

STATE BAR SECTION REPORT JUVENILE LAW

VOL. 23, NO. 3

AUGUST 2009

2009 Special Legislative Issue

OFFICERS

Chair:	William Connolly 2930 Revere Street Houston, TX 77098-5607 (713) 520-5757
Chair-Elect:	Chris Hubner P.O. Box 13547 Austin, TX 78711 (512) 424-6677
Secretary:	Jill Mata 235 East Mitchell San Antonio, TX 78210 (210) 531-1965
Treasurer:	Nydia Thomas P.O. Box 13547 Austin, TX 78711 (512) 424-6683
Immediate Past Chair:	Tim Menikos 2701 Kimbo Road Fort Worth, TX 76111 (817) 838-4621

COUNCIL

Terms Expire 2010

Richard Ainsa	El Paso
David Hazlewood	Lubbock
Riley Shaw	Fort Worth

Terms Expire 2011

Kameron Johnson	Austin
Marisela Ledezma	Edinburg
Laura Peterson	Garland

Terms Expire 2012

Ann Campbell	Houston
Kevin Collins	San Antonio
Kaci Sohrt	Austin

Newsletter Editor: Judge Pat Garza
386th District Court
235 E. Mitchell
San Antonio, Texas 78210
patgarza386@sbcglobal.net

Newsletter Secretary: Debbie Steed

Website: www.juvenilelaw.org

TABLE OF CONTENTS

	Page
Legislative Foreword	3
<i>81st Texas Legislature Appropriations to the Texas Juvenile Probation Commission,</i> Vicki Spriggs	7
<i>81st Texas Legislature Appropriations to the Texas Youth Commission,</i> Cheryl Townsend	17
1. Title 3 and Related Provisions	21
Family Code.....	21
Alcoholic Beverage Code	31
Government Code	32
Health and Safety Code	42
Human Resources Code.....	43
Occupations Code	44
Transportation Code.....	46
Code of Criminal Procedure	50
Penal Code	55
2. Child Protective Services	63
3. Education Issues Related to Juvenile Justice Legislation	67
4. Abuse, Neglect and Exploitation Legislation	71
5. Gang Legislation	75
6. Sex Offender Legislation	87
7. Victim Legislation	99
8. Open Government Legislation.....	117
9. Justice of the Peace and Municipal Court Legislation.....	123
10. Texas Juvenile Probation Commission Provisions	129
11. Texas Youth Commission Provisions.....	145
12. Miscellaneous Provisions.....	161

LEGISLATIVE FOREWORD

by Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission

The 81st Texas Legislature 2009 *The Sunset After the Storm*

In our last Special Legislative Issue of the Juvenile Law Newsletter, the 2007 legislative session was affectionately referred to as the “*Perfect Storm*” as the Texas Youth Commission (TYC) was under the public and legislative microscope revolving around allegations of sexual abuse in their West Texas facility in Pyote. After unrivaled scrutiny and discussion of every facet of TYC operations, Senate Bill 103 in 2007 mandated extensive and far-reaching reform measures for TYC and counties were provided additional funding to divert youth from TYC commitment to community based programs and services.

The 2009 legislative session produced much calmer waters generally speaking but did have its share of smaller storms in what we will call the “*Sunset after the Storm*” to describe the actual Sunset Advisory Commission review process that both TYC and the Texas Juvenile Probation Commission (TJPC) underwent during the interim after the tumultuous 2007 session. TYC and TJPC had previously been under Sunset review back in 1997. Virtually all state agencies are legislatively required to go through a Sunset review every 10-12 years and TYC and TJPC typically go through the review at the same time. This year the Office of the Independent Ombudsman (OIO) within TYC was also subjected to the review. The Sunset process is the regular assessment of the continuing need for a state agency to exist. Sunset is basically the periodic, formal process the Texas Legislature uses to determine if a state agency is still useful and viable or if it is time for the sun to set on that agency (i.e., complete abolishment or significant restructuring of the agency). The Sunset Advisory Commission is statutorily created and has five Senate members, five House members, and two public members.

The Sunset Commission staff faced a very difficult, if not impossible, task to effectively evaluate TYC amidst agency internal restructuring and the implementation of the Senate Bill 103 reforms. TYC came out from the 2007 legislative session with a new executive director and new management in addition to a conservator overseeing the agency. Shortly thereafter, the original conservator was replaced with a new conservator and the executive

director left the agency. This continued turnover of management of the agency made implementation of the reforms of Senate Bill 103 a difficult process. The agency continued under much legislative and media scrutiny throughout the interim and during the Sunset review process. In October of 2008, after the Sunset review had been completed, a new Executive Commissioner, Cheryl Townsend, was appointed for TYC. As a result, the management of the agency greatly stabilized allowing needed improvements and reforms to really begin to take hold at TYC. The review of TJPC and the OIO presented fewer challenges to the Sunset staff, but the task was still a huge undertaking to fully consider the entire juvenile justice system and each agency’s interplay with the other.

Sunset Commission staff focused a great deal of analysis on the working relationship and collaboration between TJPC and TYC. This focus underscored the belief that the juvenile justice system is one system with multiple agencies playing a role. Thus, the Sunset Commission staff strongly believed that TJPC and TYC should work much more closely together to accomplish systemic goals for the juvenile justice system in Texas.

The Sunset Commission report with their official recommendations was formally released in July of 2009. The report surprised many by recommending the abolishment of both TJPC and TYC and the subsequent creation of a single, new state agency named the Texas Department of Juvenile Justice. This recommendation reflected the belief that the creation of one juvenile justice agency would resolve long-standing issues of problematic communication and collaboration between TYC and TJPC. The official Sunset Advisory Commission voted on the recommendations contained in the report on January 14, 2009. The vote was close at 6 to 5 in favor of the consolidation recommendation.

The recommendation of the Sunset Advisory Commission became the foundation for both House Bill 3689 by Representative Ruth McClendon and Senate Bill 1020 by Senator Juan Hinojosa. Both bills were identical

to start but as each bill began its path through the legislature, the substance of each bill was dramatically changed from the original Sunset recommendations. There was a great deal of opposition to the consolidation of TJPC and TYC into one new agency and the legislature heard this outcry very clearly. HB 3689 and SB 1020 both quickly began to develop alternative ideas for how to ensure TJPC and TYC would work effectively together. Some of the alternatives discussed were to have both agencies report to one governing board; to have both agencies have independent governing boards and one large oversight or policy board governing both agencies; or to allow both agencies to remain independent but with mandated cooperation and communication.

Ultimately, HB 3689 became the vehicle that went to a conference committee of the House and Senate. The plan that ultimately passed left TJPC and TYC as separate agencies each with an independent governing board. The bill required greater levels of cooperation, collaboration and communication between TJPC and TYC in addition to other provisions. Thus, the session ended far from where it began as it relates to juvenile justice, but most juvenile justice professionals were relieved that the final Sunset bill was reasonable and yet contained significant systemic improvements overall.

Integral to the discussion of TYC reforms this session was a continuing discussion of diverting more youth from TYC commitment to community-based programs and services. The Sunset Commission recommended a pilot diversion program in their report. After extensive legislative debate on the scope of these programs and necessary funding, TJPC received approximately \$48 million over the biennium to assist local juvenile probation departments in creating or enhancing local community-based programs to divert youth from TYC.

Continuing the tradition of the late Professor Robert Dawson, and as we have done for the past seven legislative sessions beginning in 1995, this special legislative issue contains the text of all major bills impacting the juvenile justice system along with commentary explaining the bills and any history of interest.

Overall, it was a very busy session. Lawmakers filed 12,226 bills and of those, 5,894 passed. **House Bill 3689** by **Representative Ruth McClendon** was the omnibus Sunset legislation for TJPC, TYC and the OIO. There are additional bills of interest discussed in this issue. **House Bill 1629** by **Representative Elliott Naishtat** and **Representative Jerry Madden** addresses gaps in services provided to youth who were under the jurisdiction of both TYC and the Texas Department of Family and Protective Services by requiring coordinated efforts for information sharing between agencies, case planning, and community reintegration. **House Bill 2086** by **Representative Joseph**

Moody provides tools to help fight organized gang activity by creating new offenses, enhancing penalties for engaging in organized criminal activity and establishing "gang-free zones". **House Bill 4009** by **Representative Randy Weber** provides services to victims of human trafficking by creating a task force to study and prevent this activity, providing assistance for victims, and creating offenses to punish those who exploit victims of human trafficking. **House Bill 4451** by **Representative Jim McReynolds**, **Representative Sid Miller**, and **Representative Marisa Marquez** fills a gap in services for TYC youth with mental health conditions by requiring continuity of care services between TYC and the Texas Correctional Office on Offenders with Medical or Mental Impairments. **Senate Bill 328** by **Senator John Carona** prohibits the operation of a watercraft while under the influence of alcohol and makes numerous changes to penalty provisions for driving while intoxicated, driving while intoxicated with a child passenger and boating while intoxicated to provide for consistent application of penalties to all intoxication offenses. **Senate Bill 689** by **Senator Florence Shapiro** makes needed changes to sex offender registration laws to cover expanding uses of technology through online identifiers and social networking sites.

There are many individuals who I want to thank this year. As Professor Dawson told me many times, "If it is worth doing, it is worth delegating," so I have followed his advice again this year. Fortunately, I have been extremely blessed to have some talented and hardworking helpers with this issue. TJPC's Legal Division has worked tirelessly in drafting, editing and producing this issue. Thank you to TJPC Deputy General Counsel, **Nydia Thomas** and Staff Attorneys **Chris Cowan**, **Chris Hubner**, and **Karen Roe** for their work during the session, on the TJPC Post-Legislative Conference in June and especially on this issue. TJPC's Director of Policy Development and External Relations, **Linda Brooke**, graciously contributed commentary on both TJPC appropriations and education related legislation as she has done for the last several sessions—thank you, Linda! A big thank you to our "unofficial TJPC staff member", Assistant District Attorney, **Riley Shaw**, from Tarrant County. Riley worked diligently and tirelessly during the session to help ensure passage of good legislation. He was the voice of reason at the Capitol on many occasions. Additionally, he has provided commentary on various penal code and code of criminal procedure provisions. Thanks, Riley. I would also like to thank **Eileen Garcia-Matthews**, Executive Director of Texans Care for Children for commentary on bills impacting child protective services and **Mark Goodner** and **Katherine Tefft**, Texas Municipal Courts Education Center, for their commentary on legislation affecting justices of the peace and municipal courts.

In addition to those who wrote or contributed to writing the section-by-section commentaries, two people contributed special articles. **Vicki Spriggs**, Executive Director of TJPC, contributed an article on the legislative appropriation process and its impact on the system and **Cheryln Townsend**, Executive Director of TYC, contributed a similar article on the legislative appropriation process and its impact on TYC.

Last, but certainly not least, a huge thank-you to **Kristy Almager** for her technical expertise in producing this issue. Kristy just returned to us after her maternity leave following the birth of our newest TJPC baby, Landon Robert Almager. We are so happy to have Kristy back!!! Many, many hours go into compiling, formatting and producing a publication such as this. As always, we simply could not have done it without Kristy and her efforts are truly appreciated.

A special thanks to our newsletter editor, Pat Garza, and section Chair, William Connolly, for graciously giving our team the opportunity to again produce this issue for the Juvenile Law Section. I hope the 2009 Special Legislative Issue is useful to all juvenile justice practitioners statewide. The 81st Texas Legislature was a bit of a roller coaster ride, especially if you worked for TJPC, TYC or the OIO or are in the field of juvenile probation. Once again, the opportunities for community based programs that effectively rehabilitate youthful offenders have received much attention and funding from the Texas Legislature. Our mission now is to make the programs and services as successful as we can...a challenge that Texas juvenile justice professionals are always willing and able to accept. Good luck to everyone.

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 at:

<http://www.capitol.state.tx.us/Search/BillSearch.aspx>

81st Texas Legislature Appropriations to the Texas Juvenile Probation Commission: Helping Juveniles Who Progress in the Juvenile Justice System

Vicki Spriggs
Executive Director
Texas Juvenile Probation Commission

The Texas Juvenile Probation Commission (TJPC) and juvenile probation departments, juvenile courts, prosecutors, and defense attorneys are challenged this legislative session to continue to expand services at the local level in order to divert more youth from commitment to the Texas Youth Commission (TYC). Though referrals to juvenile probation departments continue to decrease, youth referred are manifesting multiple behavioral issues.

To address the complex needs of this population and to maintain the legislative goal of continuing the reforms taking place at TYC, a biennial total of approximately \$50 million was appropriated to TJPC by the legislature for the 2010-11 biennium. This new funding is targeted at the following functions:

- the development of the Juvenile Case Management System (JCMS), a web-based case management system which will allow juvenile probation departments to share case file information between TJPC, TYC, and juvenile probation departments statewide;
- the establishment of a residential mental health facility for juvenile offenders with low to moderate behavioral health issues;
- the establishment of a contract between TJPC and the Texas Correctional on Offenders with Mental and Medical Impairments (TCOOMMI). This contract will result from local juvenile probation departments meeting with their local mental health authority to identify the service gaps of referred youth. This information will be sent to TJPC by each department choosing to use their new funding to address mental health services. TJPC will then contract with TCOOMMI who will in turn fund the local mental health authorities and provide oversight in the provision of the services.

The Legislature allowed TJPC to restructure the funding streams in the budget. Since 1995, funds had been appropriated for specific purposes. Over time, this resulted in probation departments providing services not based on the need of the juvenile but on the basis of the funding available. The restructuring of the TJPC budget allows counties flexibility with funds to better serve the needs of

their population. This was important since Texas juvenile probation departments collectively lost approximately \$42 million a year in federal Title IV-E administrative claim reimbursements due to a re-interpretation of the regulations by the federal government in January of 2008. Juvenile probation departments used Title IV-E funds to provide programs, services and staff to address the needs of juvenile offenders.

The field of juvenile probation continues to face many challenges and has since 1995 when the entire juvenile justice system was reformed. These challenges, like all challenges, were opportunities that resulted in new thinking, new programs, and ultimately a decrease in the number of youth being referred to juvenile probation departments across this state. The new challenges of this session will reveal many new opportunities and, as in the past, juvenile justice professionals and TJPC will work together to meet the challenge, forge new partnerships, and create new opportunities for Texas' juveniles.

State agencies are required to submit a biennial legislative appropriations request (LAR) to the Legislative Budget Board in August prior to the beginning of the legislative session in January. In August 2008, agencies were required to draft proposed budgets with 10% identified for possible reduction. This reduction amounted to \$24,673,235 in general revenue for the Commission. The proposed budget reduction was taken in the budget line items that were specific to the placement of youth in residential facilities and represented the back end of the system (i.e., Local Post-Adjudication Facilities, Level 5, and Small County Diversionary Placement). In January 2009, all agencies received a letter requiring the identification of 2.5% of their current fiscal year budget for possible reduction; this amount for TJPC totaled \$3.2 million. Juvenile probation departments were notified of the possible need to return funding. TJPC did not experience either reduction.

In preparing the LAR, an agency may ask for exceptional items which are above the base request less any reductions required by the Legislature. TJPC's exceptional items request totaled \$53,518,074; the items are listed in order of priority on the following two pages.

**Texas Juvenile Probation Commission
Legislative Appropriations Request 2010 – 2011
Exceptional Item Requests**

	2010	2011
1. Replacement of Lost Federal IV-E Funding to Probation Departments	\$17,000,000	\$17,000,000
2. Increase in TJPC Staff Salaries	\$211,484	\$211,484
3. Increase in Administrative Budget	\$125,777	\$121,561
Consumable Supplies	\$5,169	\$8,271
Travel	\$75,608	\$98,290
Other Operating Expense	\$45,000	\$15,000
4. Increase in FTEs Resulting from Senate Bill 103 Mandates	\$316,597	\$304,995
Salaries and Wages	\$262,095	\$262,095
Consumable Supplies	\$7,422	\$7,422
Travel	\$13,256	\$13,256
Other Operating Expense	\$22,222	\$22,222
Capital Expenditures	\$11,602	\$0
5. Increase in TJPC Staff	\$351,927	\$340,772
Salaries and Wages	\$297,872	\$297,872
Consumable Supplies	\$7,422	\$7,422
Travel	\$13,256	\$13,256
Other Operating Expense	\$22,222	\$22,222
Capital Expenditures	\$11,155	\$0
6. Juvenile Case Management System		
JCMS is a comprehensive, state-of-the-art; web-based juvenile justice information and case management system that will provide for the common data collection, reporting and management needs of Texas juvenile probation departments. JMCS will provide statewide data sharing between the 166 local juvenile probation departments. The system will consist of a core case management component (intake, referral, case management, etc.) and additional enhancement features such as detention, institution management, law enforcement and juvenile justice alternative education programs. Furthermore, JCMS is being architected to facilitate sharing of data between juvenile justice agencies both across and within jurisdictions to allow for better focused programs and services to be offered to juvenile offenders. Thorough and complete information regarding a juvenile offender contributes to more effective decision-making and utilization of limited state and county programmatic resources.	\$4,000,000	\$500,000
Salaries and Wages	\$500,000	\$500,000
Other Operating Expense	\$3,000,000	\$0
Capital Expenditures	\$500,000	\$0

7. Peavy Switch Mental health Residential Treatment Program

The Peavy Switch project (approximately 25 bed facility, at a cost of \$285.00 per day, per youth) would provide inpatient treatment for juvenile offenders with moderate mental health needs (75 per youth, per year). TJPC is requesting funding for the 2010-2011 biennium to provide mental health services to those juveniles who can not be served in the community due to a combination of their mental health issues and their conduct in the community.

\$2,600,000 \$2,600,000

8. Mental Health Assessments and Services (Grants)

Juveniles in secure pre- and post-adjudication facilities pose a greater challenge to the system, as both TJPC standards and constitutional safeguards demand that juveniles with a potential mental health diagnosis receive mental health assessment and services. The agency is requesting funding to assist juvenile probation departments to provide mental health assessments and services to juveniles under their jurisdiction, with special focus on juveniles held in secure pre- and post-adjudication facilities. Three million each year would allow for the hiring of licensed mental health providers in each county operated secure facility. Five-hundred thousand is a one-time fee that provides for development of an automated in-depth screening/assessment instrument.

\$3,500,000 \$3,000,000

9. Replace TJPC Vehicle

\$25,000 \$0

10. JJAEP Funding for Mandatory Attendance Days (Grants)

Increase funding available for reimbursement of mandatory student attendance days due to anticipated increase in student entries.

\$629,788 \$678,689

11. Budget Restructure.

Since 1995, the legislative appropriations to TJPC have been targeted to specific areas and specific programs or services in juvenile probation departments. For example, current funding streams target residential placement, front-end programs and services, and special services such as Intensive Services Probation (ISP). TJPC currently administers up to 19 different contracts, based upon these targeted funding streams, with each of the 166 juvenile probation departments. Varied funding streams fragment, limit and restrict the local juvenile probation departments' ability to respond to the specific needs of youth. For example, if all the funding for non-residential community-based programs and services has been exhausted, but funding remains for residential placements, it is likely that a youth may be placed into a residential facility since there is funding for that service, regardless of whether placement is the best, or most appropriate disposition option for that particular juvenile. TJPC is requesting that specific, targeted funding streams be consolidated and streamlined to allow flexibility for local probation departments, thus allowing the departments to tailor the programs and services that are most appropriate to each juvenile offender's needs. Consolidated funding streams will help probation departments expend the limited state and local resources in a more efficient and effective manner. Outcome based performance measures will be implemented to ensure that consolidated funding streams are meeting desired goals.

12. Residential Facilities Rider Language

Juvenile Boards may use funds appropriated in Goal A, Basic Probation and Goal B, Community Corrections, to lease, contract for, or reserve bed space with public and private residential facilities for the purpose of diverting juveniles from commitment to the Youth Commission providing rehabilitation and treatment to juvenile offenders. Funds used for placements may not exceed the Commission's Tier Level of Care Rates.

Proposed Levels:

General Correctional	\$95.00
Specialized	\$127.00
Intensive	\$225.00

The table below shows TJPC's budget for the 2010-2011 biennium as passed by the 81st Texas Legislature.

**Texas Juvenile Probation Commission
2010 – 2011 Biennium
Actual Funding**

Description	FY 2010	FY 2011
A. Goal: Basic Probation (State Aid)		
A.1.1. Strategy: Basic Probation Services	33,441,181	33,441,181
A.1.2. Strategy: Progressive Sanctions Levels 1 - 3	14,120,361	14,120,361
Total, Goal A:	47,561,542	47,561,542
B. Goal: Community Corrections		
B.1.1. Strategy: Community Corrections Services	93,587,112	90,587,112
B.1.2. Strategy: Harris County Boot Camp	1,000,000	1,000,000
B.1.3. Strategy: Local Post-Adjudication Facilities	4,147,038	4,147,038
B.1.4. Strategy: Special Needs Diversionary Programs	1,974,034	1,974,034
Total, Goal B:	100,708,184	97,708,184
C. Goal: Probation Assistance		
C.1.1. Strategy: Probation Assistance	21,904,996	21,888,417
Total, Goal C:	21,904,996	21,888,417
D. Goal: Juvenile Justice Alternative Education Program		
D.1.1. Strategy: Juvenile Justice Alternative Education Program	11,476,023	11,534,404
Total, Goal D:	11,476,023	11,534,404
E. Goal: Indirect Administration		
E.1.1. Strategy: Central Administration	985,768	985,768
E.1.2. Strategy: Information Resources	137,629	137,629
Total, Goal E:	1,123,397	1,123,397
Total Appropriation	182,774,142	179,815,944

Appropriation Riders to TJPC Budget

1. Performance Measure Targets. 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 Juvenile Probation Commission. In order to achieve the objectives and service standards established by this Act, the Juvenile Probation Commission shall make every effort to attain the following designated key performance target levels associated with each item of appropriation. [Modified due to length.]

