court.

Subsection (b) presents several difficult issues with regard to juvenile court implementation. First, the only current mechanism to "request an adjudication" in juvenile court is the filing of a petition. Subsection (d) provides that Section 65.252 is not meant to limit the prosecutor's discretion to prosecute a child for conduct under Section 51.03. Presumably, this is a reference to the delinquent conduct offense of failure to comply with a court order (indirect contempt). However, as this entire subsection is about prosecuting contempt and a petition alleging CINS or delinquent conduct must be filed for a juvenile court to have jurisdiction over a juvenile, it seems that a petition would be the mechanism for getting a case under this section to the court. If that is not the intent, then courts, prosecutors, and probation departments will need to develop a process for handling "requests for adjudication" that is different from petitions. Further questions are presented by the court's requirement to, after adjudication, warn the child about the consequences of subsequent referrals to juvenile court, including a detention hearing or adjudication of delinquent conduct. It seems if these are potential actions that can be taken with a contempt referral, then they may have been taken prior to this "warning."

Another issue that arises in this section is that of adjudicating direct contempt. Direct contempt is not defined as delinquent conduct or CINS; it is referenced only Section 54.07 of the Family Code, which gives the juvenile court authority to address direct contempt of the juvenile court only. It is questionable that the juvenile court has any authority to adjudicate a direct contempt referral from another court. Even if HB 2398 is read to confer that jurisdiction, it is unclear what action the juvenile court could take to address direct contempt given that the required court action on an adjudication under Section 65.252 is specifically related to the violation of the court order and seems to have no relation to direct contempt conduct.

Subsection (d) presents further issues. That subsection provides that if the prosecutor determines there is no probable cause or if the juvenile probation department finds extenuating circumstances caused the original truancy referral, the juvenile court is required to enter an order requiring the child to continue complying with the truancy court's order. Given that the juvenile court would seemingly only be involved in a matter if it is referred to the juvenile court and there is no referral if the prosecution finds no probable cause, it is unclear how this court order is to be obtained.

With regard to the juvenile probation department, this is the first mention that the probation department has a responsibility to look into the facts related to the actual truancy referral and make findings related to extenuating circumstances. This is a difficult provision to understand and implement. The purpose of the contempt referral to juvenile court is presumably for the juvenile court to determine if the child did fail to comply with the truancy court order or commit an act amounting to direct contempt (outstanding legal issues aside). To require the juvenile probation department to look into the original truancy referral, which has already been adjudicated by the truancy court and for which there is an appellate process to challenge, is counterintuitive to this purpose. Additionally, if the juvenile probation department were to find extenuating circumstances related to that original truancy referral, the outcome is that the juvenile court is to issue an order requiring the child to *continue complying* with the truancy court order. In addition to the questions regarding how this matter has gotten to the juvenile court, as outlined in the paragraph above, given that there has not been a finding related to whether or not the child was complying with the truancy court order, an order to continue complying may not make sense in the situation.

Further issues with implementation related to the extenuating circumstances provision exist due to the fact that the information required to be forwarded with the contempt referral to the juvenile probation department does not include information related to the reasons for the truancy. Thus, the juvenile probation department must conduct a review with the child, parent, and any other necessary individuals in order to make the extenuating circumstances determination. Though not addressed, presumably the summons procedures in Title 3,

Family Code, would be followed if the court sets a hearing. Courts must be mindful of the 20-day limit for having the hearing and ensure their clerks are aware of which cases that applies to.

Family Code Sec. 65.253. PARENT OR OTHER PERSON IN CONTEMPT OF COURT. (a) A truancy court may enforce the following orders by contempt:

(1) an order that a parent of a child, guardian of a child, or any court-appointed guardian ad litem of a child attend an adjudication hearing under Section 65.062(b);

(2) an order requiring a person other than a child to take a particular action under Section 65.105(a);

(3) an order that a child's parent, or other person responsible to support the child, reimburse the municipality or county for the cost of the guardian ad litem appointed for the child under Section 65.061(c); and

(4) an order that a parent, or person other than the child, pay the $50 court cost under Section 65.107.

(b) A truancy court may find a parent or person other than the child in direct contempt of the court.

(c) The penalty for a finding of contempt under Subsection (a) or (b) is a fine in an amount not to exceed $100.

(d) In addition to the assessment of a fine under Subsection (c), direct contempt of the truancy court by a parent or person other than the child is punishable by:

(1) confinement in jail for a maximum of three days;

(2) a maximum of 40 hours of community service; or

(3) both confinement and community service.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The child accused of engaging in truant conduct is not the only individual that a truancy court can hold in contempt. A truancy court can also hold a parent, guardian or guardian ad litem in contempt. Subsection (a) details four orders that a truancy court can require a parent, guardian or guardian ad litem to take. If the parent (or other person) does not take these actions, the truancy court can enforce these four orders by holding the parent (or other person) in contempt. Subsection (b) explains that a parent or other person besides the child may be found to be in direct contempt of court. Subsection (c) authorizes a truancy court to fine a person in contempt up to $100. Subsection (d) authorizes different consequences including confinement in jail for up to three days and up to 40 hours of community service.

Family Code Sec. 65.254. WRIT OF ATTACHMENT. A truancy court may issue a writ of attachment for a person who violates an order entered under Section 65.057(c). The writ of attachment is executed in the same manner as in a criminal proceeding as provided by Chapter 24, Code of Criminal Procedure.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The statute references an order under Section 65.057(c). This is an order directing a person with physical custody and control of a child to bring the child to a truancy court hearing. A person who violates the order can be the object of a writ of attachment issued by the truancy court. Chapter 24 of the Code of Criminal Procedure dictates the writ-of-attachment procedures.

Family Code Sec. 65.255. ENTRY OF TRUANCY COURT ORDER AGAINST PARENT OR OTHER ELIGIBLE PERSON. (a) The truancy court shall:

(1) provide notice to a person who is the subject of a proposed truancy court order under Section 65.253; and

(2) provide a sufficient opportunity for the person to be heard regarding the proposed order.

(b) A truancy court order under Section 65.253 must be in writing and a copy promptly furnished to the parent or other eligible person.

(c) The truancy court may require the parent or other eligible person to provide suitable identification to be included in the court's file. Suitable identification includes fingerprints, a driver's license number, a social security number, or similar indicia of identity.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.255 concerns orders under Section 65.253. The orders under Section 65.253 are directed at parents, guardians, and guardians ad litem. The statute requires the object of such an order to be given notice and an opportunity to be heard. The order must be in writing and must be promptly furnished to the parent or other person. The statute authorizes truancy courts to require the parent or other person to provide suitable identification to be included in the court's file.

Family Code Sec. 65.256. APPEAL. (a) The parent or other eligible person against whom a final truancy court order has been entered under Section 65.253 may appeal as provided by law from judgments entered by a justice court in civil cases.

(b) Rule 506, Texas Rules of Civil Procedure, applies to an appeal under this section, except an appeal bond is not required.

(c) The pendency of an appeal initiated under this section does not abate or otherwise affect the proceedings in the truancy court involving the child.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.256 creates a right to appeal for a parent or other person against whom a final truancy court order has been made.

Family Code Sec. 65.257. MOTION FOR ENFORCEMENT. (a) The state may initiate enforcement of a truancy court order under Section 65.253 against a parent or person other than the child by filing a written motion. In ordinary and concise language, the motion must:

(1) identify the provision of the order allegedly violated and sought to be enforced;

(2) state specifically and factually the manner of the person's alleged noncompliance;

(3) state the relief requested; and

(4) contain the signature of the party filing the motion.

(b) The state must allege the particular violation by the person of the truancy court order that the state had a reasonable basis for believing the person was violating when the motion was filed.