Total, Capital Budget

2010	2011
<u>\$541,096</u>	<u>\$30,000</u>

3. Restriction, State Aid. None of the funds appropriated above in Strategy A.1.1, Basic Probation Services, and allocated to local juvenile probation boards shall be expended for salaries or expenses of juvenile board members.

4. Appropriation of Federal 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 Probation Commission shall certify or transfer state funds to the Texas Department of Family and Protective Services so that federal financial participation can be claimed for Title IV-E services provided by counties. The Juvenile Probation Commission 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 the Juvenile Probation Commission for the purpose of reimbursing counties for services provided to eligible children.

5. Juvenile Boot Camp Funding. Out of the funds appropriated above in Strategy B.1.2, Harris County Boot Camp, the amount of \$1,000,000 annually may be expended only for the purpose of providing a juvenile boot camp in Harris County.

6. Residential Facilities. Juvenile Boards may use funds appropriated in Goal A, Basic Probation, and Goal B, Community Corrections, to lease, contract for, or reserve bed space with public and private residential facilities for the purpose of providing rehabilitation and treatment to juvenile offenders. Funds used for placements may not exceed the Commission's Tier Level of Care Rates.

7. County Funding Levels. To receive the full amount of state aid funds for which a juvenile board may be eligible, a juvenile board must demonstrate to the commission's satisfaction that the amount of local or county funds budgeted for juvenile services is at least equal to the amount spent

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 in 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. [Modified due to length.]

for those services, excluding construction and capital outlay expenses, in the 1994 county fiscal year. This requirement shall not be waived by the commission unless the juvenile board demonstrates to the satisfaction of the commission that unusual, catastrophic, or exceptional circumstances existed during the year in question to adversely affect the level of county fiscal effort. If the required local funding level is not met and no waiver is granted by the commission, the commission shall reduce the allocation of state aid funds to the juvenile board by the amount equal to the amount that the county funding is below the required funding.

8. Local Post-adjudication Facilities. Out of the funds appropriated above in Strategy B.1.3, Local Post-Adjudication Facilities, the amount of \$4,147,038 in fiscal year 2010 and \$4,147,038 in fiscal year 2011 in General Revenue Funds may be used only for the purpose of funding local post-adjudication facilities. The agency shall fund these facilities based on historical occupancy rates, rather than the number of beds in the facility.

9. Juvenile Justice Alternative Education Programs (JJAEP). Out of the funds transferred to the Juvenile Probation Commission pursuant to Texas Education Agency (TEA) Rider 33 and appropriated above in Strategy D.1.1, Juvenile Justice Alternative Education Programs, the Juvenile Probation Commission shall allocate \$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.

An additional \$500,000 shall be set aside in a reserve fund for each fiscal year of the biennium to allow mandated and non-mandated counties to apply for additional funds on a grant basis. The remaining funds shall be allocated for

distribution to the counties mandated by § 37.011(a) Texas Education Code, at the rate of \$79 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, and are intended to cover the full cost of providing education services to such students. 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 \$79 per student per day of attendance. Counties in which populations exceed 72,000 but are 125,000 or less, may participate in the JJAEP and are eligible for state reimbursement at the rate of \$79 per student per day.

The Juvenile Probation Commission may expend any remaining funds for summer school programs in counties with a population over 72,000, which are, funded as mandated counties in Chapter 37. 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 2010 shall be appropriated to fiscal year 2011 for the same purposes in Strategy D.1.1.

The amount of \$79 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 35. The amount of \$79 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 2011 to the Foundation School Fund No. 193.

The Juvenile Probation Commission 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.

10. Funding for Additional Eligible Students in JJAEPs. Out of funds appropriated above in Strategy D.1.1, 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 Probation Commission at the rate of \$79 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. 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. An additional \$500,000 shall be set aside in a reserve fund for each fiscal year of the biennium to allow mandated and non-mandated counties to apply for additional funds on a grant basis. The remaining funds shall be allocated for

distribution to the counties mandated by § 37.011(a) Texas Education Code, at the rate of \$79 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, and are intended to cover the full cost of providing education services to such students. 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 \$79 per student per day of attendance. Counties in which populations exceed 72,000 but are 125,000 or less, may participate in the JJAEP and are eligible for state reimbursement at the rate of \$79 per student per day.

The Juvenile Probation Commission may expend any remaining funds for summer school programs in counties with a population over 72,000, which are, funded as mandated counties in Chapter 37. 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 2008 shall be appropriated to fiscal year 2009 for the same purposes in Strategy D.1.1.

The amount of \$79 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 35. The amount of \$79 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 2009 to the Foundation School Fund No. 193.

The Juvenile Probation Commission 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.

11. Use of JJAEP Funds. None of the funds appropriated above for the support of JJAEPs shall be used to hire a person or entity to do lobbying.

12. JJAEP Accountability. Out of funds appropriated above in Strategy D.1.1, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Probation Commission shall ensure that Juvenile Justice Alternative Education Programs are held accountable for student academic and behavioral success. The Juvenile Probation Commission shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2008. The report shall include, but is not limited to, the following:

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

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

c. the percent of eligible JJAEP students statewide and by program demonstrating academic growth in the Texas Assessment of Knowledge and Skills (TAKS);

d. 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;

e. 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

f. inclusion 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.

13. Training. From funds appropriated above in Strategy C.1.1, Probation Assistance, the Juvenile Probation Commission shall provide training to local juvenile probation personnel and to local Juvenile Judges to maximize the appropriate placement of juveniles according to the progressive sanction guidelines.

14. Unexpended Balances - Hold Harmless Provision. Any unexpended balances as of August 31, 2010, in Strategy A.1.1, Basic Probation Services (estimated to be \$200,000), and in Strategy B.1.1, Community Corrections Services (estimated to be \$200,000), above are hereby appropriated to the Juvenile Probation Commission in fiscal year 2011 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise

be affected as a result of reallocations related to population shifts.

15. Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments. The Juvenile Probation Commission (JPC) 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 2010 and fiscal year 2011 refunds received from local juvenile probation departments by JPC are appropriated above in Strategy B.1.1, Community Corrections Services. Any Basic Probation refunds received in excess of \$650,000 in fiscal year 2010 and \$650,000 in fiscal year 2011 shall lapse to the General Revenue Fund. Any Community Corrections refunds received in excess of \$500,00 in fiscal year 2010 and \$500,00 in fiscal year 2011 shall lapse to the General Revenue Fund.

16. Reporting Requirements to the Legislative Budget Board (LBB). From funds appropriated above, the Juvenile Probation Commission (JPC) shall maintain a specific accountability system for tracking basic probation and community corrections funds targeted at making a positive impact on youth. JPC shall implement a monitoring system so that the use of funds appropriated in each strategy in Goals A and B can be specifically identified.

- a. The Juvenile Probation Commission shall report to juvenile probation population data as requested by the Legislative Budget board (LBB) on a monthly basis for the most recent month available. JPC shall report to the LBB on all populations specified by the LBB, 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 LBB no later than two months after the close of each fiscal year.
- b. The agency shall produce on an annual basis, detailed monitoring, tracking utilization, and effectiveness information on the above mentioned funds. This information shall include information on the impact of any new initiatives. Examples include, but are not limited to residential placements, community-based services for serious and chronic felons, and community based services for misdemeanants no longer eligible for commitment to the Youth Commission. IN addition to any other requests for information, the agency shall report the above information for the previous fiscal year to the LBB and the Governor's Office by December 1st of each year.
- c. Each report submitted to the LBB and the Governor pursuant to this provision must be accompa-

nied by supporting documentation detailing the sources and methodologies utilized to assess program effectiveness and any other supporting material specified by the LBB.

- d. Each report submitted 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.
- e. The comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to the Juvenile Probation Commission if the LBB and the Governor certify to the Comptroller of Public Accounts that the Juvenile Probation Commission is not in compliance with this provision.

17. Special Needs Diversionary Programs. Out of the funds appropriated above in Strategy B.1.4., Special Needs Diversionary Programs, \$1,974,037 in fiscal year 2010 and \$1,974,034 in fiscal year 2011 in General revenue funds shall be used for specialized mental health caseloads. The agency shall use these funds to work in coordination with the Texas Correctional Office on Offenders with Medical or mental Impairments (TCOOMMI) and local mental health services agencies to provide specialized supervision caseloads to youth with mental illness.

18. Community Corrections Funding. From funds appropriated above in Strategy B.1.1., Community Corrections Services, the Juvenile Probation Commission shall distribute at least \$4,366,500 in fiscal year 2010 and at least \$4,366,500 in fiscal year 2011 in General Revenue Funds to local juvenile probation departments for enhanced community-based services, including, but not limited to sex offender treatment, intensive supervision, and specialized supervision, for serious and chronic felony offenders.

From funds appropriated above in Strategy B.1.1., Community Corrections Services, the Juvenile Probation Commission shall distribute at least \$6,901,835 in fiscal year 2010 and at least \$6,901,835 in fiscal year 2011 in General Revenue Funds to local juvenile probation departments for enhanced community-based services to misdemeanor offenders no longer eligible for Youth Commission commitment.

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, 2007. These funds shall not be used to supplant existing expenditures associated with programs, services, and residential placement of youth within the local juvenile probation departments.

19. Sunset Contingency. Funds appropriated above for fiscal year 2011 are made contingent on the continuation of the Juvenile Probation Commission by the Eighty-first Legislature. In the event that the agency is not continued, the funds appropriated in fiscal year 2010 or as much thereof as may be necessary are to be used to provide for the phase out of agency operations.

20. Juvenile Justice Alternative Education Program (JJAEP) Disaster Compensation. Out of funds appropriated above in Strategy D.1.1., the Commission 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.

21. Community Corrections Diversion Program. Out of the funds appropriated above in Strategy B.1.1., Community Corrections Services, \$26,000,000 in General Revenue Funds in fiscal year 2010 and \$24,000,000 in General revenue Funds in fiscal year 2011, may be expended only for the purposes of providing programs for the diversion of youth from the Youth Commission (TYC) and a juvenile justice information system at the Juvenile Probation Commission (JPC). The programs may include, but are not limited to, residential, community-based, family, and after-care programs. The allocation of State funding for the program is not to exceed the rate of \$140 per juvenile per day. JPC shall maintain procedures to ensure that the State is refunded all unexpended and unencumbered balances of State funds at the end of the fiscal year.

Out of the funds appropriated above in Strategy B.1.1., Community Corrections Services, and previously identified in this rider, not more \$3,889,600 in fiscal year 2010 and not more than \$389,600 in fiscal year 2011 in General Revenue Funds shall be used for the development and maintenance of a juvenile justice information system. These amounts include salaries and wages for an additional 4 full-time equivalent positions included in the agency's bill pattern in each fiscal year for the maintenance of the juvenile justice information system. This system shall be designed to share juvenile data between juvenile probation departments, JPC, and TYC.

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. These funds shall not be used to supplant existing expenditures associated with programs, services, and residential placement of youth within the local juvenile probation departments.

From funds appropriated above, JPC shall provide funding for mental health services through an interagency contract with the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). The juvenile

probation departments participating in the diversion program shall report to JPC regarding the use of funds within thirty days after the end of each quarter. JPC 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 costs per youth participating in the program, the rates of recidivism of program participants, the number of youth who receive mental health services through TCOOMMI, the amount of funds provided to TCOOMMI for mental health services for youth, the number of youth committed to TYC, 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.

If admissions to TYC during fiscal year 2010 exceed 1,783 and upon approval of the Legislative Budget Board, the

Comptroller of Public Accounts shall transfer appropriations equal to \$51,100 for each commitment over 1,783 in fiscal year 2010 from JPC to TYC in fiscal year 2011.

JPC shall develop a mechanism for tracking youth served by the diversion program to determine the long-term success for diverting youth from TYC and the adult criminal justice system. A report on the program's results shall be submitted to the Legislative Budget Board by December 1 of each year.

22. Juvenile Mental Health Facility. From funds appropriated above, \$1,000,000 in General Revenue Funds in fiscal year 2010 shall be used for the operation of a juvenile mental health facility. Funds shall be used for "make ready" maintenance of the facility; for hiring, training, and licensing of staff; and for one month of operations at the facility. This appropriation is contingent upon the Juvenile Probation Commission providing a detailed plan for the use of the funds and the approval of the plan by the Legislative Budget Board.

81st Texas Legislature Appropriations to the Texas Youth Commission: *TYC Continues Agency Improvements and Investment in its Youth*

Cheryl Townsend
Executive Commissioner
Texas Youth Commission

As the Texas Youth Commission (TYC) prepares to close the first biennium of major legislative reforms, it looks forward to continuing the momentum of change. The focus of this change is to create a strong continuum of programs that not only serve Texas juvenile offenders but also increase public safety. With the use of national best practices, TYC will accomplish continued improvements within smaller residential programs that emphasize behavior change, treatment and re-entry rather than institutionalization of youth. The beginning of Fiscal Year (FY) 2009 saw many changes for TYC. TYC was released from conservatorship and placed under the control of an executive commissioner, the Sunset Advisory Commission issued its report to the Texas Legislature based on its Spring 2008 review, and the agency began to finalize implementation of a number of critical reforms that were mandated in Senate Bill 103 during the previous legislative session.

In spite of challenging budgetary conditions, Texas lawmakers maintained their commitment to Texas' juvenile offenders by passing legislation to fund TYC and the Texas Juvenile Probation Commission (TJPC), improve our youths' ability to succeed upon re-entry into their communities, and to support collaboration among agencies and stakeholders who work with youth and communities within the juvenile justice system.

Youth Population and Services

The driving factor in TYC's budget continues to be the level of youth population. Projections for FY 2010-11 reflected continued decreases in population with a flattening out in later years. The total biennial TYC appropriation of over \$450 million will fund an average daily residential population of 2,414 youth in FY 2010 and 2,318 youth in FY 2011. The total for residential services includes 200 contract care beds and 218 halfway house beds in each year. Also taken into consideration was a special legislative initiative funded through a TJPC rider for a community corrections diversion program. Overall, TYC's total biennial funding is about \$56 million less than the 2008-09 biennial appropriation due mainly to anticipated population changes.

The agency received new funding of \$11.5 million and 234 full-time employees (FTEs) for continued operations through FY 2010 at the West Texas and Vernon facil-

ities for 48 and 96 beds, respectively. Funding for these two facilities was eliminated in FY 2008-09. TYC also received a new rider prohibiting the use of any funding at these locations after FY 2010.

TYC anticipates providing specialized treatment services to an average of 874 and 960 youth in FY 2010 and 2011, respectively. These services include special programming for chemical dependency, sex offender treatment, and mental health treatment. New appropriations include more than \$500,000 for a regional pilot program for community re-entry and specialized aftercare services. The agency will work with counties and private community program providers in major urban areas for a program demonstrating the effectiveness of nationally recognized evidence-based re-entry programs. These services would be developed in collaboration with TJPC, individual counties and community based organizations. The pilot would implement two programs that have been successful in other states, including Washington and New Mexico: Multisystemic Therapy (MST) and Functional Family Therapy (FFT).

The agency also received approval for exceptional item funding of \$2 million and 5 FTEs in FY 2011 for 171 regional specialized treatment beds. This item will be an important initiative to reduce recidivism with more effective specialized treatment programs and expanded services. TYC will focus on specialized treatment to meet the rehabilitative needs of TYC youth within the regions where they have family support systems. These services, particularly within a secure setting, are generally not available at the county level. This item will expand the agency's resources to convert general population beds into specialized treatment beds. The expansion in FY 2011 will be for 171 regionally located contract facility beds with private providers or with juvenile boards.

Additionally, TYC youth education services will be strengthened with supplemental funding of nearly \$800,000 authorized by H.B. 4586. This funding is approved contingent upon a determination by the Texas Education Commissioner that TYC has developed a comprehensive plan to improve the reading skills and behavior of students.

New funding of \$2 million was also appropriated for automating the assessment of youth needs, the appropriate placement of youth within the TYC system, and establishing a juvenile case management data sharing system. This item will improve outcomes as TYC and other agencies increase their collaboration to integrate juvenile justice reforms and support our youth.

Staffing

Appropriations for TYC staffing in the upcoming biennium reflect the expected reductions in youth populations. The new authorized caps on the agency's FTE positions are 3,934 FTEs and 3,705 FTEs in each respective year, down from a cap of 4,263 FTEs in FY 2009. The cap for FY 2010 includes new funding for continued operations at the TYC facilities at West Texas and Vernon. The drop in FY 2011 is due mainly to the closure of those facilities by the end of FY 2010. Other staffing-related appropriations:

- **Juvenile Correctional Officers (JCO):** \$8 million for career ladder increases of 3.5%, which will occur each year for each pay level. The salary increases will help ensure that TYC continues to have a decrease in JCO turnover rates, which has a significant impact on facility operations.
- **Other Positions Assigned to Facilities, Halfway Houses, or District Parole Offices:** \$6 million for these employees to receive a 3.5% increase each year of the biennium. These targeted pay raises will help the agency retain quality employees as we continue to improve the delivery of services to our youth. TYC was one of only a few agencies that received funding for pay increases for targeted positions.
- **Retention Payment for Central Office Employees:** State employees in classified positions who are not eligible for the targeted 3.5% pay increase will receive the \$800 one-time legislative retention payment if they were employed as of 3/31/2009 and remain employed through 8/1/2009.

Capital Budget

The agency received bond funding of \$5.5 million for capital repairs to TYC facility physical plants. The funding will support construction projects needed for compliance with life-safety, health, and fire codes.

TYC's exceptional item request for re-appropriation of \$25 million in bond funding was not approved. The expected reductions in expected youth population made this item unnecessary.

The capital budget for TYC vehicles was unchanged by legislative action. The agency will continue to have baseline funding for acquiring 104 vehicles, which must conform to new alternative fuel and low-emission requirements of new legislation. As a result of TYC's request, it also received a new rider to share a vehicle with TJPC.

Following up on reform tools provided by SB 103, the 81st Legislature allows for additional services for our youth and opportunities to work in collaboration throughout the state. Some highlights follow:

Re-entry and Collaboration within the Community

The greater a youth's support and available resources upon release from a TYC facility, the more likely that youth will succeed upon re-entry into the community. A variety of bills this session provide the agency with the tools and authorization to increase community resources and to collaborate with local partners. Community re-entry and reintegration planning now underway will include a variety of state and local entities to ensure that a network of transition programs are available to youth leaving TYC. By working closely with local resource providers, we will be able to better identify gaps in services needed by youth. TYC also may contract with public and private entities to meet a broader range of youth needs. More than ever before, state and local entities are empowered to collaborate for successful outcomes for Texas' juvenile offenders.

TYC youth will also benefit from changes to Continuity of Care statutes. Interagency Memoranda of Understanding slated for implementation this Fall will provide for a seamless reinstatement of Medicaid eligibility for some youth and ensure improved services for those with mental health needs.

Building Successful Partnerships

An overriding theme of the 81st Legislature was that of collaboration and cooperation. Ten separate bills establish workgroups, task forces, or collaborative opportunities for TYC and stakeholders in health, education, and human services systems, and faith- and community-based organizations. Working together with other juvenile justice partners, TYC hopes to increase positive outcomes for its youth and help prevent other at-risk youth from entering the juvenile justice system completely.

Preparing our Youth for Bright Futures

Research shows that by giving youth marketable skills, they are less likely to re-enter the juvenile justice system. However, the majority of youth entering TYC are approximately five years behind in reading and math skills, which hinders their ability to obtain marketable skills.

TYC has determined that accelerated learning is a critical component to our youth's future success. The Comprehensive Reading Program, which passed this session, will augment TYC's accelerated learning program by providing 60 minutes of classroom reading per day with an expert reading educator who is trained to detect and overcome barriers to reading. As reading is the foundation to learning, these skills will benefit students in other courses, as well.

Youth and Staff Safety

A critical element of the TYC mission statement is to ensure the safety of our youth and staff. Because of TYC's troubled and increasingly violent population, the

agency is fully and continuously engaged in that effort. Legislative funding toward pay increases assist the agency in attracting and retaining skilled direct care staff and additional funding for specialized services will help us to more quickly stabilize troubled youth. TYC continues to work toward the Prison Rape Elimination Act (PREA) requirements and is anticipating federal adoption of final PREA standards. We are moving forward to adopt draft PREA provisions by including standards in JCO training modules, aligning agency databases and reporting processes, and allowing federal access to survey TYC operations. Upon final federal adoption, TYC will ensure that it is fully compliant with all PREA elements.



1. Title 3 and Related Provisions

Family Code

Family Code, Sec. 32.001. CONSENT BY NON-PARENT.

(b) Except as otherwise provided by this subsection, the [The] Texas Youth Commission may consent to the medical, dental, psychological, and surgical treatment of a child committed to the Texas Youth Commission [it] under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary. Consent for medical, dental, psychological, and surgical treatment of a child for whom the Department of Family and Protective Services has been appointed managing conservator and who is committed to the Texas Youth Commission is governed by Sections 266.004, 266.009, and 266.010.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: As currently written, Section 32.001(b) authorizes TYC to consent to the medical, dental, psychological and surgical treatment of a child who is committed to TYC under Title 3 when the person having the right to consent has been contacted and has not given actual notice to the contrary. As amended, Subsection (b) also mandates that for “dually managed” youth who are committed to TYC and under the managing conservatorship of the Department of Family and Protective Services (DFPS), consent for the above listed treatments is governed by the legal consent provisions applicable to foster children. See Sections 266.004, 266.009 and 266.010, Family Code.

Family Code, Sec. 51.03(f). DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION.

(f) Except as provided by Subsection (g), conduct described under Subsection (b)(1) [~~other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication,~~] 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 Chris Hubner

Source: HB 558

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: In 1989, the legislature provided that public intoxication is conduct indicating a need for supervision (CINS), even though for adults the offense is a misdemeanor punishable by fine only. See Section 49.02, Penal Code. The deletion of public intoxication from Section 51.03(f) makes it clear that the offense is no longer CINS unless the child’s case has been transferred to juvenile court under Section 51.08(b). A conforming change was made to Section 8.07(a)(4), Penal Code, such that public intoxication is now a misdemeanor punishable by fine when committed by a juvenile. Jurisdiction over juveniles who commit public intoxication now rests exclusively with justice and municipal courts. See Articles 4.11 and 4.14, Code of Criminal Procedure.

Family Code, Sec. 51.08. TRANSFER FROM CRIMINAL COURT.

(a) If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury, a traffic offense, a misdemeanor punishable by fine only [~~other than public intoxication~~], or a violation of a penal ordinance of a political subdivision, unless the child [he] has been transferred to criminal court under Section 54.02 [~~of this code~~], the court exercising criminal jurisdiction shall transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case, and shall order that the child be taken to the place of detention designated by the juvenile court, or shall release the child [him] to the custody of the child's [his] parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.

(b) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense [~~or public intoxication~~] or a violation of a penal ordinance of a political subdivision other than a traffic offense:

(1) except as provided by Subsection (d), shall waive its original jurisdiction and refer the [a] child to juvenile court if the child has previously been convicted of:

(A) two or more misdemeanors punishable by fine only other than a traffic offense [~~or public intoxication~~];

(B) two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or

(C) one or more of each of the types of misdemeanors described in Paragraph (A) or (B) [~~of this subdivision~~]; and

(2) may waive its original jurisdiction and refer the [a] child to juvenile court if the child:

(A) has not previously been convicted of a misdemeanor punishable by fine only other than a traffic offense [~~or public intoxication~~] or a violation

of a penal ordinance of a political subdivision other than a traffic offense; or

(B) has previously been convicted of fewer than two misdemeanors punishable by fine only other than a traffic offense [~~or public intoxication~~] or two violations of a penal ordinance of a political subdivision other than a traffic offense.

(c) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense [~~or public intoxication~~] or a violation of a penal ordinance of a political subdivision other than a traffic offense shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of the final disposition of any matter for which the court does not waive its original jurisdiction under Subsection (b) [~~of this section~~].

Commentary by Chris Hubner

Source: HB 558

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: The amendments delete multiple references to public intoxication, making it clear that the offense, when committed by a juvenile, is now a misdemeanor punishable by fine only. By deleting public intoxication from Section 51.08(b), a complaint against a child alleging public intoxication can now be transferred to juvenile court just like any misdemeanor punishable by fine only, other than a traffic offense. Prior law placed original jurisdiction of public intoxication under the original jurisdiction of the juvenile court as a conduct indicating a need for supervision case.

Family Code, Sec. 51.17. PROCEDURE AND EVIDENCE.

(a) Except as provided by Section 56.01(b-1) and except for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title.

Commentary by Chris Hubner

Source: HB 1688

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Section 51.17(a) is amended to make a conforming change reflecting that newly enacted Section 56.01(b-1) makes Rule 21 of the Texas Rules of Appellate Procedure, rather than the Texas Rules of Civil Procedure, applicable to motions for new trial in juvenile proceedings.

Family Code, Sec. 54.02. WAIVER OF JURISDICTION AND DISCRETIONARY TRANSFER TO CRIMINAL COURT.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least five days [~~one day~~] prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or the child's [~~his~~] parent, guardian, or guardian ad litem if such 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.

Commentary by Chris Hubner

Source: SB 518

Effective Date: September 1, 2009

Applicability: Transfer hearings commenced on or after the effective date.

Summary of Changes: Amended Section 54.02(e) requires a juvenile court, at least five days before the transfer hearing, to provide the child's attorney and the prosecutor with access to all written material to be considered by the court in making the decision to transfer an alleged juvenile offender for criminal proceedings.

Family Code, Sec. 54.03. ADJUDICATION HEARING.

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09. If the hearing is on a petition that has been approved by the grand jury under Section 53.045, the jury must consist of 12 persons and be selected in accordance with the requirements in criminal cases. If the hearing is on a petition that alleges conduct that violates a penal law of this state of the grade of misdemeanor, the jury must consist of the number of persons required by Article 33.01(b), Code of Criminal Procedure. Jury verdicts under this title must be unanimous.

Commentary by Chris Hubner

Source: HB 609

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: As currently written, Section 54.03(c) does not specify how many jurors must serve on the jury if the trial is on a petition alleging misdemeanor misconduct. Amended Section 54.03(c) makes it clear that the jury must consist of six qualified jurors, as required by Article 33.01(b), Code of Criminal Procedure.

Family Code, Sec. 54.04. DISPOSITION HEARING.

(y) A juvenile court conducting a hearing under this section involving a child for whom the Department of Family and Protective Services has been appointed managing conservator may communicate with the court having continuing jurisdiction over the child before the disposition hearing. The juvenile court may allow the parties to the suit affecting the parent-child relationship in which the Department of Family and Protective Services is a party to participate in the communication under this subsection.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Newly enacted Section 54.04(y) authorizes the juvenile court conducting a disposition hearing involving a child in the legal custody of Texas Department of Family and Protective Services (DFPS) to communicate with the court having continuing jurisdiction over the child before the disposition hearing. The juvenile court may also allow the parties to the suit affecting the parent-child relationship in which DFPS is a party to participate in the communication. In this way, the juvenile court is able to obtain more information regarding a child who is “dually managed” by DFPS and the juvenile justice system.

Family Code, Sec. 54.0409. DNA SAMPLE REQUIRED ON CERTAIN FELONY ADJUDICATIONS.

(a) This section applies only to conduct constituting the commission of a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(2) for which it is shown that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the conduct or during immediate flight from the commission of the conduct.

(b) If a court or jury makes a disposition under Section 54.04 in which a child is adjudicated as having engaged in conduct constituting the commission of a felony to which this section applies and the child is placed on probation, the court shall require as a condition of probation that the child provide a DNA sample under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required sample under other state law.

Commentary by Chris Hubner

Source: SB 727

Effective Date: September 1, 2009

Applicability: Persons placed on juvenile probation on or after the effective date.

Summary of Changes: As the law is currently written, a juvenile court must require as a condition of probation that

when a child is required to register as a sex offender that the child submit a blood sample for the purpose of creating a DNA record unless the child has already done so. See Section 54.0405(a)(2), Family Code. New Section 54.0409 contains the same requirement if a child is adjudicated on certain felonies and is placed on probation. The felonies include those listed in Article 42.12, Section 3g(a)(1), Code of Criminal Procedure (felonies for which a judge in an adult case cannot order community supervision). The requirement also applies if it is shown that the child used or exhibited a deadly weapon during the commission of the felony offense or during immediate flight from the commission of the offense. The DNA sample may include a blood sample or other biological sample or specimen provided by an individual for DNA analysis or storage. See Sec. 411.141(8), Government Code.

Family Code, Sec. 54.046. CONDITIONS OF PROBATION FOR DAMAGING PROPERTY WITH GRAFFITI.

(a) If a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, the court:

(1) shall ~~may~~ order the child to:

(A) reimburse the owner of the property for the cost of restoring the property; or

(B) with consent of the owner of the property, restore the property by removing or painting over any markings made by the child on the property; and

(2) if the child made markings on public property, a street sign, or an official traffic-control device in violation of Section 28.08, Penal Code, shall ~~may~~ order the child to:

(A) make to the political subdivision that owns the public property or erected the street sign or official traffic-control device restitution in an amount equal to the lesser of the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device; or

(B) with the consent of the political subdivision, restore the public property, street sign, or official traffic-control device by removing or painting over any markings made by the child on the property, sign, or device.

(c) If a juvenile court orders a child to make restitution under Subsection (a) and the child, child's parent, or other person responsible for the child's support is financially unable to make the restitution, the court may order the child to perform a specific number of hours of community service, in addition to the hours required under Subsection (d), to satisfy the restitution.

(d) If a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, the court:

tion to other conditions of probation, the court shall order the child to perform:

(1) at least 15 hours of community service if the amount of pecuniary loss resulting from the conduct is \$50 or more but less than \$500; or

(2) at least 30 hours of community service if the amount of pecuniary loss resulting from the conduct is \$500 or more.

(e) The juvenile court shall direct a child ordered to make restitution under this section to deliver the amount or property due as restitution to a juvenile probation department for transfer to the owner. The juvenile probation department shall notify the juvenile court when the child has delivered the full amount of restitution ordered.

Commentary by Chris Hubner

Source: HB 1633

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Amended Section 54.046(a) requires a juvenile court placing a child on probation for committing the offense of graffiti to order, as a condition of probation, that the child reimburse the owner or restore the owner's property. Previously, this had been discretionary with the court. Amended Section 54.046(c) authorizes the juvenile court, if the family is financially unable to pay restitution, to order the child, the child's parent or other responsible person to perform a specific number of community service hours in addition to the hours now required under newly enacted Section 54.046(d).

New Section 54.046(d) requires a juvenile court placing a child on probation for committing the offense of graffiti to order, as a condition of probation, that the child perform at least 15 hours of community service if the pecuniary loss is \$50 or more but less than \$500; and at least 30 hours of community service if the loss is \$500 or more. New Section 54.046(e) states that all court-ordered restitution payments in a case involving graffiti be delivered to the local juvenile probation department for transfer to the owner, and that the probation department must notify the juvenile court when the child has paid restitution in full.

Family Code, Sec. 54.0462. PAYMENT OF FEES FOR OFFENSES REQUIRING DNA TESTING.

(a) If a child is adjudicated as having engaged in delinquent conduct that constitutes the commission of a felony and the provision of a DNA sample is required under Section 54.0409 or other law, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court as a cost of court:

(1) a \$50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Youth Commission; and

(2) a \$34 fee if the disposition of the case does not include a commitment described by Subdivision (1) and the child is required to submit a DNA sample under Section 54.0409 or other law.

(b) The clerk of the court shall transfer to the comptroller any funds received under this section. The comptroller shall credit the funds to the Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by children with respect to whom a court cost is collected under this section.

(c) If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the fee required under Subsection (a), the court shall enter into the child's case records a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.

Commentary by Chris Hubner

Source: SB 727

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: New Section 54.0462 authorizes the juvenile court to order the payment of a fee as a cost of court if a child is adjudicated on a felony offense and required to provide a DNA sample under Section 54.0409. The fee is \$50 if the child is committed to a facility operated by the Texas Youth Commission (TYC) or a contract facility and \$34 if the disposition does not involve a TYC commitment. After the court clerk has transferred any funds received to the state comptroller, that agency must credit the funds to DPS to help defray the cost of performing the DNA analysis on the samples provided by juveniles under Section 54.0409. The fee can be waived by the court if a finding is made that the child, parent or other person responsible for the child's support is financially unable to pay the fee.

Family Code, Sec. 56.01. RIGHT TO APPEAL.

(a) Except as provided by Subsection (b-1), an [An] appeal from an order of a juvenile court is to a court of appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally. When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed.

(b-1) A motion for new trial seeking to vacate an adjudication is:

(1) timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed; and

(2) governed by Rule 21, Texas Rules of Appellate Procedure.

Commentary by Chris Hubner

Source: HB 1688

Effective Date: September 1, 2009

Applicability: Motions for new trial filed after disposition orders signed on or after the effective date.

Summary of Changes: Newly enacted Section 56.01(b-1) clarifies that a motion for new trial in juvenile court must be filed no later than 30 days after the date on which the disposition order is signed and is governed by Rule 21 of the Texas Rules of Appellate Procedure. The amendment addresses an area of confusion surrounding juvenile post-trial procedures involving motions for new trial, because Section 51.17(a) indicates that juvenile proceedings are governed by the Texas Rules of Civil Procedure, unless a specific exception applies. However, many attorneys were filing motions for new trial under Rule 21, which governs criminal cases. The rules for motions for new trial contained in Rule 21 more closely reflect the types of issues typically raised in a juvenile delinquency matter, since the adjudication and disposition hearings are more similar to a criminal trial than a civil trial. As modified for juvenile proceedings, timely filing of a motion for new trial occurs no later than 30 days after the signing of the disposition order, rather than 30 days after imposition or suspension of sentence in open court by the adult court. Conforming changes were made to Sections 51.17(a) and 56.01(a) to reflect this exception.

Family Code, Sec. 57.003. DUTIES [DUTY] OF JUVENILE BOARD AND VICTIM ASSISTANCE COORDINATOR.

(g) The juvenile board, with the approval of the commissioners court of the county, may approve a program in which the victim assistance coordinator may offer not more than 10 hours of posttrial psychological counseling for a person who serves as a juror or an alternate juror in an adjudication hearing involving graphic evidence or testimony and who requests the posttrial psychological counseling not later than the 180th day after the date on which the jury in the adjudication hearing is dismissed. The victim assistance coordinator may provide the counseling using a provider that assists local juvenile justice agencies in providing similar services to victims.

Commentary by Chris Hubner

Source: HB 608

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Newly added Section 57.003(g) authorizes the juvenile board, with the approval of the county's commissioners court, to approve a program in which the victim assistance coordinator may offer up to 10 hours of post-trial psychological counseling for a person who serves as a juror (or as an alternate juror) in an adjudication hearing involving graphic evidence or testimony. The juror or alternate must request the counseling not later than the 180th day after the date on which the jury is dismissed.

Family Code, Sec. 58.003. SEALING OF RECORDS.

(c-1) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision that violated a penal law of the grade of misdemeanor or felony if the child successfully completed a drug court program under Chapter 469, Health and Safety Code. The court may:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-2) If the court orders the sealing of a child's records under Subsection (c-1), a prosecuting attorney or juvenile probation department may maintain until the child's 17th birthday a separate record of the child's name and date of birth and the date the child successfully completed the drug court program. The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

(d) The court may grant the relief authorized in Subsection (a) or (c-1) at any time after final discharge of the person or after the last official action in the case if there was no adjudication, subject to Subsection (e). If the child is referred to the juvenile court for conduct constituting any offense and at the adjudication hearing the child is found to be not guilty of each offense alleged, the court shall immediately and without any additional hearing order the sealing of all files and records relating to the case.

(e) The court shall hold a hearing before sealing a person's records under Subsection (a) or (c) unless the applicant waives the right to a hearing in writing and the court and the prosecuting attorney 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 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;

(4) the public or private agency or institution having custody of records named in the application or motion; and

(5) the law enforcement agency having custody of files or records named in the application or motion.

Commentary by Chris Hubner

Source: HB 2386

Effective Date: September 1, 2009

Applicability: Sealing of records on or after the effective date.

Summary of Changes: During the 81st Legislative Session, the legislature recognized that unsealed juvenile records often make it difficult for both juveniles and young adults to secure employment or housing, join the military or attend college. Under current sealing laws, juvenile records are typically open while the youth is between ages 16 and 21. This represents a critical period for youngsters who are attempting to transition to a normal, productive lifestyle.

Newly enacted Section 58.003(c-1) authorizes a juvenile court to order the sealing of records concerning a child who has been adjudicated of engaging in delinquent conduct or conducting indicating a need for supervision that violates either a felony or a misdemeanor if the child successfully completes a drug court program. See Chapter 469, Health and Safety Code. The juvenile court's authority is discretionary. The court may order the records sealed immediately without a hearing or after a hearing to determine whether to seal the records.

If the court orders the records to be sealed, then newly enacted Section 58.003(c-2) allows a prosecuting attorney or local juvenile probation department to maintain a separate record containing the child's name, date of birth, and the date on which the child successfully completed the drug court program. When the child turns 17, the prosecutor or juvenile probation department must send the record to the juvenile court "as soon as practicable" to be added to the child's other sealed records.

Under amended Section 58.003(e) the juvenile court must hold a hearing before sealing a person's records under Section 58.008(a) or (c), unless the applicant waives the right to a hearing in writing, and both the court and the prosecutor consent. The amended language does not address whether the written waiver of the right to a hearing must comply with Section 51.09. However, if the applicant is still a juvenile, the safer practice is for the written waiver to be signed by the child as well as the child's attorney.

Family Code, Sec. 58.403. JUVENILE INFORMATION SYSTEM.

(a) Through the adoption of an interlocal contract under Chapter 791, Government Code, with one or more counties, the [The] commission [in partnership with local counties] may participate in and assist counties in the creation, operation, and maintenance of a [statewide] system that is intended for statewide use to:

(1) aid in processing the cases of children under this title;

(2) facilitate the delivery of services to children in the juvenile justice system;

(3) aid in the early identification of at-risk and delinquent children; and

(4) facilitate cross-jurisdictional sharing of information related to juvenile offenders between authorized criminal and juvenile justice agencies and partner agencies.

(b) The commission may use funds appropriated for the implementation of this section to pay costs incurred under an interlocal contract described by Subsection (a), including license fees, maintenance and operations costs, administrative costs, and any other costs specified in the interlocal contract.

(c) The commission may provide training services to counties on the use and operation of a system created, operated, or maintained by one or more counties under Subsection (a).

Commentary by Chris Hubner

Source: SB 58

Effective Date: September 1, 2009

Applicability: Interlocal contracts entered into on or after September 1, 2009.

Summary of Changes: This provision amends Section 58.403 in Subchapter E of Chapter 58 of the Family Code related to a juvenile information and case management system known as the Juvenile Case Management System (JCMS). JCMS is a new state of the art integrated computer system being developed by the Texas Conference of Urban Counties' Techshare Program. The counties of Bexar, Dallas, and Tarrant and the Texas Juvenile Probation Commission (TJPC) are building the first version of the system. JCMS is a collaborative effort between the parties and is a unique state/local partnership to create a state of the art technological system for use by Texas juvenile probation departments. By sharing design and development costs, the participating entities are leveraging state and local resources to create a unique, robust technology solution which will facilitate information sharing by juvenile justice entities statewide.

In 2007, the legislature enacted Section 58.403, officially authorizing the Texas Juvenile Probation Commission (TJPC) and local counties to create and maintain a statewide data system (i.e., JCMS) to aid in the processing of juvenile cases, facilitate service delivery, and aid in the identification of children; and to facilitate inter-jurisdictional sharing of juvenile-related information between authorized local probation departments, law enforcement, prosecutors, courts and other entities.

As amended in 2009, Section 58.403 clarifies that TJPC may enter into an interlocal contract with one or more counties to assist counties in the creation, operation and maintenance of JCMS.

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);
- (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);
- (12) requiring payment of deferred prosecution supervision fees under Section 53.03(d);
- (13) requiring a parent or other eligible person to attend a court hearing under Section 51.115;
- (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); ~~or~~

(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; or

(16) for payment of fees under Section 54.0462.

Commentary by Chris Hubner

Source: SB 727

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Amended Section 61.002 adds payment of fees for offenses requiring DNA testing under Section 54.0462 to the list of fees a juvenile court is authorized to enter into an order against a parent or other responsible adult. Such orders do not apply to the entry and enforcement of child support orders. See Section 61.002(b), Family Code.

Family Code, Sec. 107.0161. AD LITEM APPOINTMENTS FOR CHILD COMMITTED TO TEXAS YOUTH COMMISSION.

If an order appointing the Department of Family and Protective Services as managing conservator of a child does not continue the appointment of the child's guardian ad litem or attorney ad litem and the child is committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission, the court may appoint a guardian ad litem or attorney ad litem for the child.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: New Section 107.0161 authorizes the court to appoint a guardian ad litem or an attorney ad litem for the child, if an order appointing DFPS as managing conservator of the child does not continue the appointment of an ad litem and the child is committed to TYC or released on TYC parole.

Family Code, Sec. 263.001. NOTICE.

(4) "Substitute care" means the placement of a child who is in the conservatorship of the department or an authorized agency in care outside the child's home. The term includes foster care, institutional care, adoption, ~~or~~ placement with a relative of the child, or commitment to the Texas Youth Commission.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth under the managing conservatorship of DFPS who are also in TYC custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Amended Section 263.001(a)(4) expands the definition of “substitute care” to include commitment to TYC. Previously, the definition included foster care, institutional care, adoption or placement with a relative of the child.

Family Code, Sec. 263.002. REVIEW OF PLACEMENTS BY COURT.

In a suit affecting the parent-child relationship in which the department or an authorized agency has been appointed by the court or designated in an affidavit of relinquishment of parental rights as the temporary or permanent managing conservator of a child, the court shall hold a hearing to review:

(1) the conservatorship appointment and substitute care; and

(2) for a child committed to the Texas Youth Commission, the child's commitment in the Texas Youth Commission or release under supervision by the Texas Youth Commission.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth under the managing conservatorship of DFPS who are also in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Currently, Section 263.002 states that the court must hold a hearing to review the conservatorship appointment and substitute care of a child in a suit affecting the parent-child relationship in which the Texas Department of Family and Protective Services or an authorized agency has been appointed or designated temporary or permanent managing conservator of the child. Amended Section 263.002, expands the scope of this review for “dually managed” children committed to TYC to authorize the court to review the child’s progress and placement within TYC.