(c) The truancy court may also initiate enforcement of an order under this section on its own motion.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute allows the State to make a motion for enforcement in regard to an order of a truancy court directed at a parent or other adult. But the truancy court is also given power to initiate enforcement of an order on its own motion.

Family Code Sec. 65.258. NOTICE AND APPEARANCE. (a) On the filing of a motion for enforcement, the truancy court shall by written notice set the date, time, and place of the hearing and order the person against whom enforcement is sought to appear and respond to the motion.

(b) The notice must be given by personal service or by certified mail, return receipt requested, on or before the 10th day before the date of the hearing on the motion. The notice must include a copy of the motion for enforcement. Personal service must comply with the Code of Criminal Procedure.

(c) If a person moves to strike or specially excepts to the motion for enforcement, the truancy court shall rule on the exception or motion to strike before the court hears evidence on the motion for enforcement. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

(d) If a person who has been personally served with notice to appear at the hearing does not appear, the truancy court may not hold the person in contempt, but may issue a warrant for the arrest of the person.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.258 sets out details as to the handling of a motion for enforcement in regard to the order of a truancy court against a parent or other adult.

Family Code Sec. 65.259. CONDUCT OF ENFORCEMENT HEARING. (a) The movant must prove beyond a reasonable doubt that the person against whom enforcement is sought engaged in conduct constituting contempt of a reasonable and lawful court order as alleged in the motion for enforcement.

(b) The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise to incriminate himself or herself.

(c) The truancy court shall conduct the enforcement hearing without a jury.

(d) The truancy court shall include in the court's judgment:

(1) findings for each violation alleged in the motion for enforcement; and

(2) the punishment, if any, to be imposed.

(e) If the person against whom enforcement is sought was not represented by counsel during any previous court proceeding involving a motion for enforcement, the person may, through counsel, raise any defense or affirmative defense to the proceeding that could have been asserted in the previous court proceeding that was not asserted because the person was not represented by counsel.

(f) It is an affirmative defense to enforcement of a truancy court order under Section 65.253 that the court

did not provide the parent or other eligible person with due process of law in the proceeding in which the court entered the order.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 65.259 explains the details of a hearing on a motion for enforcement in regard to the order of a truancy court against a parent or other adult.

Family Code Sec. 264.304. HEARING; DETERMINATION OF AT-RISK CHILD. (c) The court shall determine that the child is an at-risk child if the court finds that the child has engaged in the following conduct:

(1) conduct, other than a traffic offense and except as provided by Subsection (d), that violates:

(A) the penal laws of this state; or

(B) the penal ordinances of any political subdivision of this state;

(2) the unexcused voluntary absence of the child on 10 or more days or parts of days within a six-month period [~~or three or more days or parts of days within a four-week period~~] from school without the consent of the child's parent, managing conservator, or guardian;

(3) the voluntary absence of the child from the child's home without the consent of the child's parent, managing conservator, or guardian for a substantial length of time or without intent to return;

(4) conduct that violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or second offense) or driving while under the influence of any narcotic drug or of any other drug to a degree that renders the child incapable of safely driving a vehicle (first or second offense); or

(5) conduct that evidences a clear and substantial intent to engage in any behavior described by Subdivisions (1)-(4).

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: The amendment to this statute is a recognition that missing school on three or more days or parts of days no longer is a violation of the law.

Government Code

Government Code Sec. 26.045. ORIGINAL CRIMINAL JURISDICTION. (d) A county court in a county with a population of 1.75 million or more has original jurisdiction over cases alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, or alleging truant conduct under Section 65.003(a), Family Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 26.045 is the statute setting out the jurisdiction of the constitutional county courts. Generally, constitutional county courts do not have jurisdiction of Class C misdemeanors. But Subsection (d) has for some time now made an exception for failure to attend school cases in counties with a population of 1.75 million or more. HB 2398 repeals the offense of failure to attend school and creates the concept of truant conduct that will be handled in truancy courts. The amendment to Section 26.045 recognizes that constitutional county courts in counties with a population of 1.75 million or more now have truancy court jurisdiction.

The title to Section 26.045 is still shown as "Original Criminal Jurisdiction." This is because the other subsections in Section 26.045 do concern the jurisdiction of the county court at law in true criminal cases. Under the laws established by HB 2398, cases involving truant conduct are not criminal cases. Thus, the placement of Subsection (d) in Section 26.045 is probably not the most logical placement.

Government Code Sec. 29.003. JURISDICTION. (i) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a); and

(2) cases that arise under Section 821.022, Health and Safety Code, or Section 65.003(a) [~~25.094~~], Family [~~Education~~] Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 29.003 sets out the jurisdiction of municipal courts. Subsection (i) allows certain municipal courts to enter into an agreement to establish concurrent jurisdiction with each other in certain cases. Prior to HB 2398, one of the specified types of cases in which this concurrent jurisdiction could be exercised was failure to attend school cases. HB 2398's amendment to this statute changes the type of case to truant conduct cases. This change recognizes the fact that failure to attend school cases no longer exist and have been replaced by truant conduct cases.

Government Code Sec. 36.001. JUDICIAL DONATION TRUST FUNDS ESTABLISHMENT OF TRUST FUNDS. (a) The governing body of a municipality or the commissioners court of a county may establish a judicial donation trust fund as a separate account held outside the municipal or county treasury to be used in accordance with this chapter.

(b) The governing body of a municipality or the commissioners court of a county may accept a gift, grant, donation, or other consideration from a public or private source that is designated for the judicial donation trust fund.

(c) Money received under Subsection (b) shall be deposited in the judicial donation trust fund and may only be disbursed in accordance with this chapter.

(d) Interest and income from the assets of the judicial donation trust fund shall be credited to and deposited in the trust fund.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Chapter 36 is an entirely new chapter the Government Code. The new chapter concerns "judicial donation trust funds." The new chapter consists of three sections – Sections 36.001, 36.002, and 36.003.

Section 36.001 authorizes commissioners courts and city councils to establish judicial donation trust funds. The establishment of these funds is totally discretionary. The fund is supposed to be a separate account completely outside the municipal or county treasury. The statute authorizes commissioners court or city council to accept gifts, grants, and donations that is designated to go to the fund. Interest and income from the assets of the fund stay in the fund.

Government Code Sec. 36.002. PROCEDURES AND ELIGIBILITY. The governing body of a municipality or the commissioners court of a county shall:

(1) adopt the procedures necessary to receive and disburse money from the judicial donation trust fund under this chapter; and

(2) establish eligibility requirements for disbursement of money under this chapter to assist needy children or families who appear before a county, justice, or municipal court for a criminal offense or truant conduct, as applicable, by providing money for resources and services that eliminate barriers to school attendance or that seek to prevent criminal behavior.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute authorizes commissioners courts and city councils to adopt procedures necessary to receive money and disburse money from the judicial donation trust fund. The statute discloses the purpose of the fund – namely, to assist needy children or families who appear before selected courts. The selected courts are county courts, justice courts, municipal courts.

Commissioners courts and city councils are directed to establish eligibility requirement for receiving funds. One statutory requirement is that a potential recipient appear before one of the selected courts for a criminal offense or for truant conduct. Of course, a person will never appear before a county, justice or municipal court for truant conduct. But a person may appear before one of these courts acting as a truancy court in response to an allegation of truant conduct.

The envisioned assistance is supposed to go "for resources and services that eliminate barriers to school attendance of that seek to prevent criminal behavior." Clearly, the funds are envisioned to prevent criminal acts and truant conduct.

Government Code Sec. 36.003. USE OF FUNDS IN ACCOUNT. (a) The judge of a county, justice, or municipal court, in accordance with Section 36.002, may award money from a judicial donation trust fund established under Section 36.001 to eligible children or families who appear before the court for a truancy or curfew violation or in another misdemeanor offense proceeding before the court.

(b) A judge of a county, justice, or municipal court may order the municipal or county treasurer to issue payment from the judicial donation trust fund for money awarded under this section.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 36.003 offers further detail as to how money in a judicial donation trust fund may be used. The judge may award money fund money to eligible children or families who appear before the court for a truancy or curfew violation. The statute makes no mention of truancy courts, but seems to envision that the term "county, justice or municipal court" includes those courts acting as truancy courts.

Government Code Sec. 54.1172. APPOINTMENT. (a) The county judge may appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, or alleging truant conduct under Section 65.003(a), Family Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: For many years now, Section 26.045(d) of the Government Code has given constitutional county courts in extremely large Texas counties special criminal jurisdiction. This is jurisdiction that constitutional county courts in other counties do not have. Specifically, constitutional county courts in these large counties were given special jurisdiction to hear failure to attend school cases and parent contributing to nonattendance cases. Statutory county courts in these large counties also had jurisdiction in these cases pursuant to Section 25.0003(a), Government Code.

At one time, this special jurisdiction applied only in counties with populations of 2 million or more. But recently, the population threshold was dropped to 1.75 million. The relevant time period for determining the population of a county for purposes of statutory interpretation is the 2010 decennial census. *See* Tex. Gov't Code Ann. § 312.011(20) (West 2015). According to the 2010 decennial census, only three counties meet the 1.75 million population requirement – Dallas County, Harris County, and Tarrant County.

While county-level courts in these three counties were given this special jurisdiction, there was no intent that these courts would actually hear the cases. Instead, the intent was that the county judge would appoint magistrates to handle failure to attend school cases and parent contributing to nonattendance cases. Section 54.1172 authorizes the appointment of these magistrates. As a practical matter, Dallas County is the only one of the three eligible counties in which special magistrates have been appointed to handle these matters. In Harris County and Tarrant County, justices of the peace and municipal judges have been handling failure to attend school cases and parent contributing to nonattendance cases.

The intent of HB 2398 was to enable Dallas County to continue to utilize the appointed masters. House Bill 2398 did not do away with parent contributing to nonattendance cases. Therefore no amendment to Section 54.1172 was necessary to enable masters to continue to hear such cases. But HB 2398 eliminated failure to attend school cases and replaced them with truant conduct cases handled by truancy courts. Section 54.1172 had to be amended to permit the appointed masters to hear cases involving allegations of truant conduct. Accordingly, the amendment to Section 54.1172 eliminates the reference to failure to attend school cases under Section 25.094, Education Code. In place of the reference to Section 25.094 is a reference to Section 65.003 – the new Family Code provision defining the concept of "truant conduct."

Government Code Sec. 54.1952. APPOINTMENT. (a) The county judge may appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, or alleging truant conduct under Section 65.003(a), Family Code, referred to the magistrate by a court having jurisdiction over the matter.

Commentary by Kaci Singer

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Subchapter JJ, Chapter 54, Government Code concerns magistrates in counties with more than 585,000 people that are contiguous to a county of over 4 million. There is only one county that meets these requirements – Fort Bend County. Section 54.1952 has for a number of years permitted the constitutional county judge to appoint one or more masters to hear certain cases. Those cases are failure to attend school cases and parent contributing to nonattendance cases. The constitutional county court does not actually have jurisdiction of these cases. But the courts with jurisdiction of these cases are permitted to refer them to the master appointed by the county judge.

Prior to the HB 2398 decriminalization of truancy, the cases involved in this system included failure to attend school. Of course, HB 2398 has repealed the

statute making failure to attend school a crime and has replaced the statute with the concept of truant conduct. The amendment to Section 54.1952 eliminates the reference to Section 25.094, Transportation Code (failure to attend school). The amendment replaces that reference with a reference to Section 65.003(a), Family Code (truant conduct). The amendment allows masters to hear truant conduct cases in Fort Bend County.

Government Code Sec. 54.1955. POWERS. (a) Except as limited by an order of the county judge, a magistrate appointed under this subchapter may:

(1) conduct hearings;

(2) hear evidence;

(3) issue summons for the appearance of witnesses;

(4) examine witnesses;

(5) swear witnesses for hearings;

(6) recommend rulings or orders or a judgment in a case;

(7) regulate proceedings in a hearing;

(8) accept a plea of guilty or nolo contendere in a case alleging a violation of Section 25.093 [~~or 25.094~~], Education Code, and assess a fine or court costs or order community service in satisfaction of a fine or costs in accordance with Article 45.049, Code of Criminal Procedure;

(9) for a violation of Section 25.093, Education Code, enter an order suspending a sentence or deferring a final disposition that includes at least one of the requirements listed in Article 45.051, Code of Criminal Procedure;

(10) for an uncontested adjudication of truant conduct under Section 65.003, Family Code, accept a plea to the petition or a stipulation of evidence, and take any other action authorized under Chapter 65, Family Code; and

(11) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the referral order, including the entry of an order that includes at least one of the remedial options [~~requirements~~] in Section 65.103, Family Code [~~Article 45.054, Code of Criminal Procedure; and~~

[~~(11) if the magistrate finds that a child as defined by Article 45.058, Code of Criminal Procedure, has violated an order under Article 45.054, Code of Criminal Procedure, proceed as authorized by Article 45.050, Code of Criminal Procedure~~].

(b) With respect to an issue of law or fact the ruling on which could result in the dismissal of a prosecution under Section 25.093 [~~or 25.094~~], Education Code, or a case of truant conduct under Section 65.003, Family Code, a magistrate may not rule on the issue but may make findings, conclusions, and recommendations on the issue.

Commentary by Ted Wood

Source: HB 2398**Effective Date:** September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute concerns the powers of a master who has been appointed to handle allegations of truant conduct in Fort Bend County. *See* analysis of Section 54.1952 for background. The statute is amended to make clear the fact that masters have power to act in cases of truant conduct that are normally handled by truancy courts.

Government Code Sec. 54.1956. NOT GUILTY PLEA ENTERED OR DENIAL OF ALLEGED CONDUCT. (a) On entry of a not guilty plea for a violation of Section 25.093, Education Code, the magistrate shall refer the case back to the referring court for all further pretrial proceedings and a full trial on the merits before the court or a jury.

(b) On denial by a child of truant conduct, as defined by Section 65.003(a), Family Code, the magistrate shall refer the case to the appropriate truancy court for adjudication.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: This statute concerns the powers of a master who has been appointed to handle allegations of truant conduct in Fort Bend County. *See* analysis of Section 54.1952 for background. The amendment clarifies that magistrates hearing allegations of truant conduct must refer the case back to the truancy court when a student denies the allegations.

Government Code Sec. 71.0352. JUVENILE DATA [~~DATE~~]: JUSTICE, MUNICIPAL, AND TRUANCY [~~JUVENILE~~] COURTS. As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System:

(1) a justice court, [~~and~~] municipal court, or truancy court [~~courts~~] shall report the number of cases filed for [~~the following offenses~~]:

(A) truant conduct under Section 65.003(a), Family Code [~~failure to attend school under Section 25.094, Education Code~~];

(B) the offense of parent contributing to nonattendance under Section 25.093, Education Code; and

(C) a violation of a local daytime curfew ordinance adopted under Section 341.905 or 351.903, Local Government Code; and

(2) in cases in which a child fails to obey an order of a justice court, [~~or~~] municipal court, or truancy

court under circumstances that would constitute contempt of court, the justice court, [~~or~~] municipal court, or truancy court shall report the number of incidents in which the child is:

(A) referred to the appropriate juvenile court for delinquent conduct as provided by Article 45.050(c)(1), Code of Criminal Procedure, or [~~and~~] Section 65.251 [~~51.03(a)(2)~~], Family Code; or

(B) held in contempt, fined, or denied driving privileges as provided by Article 45.050(c)(2), Code of Criminal Procedure, or Section 65.251, Family Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 71.0352 sets out specific court case statistics that must be reported to the Office of Court Administration (OCA) each month. The amendment to this statute recognizes the existence of truancy courts and requires that certain truancy court activity statistics be reported to OCA.