Family Code, Sec. 263.302. CHILD'S ATTENDANCE AT HEARING.

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a permanency hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older

and if the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth in TYC custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Amended Section 263.302 states that a child who is under the managing conservatorship of the Department of Family and Protective Services (DFPS) and has also been committed to TYC may attend a permanency hearing in person, by telephone or by videoconference. These hearings review the appropriateness of placement of children under the DFPS conservatorship on a periodic basis.

Family Code, Sec. 263.303. PERMANENCY PROGRESS REPORT.

(b) The permanency progress report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

(A) identify the date for dismissal of the suit under this chapter;

(B) provide:

(i) the name of any person entitled to notice under Chapter 102 who has not been served;

(ii) a description of the efforts by the department or another agency to locate and request service of citation; and

(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;

(C) evaluate the parties' compliance with temporary orders and with the service plan;

(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter; ~~and~~

(F) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life; and

(G) with respect to a child committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission:

(i) evaluate whether the child's needs for treatment and education are being met;

(ii) describe, using information provided by the Texas Youth Commission, the child's progress in any rehabilitation program administered by the Texas Youth Commission; and

(iii) recommend other plans or services to meet the child's needs.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth under the managing conservatorship of the Department of Family and Protective Services (DFPS) who are also in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: As currently written, Section 263.303(b) sets forth what must be included in a permanency progress report whether the recommendation is to dismiss or continue the suit affecting the parent-child relationship. Newly added Section 263.303(b)(2)(G) applies to children who have been committed to TYC or released on TYC parole. With respect to these children, the report must: 1) evaluate whether the child’s treatment and education needs are being met; 2) describe, using information provided by TYC, the child’s progress in any TYC rehabilitation program; and 3) recommend other plans or services to meet the child’s needs.

Family Code, Sec. 263.306. PERMANENCY HEARINGS: PROCEDURE.

(a) At each permanency hearing the court shall:

(1) identify all persons or parties present at the hearing or those given notice but failing to appear;

(2) review the efforts of the department or another agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

(C) obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, or relative of the child;

(3) review the efforts of each custodial parent, alleged father, or relative of the child before the court in providing information necessary to locate another absent parent, alleged father, or relative of the child;

(4) return the child to the parent or parents if the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(5) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the placement of the child is in the child's best interest;

(6) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;

(7) evaluate the parties' compliance with temporary orders and the service plan;

(8) determine whether:

(A) the child continues to need substitute care;

(B) the child's current placement is appropriate for meeting the child's needs, including with respect to a child who has been placed outside of the state, whether that placement continues to be in the best interest of the child; and

(C) other plans or services are needed to meet the child's special needs or circumstances;

(9) if the child is placed in institutional care, determine whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(10) if the child is 16 years of age or older, order services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;

(11) determine plans, services, and further temporary orders necessary to ensure that a final order is rendered before the date for dismissal of the suit under this chapter; ~~and~~

(12) if the child is committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission, determine whether the child's needs for treatment, rehabilitation, and education are being met; and

(13) determine the date for dismissal of the suit under this chapter and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth under the managing conservatorship of the Department of Family and Protective Services (DFPS) who are also in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Amended Section 263.306(a) adds Subdivision (12) to require the court, at each permanency hearing involving “dually managed” youth, to determine whether the child’s needs for treatment, rehabilitation and

education are being met in TYC or when the child is released on TYC parole.

Family Code, Sec. 263.501. PLACEMENT REVIEW AFTER FINAL ORDER.

(f) The child shall attend each placement review hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a placement review hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency or transition plan, if the child is four years of age or older. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

(g) A court required to conduct placement review hearings for a child for whom the department has been appointed permanent managing conservator may not dismiss a suit affecting the parent-child relationship filed by the department regarding the child while the child is committed to the Texas Youth Commission or released under the supervision of the Texas Youth Commission, unless the child is adopted or permanent managing conservatorship of the child is awarded to an individual other than the department.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Amended Section 263.501(f) states that a child who has been committed to TYC may attend a permanency hearing in person, by telephone or by videoconference. The change is identical to the one added to Section 263.302 (Child's Attendance at Hearing).

Newly added Section 263.501(g) prohibits a court that is required to conduct placement review hearings for a child under the Texas Department of Family and Protective Services (DFPS) legal custody from dismissing a suit affecting the parent-child relationship that has been filed by DFPS while the child is committed to TYC or released on TYC parole, unless the child is adopted or permanent managing conservatorship of the child is awarded to someone other than DFPS.

Family Code, Sec. 263.502. PLACEMENT REVIEW REPORT.

(c) The placement review report must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and spe-

cial needs of the child if the child is placed in institutional care;

(3) contain a discharge plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are available through the Preparation for Adult Living Program operated by the department;

(4) evaluate whether the child's current educational placement is appropriate for meeting the child's academic needs;

(5) identify other plans or services that are needed to meet the child's special needs or circumstances; ~~and~~

(6) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption, including efforts to provide adoption promotion and support services as defined by 42 U.S.C. Section 629a and other efforts consistent with the federal Adoption and Safe Families Act of 1997 (Pub. L. No. 105-89); and

(7) with respect to a child committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission:

(A) evaluate whether the child's needs for treatment and education are being met;

(B) describe, using information provided by the Texas Youth Commission, the child's progress in any rehabilitation program administered by the Texas Youth Commission; and

(C) recommend other plans or services to meet the child's needs.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth who are under the managing conservatorship of the Department of Family and Protective Services (DFPS) and also in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Newly added Section 263.502(c)(7) applies to "dually managed" children who have been committed to TYC or released on TYC parole. With respect to these children, the placement review report must also: 1) evaluate whether the child's treatment and education needs are being met; 2) describe, using information provided by TYC, the child's progress in any TYC rehabilitation program; and 3) recommend other plans or services to meet the child's needs.

Family Code, Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE.

At each placement review hearing, the court shall determine whether:

(1) the child's current placement is necessary, safe, and appropriate for meeting the child's needs, including with respect to a child placed outside of the state, whether the placement continues to be appropriate and in the best interest of the child;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances;

(5) the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; ~~and~~

(6) the department or authorized agency has made reasonable efforts to finalize the permanency plan that is in effect for the child; and

(7) if the child is committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission, the child's needs for treatment, rehabilitation, and education are being met.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth who are under the managing conservatorship of the Department of Family and Protective Services (DFPS) and also in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Newly added Section 263.503(7) applies to "dually managed" children who have been committed to TYC or released on TYC parole. With respect to these children, at each placement review hearing the court must also determine whether the child's treatment, rehabilitation and education needs are being met.

Family Code, Sec. 264.0091. USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY.

Subject to the availability of funds, the department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts, children, and other individuals in court proceedings, including children for whom the department, an authorized agency, or a licensed child-placing agency has been appointed managing

conservator and who are committed to the Texas Youth Commission.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: Amended Section 264.0091 expands the use of teleconferencing and videoconferencing to facilitate participation by children, including children who are committed to TYC and for whom the Texas Department of Family and Protective Services, an authorized agency or a licensed child-placing agency has been appointed managing conservator.

Alcoholic Beverage Code

Alcoholic Beverage Code, Sec. 106.041. DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

Sec. 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: This provision is part of the Nicole "Lilly" Lalime Act, which expands consequences that can be imposed for operation of a watercraft while under the influence of alcohol to make them consistent with those that apply to operation of a motor vehicle while under the influence of alcohol. This section changes the heading of the portions of the Alcoholic Beverage Code which deal with operation of a motor vehicle by a minor under the influence of alcohol to include operation of a watercraft.

Alcoholic Beverage Code, Sec. 106.041. DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

(a) A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.

(g) An offense under this section is not a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: The amendment to Section 106.041(a) expands the offense of operation of a motor vehicle by a minor while under the influence of alcohol to include operation of a watercraft.

Section 106.041(g) is amended to add that the offense of driving or operating a watercraft under the influence of alcohol by a minor is not a lesser included offense of driving while intoxicated with a child passenger (younger than 15 years of age) or boating while intoxicated. These were added to the existing law, which states that driving under the influence of alcohol by a minor is not a lesser included offense of driving while intoxicated.

Alcoholic Beverage Code, Sec. 106.041. DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

(j) (4) "Watercraft" has the meaning assigned by Section 49.01, Penal Code.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: Newly enacted Section 106.041(j)(4) applies the definition of watercraft found in Section 49.01(5) of the Penal Code to the offenses in this chapter, to provide that the operation of any vessel, one or more water skis, an aquaplane, or other device used for transporting a person on water is covered. Devices which are propelled only by water current are excluded.

Government Code

Government Code, Sec. 24.580. 436TH JUDICIAL DISTRICT (BEXAR COUNTY).

(a) The 436th Judicial District is composed of Bexar County.

(b) The 436th District Court shall give preference to juvenile matters.

Commentary by Chris Hubner

Source: HB 4833

Effective Date: September 1, 2009

Applicability: Creation of new Judicial District effective October 1, 2009.

Summary of Changes: New Section 24.580, Government Code, creates the 436th District Court, which must give preference to juvenile matters. The new court is created on October 1, 2009.

Government Code, Sec. 25.0202. BOSQUE COUNTY COURT AT LAW PROVISIONS.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Bosque County has concurrent jurisdiction with the district court in:

(1) family law cases and proceedings;

(2) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$100,000, excluding interest, court costs, and attorney's fees; and

(3) contested probate matters under Section 5(b), Texas Probate Code.

(b) The County Court at Law of Bosque County has primary jurisdiction over juvenile matters.

(c) A county court at law has the same terms of court as the County Court of Bosque County.

(d) The judge of a county court at law may not engage in the private practice of law and must meet the qualifications established by Section 25.0014.

(e) The judge of a county court at law shall be paid as provided by Section 25.0005. The judge's salary shall be paid out of the county treasury on order of the commissioners court. Notwithstanding any other law, the judge is entitled to necessary office and operational expenses, including administrative and clerical personnel, on the approval of the commissioners court. Administrative and clerical personnel to which a judge is entitled on approval under this subsection includes a court coordinator, court reporter, and bailiff.

(f) If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members. In all other cases, except as otherwise required by law, the jury shall be composed of six members.

(g) Jurors regularly impaneled for a week by the district court may, on request of the county judge or the judge of a county court at law, be made available and shall serve for the week in the county court or the county court at law.

(b) Effective October 1, 2009, Section 152.0241(a), Human Resources Code, is amended to read as follows:

(a) Bosque County is included in the Bosque, Comanche, and Hamilton counties juvenile board. The juvenile board is composed of:

(1) the county judge in Bosque County;

(2) the county judge in Comanche County;

ty;

(3) the county judge in Hamilton County;

ty; [and]

(4) the 220th Judicial District judge; and

(5) the judge of the County Court at Law in Bosque County.

(c) The County Court at Law of Bosque County is created on October 1, 2009.

Commentary by Chris Hubner

Source: HB 4833

Effective Date: September 1, 2009

Applicability: Creation and jurisdiction of Bosque County Court at Law and composition of Bosque County Juvenile Board effective October 1, 2009.

Summary of Changes: New Section 25.0202(b), Government Code, designates the County Court at Law of Bosque County as having primary jurisdiction over juvenile matters. The new designation goes into effect October 1, 2009.

Government Code, Sec. 25.1182. HUNT COUNTY COURT AT LAW PROVISIONS.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Hunt County has concurrent jurisdiction with the district court in:

(1) felony cases to:

(A) conduct arraignments;

(B) conduct pretrial hearings;

(C) accept guilty pleas; and

(D) conduct jury trials on as-

signment of a district judge presiding in Hunt County and acceptance of the assignment by the judge of the county court at law;

(2) Class A and Class B misdemeanor cases;

(3) family law matters;

(4) juvenile matters;

(5) probate matters; and

(6) appeals from the justice and municipal courts.

(b) A county court at law's civil jurisdiction concurrent with the district court in civil cases is limited to cases in which the matter in controversy does not exceed \$200,000. A county court at law does not have general supervisory control or appellate review of the commissioners court or jurisdiction of:

(1) suits on behalf of this state to recover penalties or escheated property;

(2) felony cases involving capital murder;

(3) misdemeanors involving official misconduct; or

(4) contested elections [has the same terms of court as the County Court of Hunt County].

(c) The judge of a county court at law must have the same qualifications as those required by law for a district judge.

(d) The judge of a county court at law shall be paid a total [an] annual salary set by the commissioners

court at an amount that is not less than \$1,000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total annual salary does not include contributions and supplements paid by a county [that is at least \$42,500, to be paid from the same fund and in the same manner as the county judge. The judge is entitled to receive travel expenses and necessary office expenses in the same manner as is allowed the county judge].

(e) The judge of a county court at law [shall diligently discharge the duties of his office on a full time basis and] may not engage in the private practice of law.

(f) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court, and the county clerk shall serve as clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law [A special judge of a county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for county courts. If the judge of a county court at law is disqualified to try a case pending in the judge's court, the parties or their attorneys may agree on the selection of a special judge to try the case. A special judge is entitled to receive \$100 for each day served to be paid out of the general fund of the county by the commissioners court].

(g) The official court reporter of a county court at law is entitled to receive a salary set by the judge of the county court at law with the approval of the commissioners court [The county sheriff shall, in person or by deputy, attend a county court at law as required by the judge].

(h) Jurors summoned for a county court at law or a district court in the county may by order of the judge of the court to which they are summoned be transferred to another court for service and may be used as if summoned for the court to which they are transferred [Practice in a county court at law is that prescribed by law for county courts].

[(i) Section 25.0005(b) does not apply to a county court at law in Hunt County.]

(b) Sections 152.1221(a), (b), and (d), Human Resources Code, are amended to read as follows:

(a) The Hunt County Juvenile Board is composed of the county judge, the district judges in Hunt County, and the judges [judge] of the county courts [court] at law.

(b) The board shall designate a juvenile court judge as [is] the chairman of the board and its chief administrative officer.

(d) Each judge on the board may [shall] appoint one citizen to serve on the advisory council. Members of the advisory council serve without compensation.

Commentary by Chris Hubner

Source: HB 4833

Effective Date: September 1, 2009

Applicability: Jurisdiction of Hunt County Courts at Law and composition of Hunt County Juvenile Board effective September 1, 2009.

Summary of Changes: New Section 25.1182(a)(4), Government Code, mandates that a County Court at Law in Hunt County has concurrent jurisdiction with the district court in juvenile matters, effective September 1, 2009.

Government Code, Sec. 25.1772(a)(4). NAVARRO COUNTY COURT AT LAW PROVISIONS.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Navarro County has concurrent jurisdiction with the district court in:

(1) felony cases to:

(A) conduct arraignments;

(B) conduct pretrial hearings;

(C) accept guilty pleas; and

(D) conduct jury trials on as-

signment of a district judge presiding in Navarro County and acceptance of the assignment by the judge of the county court at law;

(2) Class A and Class B misdemeanor cases;

(3) family law matters;

(4) juvenile matters;

(5) probate matters; and

(6) appeals from the justice and municipal courts.

(b) A county court at law does not have general supervisory control or appellate review of the commissioners court or jurisdiction of:

(1) suits on behalf of this state to recover penalties or escheated property;

(2) felony cases involving capital murder;

(3) misdemeanors involving official misconduct; or

(4) contested elections.

(c) The judge of a county court at law must have the same qualifications as those required by law for a district judge.

(d) The judge of a county court at law shall be paid a total annual salary set by the commissioners court at an amount that is not less than \$1,000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total annual salary does not include contributions and supplements paid by a county.

(e) The judge of a county court at law may not engage in the private practice of law.

(f) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the

district court, and the county clerk shall serve as clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(g) The official court reporter of a county court at law is entitled to receive a salary set by the judge of the county court at law with the approval of the commissioners court.

(h) Jurors summoned for a county court at law or a district court in the county may by order of the judge of the court to which they are summoned be transferred to another court for service and may be used as if summoned for the court to which they are transferred.

(b) Notwithstanding Section 25.1771, Government Code, as added by this section, the County Court at Law of Navarro County is created on January 1, 2011, or on an earlier date determined by the Commissioners Court of Navarro County by an order entered in its minutes.

Commentary by Chris Hubner

Source: HB 4833

Effective Date: September 1, 2009

Applicability: Creation and jurisdiction of Navarro County Court at Law effective January 1, 2011, or an earlier date determined by the Commissioners Court.

Summary of Changes: New Section 25.1772(a)(4), Government Code, mandates that a County Court at Law in Navarro County has concurrent jurisdiction with the district court in juvenile matters, effective September 1, 2009.

Government Code, Sec. 25.2362. VAN ZANDT COUNTY COURT AT LAW PROVISIONS.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Van Zandt County has concurrent jurisdiction with the district court in:

(1) felony cases to:

(A) conduct arraignments;

(B) conduct pretrial hearings;

(C) accept guilty pleas; and

(D) conduct jury trials on as-

signment of a district judge presiding in Van Zandt County and acceptance of the assignment by the judge of the county court at law;

(2) Class A and Class B misdemeanor cases;

(3) family law matters;

(4) juvenile matters;

(5) probate matters; and

(6) appeals from the justice and municipal courts.

(b) A county court at law's civil jurisdiction concurrent with the district court in civil cases is limited to cases in which the matter in controversy does not exceed \$200,000. A county court at law does not have general supervisory control or appellate review of the commissioners court or jurisdiction of:

(1) suits on behalf of this state to recover penalties or escheated property;

(2) felony cases involving capital murder;

(3) misdemeanors involving official misconduct; or

(4) contested elections.

(c) The judge of a county court at law must have the same qualifications as those required by law for a district judge.

(d) The judge of a county court at law shall be paid a total annual salary set by the commissioners court at an amount that is not less than \$1,000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total annual salary does not include contributions and supplements paid by a county.

(e) The judge of a county court at law may not engage in the private practice of law.

(f) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court, and the county clerk shall serve as clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(g) The official court reporter of a county court at law is entitled to receive a salary set by the judge of the county court at law with the approval of the commissioners court.

(h) Jurors summoned for a county court at law or a district court in the county may by order of the judge of the court to which they are summoned be transferred to another court for service and may be used as if summoned for the court to which they are transferred.

(b) Effective January 1, 2011, Section 152.2401(a), Human Resources Code, is amended to read as follows:

(a) The Van Zandt County Juvenile Board is composed of the county judge, the criminal district attorney of Van Zandt County, ~~and~~ the judge of the 294th Judicial District, and the judge of the county court at law.

(c) Notwithstanding Section 25.0009, Government Code, the initial vacancy in the office of judge of the County Court at Law of Van Zandt County shall be filled by election. The office exists for purposes of the primary and general elections in 2010. A vacancy after the initial vacancy is filled as provided by Section 25.0009, Government Code. This subsection takes effect September 1, 2009.

(d) Except as otherwise provided by this section, this section takes effect January 1, 2011.

Commentary by Chris Hubner

Source: HB 4833

Effective Date: September 1, 2009

Applicability: Jurisdiction of Van Zandt County Court at Law and composition of Van Zandt County Juvenile Board effective January 1, 2011.

Summary of Changes: New Section 25.2362(a)(4), Government Code, mandates that a County Court at Law in Van Zandt County has concurrent jurisdiction with the district court in juvenile matters, effective January 1, 2011.

Government Code, Sec. 61.07611. RESTRAINT OF PREGNANT JUVENILE.

(a) The commission may not use restraints to control the movement of a pregnant child who is committed to the commission at any time during which the child is in labor or delivery or recovering from delivery, unless the executive director or executive director's designee determines that the use of restraints is necessary to:

(1) ensure the safety and security of the child or her infant, commission or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the child will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

Commentary by Chris Hubner

Source: HB 3653

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Newly enacted Section 61.07611, Government Code, prohibits the Texas Youth Commission (TYC) from using physical restraints to control the movement of a pregnant juvenile at any time during labor, delivery or while recovering from delivery, unless TYC's executive director or a designee determines the use of restraints is necessary to: 1) ensure the safety and security of the child or her infant, TYC or medical personnel, or any member of the public; or 2) prevent a substantial risk that the juvenile will try to escape. If use of a restraint is authorized, its use and the manner in which it is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

Government Code, Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE.