Government Code Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

(1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . $4;

(2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . $25;

(3) fees for services of peace officer:

(A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . $5;

(B) executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure) . . . $50;

(C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . $5;

(D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . $35;

(E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . $10;

(F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . $5;

(G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . $5;

(H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . $8 each day;

(I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . $0.29 per mile; and

(J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed $5;

(4) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . $10 per day or part of a day, plus actual necessary travel expenses;

(5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

(6) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . $25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . $25;

(8) court costs on an offense of parent contributing to student nonattendance [~~truancy or contributing to truancy~~] (Art. 102.014, Code of Criminal Procedure) . . . $20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . $15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . $100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) . . . $100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure) . . . $250;

(14) court cost for DNA testing for the offense of public lewdness or indecent exposure (Art. 102.020(a)(2), Code of Criminal Procedure) . . . $50;

(15) court cost for DNA testing for certain felonies (Art. 102.020(a)(3), Code of Criminal Procedure) . . . $34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure) . . . $12;

(17) if directed by the justice of the peace or municipal court judge hearing the case, court costs on

conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; and

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law (Art. 102.0178, Code of Criminal Procedure) . . . $60.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 102.021 is a summary listing of court costs to be paid upon conviction of a criminal offense. The amendment to this statute recognizes that HB 2398 has done away with failure to appear-cases. Accordingly, there is no longer any $20 court cost for a conviction for failure to attend school. The court cost remains in parent contributing to nonattendance cases because that particular criminal act is not repealed. This summary statute merely recognizes the changes made to the foundational court cost statute – Article 102.014 of the Code of Criminal Procedure.

Government Code Sec. 103.021. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: CODE OF CRIMINAL PROCEDURE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Code of Criminal Procedure if ordered by the court or otherwise required:

(1) a personal bond fee (Art. 17.42, Code of Criminal Procedure) . . . the greater of $20 or three percent of the amount of the bail fixed for the accused;

(2) cost of electronic monitoring as a condition of release on personal bond (Art. 17.43, Code of Criminal Procedure) . . . actual cost;

(3) a fee for verification of and monitoring of motor vehicle ignition interlock (Art. 17.441, Code of Criminal Procedure) . . . not to exceed $10;

(3-a) costs associated with operating a global positioning monitoring system as a condition of release on bond (Art. 17.49(b)(2), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;

(3-b) costs associated with providing a defendant's victim with an electronic receptor device as a condition of the defendant's release on bond (Art. 17.49(b)(3), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;

(4) repayment of reward paid by a crime stoppers organization on conviction of a felony (Art. 37.073, Code of Criminal Procedure) . . . amount ordered;

(5) reimbursement to general revenue fund for payments made to victim of an offense as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed $50 for a misdemeanor offense or $100 for a felony offense;

(6) payment to a crime stoppers organization as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed $50;

(7) children's advocacy center fee (Art. 42.12, Code of Criminal Procedure) . . . not to exceed $50;

(8) family violence center fee (Art. 42.12, Code of Criminal Procedure) . . . $100;

(9) community supervision fee (Art. 42.12, Code of Criminal Procedure) . . . not less than $25 or more than $60 per month;

(10) additional community supervision fee for certain offenses (Art. 42.12, Code of Criminal Procedure) . . . $5 per month;

(11) for certain financially able sex offenders as a condition of community supervision, the costs of treatment, specialized supervision, or rehabilitation (Art. 42.12, Code of Criminal Procedure) . . . all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation as determined by the judge;

(12) fee for failure to appear for trial in a justice or municipal court if a jury trial is not waived (Art. 45.026, Code of Criminal Procedure) . . . costs incurred for impaneling the jury;

(13) costs of certain testing, assessments, or programs during a deferral period (Art. 45.051, Code of Criminal Procedure) . . . amount ordered;

(14) special expense on dismissal of certain misdemeanor complaints (Art. 45.051, Code of Criminal Procedure) . . . not to exceed amount of fine assessed;

(15) an additional fee:

(A) for a copy of the defendant's driving record to be requested from the Department of Public Safety by the judge (Art. 45.0511(c-1), Code of Criminal Procedure) . . . amount equal to the sum of the fee established by Section 521.048, Transportation Code, and the state electronic Internet portal fee;

(B) as an administrative fee for requesting a driving safety course or a course under the motorcycle operator training and safety program for certain traffic offenses to cover the cost of administering the article (Art. 45.0511(f)(1), Code of Criminal Procedure) . . . not to exceed $10; or

(C) for requesting a driving safety course or a course under the motorcycle operator training and safety program before the final disposition of the case (Art. 45.0511(f)(2), Code of Criminal Procedure) . . . not to exceed the maximum amount of the fine for the offense committed by the defendant;

(16) a request fee for teen court program (Art. 45.052, Code of Criminal Procedure) . . . $20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed $10;

(17) a fee to cover costs of required duties of teen court (Art. 45.052, Code of Criminal Procedure) . . .

$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise $10;

(18) a mileage fee for officer performing certain services (Art. 102.001, Code of Criminal Procedure) . . . $0.15 per mile;

(19) certified mailing of notice of hearing date (Art. 102.006, Code of Criminal Procedure) . . . $1, plus postage;

(20) certified mailing of certified copies of an order of expunction (Art. 102.006, Code of Criminal Procedure) . . . $2, plus postage;

(20-a) a fee to defray the cost of notifying state agencies of orders of expungement (Art. 45.0216, Code of Criminal Procedure) . . . $30 per application;

[~~(20-b) a fee to defray the cost of notifying state agencies of orders of expunction (Art. 45.055, Code of Criminal Procedure) . . . $30 per application;~~]

(21) sight orders:

(A) if the face amount of the check or sight order does not exceed $10 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $10;

(B) if the face amount of the check or sight order is greater than $10 but does not exceed $100 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $15;

(C) if the face amount of the check or sight order is greater than $100 but does not exceed $300 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $30;

(D) if the face amount of the check or sight order is greater than $300 but does not exceed $500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $50; and

(E) if the face amount of the check or sight order is greater than $500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $75;

(22) fees for a pretrial intervention program:

(A) a supervision fee (Art. 102.012(a), Code of Crimin al Procedure) . . . $60 a month plus expenses; and

(B) a district attorney, criminal district attorney, or county attorney administrative fee (Art. 102.0121, Code of Criminal Procedure) . . . not to exceed $500;

(23) parking fee violations for child safety fund in municipalities with populations:

(A) greater than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not less than $2 and not to exceed $5; and

(B) less than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not to exceed $5;

(24) an administrative fee for collection of fines, fees, restitution, or other costs (Art. 102.072, Code of Criminal Procedure) . . . not to exceed $2 for each transaction; and

(25) a collection fee, if authorized by the commissioners court of a county or the governing body of a municipality, for certain debts and accounts receivable, including unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid (Art. 103.0031, Code of Criminal Procedure) . . . 30 percent of an amount more than 60 days past due.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 103.021 is a summary statute that lists certain court costs and fees. The amendment to this statute eliminates a reference to a $30 fee that is called for by Article 45.055 of the Code of Criminal Procedure. Article 45.055 concerns expunctions in failure to attend-school cases. Because HB 2398 repeals the statute making the failure to attend school a criminal offense, HB 2398 also repeals Article 45.055. Because Article 45.055 is repealed, the $30 expunction fee is also eliminated. Accordingly, there should be no mention of the fee in the summary statute.

Government Code <u>Sec. 103.035. ADDITIONAL COSTS IN TRUANCY CASES: FAMILY CODE. A party to a truancy case in a truancy court shall pay court costs of $50 under Section 65.107, Family Code, if ordered by the truancy court.</u>

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: HB 2398 creates a new $50 court cost. The cost is to be paid (generally) upon a finding that a student has engaged in truant conduct. The statute calling for this new court cost is Section 65.107, Family Code. The creation of a new Section 103.035 is to list this new court cost in that part of the Government Code that summarizes court costs.

Local Government Code

Local Government Code Sec. 81.032. ACCEPTANCE OF DONATIONS AND BEQUESTS. The commissioners court may accept a gift, grant, donation, bequest, or devise of money or other property on behalf of the county<u>, including a donation under Chapter 36, Government Code,</u> for the purpose of performing a function conferred by law on the county or a county officer.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 81.032 authorizes commissioners courts to accept gifts. The amendment explicitly permits commissioners courts to accept donations to a judicial donation trust fund. This explicit authorization is probably not necessary to permit donations to the judicial donation trust fund. But the explicit statement removes any possible doubt about the county receiving donations to the judicial donation trust fund.

HB 2398, SECTION 41. The following laws are repealed:

(1) Articles 45.054 and 45.055, Code of Criminal Procedure;

(2) Sections 25.094 and 25.0916(d), Education Code; and

(3) Sections 51.03(d), (e-1), and (g), 51.04(h), 51.08(e), 54.021, 54.0402, 54.041(f) and (g), and 54.05(a-1), Family Code.

Commentary by Ted Wood

Source: HB 2398
Effective Date: September 1, 2015
Applicability: Applies to an offense committed or conduct that occurs on or after the effective date.
Summary of Changes: Section 25.094 makes failure to attend school a crime. The first step in the decriminalization of truancy is to repeal this statute. This is exactly why Section 25.094 is repealed. The repeal begins a chain reaction that necessitates changes to (or repeals of) other statutes.

Section 25.0916 deals with uniform truancy policies in certain counties. Subsection (d) contained a deadline (September 1, 2013) for action in the past. That deadline has come and gone and is no longer relevant. Accordingly, Subsection (d) is repealed.

Article 45.054 sets out details of handling of failure to attend-school cases. But with the repeal of the failure to attend school statute, these procedures and remedies would make no sense in the Code of Criminal Procedure. Accordingly, HB 2398 repeals Article 45.054. But this does not mean the procedures and remedies should be abandoned and forgotten. The remedies appear almost totally intact in new Section 65.103, Family Code. Some of the procedures survive and appear in other portions of Chapter 65.

Article 45.055 concerns expunctions in failure to attend school cases. The repeal of this statute eliminates these expunction procedures. But this does not mean there are no expunctions under the new truancy laws. A new Article 45.0541 of the Code of Criminal Procedure contains information about the expunction of proceedings in truancy courts. Article 45.055 also called for a $30 fee in expunction proceedings. This fee has been done away with entirely.

Section 51.03(d) concerns affirmative defenses in truancy proceedings in juvenile courts. With the elimination of truancy proceedings in juvenile courts, there is no need for this section of code detailing affirmative defenses. Subsection (e-1) describes the term “child” for purposes of truancy proceedings in the juvenile courts. But with the elimination of truancy proceedings in juvenile courts, there is no need for this section of code defining the term “child.” Subsection (g) also refers to missing school as being conduct indicating a need for supervision. With the elimination of truancy proceedings in juvenile courts, there is no need for this statute.

Section 51.04(h) is a jurisdictional statute giving juvenile courts in certain counties concurrent jurisdiction with justice and municipal courts over conduct that constitutes failure to attend school. In light of the repeal of the statute making the failure to attend school a crime, there is no need for Section 51.04(h). Accordingly, the statute is repealed. Section 51.08(e) is another statute rendered irrelevant by the repeal of the statute making the failure to attend school a crime – Section 25.094, Education Code. Accordingly, Section 51.08(e) is repealed.

Section 54.021 is a relatively long statute dealing with the handling of truancy cases in juvenile court. HB 2398 amended Section 51.03, Family Code to remove habitual absence from school from the list of conduct indicating a need for supervision. By doing so, juvenile courts no longer have any authority to hear what used to be known as truancy cases. Thus, the many details concerning truancy cases in juvenile court spelled out in Section 54.021 are rendered irrelevant. Accordingly, Section 54.021 is repealed in its entirety.

Section 54.0402 is a one-sentence statute about disposition orders in truancy cases in juvenile courts. With the repeal of the statutes calling for juvenile courts to handle truancy cases, Section 54.0402 is irrelevant. Accordingly, the statute is repealed.

Section 54.041(f) describes a program that the parents of a child who has been found to have engaged in truancy may be ordered to attend. But with the elimination of truancy cases in the juvenile courts, this statute has no relevance. Accordingly, the statute is repealed.

Section 54.041(g), which was repealed, is not related to truancy or failure to attend school. It is related to restitution, which the court can order a parent to pay if a

child is adjudicated for CINS or delinquent conduct involving property damage or personal injury; there is no restitution in a truancy case because it does not involve property damage or personal injury. Subsection (g), which was repealed, provides protection for the parents in that if the court finds that the parent made a reasonable good faith effort to prevent the child from engaging in CINS or delinquent conduct and, despite the efforts, the child continued to engage in such conduct, the court must waive any restitution requirement on the parent. Presumably this repeal is a mistake; courts should consider continuing to follow this rule despite its repeal and hopefully it can be returned to statute next session.

Section 54.05(a-1) concerns with hearings to modify dispositions in truancy cases in juvenile court. Given that juvenile courts no longer handle truancy cases, this provision is irrelevant. Accordingly, the statutory provision is repealed.

**Editor's Note: Some commentaries attributed to Ted Wood also contain contributions from TJJD Staff Attorney Kaci Singer.*

8. Legislation Affecting Indigent Defense

Wesley Shackelford
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IMPORTANT NOTE

The article contained below does not include the text of each bill, but rather only references relevant bills by number and author. This special feature article produced by Wesley Shackelford on behalf of Texas Indigent Defense Commission and is presented with its original content. If you are interested in seeing the full text of the bills outlined in this section, visit the Texas Legislature Online website at:

www.legis.state.tx.us

HB 3633 by Rep. Abel Herrero requires attorney fee repayment orders issued as a condition of community supervision be subject to an "ability to pay" requirement as exists when they are ordered as court costs elsewhere in the Code of Criminal Procedure. It also limits the amount to be repaid to counties to the actual cost of the legal services provided. The bill also clarifies that when a defendant is represented by a public defender's office, the appropriate amount for an attorney fee repayment order is the amount that would have been paid to an appointed attorney had the county not had a public defender's office.

SB 1353 by Sen. Juan Hinojosa permits the Texas Indigent Defense Commission (TIDC) to directly participate with the Conference of Urban Counties (CUC)-TechShare Indigent Defense Technology program.