An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Family Code if ordered by the court or otherwise required:

(1) in family matters:

(A) issuing writ of withholding
(Sec. 8.262, Family Code) ... \$15;

(B) filing copy of writ of withholding to subsequent employer (Sec. 8.267, Family Code) ... \$15;

(C) issuing and delivering modified writ of withholding or notice of termination (Sec. 8.302, Family Code) ... \$15;

(D) issuing and delivering notice of termination of withholding (Sec. 8.303, Family Code) ... \$15;

(E) issuance of change of name certificate (Sec. 45.106, Family Code) ... \$10;

(F) protective order fee (Sec. 81.003, Family Code) ... \$16;

(G) filing suit requesting adoption of child (Sec. 108.006, Family Code) ... \$15;

(H) filing fees for suits affecting parent-child relationship (Sec. 110.002, Family Code):

(i) suit or motion for modification (Sec. 110.002, Family Code) ... \$15;

(ii) motion for enforcement (Sec. 110.002, Family Code) ... \$15;

(iii) notice of application for judicial writ of withholding (Sec. 110.002, Family Code) ... \$15;

(iv) motion to transfer (Sec. 110.002, Family Code) ... \$15;

(v) petition for license suspension (Sec. 110.002, Family Code) ... \$15;

(vi) motion to revoke a stay of license suspension (Sec. 110.002, Family Code) ... \$15; and

(vii) motion for contempt (Sec. 110.002, Family Code) ... \$15;

(I) order or writ of income withholding to be delivered to employer (Sec. 110.004, Family Code) ... not to exceed \$15;

(J) filing fee for transferred case (Sec. 110.005, Family Code) ... \$45;

(K) filing a writ of withholding (Sec. 158.319, Family Code) ... \$15;

(L) filing a request for modified writ of withholding or notice of termination (Sec. 158.403, Family Code) ... not to exceed \$15;

(M) filing an administrative writ to employer (Sec. 158.503, Family Code) ... not to exceed \$15; and

(N) genetic testing fees in relation to a child born to a gestational mother (Sec. 160.762, Family Code) ... as assessed by the court; and

(2) in juvenile court:

(A) fee schedule for deferred prosecution services (Sec. 53.03, Family Code) ... maximum fee of \$15 a month;

(B) a request fee for a teen court program ~~[administration fee]~~ (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the

Texas-Louisiana border region, but otherwise not to exceed \$10;

(C) court costs for juvenile probation diversion fund (Sec. 54.0411, Family Code) ... \$20;

(D) a juvenile delinquency prevention fee (Sec. 54.0461, Family Code) ... \$50 ~~[\$5]; [and]~~

(E) a court fee for child's probationary period (Sec. 54.061, Family Code) ... not to exceed \$15 a month;

(F) a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;

(G) a fee for DNA testing on commitment to certain facilities (Sec. 54.0462, Family Code) ... \$50; and

(H) a fee for DNA testing after placement on probation or as otherwise required by law (Sec. 54.0462, Family Code) ... \$34.

Commentary by Nydia D. Thomas

Source: SB 727

Effective Date: September 1, 2009

Applicability: Fees ordered on or after the effective date.

Summary of Changes: Section 103.0212 of the Government Code outlines a range of fees and costs that may be ordered by the court in criminal and civil cases under the Family Code. This session, the legislature authorized or imposed new charges in juvenile proceedings. Specifically, the juvenile delinquency prevention fee under Section 54.0461 of the Family Code was increased from \$5 to \$50. Under new Section 54.0462, the juvenile court may order a fee for DNA testing associated with commitment to certain facilities in the amount of \$50. A DNA testing fee in the amount of \$34 may also be imposed after ordering probation placement or when the test is required under other law. A new teen court cost of \$20 was added under Section 54.032 that specifically applies to teen courts located on the Texas-Louisiana border. The existing \$10 teen court fee applicable in other counties did not increase.

Government Code, Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE.

An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Family Code if ordered by the court or otherwise required:

(1) in family matters:

(A) issuing writ of withholding (Sec. 8.262, Family Code) ... \$15;

(B) filing copy of writ of withholding to subsequent employer (Sec. 8.267, Family Code) ... \$15;

(C) issuing and delivering modified writ of withholding or notice of termination (Sec. 8.302, Family Code) ... \$15;

(D) issuing and delivering notice of termination of withholding (Sec. 8.303, Family Code) ... \$15;

(E) issuance of change of name certificate (Sec. 45.106, Family Code) ... \$10;

(F) protective order fee (Sec. 81.003, Family Code) ... \$16;

(G) filing suit requesting adoption of child (Sec. 108.006, Family Code) ... \$15;

(H) filing fees for suits affecting parent-child relationship (Sec. 110.002, Family Code):

(i) suit or motion for modification (Sec. 110.002, Family Code) ... \$15;

(ii) motion for enforcement (Sec. 110.002, Family Code) ... \$15;

(iii) notice of application for judicial writ of withholding (Sec. 110.002, Family Code) ... \$15;

(iv) motion to transfer (Sec. 110.002, Family Code) ... \$15;

(v) petition for license suspension (Sec. 110.002, Family Code) ... \$15;

(vi) motion to revoke a stay of license suspension (Sec. 110.002, Family Code) ... \$15; and

(vii) motion for contempt (Sec. 110.002, Family Code) ... \$15;

(I) order or writ of income withholding to be delivered to employer (Sec. 110.004, Family Code) ... not to exceed \$15;

(J) filing fee for transferred case (Sec. 110.005, Family Code) ... \$45;

(K) filing a writ of withholding (Sec. 158.319, Family Code) ... \$15;

(L) filing a request for modified writ of withholding or notice of termination (Sec. 158.403, Family Code) ... not to exceed \$15;

(M) filing an administrative writ to employer (Sec. 158.503, Family Code) ... not to exceed \$15; and

(N) genetic testing fees in relation to a child born to a gestational mother (Sec. 160.762, Family Code) ... as assessed by the court; and

(2) in juvenile court:

(A) fee schedule for deferred prosecution services (Sec. 53.03, Family Code) ... maximum fee of \$15 a month;

(B) a request fee for a teen court program [~~administration fee~~] (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;

(C) court costs for juvenile probation diversion fund (Sec. 54.0411, Family Code) ... \$20;

(D) a juvenile delinquency prevention fee (Sec. 54.0461, Family Code) ... \$50 [~~\$5~~]; ~~and~~

(E) a court fee for child's probationary period (Sec. 54.061, Family Code) ... not to exceed \$15 a month; and

(F) a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10.

Commentary by Chris Hubner

Source: SB 1969

Effective Date: September 1, 2009

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: Amended Section 103.0212(2)(B), Government Code, clarifies that a request fee for a teen court program is \$20 if the court ordering the fee is located in the Texas-Louisiana border region. Otherwise, such a fee may not exceed \$10. Amended Section 103.0212 (2)(D), Government Code, makes a conforming change regarding the mandatory \$50 juvenile delinquency prevention fee.

Newly added Section 103.0212(2)(F), Government Code, also clarifies that a fee to cover costs of required duties of teen court is \$20 if the court ordering the fee is located in the Texas-Louisiana border region. Otherwise, such a fee may not exceed \$10.

Government Code, Sec. 402.035. HUMAN TRAFFICKING PREVENTION TASK FORCE.

(a) In this section, "task force" means the human trafficking prevention task force.

(b) The office of the attorney general shall establish the human trafficking prevention task force to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes.

(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 public safety director of the Department of Public Safety or the director's designee;

(6) one representative from each of the following state agencies, appointed by the chief administrative officer of the respective agency:

(A) the Texas Workforce Commission;

Criminal Justice;
sion;
tion Commission; and
rage Commission; and
(7) as appointed by the attorney general:
(A) a public defender, as de-
finied by Article 26.044, Code of Criminal Procedure;
(B) an attorney representing the
state;
(C) a representative of:
(i) a hotel and motel
association;
ty attorneys association; and
sociation;
departments;
(E) representatives of local law
enforcement agencies affected by human trafficking; and
(F) representatives of nongo-
vernmental entities making comprehensive efforts to com-
bat 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 de-
veloping training regarding the prevention of human traf-
ficking; or
(v) engaging in other
activities designed to prevent human trafficking.
(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 Al-
cohol, Tobacco, Firearms and Explosives;
(iv) the United States
Immigration and Customs Enforcement Agency; 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;

(3) solicit cooperation and assistance
from state and local governmental agencies, political sub-
divisions 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 go-
vernmental agency and political subdivision of the state
that assists in the prevention of human trafficking collects
statistical data related to human trafficking, including, as
appropriate:

(A) the number of investiga-
tions concerning, arrests and prosecutions for, and convic-
tions of:

(i) the offense of traf-
ficking of persons; and

(ii) the offense of for-
gery or an offense under Chapter 43, Penal Code, if com-
mitted as part of a criminal episode involving the traffick-
ing of persons;

(B) demographic information
on persons who are convicted of offenses described by Pa-
ragraph (A) and persons who are the victims of those of-
fenses;

(C) geographic routes by which
human trafficking victims are trafficked 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 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) on the request of a judge of a county
court, county court at law, or district court or a county at-
torney, 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;

(7) examine training protocols related to
human trafficking issues, as developed and implemented by
federal, state, and local law enforcement agencies;

(8) collaborate with state and local go-
vernmental agencies, political subdivisions of the state, and
nongovernmental organizations to implement a media
awareness campaign in communities affected by human
trafficking; and

(9) develop recommendations on how to
strengthen state and local efforts to prevent human traffick-

ing, protect and assist human trafficking victims, and prosecute human trafficking offenders.

(e) The presiding officer of the task force is the attorney general or the attorney general's designee.

(f) The office of the attorney general shall supervise the administration of the task force. The attorney general shall provide the necessary staff and facilities to assist the task force in performing its duties.

(g) Not later than December 1 of each even-numbered year, the task force shall submit a report regarding the task force's activities, findings, and recommendations, including any proposed legislation, to the governor, the lieutenant governor, and the legislature.

(h) This section expires September 1, 2013.

Commentary by Riley Shaw

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Creation of Task Force on September 1, 2009, through expiration on September 1, 2013.

Summary of Changes: Creates a four-year Human Trafficking Prevention Task Force to be run by the Texas AG's office, with participation by the Texas Workforce Commission, Texas Department of Criminal Justice, Texas Youth Commission, Texas Juvenile Probation Commission, and Texas, Texas Alcoholic Beverage Commission, public defenders, prosecutors, members of law enforcement, and members of hotel/motel associations.

Government Code, Sec. 500.008. DETECTION AND MONITORING OF CELLULAR TELEPHONES.

(a) The department may own and the office of inspector general may possess, install, operate, or monitor an electronic, mechanical, or other device, as defined by Article 18.20, Code of Criminal Procedure.

(b) The inspector general shall designate in writing the commissioned officers of the office of inspector general who are authorized to possess, install, operate, and monitor electronic, mechanical, or other devices for the department.

(c) An investigative or law enforcement officer or other person, on request of the office of inspector general, may assist the office in the operation and monitoring of an interception of wire, oral, or electronic communications if the investigative or law enforcement officer or other person:

(1) is designated by the executive director for that purpose; and

(2) acts in the presence and under the direction of a commissioned officer of the inspector general.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009.

Applicability: Implementation on or after the effective date.

Summary of Changes: Provides the procedure for the Texas Department of Criminal Justice to use in designating who gets to participate in the interception of wire, oral, or electronic communications.

Government Code, Sec. 508.145. ELIGIBILITY FOR RELEASE ON PAROLE; COMPUTATION OF PAROLE ELIGIBILITY DATE.

(b) An inmate serving a life sentence under Section 12.31(a)(1), Penal Code, for a capital felony is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 40 calendar years.

Commentary by Karen J. Roe

Source: SB 839

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: A juvenile offender certified to stand trial as an adult for the offense of capital murder must, if convicted, serve a minimum of 40 calendar years before being eligible for parole.

A corresponding change was made to Section 12.31 of the Penal Code, which eliminates the sentence of life without the possibility of parole for juveniles certified to stand trial as adults in capital felony cases, and replaces it with a life sentence with parole eligibility after 40 years.

Government Code, Sec. 531.02418. MEDICAID AND CHILD HEALTH PLAN PROGRAM ELIGIBILITY DETERMINATIONS FOR CERTAIN INDIVIDUALS.

(a) The commission shall enter into a memorandum of understanding with the Texas Youth Commission to ensure that each individual who is committed under Title 3, Family Code, is assessed by the commission for eligibility for the medical assistance program under Chapter 32, Human Resources Code, and the child health plan program before that individual's release from commitment.

(b) The commission shall enter into a memorandum of understanding with the Texas Juvenile Probation Commission to ensure that each individual who is placed or detained under Title 3, Family Code, is assessed by the commission for eligibility for the medical assistance program under Chapter 32, Human Resources Code, and the child health plan program before the individual's release from placement or detention. Local juvenile probation departments are subject to the requirements of the memorandum.

(c) Each memorandum of understanding entered into as required by this section must specify:

(1) the information that must be provided to the commission;

(2) the process by which and time frame within which the information must be provided; and

(3) the roles and responsibilities of all parties to the memorandum, which must include a requirement that the commission pursue the actions needed to complete eligibility applications as necessary.

(d) Each memorandum of understanding required by Subsection (a) or (b) must be tailored to achieve the goal of ensuring that an individual described by Subsection (a) or (b) who is determined eligible by the commission for coverage under the medical assistance program under Chapter 32, Human Resources Code, or the child health plan program, is enrolled in the program for which the individual is eligible and may begin receiving services through the program as soon as possible after the eligibility determination is made and, if possible, to achieve the goal of ensuring that the individual may begin receiving those services on the date of the individual's release from placement, detention, or commitment.

(e) The executive commissioner may adopt rules as necessary to implement this section.

Commentary by Chris Hubner

Source: HB 1630

Effective Date: June 1, 2009

Applicability: Memorandum of Understanding (MOU) between the Health and Human Services Commission (HHSC), Texas Youth Commission (TYC) and Texas Juvenile Probation Commission (TJPC) must be entered into not later than October 1, 2009. MOU between HHSC and TJPC must be entered into not later than February 1, 2010.

Summary of Changes: Newly enacted Section 531.02418, Government Code, requires the HHSC to enter into an MOU with TYC and TJPC to ensure that each individual who is committed, placed or detained under Title 3 of the Family Code is assessed by HHSC for medical assistance program and child health plan program eligibility before that individual's release from commitment, placement or a juvenile detention facility. Local juvenile probation departments will be required to adhere to the provisions contained in the MOU between HHSC and TJPC. The new statute seeks to avoid gaps in medical coverage or the child health plan program coverage when individuals are released from placement, detention or commitment. In the past, these gaps in service have often meant that youth must reapply for health care coverage.

Government Code, Sec. 531.381. DEFINITIONS.

In this subchapter:

(1) "Domestic victim" means a victim of trafficking who is a permanent legal resident or citizen of the United States.

(2) "Victim of trafficking" has the meaning assigned by 22 U.S.C. Section 7102.

Commentary by Riley Shaw

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: This new provision defines "domestic victim" and "victim of human trafficking" in a new law that authorizes the Health and Human Services Commission to develop an assistance program for these victims, to be funded through appropriated funds, gifts, grants and donations. The program will provide outreach services to domestic victims and education and training for court and law enforcement personnel.

Government Code, Ch. 531, Subch. T. COUNCIL ON CHILDREN AND FAMILIES.

SUBCHAPTER T. COUNCIL ON CHILDREN AND FAMILIES

Sec. 531.801. DEFINITION. In this subchapter, "council" means the Council on Children and Families.

Sec. 531.802. COUNCIL ON CHILDREN AND FAMILIES. (a) The Council on Children and Families is established to:

(1) coordinate the state's health, education, and human services systems to ensure that children and families have access to needed services;

(2) improve coordination and efficiency in state agencies, advisory councils on issues affecting children, and local levels of service;

(3) prioritize and mobilize resources for children; and

(4) facilitate an integrated approach to providing services for children and youth.

(b) The council shall:

(1) promote a common vision of desired outcomes for children and youth and of family and community supports;

(2) promote shared accountability for outcomes for children and youth; and

(3) align allocations of resources with policies for children and youth.

(c) Subject to Subsection (d), the council is composed of the following:

(1) the executive commissioner;

(2) the commissioner of state health services;

(3) the commissioner of the Department of Family and Protective Services;

(4) the commissioner of aging and disability services;

(5) the commissioner of assistive and rehabilitative services;

(6) the commissioner of education;

(7) the executive director of the Texas Juvenile Probation Commission;

(8) the executive commissioner of the Texas Youth Commission;

(9) the executive director of the Texas Workforce Commission;

(10) the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(11) two public representatives who are parents of children who have received services from an agency represented on the council, appointed by the executive commissioner; and

(12) two representatives who are young adults or adolescents who have received services from an agency represented on the council, appointed by the executive commissioner.

(d) An individual listed in Subsections (c)(1)-(10) may designate another individual as having authority to act on behalf of the individual at council meetings and with respect to council functions.

(e) The members of the council annually shall elect one member to serve as the presiding officer.

(f) Council meetings are held at the call of the presiding officer.

(g) The council is administratively attached to the commission but is independent of direction by the commission or the executive commissioner. The commission, through the commission's Office of Program Coordination for Children and Youth, shall provide administrative support and resources to the council as necessary to enable the council to perform its duties.

(h) The agencies represented on the council shall provide periodic staff support of specialists as needed to the council.

(i) The council is not subject to Chapter 2110.

Sec. 531.803. DUTIES. (a) The council shall:

(1) analyze the biennial legislative appropriations requests of members of the council for services provided to children and their families and identify appropriations that, through the coordination of members of the council, could be modified in the next legislative appropriation request to eliminate waste or increase available services and, not later than May 1 of each even-numbered year, prepare a report recommending those modifications for consideration during the development of the next biennial legislative appropriations request;

(2) investigate opportunities to increase flexible funding for health, education, and human services provided to children and their families;

(3) identify methods to remove barriers to local coordination of health, education, and human services provided to children and their families;

(4) identify methods to ensure that children and youth receive appropriate assessment, diagnoses, and intervention services;

(5) develop methods to prevent unnecessary parental relinquishment of custody of children;

(6) prioritize assisting children in family settings rather than institutional settings; and

(7) make recommendations about family involvement in the provision and planning of health, education, and human services for a child, including family partner and liaison models.

(b) The state agency members of the council may, as appropriate, enter into memoranda of understanding with other agencies to implement any method, process, policy, or recommendation identified or developed under Subsection (a). Before a method, process, policy, or recommendation is implemented, the council shall:

(1) identify:

(A) the timeline and proposed outcome of implementing the method, process, policy, or recommendation; and

(B) benchmarks that may be used to measure the success of the implementation of the method, process, policy, or recommendation; and

(2) assign to the appropriate members of the council responsibility for implementing the method, process, policy, or recommendation.

(c) The council may collect data necessary to conduct the council's duties or implement the council's recommendations and shall use any reports or information produced by other entities related to children, youth, and families to inform the council.

Sec. 531.804. REPORT BY COUNCIL REGARDING CHILD WELFARE. Not later than December 1 of each even-numbered year, the council shall submit a report to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature that contains:

(1) the requests, plans, and recommendations of the council, including recommendations of any legislation that is needed to further develop and maintain a statewide system of quality health, education, and human services for children and families; and

(2) information regarding the implementation by the members of the council of any method, process, policy, or recommendation, including information regarding whether the implementation has proceeded in accordance with the timeline, outcome, and benchmarks identified by the council.

Sec. 531.805. SUNSET PROVISION. The Council on Children and Families is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this subchapter expires September 1, 2019.

Commentary by Chris Hubner

Source: SB 1646

Effective Date: June 19, 2009

Applicability: Initial meeting must be convened not later than October 1, 2009.

Summary of Changes: In Texas, there is no single agency or oversight body to coordinate the work of the 10 state agencies and various local entities that provide services and funding to children and youth. This makes it difficult to track statewide spending on children's services, increases duplication of efforts, and results in a leadership vacuum in terms of establishing priorities and assessing potential gaps in services to children and families.

SB 1646 establishes executive level coordination in the form of a Council on Children and Families to promote: 1) improved coordination and efficiency across state agencies; 2) an integrated approach to serving children and youth; 3) identification of gaps and duplication in services; and 4) alignment of policies with resources. The Council represents the first commissioner-level entity in Texas to consider the full spectrum of issues confronting children.

Health and Safety Code

Health and Safety Code, Sec. 81.050. MANDATORY TESTING OF PERSONS SUSPECTED OF EXPOSING CERTAIN OTHER PERSONS TO REPORTABLE DISEASES, INCLUDING HIV INFECTION.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection:

- (1) a law enforcement officer;
- (2) a fire fighter;
- (3) an emergency medical service employee or paramedic;
- (4) a correctional officer; ~~(5)~~
- (5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code; or
- (6) an employee of a juvenile probation department.

Commentary by Chris Hubner

Source: HB 3005

Effective Date: June 19, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: New Section 81.050(b)(6), Health and Safety Code, adds employees of a juvenile probation department to the list of employees or volunteers who may request involuntary testing of persons suspected of exposing them to certain diseases, including HIV infection. The list now includes law enforcement officers, fire fighters,

EMS employees or paramedics, correctional officers, others who perform services in a correctional or secure detention facility, and employees of a juvenile probation department.

A juvenile probation officer can request a test from the state or a local health department when the officer believes he or she was exposed to HIV or another communicable disease (defined by the state health department) during the performance of the officer's job duties. The health department reviews each request and can issue an order that a person be tested for HIV or communicable diseases if there is evidence of a risk of exposure, as defined by the United States Public Health Service. If the person refuses to be tested based on the order from the health department, a prosecutor may ask for a court order requiring the test. The person requesting the test must be informed of the test results when they become available and offered medical follow-up and counseling services if needed.

Health and Safety Code, Sec. 614.009. BIENNIAL REPORT.

Not later than February 1 of each odd-numbered year, the office shall present to the board and file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

- (1) an evaluation of any demonstration project undertaken by the office;
- (2) an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with special needs;
- (3) recommendations of the office made in accordance with Section 614.007(5);
- (4) an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, ~~and~~ 614.016, and 614.018, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and
- (5) any other recommendations that the office considers appropriate.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Reports issued on or after the effective date.

Summary of Changes: This section was amended to include the new continuity of care MOU within the mandatory legislative report that the Texas Correctional Office on Offenders with Mental and Medical Impairments

(TCOOMMI) must prepare in February of each legislative session year.

Health and Safety Code, Sec. 614.019. PROGRAMS FOR JUVENILES.

(a) The office, in cooperation with the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation, the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Youth Commission and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or mental retardation who is discharged from the Texas Youth Commission under Section 61.077, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the commission and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or mental retardation services provided by a local mental health or mental retardation authority.