SB 662 by Sen. Jose Rodriguez will expedite post-conviction relief to defendants who are not guilty, guilty of only a lesser offense, or convicted and/or sentenced under a statute found to be unconstitutional. The bill requires the court to appoint counsel for applicants for habeas corpus relief when the state agrees to relief on the grounds that the defendant/applicant is not guilty, guilty of only a lesser offense, or the law under which the person was convicted has been declared unconstitutional.

SB 1057 by Sen. Juan Hinojosa provides statutory authority for the TIDC to provide continuing state funding at up to 50% of the cost for regional public defender programs and permits TIDC to provide the funds directly to such defender programs rather than via a grant to a county. The TIDC board will need to consider how to incorporate this new authority into its grant funding strategies in a fair and effective manner.

HB 48 by Rep. Ruth Jones McClendon creates the Timothy Cole Exoneration Review Commission under the auspices of the Texas Judicial Council and administratively attached to the Office of Court Administration. The new organization is charged with reviewing proven wrongful convictions where the exoneration occurred since January 1, 2010. It is to identify the main causes of those convictions and make recommendations to prevent such tragedies from reoccurring in the future. The bill became effective immediately upon Governor Abbott's signature on June 1, 2015.

SB 316 by Sen. Juan Hinojosa requires courts to prioritize the appointment of an available public defender's office to make efficient use of such offices.

9. Texans Care for Children Legislative Report

Review of Juvenile Justice and the 2015 Legislative Session

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Texans Care for Children

IMPORTANT NOTE

The information contained below is part of a comprehensive legislative report produced by Texans Care for Children. An excerpt of the original report related to Juvenile Justice is printed below. The full report can be viewed at: www.txchildren.org. The information below does not include the text of each bill, but rather references bill numbers. If you are interested in seeing the full text of the bills outlined in this section, visit the Texas Legislature Online website at:

www.legis.state.tx.us

Legislature decriminalizes truancy, moves more juveniles closer to home, and expands the juvenile justice ombudsman's authority, but keeps 17-year-olds in the adult criminal justice system

This session the Legislature made a number of positive changes to help youth stay out of trouble and turn their lives around when they do get in trouble. As part of SB 1630, an omnibus juvenile justice bill, lawmakers approved our proposal to expand the authority of the **juvenile justice ombudsman**. In the past, the ombudsman has only been able to check on youth in the state's custody, in placements contracted by the state, or on parole. Under the new law, the ombudsman will have the authority to protect the rights and ensure the safety of youth in both state and local probation care, in both public and contract facilities.

The broader bill, SB 1630, seeks to keep more kids out of state secure facilities. The legislation requires the Texas Juvenile Justice Department (TJJD) to develop a regionalization plan to **keep youth closer to home**, where they are proven to have greater success. Under the bill, the only youth who will be committed to state secure facilities are those who receive a determinate sentence and, unfortunately, those on an indeterminate sentence if the committing judge concludes that there is no appropriate placement to meet the youths' needs. The legislation also requires the validation of all risk and needs assessment instruments or processes used by juvenile probation departments, ensuring appropriate assessments are made before youth are placed away from their homes or provided services.

At the beginning of the legislative session, both appropriations bills filed in the House and Senate removed the structure for the TJJD budget, instead providing guidance that the budget would need to be written through policy decisions. Legislators wrote the final budget with the SB 1630 regionalization plan in mind, **shifting more funds to the front end of the juvenile justice system** and keeping more kids closer to home and out of state facilities. Many of the funding shifts will be developed through a grant structure created by the agency to provide community juvenile justice funding.

This session the Legislature also worked on making sure that a teenage mistake doesn't prevent Texans from going to college, getting a job, finding housing, and turning their lives around. Lawmakers passed bills to streamline the sealing of records, allowing more youth to have their records automatically sealed. They also approved a bill to limit the practice of sharing the fingerprints of youth for whom charges are dropped, or who are otherwise diverted and not adjudicated. The Legislature also passed a bill establishing an advisory committee to make recommendations for further improving **juvenile records** retention policies [*sic*].

Another significant bill passed this session is aimed at keeping truant students in classrooms, not courtrooms. The Legislation decriminalizes **truancy**, keeping truancy in the same courts but as a civil offense. It removes schools' option to file a truancy report with the courts after a student misses three school days in four weeks. The bill requires schools to create truancy prevention measures and employ a truancy prevention officer. It also allows counties to create judicial trust funds to accept donations and grants for the purpose of providing services to families and youth to prevent truancy and delinquent conduct.

Truancy reform was not the only way that the Legislature sought to keep students out of trouble and out of the justice system. Legislators also passed a bill to require **school police officers** in the state's largest districts to receive training specific to the population they interact with every day – our children. The proposal gained momentum after a couple of high-profile incidents of school officers using excessive force on stu-

dents. However, proposals to limit the use of tasers and pepper sprays in schools fell short.

Unfortunately, the Legislature did not pass high-priority legislation to **raise the age** of juvenile jurisdiction. Multiple legislators filed bills to send 17-year-old offenders to the juvenile system rather than continuing to send all of them to the adult system. A strong coalition of sheriffs, judges, business leaders, children's advocates, and legislators made great progress building support for the change this session. However, the House bill was placed on the House calendar too late to pass, and the Senate didn't hold a hearing on the Senate bill or accept a House amendment to SB 1630 to raise the age. This will be a top priority during the next legislative session. Proposals to keep the youngest kids out of the juvenile justice system and out of secure facilities were not given hearings.

Outcomes of significant juvenile justice initiatives this session

The following initiatives to support children in school became LAW:

HB 2398 – Decriminalizing truancy and seeking to help chronically absent students stay in the classroom

- Provisions from many of the other truancy bills filed this session were added to HB 2398

HB 2684 – Creating a model training program and training requirement for school police officers

SB 107 – Creating campus behavior coordinators on school campuses, seeking to reduce disciplinary measures that remove youth from the classroom

SB 133 – Expanding optional mental health training to additional public school employees, including coaches and school police officers

The following initiatives to support children in school did NOT pass:

HB 2885/ HB 3341 / HB 2285 – Improving accountability of school police officers by requiring data collection regarding school police activities

- HB 2885 and HB 3341 both passed the House committee but were not voted on by the full House

HB 3979 / SB 625/ SB 1696 – Prohibiting school police officers from using Tasers and pepper spray on students

- SB 625 was left pending in committee following a hearing; the others did not receive a hearing

SB 1334 – Requiring school districts with a pattern of disproportionately disciplining youth of color and youth with disabilities to develop an improvement plan

- Did not receive a hearing

The following initiatives to support children through improved juvenile records policy became LAW:

HB 431 – Creating an advisory committee to examine and make recommendations to improve the handling of juvenile records

HB 1491 – Prohibiting business entities from publishing confidential juvenile records

SB 409 – Limiting the sharing of fingerprints of youth who are not adjudicated

SB 1707 / HB 263 – Streamlining the system to allow more youth to have their records automatically sealed

The following initiatives to support children by improving the juvenile justice system became LAW:

HB 257 – Prohibiting judges from having a financial interest in a private correctional or rehabilitation facility

HB 839 – Automatically reinstating CHIP and Medicaid when a previously covered youth leaves a juvenile facility

HB 1144 – Creating a task force on studying and improving the outcomes for juvenile sex offenders

HB 2048 / SB 1891 – Maintaining and strengthening the coordinated community-based "systems of care" approach to serving children with severe mental illness

- HB 2048 passed the House but did not receive a Senate hearing; however, similar provisions were included in SB 200

HB 2372 – Realigning training hours for juvenile correctional officers to allow for on-the-job training and promote retention of new officers

HB 3277 – Expanding the authority of the juvenile justice ombudsman

- HB 3277 passed the House but did not receive a Senate hearing; however, similar provisions were included in SB 1630

SB 239 – Increasing the mental health workforce by making loan repayment assistance available to mental health professionals who provide services in workforce

shortage areas, including the Texas Juvenile Justice Department

SB 888 / HB 725 – Allowing youth to appeal the court's decision to certify them as an adult before trial rather than waiting for a conviction in adult court

SB 1149 – Adding additional protections for youth committed to local post-adjudication secure correctional facilities

SB 1630 – Keeping more youth offenders out of state juvenile justice facilities and in local programs, developing a regionalization plan, and expanding the authority of the juvenile justice ombudsman

The following initiatives to support children by improving the juvenile justice system did NOT pass

HB 1205 / HB 35 / HB 330 / SB 104 – Raising the age of juvenile jurisdiction to include 17-year-olds in the juvenile justice system instead of the adult criminal justice system

- HB 1205 passed the House committee but was not voted on by the full House; a similar amendment was added to SB 1630 in the House but was removed by the conference committee

HB 2626 / SB 1401 – Creating a task force to identify alternatives to the juvenile justice system for the youngest children who make mistakes

- Did not receive a hearing

HB 2793 – Limiting secure confinement for youth who have run away from home

- Passed the House committee but was not voted on by the full House

HB 2931/ SB 1333 – Limiting secure confinement in post-adjudication facilities or state-run facilities to youth over the age of 14

- Did not receive a hearing

HB 2934 – Prohibiting the indiscriminate shackling of youth in the courtroom

- Passed the House committee but was not voted on by the full House

HB 3852 / SB 943 – Prohibiting secure confinement of status offenders

- HB 3852 passed the House committee but was not voted on by the full House; SB 943 did not receive hearing

10. Raise the Age: A Retrospective on the 84th Session

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Texas Criminal Justice Coalition

IMPORTANT NOTE

The information contained below was prepared as a special feature article for the Special Legislative Issue. If you are interested in seeing the full text of the bills outlined in this section, visit the Texas Legislature Online website at:

www.legis.state.tx.us

Background

In Texas, a person who commits a crime at the age of 17 is considered an adult for criminal justice purposes. Texas is one of only 9 remaining states that charge 17-year-olds as adults in the criminal justice system, regardless of the crime or the teen's personal experiences. In light of national efforts to raise the age of criminal responsibility from 17 to 18, like the successful passage of legislation in Illinois in 2013 and anticipated passage of legislation in New York, it is unsurprising that the juvenile justice community buzzed over the issue of raising the age in the months leading up to the 84th Legislative Session.

Extensive work was done during the Interim to lay the groundwork to consider raising the age, including research and stakeholder outreach:

- The House Criminal Jurisprudence Committee partnered with the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin on a year-long research project to examine issues related to raising the age of juvenile jurisdiction. In addition to a public hearing on the issue, the Committee held several stakeholder focus groups comprised of prosecutors, juvenile probation chiefs, juvenile judges, sheriffs, and county representatives. The Committee also gathered and evaluated data pertinent to this issue, analyzed current law and relevant statutes, and conducted research about the experiences of other states. The Committee's ultimate recommendation was to raise the age.

- Texans Care for Children hosted a two-day convening of stakeholders and produced a thorough report aimed at "better understand[ing] the impact.

- raising the age of jurisdiction would have in Texas, to analyze the operational and fiscal challenges stakeholders would face, and to identify what Texas would need to do promote the best outcomes when the policy change is made."[1]

- The Texas Criminal Justice Coalition also provided technical assistance on bill language, convening several stakeholder meetings to consider which alterations were necessary to the relevant codes to effect the anticipated change, and presented research addressing the impact of the Prison Rape Elimination Act ("PREA"), which requires all "youthful inmates" (defined as anyone under the age 18) to be "sight and sound" separated from the rest of the adult population.

Some of the key findings of the House Criminal Jurisprudence Committee and other advocates groups are summarized below.

KEY FINDINGS

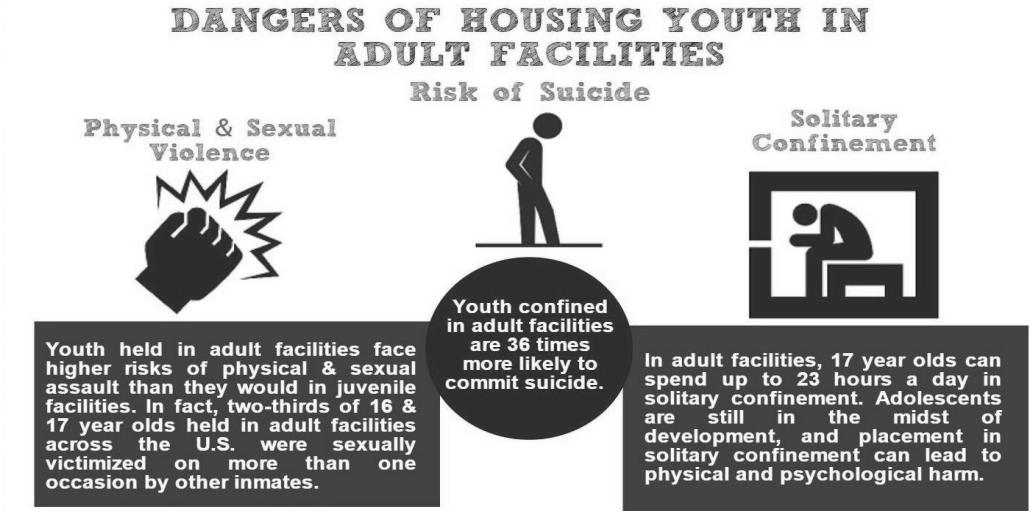
- **The majority of 17-year-olds are arrested for nonviolent and misdemeanor offenses.** 96% of 17 year-olds who were arrested in 2013 were arrested for nonviolent and misdemeanor offenses.[2]

- **Young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system** *(see graphic to right)*. According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal justice system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crimes.[3]

- **Setting the age of adult criminal justice jurisdiction at 17 negates neurological research findings** that identifies this time period as a crucial point in developing cognitive reasoning.[4]

- **Raising the age of juvenile jurisdiction to 18 will ultimately save Texas $88.9 million for every cohort of 17-year-olds moved into the juvenile system**.[5]

- **Adult correctional facilities present a greater safety risk for youth.** Youth are over eight times as likely to have a substantiated incident of sexual violence while in state prisons than adults in these same facilities (*see graphic below)*.[6]



- **17-year-olds housed in adult correctional facilities are frequently housed in isolation.** Youth who are held in adult correctional facilities are subject to isolation, which poses a danger to their mental and physical health.[7] Unfortunately, most county jails (where the majority of youth are held) are not equipped to segregate 17-year-olds, as required by PREA, without isolating them.[8]

- **Keeping 17-year-olds in the adult criminal justice system comes at *significant* expense to counties.** While the *Youthful Inmate Standard* is extremely difficult for county jails to comply with, **of the 112 counties who responded to an information request filed by the Texas Criminal Justice Coalition, nearly 65% of Texas counties with adult correctional facilities indicated that they already comply or are attempting to comply with PREA requirements.**[9] But compliance is expensive for jails that house 17-year-olds: As the Sheriffs' Association of Texas states, "To ensure the safety of 17-year-olds in our care, best practice tells us 17-year-olds should be separated from older offenders in correctional facilities. This means increasing staff and building units on to or jails to house these youth. Many counties will soon need to retrofit their jails to comply with safety standards for 17-year-olds – costing taxpayers millions of dol-

lars."[10] Dallas County, for example, spends nearly $80,000 per week keeping youth separated by sight and sound from the general population.[11] These continuing costs of housing 17-year-olds are difficult for counties to endure, and are one of the primary reasons the Sheriffs' Association of Texas has chosen to support "raising the age" of juvenile jurisdiction.[12] Yet another county concern is lawsuits: PREA exposes counties to increased civil liability,[13] with the potential for substantial litigation costs.