Commentary by Chris Hubner

Source: HB 4451

Effective Date: June 19, 2009

Applicability: Youth paroled or discharged from the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: Amended Section 614.019 seeks to ensure that children with mental illness who are receiving continuity of care services from TYC during their parole, and who are no longer eligible to receive services from a local mental health authority upon turning 17, may continue to receive such services from Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) until their parole is completed. Additionally, children with mental illness or mental retardation who are discharged from TYC may receive continuity of care services from TCOOMMI for at least 90 days after discharge from TYC and for as long as necessary until they have demonstrated sufficient stability to successfully transition to services provided by a local mental health or mental retardation authority.

Human Resources Code

Human Resources Code, Sec. 61.077. CHILDREN WITH MENTAL ILLNESS OR MENTAL RETARDATION.

(g) If a child who is mentally ill or mentally retarded is discharged from the commission 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 Chris Hubner

Source: HB 4451

Effective Date: June 19, 2009

Applicability: Youth paroled or discharged from the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: Under the law as it is currently written, children with mental illness or mental retardation who are committed to TYC may be discharged if they have completed the minimum length of stay and TYC determines they are unable to progress through rehabilitation due to their mental disability. As a result, many of these children were ineligible to receive continuity of care services since they were not being released on parole. New Section 61.077(g), Human Resources Code, provides that if a child who is mentally ill or mentally retarded is discharged from TYC under Section 61.077(b) (discharge of a child who is mentally ill or mentally retarded from TYC custody under certain conditions), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI).

Human Resources Code, Sec. 61.0773. TRANSFER OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES FOR MENTAL HEALTH SERVICES.

(a) The commission 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 commission under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code.

(b) A petition made by the commission 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) The commission 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 the commission 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 sec-

tion 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 the commission. The juvenile court may transfer the child to the custody of the commission, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

Commentary by Chris Hubner

Source: HB 4451

Effective Date: June 19, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: New Section 61.0773, Human Resources Code, authorizes TYC to petition the juvenile court that entered the order of commitment to the Texas Youth Commission (TYC) for the initiation of mental health commitment proceedings if the child was committed to TYC under a determinate sentence. Such a petition must be treated as a motion under Section 55.11 (mental illness determination; examination), and requires the juvenile court to proceed under Chapter 55, Subchapter B (child with mental illness). TYC must cooperate with the juvenile court in any proceeding under Section 61.0773.

If a child spends any time in an inpatient mental health facility, the juvenile court must give the child credit toward the commitment term. Children who are committed to an inpatient mental health facility under Section 61.0773 cannot be released from the facility on a pass or furlough. Additionally, if the term of an order committing a child to an inpatient mental health facility is set to expire before the end of the child's sentence, and another such order is not scheduled to be entered, the inpatient mental health facility must notify the juvenile court that entered the order of commitment to TYC. The juvenile court may then transfer the child to the custody of TYC, transfer the child to the Texas Department of Criminal Justice or release the child under TYC parole supervision, as appropriate.

Human Resources Code, Sec. 142.006. AUTHORIZATION TO CARRY FIREARM.

(a) A juvenile probation officer may carry a firearm in the course of the officer's official duties if:

(1) the juvenile probation officer possesses a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 1701.258, Occupations Code;

(2) the chief juvenile probation officer of the juvenile probation department that employs the juvenile

probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(3) the juvenile probation officer has been employed for at least one year by the juvenile probation department described by Subdivision (2).

(b) A juvenile probation officer is disqualified from being authorized to carry a firearm under this section if the officer has been designated a perpetrator in a Texas Juvenile Probation Commission abuse, neglect, or exploitation investigation.

(c) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

Commentary by Chris Hubner

Source: SB 1237

Effective Date: June 19, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Newly enacted Section 142.006, Human Resources Code, authorizes a juvenile probation officer to carry a firearm in the course of his or her duties if: 1) the officer has received a certificate of firearms proficiency from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE); 2) the chief juvenile probation officer of the probation department employing the officer authorizes the officer to carry a firearm; and 3) the officer has been employed by the juvenile probation department for at least one year. An officer is disqualified from carrying a firearm if he or she has been designated as a perpetrator in a Texas Juvenile Probation Commission abuse, neglect or exploitation investigation.

SB 1237 also makes a conforming change to Section 46.15(a), Penal Code, to clarify that a juvenile probation officer who is authorized to carry a firearm does not commit the offenses of unlawful carrying a weapon or places weapons prohibited. See Sections 46.02 and 46.03, Penal Code.

Occupations Code

Occupations Code, Sec. 1701.258. FIREARMS TRAINING PROGRAM FOR JUVENILE PROBATION OFFICERS.

(a) The commission and the Texas Juvenile Probation Commission by rule shall adopt a memorandum of understanding that establishes a training program in the use of firearms by juvenile probation officers. The memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of juvenile probation officers;

(2) range firing and procedure, and firearms safety and maintenance; and

(3) other topics determined by the commission and the Texas Juvenile Probation Commission to be necessary for the responsible use of firearms by juvenile probation officers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each juvenile probation officer the commission determines has successfully completed the program described by Subsection (a).

(c) The commission may establish reasonable and necessary fees for the administration of this section.

(d) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

Commentary by Chris Hubner

Source: SB 1237

Effective Date: June 19, 2009

Applicability: Training programs commencing on or after the effective date.

Summary of Changes: Newly enacted Section 1701.258, Occupations Code, requires Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and Texas Juvenile Probation Commission (TJPC) to adopt a Memorandum of Understanding (MOU) to establish a training program in the use of firearms by juvenile probation officers. The MOU must be adopted by January 1, 2010, and must establish a program that provides instruction in: 1) the legal limitations on the use of firearms; 2) range firing and procedure, and firearms safety and maintenance; and 3) other topics deemed to be necessary for the responsible use of firearms by juvenile probation officers. TCLEOSE must administer the training program, issue certificates for successful completion of the program, and may charge reasonable and necessary fees for administering the program.

Occupations Code, Sec. 1701.258. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS.

(a) The commission by rule shall require an officer first licensed by the commission on or after January 1, 2011, to complete within a reasonable time after obtaining the license a one-time basic education and training program on the trafficking of persons. The program must:

(1) consist of at least four hours of training; and

(2) include a review of the substance of Sections 20A.02 and 43.05, Penal Code.

(b) The commission shall make available to each officer a voluntary advanced education, instruction, and

training program on the trafficking of persons and compelling prostitution prohibited under Sections 20A.02 and 43.05, Penal Code.

(c) Not later than January 1, 2011, the commission shall begin offering the basic and advanced programs established under this section. This subsection expires September 1, 2011.

Commentary by Chris Hubner

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Rules must be adopted not later than December 1, 2010. The required programs shall be offered not later than January 1, 2011, to officers who are licensed on or after January 1, 2011. The subsection expires on September 1, 2011.

Summary of Changes: Newly enacted Section 1701.258, Occupations Code, mandates that the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) by rule must require a law enforcement officer who is licensed on or after January 1, 2011, to complete a one-time basic education and training program concerning the trafficking of persons. The program must consist of at least four (4) hours of training and include a review of Penal Code Section 20A.02 (trafficking of persons) and Section 43.05 (compelling prostitution). By January 1, 2011, TCLEOSE must begin offering relevant basic and advanced training programs.

Occupations Code, Sec. 1701.402. PROFICIENCY CERTIFICATES.

(h) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).

Commentary by Chris Hubner

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Certificates issued on or after January 1, 2011.

Summary of Changes: Amended Section 1701.402, Occupations Code, adds Subsection (h), which requires a law enforcement officer, on or after January 1, 2011, to complete the basic education and training program on trafficking of persons as a requirement for an intermediate or advanced proficiency certificate issued by Texas Commission on Law Enforcement Officer Standards and Education.

Transportation Code

Transportation Code, Sec. 521.342. PERSON UNDER 21 YEARS OF AGE.

(a) Except as provided by Section 521.344, the license of a person who was under 21 years of age at the time of the offense, other than an offense classified as a misdemeanor punishable by fine only, is automatically suspended on conviction of:

(1) an offense under Section 49.04, 49.045, or 49.07, Penal Code, committed as a result of the introduction of alcohol into the body;

(2) an offense under the Alcoholic Beverage Code, other than an offense to which Section 106.071 of that code applies, involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;

(3) a misdemeanor offense under Chapter 481, Health and Safety Code, for which Subchapter P does not require the automatic suspension of the license;

(4) an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug; or

(5) an offense under Chapter 485, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of an abusable volatile chemical.

(b) The department shall suspend for one year the license of a person who is under 21 years of age and is convicted of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, regardless of whether the person is required to attend an educational program under Section 13(h), Article 42.12, Code of Criminal Procedure, that is designed to rehabilitate persons who have operated motor vehicles while intoxicated, unless the person is placed under community supervision under that article and is required as a condition of the community supervision to not operate a motor vehicle unless the vehicle is equipped with the device described by Section 13(i) of that article. If the person is required to attend such a program and does not complete the program before the end of the person's suspension, the department shall suspend the person's license or continue the suspension, as appropriate, until the department receives proof that the person has successfully completed the program. On the person's successful completion of the program, the person's instructor shall give notice to the department and to the community supervision and corrections department in the manner provided by Section 13(h), Article 42.12, Code of Criminal Procedure.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: This amendment to Section 521.342 adds the offense of driving while intoxicated with a child passenger to the list of offenses that require automatic suspension of a driver's license for persons under age 21. This change makes the punishment for driving while intoxicated with a child passenger consistent with penalties currently available for driving and boating while intoxicated.

Transportation Code, Sec. 521.344. SUSPENSION FOR OFFENSES INVOLVING INTOXICATION.

(a) Except as provided by Sections 521.342(b) and 521.345, and by Subsections (d)-(i), if a person is convicted of an offense under Section 49.04, 49.045, or 49.07, Penal Code, the license suspension:

(1) begins on a date set by the court that is not earlier than the date of the conviction or later than the 30th day after the date of the conviction, as determined by the court; and

(2) continues for a period set by the court according to the following schedule:

(A) not less than 90 days or more than one year, if the person is punished under Section 49.04, 49.045, or 49.07, Penal Code, except that if the person's license is suspended for a second or subsequent offense under Section 49.07 committed within five years of the date on which the most recent preceding offense was committed, the suspension continues for a period of one year;

(B) not less than 180 days or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code; or

(C) not less than one year or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code, and is subject to Section 49.09(h) of that code.

(c) The court shall credit toward the period of suspension imposed on the person for refusal to give a specimen under Chapter 724 if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this chapter. The court may not extend the credit to a person:

(1) who has been previously convicted of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code; or

(2) whose period of suspension is governed by Section 521.342(b).

(i) On the date that a suspension order under Section 521.343(c) is to expire, the period of suspension or the corresponding period in which the department is prohibited from issuing a license is automatically increased to two years unless the department receives notice of successful completion of the educational program as required by Section 13, Article 42.12, Code of Criminal Procedure. At the

time a person is convicted of an offense under Section 49.04 or 49.045, Penal Code, the court shall warn the person of the effect of this subsection. On the person's successful completion of the program, the person's instructor shall give notice to the department and to the community supervision and corrections department in the manner required by Section 13, Article 42.12, Code of Criminal Procedure. If the department receives proof of completion after a period has been extended under this subsection, the department shall immediately end the suspension or prohibition.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: Section 521.344 is amended to add the offense of driving while intoxicated with a child passenger to existing provisions that define the duration of a driver's license suspension period for other intoxication offenses, including intoxication assault and intoxication manslaughter. This section establishes the duration of the license suspension period when action is initiated by the Department of Public Safety. This provision does not apply to cases in which license suspension is ordered by a juvenile court, or other court for failure of a minor to complete an alcohol awareness course. See Section 521.345 of the Transportation Code.

Transportation Code, Sec. 524.001. DEFINITIONS.

(3) "Alcohol-related or drug-related enforcement contact" means a driver's license suspension, disqualification, or prohibition order under the laws of this state or another state resulting from:

(A) a conviction of an offense prohibiting the operation of a motor vehicle or watercraft while:

- (i) intoxicated;
- (ii) under the influence

of alcohol; or

(iii) under the influence of a controlled substance;

(B) a refusal to submit to the taking of a breath or blood specimen following an arrest for an offense prohibiting the operation of a motor vehicle or an offense prohibiting the operation of a watercraft, if the watercraft was powered with an engine having a manufacturer's rating of 50 horsepower or more, while:

- (i) intoxicated;
- (ii) under the influence

of alcohol; or

(iii) under the influence of a controlled substance; or

(C) an analysis of a breath or blood specimen showing an alcohol concentration of a level specified by Section 49.01, Penal Code, following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: This amendment to Section 524.001(3)(B) expands the definition of "alcohol-related or drug-related enforcement contact" to include a conviction for operating a watercraft while impaired and for refusal to submit a breath or blood specimen following an arrest for operation of a watercraft. Persons with prior alcohol-related or drug-related enforcement contacts face longer license suspension periods. This definition applies only to watercraft powered with an engine having a rating of 50 horsepower or more, which is more restrictive than the definition of watercraft provided by Section 49.01(d) of the Penal Code. The more restrictive definition found in this section means that not all convictions for operating a watercraft while intoxicated will be counted as alcohol-related or drug-related enforcement contacts.

Transportation Code, Sec. 524.011. OFFICER'S DUTIES FOR DRIVER'S LICENSE SUSPENSION.

(a) An officer arresting a person shall comply with Subsection (b) if:

(1) the person is arrested for an offense under Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08 of that code involving the operation of a motor vehicle or watercraft, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code; or

(2) the person is a minor arrested for an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle or watercraft and:

(A) the minor is not requested to submit to the taking of a specimen; or

(B) the minor submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of greater than .00 but less than the level specified by Section 49.01(2)(B), Penal Code.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: The amendment to Section 524.001(a)(1) adds provisions to allow law enforcement officers to initiate license suspension procedures for persons arrested for driving while intoxicated with a child passenger and boating while intoxicated to make them consistent with existing procedures for license suspension of those arrested for driving while intoxicated who either refuse to submit a sample for, or fail to pass, a breath or blood test for intoxication.

Section 524.001(a)(2) is amended to add the same provisions to the license suspension procedures that apply to minors.

Transportation Code, Sec. 524.012. DEPARTMENT'S DETERMINATION FOR DRIVER'S LICENSE SUSPENSION.

(b) The department shall suspend the person's driver's license if the department determines that:

(1) the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place or while operating a watercraft; or

(2) the person was ~~is~~ a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: The amendment to Section 524.012(b)(1) adds language to license suspension procedures to allow suspension for the offense of operation of a watercraft while intoxicated to make them consistent with existing penalties for driving while intoxicated.

Section 524.012(b)(2) applies to minors and adds language to clarify that the law applies to persons who were minors on the date upon which a breath or blood specimen was obtained. It also extends the license revocation procedures to cover minors who operate watercraft while under the influence of any detectable amount of alcohol

Transportation Code, Sec. 524.015. EFFECT OF DISPOSITION OF CRIMINAL CHARGE ON DRIVER'S LICENSE SUSPENSION.

(b) A suspension may not be imposed under this chapter on a person who is acquitted of a criminal charge under Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, arising from the occurrence that was the basis for the suspension. If a suspension was imposed before the acquittal, the department shall rescind the suspension and shall remove any reference to the suspension from the person's computerized driving record.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: This section authorizes restoration of a driver's license for persons acquitted of driving while intoxicated and boating while intoxicated to be consistent with license restoration procedures for those acquitted of other intoxication charges.

Transportation Code, Sec. 524.022. PERIOD OF SUSPENSION.

(b) A period of suspension under this chapter for a minor is:

(1) 60 days if the minor has not been previously convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle or a watercraft;

(2) 120 days if the minor has been previously convicted once of an offense listed by Subdivision (1); or

(3) 180 days if the minor has been previously convicted twice or more of an offense listed by Subdivision (1).

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: Section 524.001(b)(1) amends the provision that defines the duration of a license suspension period for minors to add the offenses of driving while intoxicated with a child passenger and boating while intoxicated to the list of intoxication offenses to which license suspension procedures apply.

Transportation Code, Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

(a) If a person is convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, and if any conduct on which that conviction is based is a ground for a driver's license suspension under this chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the suspensions shall be imposed.

(b) The court imposing a driver's license suspension under Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as required by Subsection (a) shall credit a period of suspension imposed under this chapter toward the period of suspension required under Section 106.041, Alcoholic Beverage Code, or Subchapter O, Chapter 521, or Subchapter H, Chapter 522, unless the person was convicted of an offense under Article 67011-1, Revised Statutes, as that law existed before September 1, 1994, Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994, Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, before the date of the conviction on which the suspension is based, in which event credit may not be given.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: Amended Section 524.023 adds references to driving while intoxicated with a child passenger and boating while intoxicated to provisions related to driver's license suspension to make the consequences for these offenses consistent with those available for other intoxication offenses.

Transportation Code, Sec. 524.035. HEARING.

(a) The issues that must be proved at a hearing by a preponderance of the evidence are:

(1) whether:

(A) the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place or while operating a watercraft; or

(B) the person was [is] a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft; and

(2) whether reasonable suspicion to stop or probable cause to arrest the person existed.

(d) An administrative law judge may not find in the affirmative on the issue in Subsection (a)(1) if:

(1) the person is an adult and the analysis of the person's breath or blood determined that the person had an alcohol concentration of a level below that specified by Section 49.01, Penal Code, at the time the specimen was taken; or

(2) the person was [is] a minor on the date that the breath or blood specimen was obtained and the administrative law judge does not find that the minor had any detectable amount of alcohol in the minor's system when the minor was arrested.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: The amendments to this section delineate what must be proved at an administrative license suspension hearing to be consistent with other changes made by this act.

Transportation Code, Sec. 524.042. STAY OF SUSPENSION ON APPEAL.

(a) A suspension of a driver's license under this chapter is stayed on the filing of an appeal petition only if:

(1) the person's driver's license has not been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest; and

(2) the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under:

(A) Article 67011-1, Revised Statutes, as that law existed before September 1, 1994;

(B) Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994;

(C) Section 49.04, 49.045, or 49.06, Penal Code;

(D) Section 49.07 or 49.08, Penal Code, if the offense involved the operation of a motor vehicle or a watercraft; or

(E) Section 106.041, Alcoholic Beverage Code.

Commentary by Karen J. Roe

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses that occur on or after the effective date. This provision does not apply if any element of the offense occurred before September 1, 2009.

Summary of Changes: Section 524.042(a)(2) is amended to add the offenses of driving while intoxicated with a child passenger and boating while intoxicated to the list of offenses for which a prior conviction will preclude a person's

ability to obtain a stay of an order suspending a driver's license during the pendency of an appeal.

Transportation Code, Sec. 545.412. CHILD PASSENGER SAFETY SEAT SYSTEMS; OFFENSE.

(e) This section does not apply to a person:

(1) operating a vehicle transporting passengers for hire, excluding ~~including~~ third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or

(2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

(f) In this section:

(1) "Child passenger safety seat system" means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(2) "Passenger vehicle" means a passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor.

(3) "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(4) "Secured," in connection with use of a safety belt, means using the lap belt and any shoulder straps according to the instructions of:

(A) the manufacturer of the vehicle, if the safety belt is original equipment; or

(B) the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

Commentary by Linda Brooke

Source: HB 537

Effective Date: September 1, 2009

Applicability: Operation of a passenger vehicle on or after the effective date.

Summary of Changes: HB 537 modifies the definition of a passenger vehicle under the Transportation Code Section 545.12(f)(2) to include a passenger van designed to transport 15 or fewer persons (including the driver).

Transportation Code, Sec. 545.413. SAFETY BELTS; OFFENSE.

(a) A person commits an offense if:

(1) the person:

(A) is at least 15 years of age;

(B) is riding in ~~the front seat~~ of a passenger vehicle while the vehicle is being operated;

(C) is occupying a seat that is equipped with a safety belt; and

(D) is not secured by a safety belt; or

(2) as the operator of a school bus equipped with a safety belt for the operator's seat, the person is not secured by the safety belt.

(b-1) A person commits an offense if the person allows a child who is younger than 17 years of age and who is not required to be secured in a child passenger safety seat system under Section 545.412(a) to ride in a passenger van designed to transport 15 or fewer passengers, including the driver, without securing the child individually by a safety belt, if the child is occupying a seat that is equipped with a safety belt.

Commentary by Linda Brooke

Source: HB 537

Effective Date: September 1, 2009

Applicability: Operation of a passenger vehicle on or after the effective date.

Summary of Changes: New Section 545.413(b-1) creates an offense for the operator of a passenger van who allows passengers 17 years of age and younger not to be secured with individual seat belts when riding in a passenger van. An offense under this section is punishable by a fine of not less than \$100 or more than \$200.

Code of Criminal Procedure

Code of Criminal Procedure, Sec. 8B. DETECTION OF CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE IN CORRECTIONAL OR DETENTION FACILITY.

(a) In this section, "correctional facility" has the meaning assigned by Section 39.04(e), Penal Code.

(b) Notwithstanding any other provision of this article or Article 18.21, the office of the inspector general of the Texas Department of Criminal Justice may:

(1) without a warrant, use electronic, mechanical, or other devices to detect the presence or use of a cellular telephone or other wireless communications device in a correctional facility;

(2) without a warrant, intercept, monitor, detect, or, as authorized by applicable federal laws and regulations, prevent the transmission of any communication transmitted through the use of a cellular telephone or other wireless communications device in a correctional facility; and

(3) use, to the extent authorized by law, any information obtained under Subdivision (2), including the contents of an intercepted communication, in any criminal or civil proceeding before a court or other governmental agency or entity.