Key Aspects of the Proposals & Legislative Outcomes

Given the significant interest in the issue, it is unsurprising that several bills were filed at the beginning of the 84th Legislative Session to address the age of juvenile jurisdiction. In total, five bills were filed: SB 104 (Hinojosa), HB 53 (McClendon), HB 330 (Wu), HB 1205 (Dutton), and HB 1240 (Walle). As filed, these bills were very similar. Each redefined "child" in the Family Code, Penal Code, Code of Criminal Procedure, Education Code, Health and Safety Code, Human Resources Code, Government Code, Local Government Code, and Transportation Code to mean a person at least age 10 and not yet 18 at the time the offense was committed. The bills also extended other age classifications by the same one year increments where necessary; for example, the age of court ordered probation was raised from 18 to under 19, and de terminate sentence probation was extended from the offender's 19th birthday to their 20th birthday.

The primary differences between these four bills are summarized below:

- HB 53 and HB 1240 (1) amended the capitol felony statute provisions regarding juveniles from 18 to 19; and (2) omitted the nonretroactivity provisions contained in the other three bills.

- HB 330 and HB 1205 (1) omitted provisions related to the contempt authority by the justice or municipal courts and curfew; and (2) added a provision addressing the certification of juveniles to adult court.

- HB 53, HB 330, and HB 1205 were effective September 1, 2015; whereas SB 104 was effective September 1, 2016.

All five authors asked for substantial feedback from stakeholders on the drafted language and ultimately agreed to a committee substitute, which was introduced as CSHB 1205. CSHB 1205:

- Changed the implementation date to January 1, 2017 to allow counties adequate time to prepare.

- Created an advisory committee composed of stakeholders to monitor and evaluate the implementation of the legislation.

- Made several conforming changes to statutes missed in the original bill draft where age of jurisdiction is referenced.

- Made several conforming changes to reflect that juvenile court will have jurisdiction over youth who committed crimes before their 18th birthday until they are 19 years old.

- Made several changes to reflect and conform with the change that youth may be committed to TJJD or placed on determinate sentence probation until their 20th birthday.

- Removed Sections 2.01, 2.03 and 2.05 of the original draft, which had changed the age definitions of when a victim is considered a minor for the purposes of certain crimes. These changes were not directly relevant to raising the age of juvenile jurisdiction.

- Removed Section 4.40 of the original draft which unnecessarily raised a procedural age at which older youth must be held separately from younger youth committed to TJJD. Currently, TJJD holds youth under 15 separate from youth over 17, and the substitute does not change this.

CSHB 1205 (Dutton) was voted out of the Juvenile Justice and Family Issues Committee and was scheduled to be heard on the House Floor. The bill, however, never received a full house vote as the House ran out of time to consider House bills before the bill could be considered.

SB 104 (Hinojosa) was never given a hearing in the Senate.

Despite these setbacks, proponents of raising the age were unwilling to see the measure die and began to look for vehicles for amendment. They succeeded in amending raise the age onto SB 1630 (Whitmire), a juvenile justice system reorganization bill that moves the juvenile justice system in Texas to a regional model that would keep youth closer to their counties rather than commitment to state facilities. The amendment, co-sponsored by Representatives Wu and Larson, was a truncated version of CSHB 1205 that:

- Raised the age of juvenile jurisdiction from 17 to 18 by redefining the definition of "child" to mean a person 10 years of age or older and under 18 years of age at the time the offense was committed.

- Contained catch all language providing: (1) any criminal offenses distinguishing between adults and children should define children as those under 18; and (2) raising the age of juvenile jurisdiction over a child to 19 or 20 if the child was placed on determinate sentence probation.

- Had an effective date of September 1, 2017 that would trigger only if the 85th Legislature appropriated funds for raising the age.

The authors of the amendment stated publicly that an amendment in this form was meant to give the Texas Juvenile Justice Department and local governments time to plan and prepare for implementing the change after the next legislative session. While the amendment was removed during conference on SB 1630, conferees publicly stated that they intended to use the interim to study implementation of the measure and supported raising the age of juvenile jurisdiction next legislative session.[14]

Lessons Learned

While the concept of raising the age of juvenile jurisdiction had significant support from stakeholders, many wondered about the path towards implementation. They raised two primary concerns: First, stakeholders questioned whether the bills, as filed, properly addressed all provisions of the Codes relating to the age of jurisdiction. Significant resources were dedicated to calm these concerns. Ultimately, many felt that the committee substitute to HB 1205, coupled with promises by the author to make a few technical amendments, assuaged fears in this respect. The non-partisan cooperation among a broad range of stakeholders to get the language right was one of the successes of the campaign to raise the age. Going forward, stakeholders should be involved as early as possible to provide feedback and guidance into the exact bill language so that measures as large as this one get support from a variety of stakeholders.

The second concern was more difficult to address. Juvenile probation officers expressed concerns about implementing such sweeping reform on the local level without significant state financial and technical support. Despite efforts by TJJD and the Legislative Budget Board (LBB), the costs associated with the implementation of this change were never fully quantified. The LBB concluded that "[d]ue to the vast characteristics of the juvenile population and the unknown composition of the future population of offenders, local government entities indicated costs associated with this bill are difficult to estimate."[15] Several local juvenile probation departments, including Bexar County, Tarrant County, Nueces County, El Paso County, and Harris County provided cost estimates. However, there was not consistency among the inputs used to calculate these estimates, which made it difficult to compare or extrapolate them into a statewide estimate. Complicating the matter further, Sheriffs testified that they anticipated vast savings from removing 17-year-olds from their jurisdiction but actual estimates of those savings were not produced.

Ultimately, the Legislature was left with a fiscal note addressing the cost to the state but very little guidance on the anticipated costs to local governments. This made it extremely difficult for interested members to address anticipated costs and therefore local governments were not allocated any funds for implementation in the final budget. Without sufficient funds to support the measure, some local stakeholders privately withheld their support for the measure and some actively advocated against passage of either CSHB 1205 or the amendments to SB 1630.

The failure of proponents of the bill to provide a clear path towards implementation and to secure sufficient funding to support the measure was ultimately fatal and was one of the key reasons the measure died. Several lessons can be learned from this failure: First, concerted efforts must be made to address the elephant in the room — costs. This can be done by identifying which inputs should be used to calculate costs and savings to local governments so that local estimates can be uniform. This is easier said than done in a state comprised of 254 counties and 167 juvenile jurisdictions, each with their own unique

challenges with moving 17-year-olds from adult to juvenile systems. But if the measure is to succeed, as most have expressed hope it will, then this must be done. Second, juvenile stakeholders, advocates, and other community proponents of the measure must be encouraged to meet earlier in the process to identify other hurdles to implementation. These concerns can only be addressed through open communication.

What Lies Ahead

With public and private commitments by several legislators, this issue will continue to be a hot one during the coming Interim. Representative Wu has committed to working with Senator Whitmire and Governor Abbott during the Interim so that the measure can pass during the 85th Legislative Session. The Texas Criminal Justice Coalition and other juvenile justice advocates have also expressed continuing support for the measure and anticipate donating significant resources to its passage.

The concept of raising the age of juvenile jurisdiction will require the extensive expertise of justice stakeholders, on the juvenile and adult sides, so that the children of Texas can be treated as the kids that they are. If you are interested in learning more about these efforts, please contact me at ehenneke@texascjc.org.

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