(c) Not later than the 30th day after the date on which the office of the inspector general uses an electronic, mechanical, or other device under Subsection (b), the inspector general shall report the use of the device to:

(1) a prosecutor with jurisdiction in the county in which the device was used; or

(2) the special prosecution unit established under Subchapter E, Chapter 41, Government Code, if that unit has jurisdiction in the county in which the device was used.

(d) When using an electronic, mechanical, or other device under Subsection (b), the office of the inspector general shall minimize the impact of the device on any communication that is not reasonably related to the detection of the presence or use of a cellular telephone or other wireless communications device in a correctional facility.

(e) A person confined in a correctional facility does not have an expectation of privacy with respect to the possession or use of a cellular telephone or other wireless communications device located on the premises of the facility. The person who is confined, and any person with whom that person communicates through the use of a cellular telephone or other wireless communications device, does not have an expectation of privacy with respect to the contents of any communication transmitted by the cellular telephone or wireless communications device.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Implementation on or after the effective date.

Summary of Changes: The Inspector General of the Texas Department of Criminal Justice (TDCJ) needs no warrant to monitor, detect, or prevent communication transmissions by cell phone and wireless communications at TDCJ facilities; the contents of those communications are admissible in court; there are reporting requirements; and an inmate (and the person they are communicating with) has no expectation of privacy in cell phone and wireless communications intercepted.

Code of Criminal Procedure, Art. 13.34. CERTAIN OFFENSES COMMITTED AGAINST A CHILD COMMITTED TO THE TEXAS YOUTH COMMISSION.

An offense described by Article 104.003(a) committed by an employee or officer of the Texas Youth Commission or a person providing services under a contract with the commission against a child committed to the commission may be prosecuted in:

(1) any county in which an element of the offense occurred; or

(2) Travis County.

Commentary by Riley Shaw

Source: HB 3316

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: New Article 13.34 establishes venue for prosecution of certain offenses by Texas Youth Commission (TYC) personnel or their contractors against children committed to TYC's care. Prosecution can occur in either the county of offense or in Travis County.

Code of Criminal Procedure, Art. 18.01. SEARCH WARRANT.

(c) A search warrant may not be issued under Article 18.02(10) [pursuant to Subdivision (10) of Article 18.02 of this code] unless the sworn affidavit required by Subsection (b) [of this article] sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d), ~~and~~ (i), ~~and~~ (j) [of this article], only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, or a justice of the Supreme Court of Texas, including the chief justice, may issue warrants under Article 18.02(10) [pursuant to Subdivision (10), Article 18.02 of this code].

(j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:

(1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and

(2) refuses to submit to a breath or blood alcohol test.

Commentary by Riley Shaw

Source: SB 328

Effective Date: September 1, 2009

Applicability: Search warrants issued on or after the effective date.

Summary of Changes: Any magistrate who is an attorney can issue an evidentiary search warrant for the defendant's blood where there has been a breath/blood test refusal in an intoxication-related offense.

Code of Criminal Procedure, Art. 18.20. DETECTION, INTERCEPTION, AND USE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Title of article on or after the effective date.

Summary of Changes: This amendment adds the term “detection” to the heading of Article 18.20.

Code of Criminal Procedure, Art. 18.20, Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED.

A judge of competent jurisdiction may issue an order authorizing interception of wire, oral, or electronic communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

(1) a felony under Section 19.02, 19.03, or 43.26, Penal Code;

(2) a felony under:

(A) Chapter 481, Health and Safety Code, other than felony possession of marihuana;

(B) Section 485.032 [~~485.033~~], Health and Safety Code; or

(C) Chapter 483, Health and Safety Code;

(3) an offense under Section 20.03 or 20.04, Penal Code;

(4) an offense under Chapter 20A, Penal Code;

(5) an offense under Chapter 34, Penal Code, if the criminal activity giving rise to the proceeds involves the commission of an offense under Title 5, Penal Code, or an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under Title 5; ~~or~~

(6) an offense under Section 38.11, Penal Code; or

(7) an attempt, conspiracy, or solicitation to commit an offense listed in this section.

Commentary by Karen J. Roe

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This section of the Code of Criminal Procedure defines when law enforcement authorities may intercept wire, oral or electronic communications to detect or investigate criminal activity. Section 4 of Article 18.20 lists the offenses for which a court may authorize wiretapping or other means of intercepting communications. It corrects a reference to the Health and Safety Code

to properly include delivery of an abusable volatile chemical to a person under 18 without a permit as an offense for which authorization to intercept communications may be obtained. The change also adds prohibited substances and items in a correctional facility to the list of offenses for which a court can issue and order authorizing the interception of communications.

Code of Criminal Procedure, Art. 18.20, Sec. 5. CONTROL OF INTERCEPTING DEVICES.

(a) Except as otherwise provided by this section and Sections [Section] 8A and 8B, only the Department of Public Safety is authorized by this article to own, possess, install, operate, or monitor an electronic, mechanical, or other device. The Department of Public Safety may be assisted by an investigative or law enforcement officer or other person in the operation and monitoring of an interception of wire, oral, or electronic communications, provided that the officer or other person:

(1) is designated by the director for that purpose; and

(2) acts in the presence and under the direction of a commissioned officer of the Department of Public Safety.

(c) The Texas Department of Criminal Justice may own electronic, mechanical, or other devices for a use or purpose authorized by Section 500.008, Government Code, and the inspector general of the Texas Department of Criminal Justice, a commissioned officer of that office, or another person acting in the presence and under the direction of a commissioned officer of that office may possess, install, operate, or monitor those devices as provided by Section 500.008.

(d) The Texas Youth Commission may own electronic, mechanical, or other devices for a use or purpose authorized by Section 61.0455, Human Resources Code, and the inspector general of the Texas Youth Commission, a commissioned officer of that office, or another person acting in the presence and under the direction of a commissioned officer of that office may possess, install, operate, or monitor those devices as provided by Section 61.0455.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Implementation on or after the effective date.

Summary of Changes: Allows the Texas Department of Criminal Justice and the Texas Youth Commission to own and operate wire, oral or electronic communications interception equipment.

Code of Criminal Procedure, Art. 18.20, Sec. 17. NONAPPLICABILITY.

This article does not apply to conduct described as an affirmative defense under Section 16.02(c), Penal Code, except as otherwise specifically provided by that section.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This amendment provides that the provisions of Article 18.20, which relate to the interception and use of wire, oral or electronic communications do not apply to conduct described as an affirmative defense to the offense of unlawful interception, use or disclosure of electronic communications (Penal Code Section 16.02(c)), except as otherwise specifically provided by that section.

Code of Criminal Procedure, Art. 38.45. EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY.

(a) During the course of a criminal hearing or proceeding, the court may not make available or allow to be made available for copying or dissemination to the public property or material that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code.

(b) The court shall place property or material described by Subsection (a) under seal of the court on conclusion of the criminal hearing or proceeding.

(c) The attorney representing the state shall be provided access to property or material described by Subsection (a). In the manner provided by Article 39.15, the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial shall be provided access to property or material described by Subsection (a).

(d) A court that places property or material described by Subsection (a) under seal may issue an order lifting the seal on a finding that the order is in the best interest of the public.

Commentary by Riley Shaw

Source: SB 595

Effective Date: September 1, 2009

Applicability: Criminal proceedings on or after the effective date.

Summary of Changes: Child pornography image or video evidence may not be made available to the public, must be placed under seal at the conclusion of the proceeding (may be unsealed if in best interest of public), and may be accessed by defendant, defense counsel, and defense expert.

Code of Criminal Procedure, Art. 39.14. DISCOVERY.

(a) Upon motion of the defendant showing good cause thereof and upon notice to the other parties, except as

provided by Article 39.15, the court in which an action is pending shall order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

Commentary by Riley Shaw

Source: SB 595

Effective Date: September 1, 2009

Applicability: **silent.** Criminal proceedings on or after the effective date.

Summary of Changes: This amendment to the rules that govern discovery in criminal prosecutions provides an exemption for child pornography, requiring that materials related to those cases remain in the custody of the court or the state. Rules for handling evidence in child pornography cases are set by Article 39.15.

Code of Criminal Procedure, Art. 39.15. DISCOVERY OF EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY.

(a) In the manner provided by this article, a court shall allow discovery under Article 39.14 of property or material that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code.

(b) Property or material described by Subsection (a) must remain in the care, custody, or control of the court or the state as provided by Article 38.45.

(c) A court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material described by Subsection (a), provided that the state makes the property or material reasonably available to the defendant.

(d) For purposes of Subsection (c), property or material is considered to be reasonably available to the defendant if, at a facility under the control of the state, the state provides ample opportunity for the inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the

defendant seeks to qualify to provide expert testimony at trial.

Commentary by Riley Shaw

Source: SB 595

Effective Date: September 1, 2009

Applicability: Discovery motions and orders on or after the effective date.

Summary of Changes: Newly enacted Article 39.15 specifies discovery procedures in child pornography cases. There are three basic rules: 1) the pornography must remain in the custody of the court or the state; 2) the pornography cannot be copied by the defense; and 3) the state is required to provide an ample opportunity, at the state's office, for inspection, viewing, and examination of the pornography by the defendant, defense counsel, and defense expert.

Code of Criminal Procedure, Art. 42.037. RESTITUTION.

(s)(1) A court shall order ~~[If a court orders]~~ a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution by:

(A) reimbursing the owner of the property for the cost of restoring the property; or

(B) with the consent of the owner of the property, ~~[to the victim of the offense, the court may order the defendant to make restitution as provided by Subsection (b)(1)(B) or by]~~ personally restoring the property by removing or painting over any markings the defendant made.

(2) A court shall order a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to a political subdivision that owns public property or erects a street sign or official traffic-control device on which the defendant makes markings in violation of Section 28.08, Penal Code, by:

(A) paying an ~~[-The]~~ amount ~~[of the restitution ordered must be]~~ equal to the lesser of ~~[the amount of restitution authorized by Subsection (b)(1)(B) or]~~ the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device; or

(B) with the consent of the political subdivision, restoring the public property, street sign, or official traffic-control device by removing or painting over any markings made by the defendant on the property, sign, or device.

(3) If the court orders a defendant to make restitution under this subsection ~~[subdivision]~~ and the defendant is financially unable to make the restitution, the court may order the defendant to perform a specific number of hours of community service~~[-including service restoring the property by removing or painting over any markings the defendant made;]~~ to satisfy the restitution.

(4) Notwithstanding Subsection (g)(4), a court shall direct a defendant ordered to make restitution under this subsection as a condition of community supervision to deliver the amount or property due as restitution to the defendant's supervising officer for transfer to the owner. A parole panel shall direct a defendant ordered to make restitution under this subsection as a condition of parole or mandatory supervision to deliver the amount or property due as restitution to the defendant's supervising officer. The defendant's supervising officer shall notify the court when the defendant has delivered the full amount of restitution ordered.

(5) For purposes of this subsection ~~[subdivision]~~, "official traffic-control device" has the meaning assigned by Section 541.304, Transportation Code.

Commentary by Riley Shaw

Source: HB 1633

Effective Date: September 1, 2009

Applicability: Offenses or conduct that occurs on or after the effective date.

Summary of Changes: In graffiti cases, restitution to the victim or restoration of the property must be ordered by the court upon conviction. Previously, courts could order restitution, but they were not required to do so.

Code of Criminal Procedure, Art. 42.12, Sec. 11. COMMUNITY SUPERVISION.

(k) A court granting community supervision to a defendant convicted of an offense under Section 28.08, Penal Code, shall require as a condition of community supervision that the defendant perform:

(1) at least 15 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$50 or more but less than \$500; or

(2) at least 30 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$500 or more.

Commentary by Riley Shaw

Source: HB 1633

Effective Date: September 1, 2009

Applicability: Offenses or conduct that occurs on or after the effective date.

Summary of Changes: In graffiti cases, the court must order, on conviction and probation of adult offenders, 15-30 hours of community service as a condition of probation.

Code of Criminal Procedure, Art. 42.12, Sec. 13. COMMUNITY SUPERVISION.

(h) If a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the judge shall require, as a condition of the community supervision, that the defendant attend and suc-

cessfully complete before the 181st day after the day community supervision is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the Texas Department of Transportation, and the community justice assistance division of the Texas Department of Criminal Justice designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement or may grant an extension of time to successfully complete the program that expires not later than one year after the beginning date of the person's community supervision, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and the fact that the defendant resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause for waiver in the judgment. If a defendant is required, as a condition of community supervision, to attend an educational program or if the court waives the educational program requirement, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. If the court grants an extension of time in which the person may complete the program, the court clerk shall immediately report that fact to the Department of Public Safety on a form prescribed by the department. The report must include the beginning date of the person's community supervision. Upon the person's successful completion of the educational program, the person's instructor shall give notice to the Department of Public Safety for inclusion in the person's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code. The Department of Public Safety may not reinstate a license suspended under this subsection unless the person whose license was suspended makes application to the department for reinstatement of the person's license and pays

to the department a reinstatement fee of \$100 [~~\$50~~]. The Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund. This subsection does not apply to a defendant if a jury recommends community supervision for the defendant and also recommends that the defendant's driver's license not be suspended.

(n) Notwithstanding any other provision of this section or other law, the judge who places on community supervision a defendant who was [~~is~~] younger than 21 years of age at the time of the offense and was convicted for an offense under Sections 49.04-49.08, Penal Code, shall:

(1) order that the defendant's driver's license be suspended for 90 days beginning on the date that the person is placed on community supervision; and

(2) require as a condition of community supervision that the defendant not operate a motor vehicle unless the vehicle is equipped with the device described by Subsection (i) of this section.

Commentary by Riley Shaw

Source: SB 328

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: Regarding DWI and alcohol-related probations, newly added Section 42.12(n) increases driver's license reinstatement fee with the Texas Department of Public Safety from \$50 to \$100.

Penal Code

Penal Code, Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY.

(a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only [~~other than public intoxication~~];

(5) a violation of a penal ordinance of a political subdivision;

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first

degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

Commentary by Nydia D. Thomas

Source: HB 558

Effective Date: September 1, 2009

Applicability: Conduct committed on or after the effective date.

Summary of Changes: Penal Code Section 8.07 governs the jurisdiction and prosecution of children in criminal courts. Fineable only offenses, including those related to the use or possession of alcohol by a minor, are under the exclusive jurisdictional authority of the justice and municipal courts. Under prior law, the legislature designated public intoxication as a CINS offense that must be referred to and prosecuted in juvenile court. As amended, Section 8.07 authorizes minors under the age of 15 to be prosecuted in justice or municipal court for public intoxication. As a practical matter, the recommended juvenile court sanctions for a CINS offense are limited to supervisory caution. Under the new jurisdictional scheme, justice and municipal courts will now be able to utilize their dispositional powers to provide case manager supervision as well as a range of appropriate rehabilitation and programmatic services to address the needs of minors prosecuted for public intoxication.

Penal Code, Sec. 12.31. CAPITAL FELONY.

(a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice ~~[institutional division]~~ for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice ~~[institutional division]~~ for:

(1) life, if the individual's case was transferred to the court under Section 54.02, Family Code; or

(2) life without parole.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that:

(1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the case

was transferred to the court under Section 54.02, Family Code; or

(2) a sentence of life imprisonment without parole is mandatory on conviction of the capital felony.

Commentary by Karen J. Roe

Source: SB 839

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This change eliminates a sentence of life without parole for a juvenile offender certified to stand trial as an adult for the offense of capital murder. The option of a life without parole sentence was instituted in 2005, when the Legislature eliminated the use of life sentences for capital murder, making the death penalty and life without parole the sentencing options in capital murder cases. As the imposition of the death penalty is prohibited for offenders who are under age 18 at the time of the offense, life without parole was the only option for juvenile offenders certified to stand trial as adults. This change allows imposition of a life sentence, which comes with the possibility of parole after 40 years, instead of life without parole. This change will give prison officials a useful tool in managing the behavior of these offenders, and create the possibility of parole for those convicted of capital murder committed before reaching age 17.

A conforming change was made to Section 508.145 of the Government Code to provide that these offenders are not eligible for parole until they have served 40 years of actual calendar time, which cannot be reduced for good conduct.

Penal Code, Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.

(e-1) It is a defense to prosecution under Subsection (d)(1) that the electronic, mechanical, or other device is possessed by a person authorized to possess the device under Section 500.008, Government Code, or Section 61.0455, Human Resources Code.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: This new subsection provides a defense to the offense of unlawful interception, use, or disclosure of wire, oral, or electronic communications for commissioned officers employed by the Texas Department of Criminal Justice and the Texas Youth Commission and their designees who are authorized by the Office of the

Inspector General to possess these devices for the purpose of detecting contraband in correctional facilities.

Penal Code, Sec. 20A.02. TRAFFICKING OF PERSONS.

(a) A person commits an offense if the person knowingly:

(1) ~~[knowingly]~~ traffics another person with the intent or knowledge that the trafficked person will engage in forced labor or services; or

(2) ~~[intentionally or knowingly]~~ benefits from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services.

(b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Section 43.05 or 43.25 ~~[43.02]~~ and the person who is trafficked is a child younger than 18 years of age at the time of the offense, regardless of whether the actor knows the age of the child at the time the actor commits the offense; or

(2) the commission of the offense results in the death of the person who is trafficked.

Commentary by Riley Shaw

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Offenses on or after the effective date.

Summary of Changes: This amendment applies to human trafficking cases. It changes the definition of what constitutes a first degree felony by removing the offense of engaging in prostitution and replacing it with compelling prostitution or compelling sexual performance of a child, when the victim is under 18 years of age. It creates strict liability for the offense regarding the age of the victim, regardless of whether the person accused knew the true age of the victim at the time of the offense.

Penal Code, Sec. 22.02. AGGRAVATED ASSAULT.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) the actor uses a deadly weapon during the commission of the assault and causes serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; ~~[or]~~

(2) regardless of whether the offense is committed under Subsection (a)(1) or (a)(2), the offense is committed:

(A) by a public servant acting under color of the servant's office or employment;

(B) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(C) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime; or

(D) against a person the actor knows is a security officer while the officer is performing a duty as a security officer; or

(3) the actor is in a motor vehicle, as defined by Section 501.002, Transportation Code, and:

(A) knowingly discharges a firearm at or in the direction of a habitation, building, or vehicle;

(B) is reckless as to whether the habitation, building, or vehicle is occupied; and

(C) in discharging the firearm, causes serious bodily injury to any person.

Commentary by Riley Shaw

Source: HB 176

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This amendment creates a new first degree felony for drive-by shootings aimed at a house, building, or vehicle that result in serious bodily injury.

Penal Code, Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY.

(a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 22.01(a)(1) against another person or persons whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code.

(b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a) or the exact date when that conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).

(c) A defendant may not be convicted in the same criminal action of another offense the victim of which is an alleged victim of the offense under Subsection (a) and an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:

- (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 Sub-
section (a).
(d) A defendant may not be charged with more
than one count under Subsection (a) if all of the specific
conduct that is alleged to have been engaged in is alleged
to have been committed against a single victim or members
of the same household, as defined by Section 71.005, Fami-
ly Code.
(e) An offense under this section is a felony of the
third degree.

Commentary by Karen Roe

Source: HB 2240

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This new provision creates a third-degree felony offense for engaging in continuous family violence. This offense occurs when a person assaults, and causes bodily injury to, a covered person two or more times during a 12-month period. The bill covers persons related by consanguinity or affinity, former spouses, parents of the same child, foster children and parents, regardless of whether those persons reside in the same household. It also covers assault of non-relatives living in the same household or dwelling place and those whom the accused person is dating, defined as having a continuing relationship of a romantic or intimate nature.

If a jury serves as the trier of fact, members of the jury are required to unanimously agree that the accused committed family violence against a covered person two or more times in a 12-month period, but are not required to agree unanimously on what specific conduct occurred or the exact date when it occurred. A person cannot be convicted of another offense during the same proceeding with the same victim when an element of conduct was the same for both offenses unless the other offense: 1) is charged in the alternative; 2) occurred outside the previous 12-month period; or 3) is a lesser included offense of the assault. A person cannot be charged with more than one count of engaging in continuous family violence if the conduct involved the same victim or members of the same household.

Penal Code, Sec. 22.01. Assault.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise

of official power or performance of an official duty as a public servant;

(2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, ~~20.05~~ 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; or

(5) a person the actor knows is emergency services personnel while the person is providing emergency services.

Commentary by Karen J. Roe

Source: HB 2240

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This change adds the offense of continuous family violence, under Section 25.11 of the Penal Code, to the list of assaultive offenses that constitute third degree felonies.

Penal Code, Sec. 28.08. GRAFFITI.

(a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

- (1) ~~aerosol~~ paint;
- (2) an indelible marker; or
- (3) an etching or engraving device.

Commentary by Riley Shaw

Source: HB 1633

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This change to existing graffiti law expands the definition of paint so that it is no longer limited to the use of spray paint – now any paint will do.

Penal Code, Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN ~~[ADULT OR JUVENILE] CORRECTIONAL [OR DETENTION] FACILITY [OR ON PROPERTY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR TEXAS YOUTH COMMISSION].~~

(a) A person commits an offense if the person provides, or possesses with the intent to provide:

(1) an alcoholic beverage, controlled substance, or dangerous drug to ~~[an inmate of a correctional facility or to]~~ a person in the custody of a [secure] correctional facility ~~[or secure detention facility for juveniles]~~, except on the prescription of a [physician or] practitioner~~;~~ as defined in Section 551.003, Occupations Code];

(2) a deadly weapon to ~~[an inmate of a correctional facility or to]~~ a person in the custody of a [secure] correctional facility ~~[or secure detention facility for juveniles]~~;

(3) a cellular telephone or other wireless communications device or a component of one of those devices~~;~~ ~~cigarette, tobacco product, or money~~ to a person in the custody [an inmate] of a correctional facility ~~[operated by or under contract with the Texas Department of Criminal Justice or to person in the custody of a secure correctional facility or secure detention facility for juveniles, except for money that is provided for the benefit of the juvenile in accordance with facility rules]~~;

(4) ~~[a cellular telephone or]~~ money to a person confined in a correctional facility ~~[local jail regulated by the Commission on Jail Standards]~~; or

(5) a cigarette or tobacco product to a person confined in a correctional facility, except that if the facility is a local jail regulated by the Commission on Jail Standards, the person commits an offense only if ~~[and in]~~ providing the cigarette or tobacco product ~~[the person]~~ violates a rule or regulation adopted by the sheriff or jail administrator that:

(A) prohibits the possession of a cigarette or tobacco product by a person ~~[an inmate]~~ confined in the jail; or

(B) places restrictions on:

(i) the possession of a cigarette or tobacco product by a person ~~[an inmate]~~ confined in the jail; or

(ii) the manner in which a cigarette or tobacco product may be provided to a person ~~[an inmate]~~ confined in the jail.

(b) A person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility ~~[or a secure correctional facility or secure detention facility for juveniles, except for delivery to a facility warehouse, pharmacy, or physician]~~.

(c) A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility ~~[the Texas Department of Criminal Justice, the Texas Youth Commission, or a secure correctional facility or secure detention facility for juveniles, except for delivery to a warehouse, pharmacy, or physician on property owned, used, or controlled by the department, the commission, or the facility]~~.

(d) A person commits an offense if the person:

(1) possesses a controlled substance or dangerous drug while in a correctional facility or:

~~[(A)]~~ on property owned, used, or controlled by ~~[the Texas Department of Criminal Justice, the Texas Youth Commission, or]~~ a [secure] correctional facility ~~[or secure detention facility for juveniles; or~~

~~[(B) in a correctional facility or a secure correctional facility or secure detention facility for juveniles]; or~~

(2) possesses a deadly weapon while in a correctional facility ~~[or in a secure correctional facility or secure detention facility for juveniles]~~.

(e) It is an affirmative defense to prosecution under Subsection (b), (c), or (d)(1) ~~[of this section]~~ that the person possessed the alcoholic beverage, controlled substance, or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the beverage, substance, or drug to a warehouse, pharmacy, or practitioner ~~[physician]~~ on property owned, used, or controlled by the ~~[department, the Texas Youth Commission, or by the operator of a secure]~~ correctional facility ~~[or secure detention facility for juveniles]~~. It is an affirmative defense to prosecution under Subsection (d)(2) ~~[of this section]~~ that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility who is authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment.

(f) In this section:

(1) "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(5) "Component" means any item necessary for the current, ongoing, or future operation of a cellular telephone or other wireless communications device, including a subscriber identity module card or functionally equivalent portable memory chip, a battery or battery charger, and any number of minutes that have been purchased or for which a contract has been entered into and during which a cellular telephone or other wireless communications device is capable of transmitting or receiving communications.

(6) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14)(A), (B), or (C); or

(B) a secure correctional facility or secure detention facility, as defined [“Secure correctional facility” and “secure detention facility” have the meanings assigned] by Section 51.02, Family Code.

(g) An offense under this section is a felony of the third degree.

(h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense under Subsection (a), ~~[or]~~ (b), or (c), the offense committed under Section 15.01 is a felony of the third degree.

(i) It is an affirmative defense to prosecution under Subsection (b) that the actor:

(1) is a duly authorized member of the clergy with rights and privileges granted by an ordaining authority that includes administration of a religious ritual or ceremony requiring the presence or consumption of an alcoholic beverage; and

(2) takes four ounces or less of an alcoholic beverage into the correctional facility ~~[or the secure correctional facility or secure detention facility for juveniles]~~ and personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not consumed.

(j) A person commits an offense if the person, while confined in ~~[an inmate of]~~ a correctional facility, ~~[operated by or under contract with the Texas Department of Criminal Justice or while in the custody of a secure correctional facility or secure detention facility for juveniles]~~ possesses a cellular telephone or other wireless communications device or a component of one of those devices.

(k) A person commits an offense if, with the intent to provide to or make a cellular telephone or other wireless communications device or a component of one of those devices available for use by a person in the custody of a correctional facility, the person:

(1) acquires a cellular telephone or other wireless communications device or a component of one of those devices to be delivered to the person in custody;

(2) provides a cellular telephone or other wireless communications device or a component of one of those devices to another person for delivery to the person in custody; or

(3) makes a payment to a communication common carrier, as defined by Article 18.20, Code of Criminal Procedure, or to any communication service that provides to its users the ability to send or receive wire or electronic communications.

Commentary by Riley Shaw

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This amendment defines “correctional facility” to include secure correctional facilities and secure detention facilities as defined by Family Code Section 51.02. The amendment also creates a preparatory offense related to the introduction of cell phones into correctional facilities and expands the coverage of the general statutes to include “possesses with the intent to provide.” A definition of cell phone components is added to expand the coverage of the statute to prohibit persons from bringing memory chips or any part of a cell phone or communication device into an adult or juvenile correctional facility.

Penal Code, Sec. 43.02. PROSTITUTION.

(d) It is a defense to prosecution 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.

Commentary by Riley Shaw

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: Creates a defense to prosecution for prostitution for persons who are victims of human trafficking.

Penal Code, Sec. 43.05. COMPELLING PROSTITUTION.

(a) A person commits an offense if the person ~~[he]~~ knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a child ~~[person]~~ younger than 18 ~~[17]~~ years to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense.

Commentary by Riley Shaw

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: In compelling prostitution cases, this amendment increases victim age from 16 to 17 and makes victim’s age a strict liability issue.

Penal Code, Sec. 46.01. DEFINITIONS.

(11) “Switchblade knife” means any knife that has a blade that folds, closes, or retracts into the handle or sheath[;] and that[;]

~~[A)]~~ opens automatically by pressure applied to a button or other device located on the handle[;] or

[~~(B)~~] opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force. The term does not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure and open the knife.

Commentary by Riley Shaw

Source: HB 4456

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: Redefines switchblade knife in the section of the Penal Code relating to weapons offenses to exclude the most common forms of lock-blade pocket knives.

2. Child Protective Services



**Major Child Welfare Legislation of the 81st
Texas Legislature
By Issue Area
www.texanscareforchildren.org**

*Printed with permission from
Texans Care for Children
Eileen Garcia-Matthews, Executive Director*

Bills Affecting Foster Youth Transitioning out of Care:

HB 704 by Rose

Subject: Allowing court oversight for youth who stay in foster care past age 18.

Companion: SB 984 by Davis, Wendy

Status: Signed by the Governor, Effective 5/23/09

This bill amends the Family Code to allow a court to continue being involved in the case of a child who remains in foster care after they turn 18 if the child requests it, or if the court determines that they are not able to care for themselves. Currently, the court loses jurisdiction over a foster child when he or she turns 18, even if the youth voluntarily stays in foster care. The court's involvement would end when the youth turns 21, requests to leave, or the court determines they can care for themselves. The bill would provide for periodic review hearings and the appointment of an attorney, a guardian, or volunteer advocate for the child.

SB 43 by Zaffirini

Subject: College tuition waivers for foster youth.

Status: Signed by the Governor, Effective 5/19/09

This bill amends the Education Code by expanding the college tuition waiver program for foster youth to cover dual-credit high school courses. It would also extend the age eligibility from 21 to 25 beginning with the 2009 fall semester.

SB 983 by Davis

Subject: Personal I.D. and driver's license for children leaving foster care.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Family Code to require the Department of Family and Protective Services (DFPS) to provide

foster children with a copy of their birth certificate, immunization records, and health passport information at least one month before exiting foster care. Current statute requires provision of these documents within one month after exiting foster care. It would further require DFPS to provide, as needed, a personal identification certificate, a social security card, and proof of enrollment in Medicaid to foster children at least one month before exiting care. HB 705 would also require DFPS, the Texas Education Agency, and the Department of Public Safety to submit a joint plan to the Legislature by December 2010 regarding how foster youth can obtain a drivers license before leaving foster care.

HB 1043 by Orr

Subject: Creating employment preferences for former foster children.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Government Code to require state agencies to give employment preferences to former foster children who aged out of care when they turned 18. Preference would be given to these individuals over candidates of equal qualifications in both hiring and retaining decisions. If a competitive exam were used in selecting or promoting employees, these former foster children would be given an extra 10 points. This bill would also provide procedures for complaints if such employment preference were not given.

HB 1912 by Rodriguez

Subject: Transition services to youth aging out of foster care.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Family code to lower the age requirement, from 16 to 14, for the start of transition planning for youth aging out of foster care. The bill would also require that youth be enrolled in the Preparation for Adult Living Program before the age of 16. Foster care providers would be required to provide an individually tailored assistance program, to youth who are age 14, that helps them transition to independent living by teaching them essential life skills. These services would also be available to youth, age 18, who are no longer in foster care, if the person with whom they are staying does not pose a threat to the child's welfare. The Department of Family and Protective Services (DFPS) would also be required to ensure that youth aging out of foster care have help obtaining the appropriate documentation, including birth certificate, social security card and drivers license before the youth turns 16. Additionally, the DFPS would require those providing transitional living services for foster youth to help kids with, but not limited to, the following services: housing services, job training and employment services, and education preparation services.

Services to Children in Substitute Care:

HB 1629 by Naishtat

Subject: Foster children in the Texas Youth Commission.

Status: Signed by the Governor, Effective 5/23/09

This bill modifies the Family Code and Human Resources Code to modify rules regarding children who are under the care of the Department of Family and Protective Services (DFPS) and who are committed to or released under the supervision of the Texas Youth Commission (TYC). This bill would provide guidelines for consent to medical care, information sharing between the agencies, provisions of attorneys, a child's attendance at hearings, and assessment of a child's progress while under the care or supervision of TYC. The bill includes:

- If a child was under the care of DFPS and committed to TYC, then consent for medical treatment would be governed by rules of medical care for foster children.
- The juvenile court conducting a hearing on behalf of the child would be permitted to communicate with the court that has continuing jurisdiction over the foster child.
- If DFPS was not still providing an attorney for the child, then the court would be able to appoint an attorney.
- A child committed to TYC would be permitted to attend a permanency hearing or placement review hearing in person, by telephone, or by videoconference.
- DFPS or another authorized agency would be required to prepare a permanency progress report and a placement review report that would whether the child's needs for treatment, rehab, and education are being met, and the court would then determine if these needs are being met at a permanency hearing and a placement review hearing.
- A court could not dismiss a suit affecting the parent-child relationship filed by DFPS if the child is committed to or supervised by the TYC.
- TYC would be required to disclose records and information to DFPS.
- TYC would ensure that DFPS would have the same rights as the child's parents under the parent's bill of rights.
- A TYC caseworker would be required to submit a written report to other parties regarding results of assessments, information regarding the child's placement, and a description of the child's progress in TYC programs.

TYC and the executive commissioner of Health and Human Services Commission would be required to jointly adopt rules ensuring that DFPS and TYC effectively cooperate in providing services and transition planning to the

child.

HB 1012 by Gonzalez, Toureilles

Subject: Changing child custody and sibling visitation.

Status: Signed by the Governor, Effective 9/1/09

This bill combines all elements from House Bills 1009, 1010, and 1011. This bill would amend the Family Code to require a written agreed parenting plan for joint managing conservatorship to specify that a child's primary residence shall be in a certain geographic area. It would also standardize the times of possession in a child custody order. Additionally, it would clarify a sibling's ability to seek access to a sibling if the siblings have been separated in a child abuse and neglect case.

HB 1151 by Thompson

Subject: Court orders in suits affecting the parent-child relationship.

Status: Signed by the Governor, Effective 9/1/09

Amended to include provisions of SB 1411 by West on Kinship Care, which were also added successfully onto SB 2080 and is the controlling bill.

HB 2225 by Parker

Subject: Creating an adoption review committee.

Status: Signed by the Governor, Effective 6/19/09

This bill creates a committee who, with the help of the Department of Family and Protective Services (DFPS), would be required to review the adoption process and develop ways to improve the foster care system. The committee would be composed of nine members, six appointed by the Health and Human Services executive commissioner, and one each appointed by the Governor, Lieutenant Governor and the Speaker of the House. The DFPS would be required to submit a report detailing this review to the Governor, Lieutenant Governor, Speaker of the House, the House Committee on Human Services, and the Senate Committee on Health and Human Services by no later than December 1, 2010.

SB 68 by Nelson

Subject: Licensing and inspection requirements of the DFPS.

Status: Signed by the Governor, Effective 6/19/09

This bill provides a statutory basis for exemption from DFPS licensing and inspection requirements for certain types of child-care programs. It provides definitions for before and after school programs, and other part-time programs operated for school age children, to distinguish them from other child care facilities that are required to comply with DFPS standards and exempt them from licensing requirements. The bill requires DFPS to adopt minimum standards for different types of facilities, to allow continued operation of after school programs, summer camps and other programs that have not been subject to DFPS child-care licensing standards. Day care facilities, residential

programs and other programs that provide all-day supervision of children continue to be subject to current DFPS licensing regulations. The bill also clarifies requirements about cooperation with DFPS investigations and authorizes DFPS to publish notice of revocation or suspension of a child-care facility license on the agency website in addition to local newspapers to increase visibility of these actions.

SB 939 by Watson

Subject: Education information regarding public school kids in foster care.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Education Code by ensuring that the Public Education Information Management System (PEIMS) compiles information that allows the Texas Education Agency (TEA) to track the performance of students in foster care. To track the progress of these students the Department of Family and Protective Services (DFPS) would have to provide the districts or the TEA information regarding the identity of the students in foster care. This information would be confidential.

SB 1332 by Nelson

Subject: Returning children to previous foster placements.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Family Code to require that the Department of Family and Protective Services (DFPS) consider placing a child with a foster parent with whom the child previously resided if DFPS determines that placing the child with a relative or designated caregiver is not in the child's best interest, and the placement is available and is in the child's best interest.

SB 2080 by Uresti

Subject: Abuse/Neglect Prevention Task Force, MED-CARES, Kinship Care.

Status: Signed by the Governor, Effective 9/1/09

Provisions from SB 1411 by West regarding kinship and permanency were successfully added to this bill and to HB 1151 by Thompson. The SB 2080 provisions should be controlling because it was passed after HB 1151. Provisions of SB 1877 by Nelson regarding the Texas Medical Child Abuse Resources and Education System (MED-CARES) grant program were also added to SB 2080. The original provisions of SB 2080 establish a task force whose goal is to develop a strategy for improving child welfare and reducing child abuse and neglect. This group would consist of five members appointed by the Governor, five appointed by the Lieutenant Governor, and five appointed by the Speaker of the House. The task force would gather information about child abuse and neglect in Texas, including policies surrounding drug use during pregnancy and drug-positive babies. It would also submit a plan that could include proposals for specific statutory changes, the creation of new programs, and methods to foster cooperation among state agencies and between the state and local gov-

ernments. The task force would submit a strategic plan by August 1, 2011 and would expire on September 1, 2011.

SB 2248 by Zaffirini

Subject: Easing changes between schools for students in foster care.

Status: Signed by the Governor, Effective 6/19/09

This bill amends the Education Code to require the Texas Education Agency to assist in the transition of substitute care students from one school to another by:

- assuring that school records are transferred to the new school within 14 days,
- developing systems to ease transition in the first two weeks,
- developing procedures for awarding credit for coursework, promoting access to extracurricular and other school programs,
- establishing procedures to lessen the adverse impact of moving to a new school,
- entering into a memorandum of understanding with the Department of Family and Protective Services for information sharing,
- encouraging schools to provide services for applications to post-secondary studies, and
- requiring schools to accept referrals for special education services.

This bill also makes foster care students eligible to enroll full time in the Virtual School Network.

Judicial Aspects of Child Abuse/Neglect Cases:

HB 666 by Gutierrez

Subject: Funding drug courts.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Code of Criminal Procedure to increase the fine for conviction of a Class B misdemeanor or higher from \$50 to \$60, and apply this increase to fund drug courts.

HB 1462 by Pickett

Subject: State employee leave time for CASA training or volunteer work.

Companion: SB 1051 by Uresti

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Government Code to grant state employees an additional five hours of leave time a month to participate in training or volunteer work for Court Appointed Special Advocates (CASA). The additional leave time would not result in a loss of salary or vacation time, sick leave, earned overtime credit, or state compensatory time.

HB 2876 by Patrick, Diane

Subject: Administrative law judge releasing abuse/ neglect investigation information.

Status: Signed by the Governor, Effective 6/19/09

Section 261.201 provides that reports of abuse or neglect are confidential, not subject to the Public Information Act, and may be disclosed only if ordered by a court pursuant to the requirements of Section 261.201(b). The new subsection provides that this confidential information may also be disclosed via an order by an administrative law judge if the information relates to a contested matter before the Administrative Law Judge (ALJ) that involves the license or certification of a professional or educator. The ALJ must adhere to the same processes set out in Section 261.201(b) that are required by a civil or criminal judge prior to ordering the disclosure. The Department of Family and Protective Services must redact the information to protect the identity of the person who made the report of abuse or neglect.

SB 633 by Seliger

Subject: Allowing two counties or municipalities to form a regional drug court.

Companion: HB 1048 by Madden

Status: Signed by the Governor, Effective 5/30/09

This bill amends the Health and Safety Code to change the number of counties or municipalities required to form a regional drug court from three to two. This would allow smaller communities to pool their resources together.

SB 1369 Lucio

Subject: The appointment of an attorney ad litem.

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Government Code to require local administrative judges to maintain a list of all attorneys qualified to serve as an attorney ad litem. The court would have to appoint the attorney whose name appears first on the list unless the case involves complex matters requiring an attorney with special experience, skills, training, or qualifications. After an attorney has been appointed ad litem their name would then go to the bottom of the list. Finally, local administrative judges would be required to develop this list no later than December 1, 2009.

SB 2385 by Shapleigh

Subject: Regarding documentation in child protection hearings.

Companion: HB 1068 by Naishtat

Status: Signed by the Governor, Effective 9/1/09

This bill amends the Family Code to require the Department of Family and Protective Services (DFPS) to file a copy of the child placement resources form, background checks, home studies, and a statement offering reasons for the selected placement for the child at the adversary hearing in a child abuse or neglect case.



3. Education Issues Related to Juvenile Justice Legislation

Education Code

Education Code, Sec. 22.003. MINIMUM PERSONAL LEAVE PROGRAM.

(c-1) Any informational handbook a school district provides to employees in an electronic or paper form or makes available by posting on the district website must include notification of an employee's rights under Subsection (b) in the relevant section of the handbook. Any form used by a school district through which an employee may request leave under this section must include assault leave under Subsection (b) as an option.

Commentary by Karen J. Roe

Source: HB 1470

Effective Date: June 19, 2009

Applicability: Applies to employee informational handbooks beginning with the 2009 – 2010 school year.

Summary of Changes: Newly enacted Section 22.003(c-1) requires each school district's employee handbook and leave forms to include information relating to assault leave. This leave is available to executive, administrative and clerical employees as well as teachers and instructors who are assaulted in the course of their employment.

Education Code, Sec. 37.001. STUDENT CODE OF CONDUCT.

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4) specify that [whether] consideration will be [is] given, as a factor in each [a] decision concerning [to order] suspension, removal to a disciplinary alternative education program, [or] expulsion, or placement in a juvenile justice alternative education program, regardless

of whether the decision concerns a mandatory or discretionary action, to:

(A) self-defense;
(B) intent or lack of intent at the time the student engaged in the conduct;
(C) a student's disciplinary history; or

(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

(5) provide guidelines for setting the length of a term of:

(A) a removal under Section 37.006; and

(B) an expulsion under Section 37.007;

(6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;

(7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and

(8) provide, as appropriate for students at each grade level, methods, including options, for:

(A) managing students in the classroom and on school grounds;

(B) disciplining students; and

(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

Commentary by Linda Brooke

Source: HB 171

Effective Date: June 19, 2009

Applicability: Applies beginning with the 2009-2010 school year.

Summary of Changes: In 2005, the 79th Texas Legislature modified Section 37.001(a)(4) to allow a school district to consider self-defense, a student's intent or lack of intent and a student's disciplinary history when evaluating an incident. Additionally, the school district may consider a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. The Legislature continued to hear of instances of students who innocently engaged in a prohibited behavior and were sent to an alternative education setting regardless of their lack of intent, a student's discipline history, etc. As a result, the Legislature passed HB 171 now requiring school districts to amend their student codes of conduct to make it mandatory that self-defense, intent, disciplinary history and

disability be considered before a student is placed in a DAEP, JJAEP or expelled.

Education Code, Sec. 37.007. EXPULSION FOR SERIOUS OFFENSES.

(a) Except as provided by Subsection (k), a [A] student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

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

(E) aggravated kidnapping under Section 20.04, Penal Code;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code;

(H) criminally negligent homicide under Section 19.05, Penal Code; or

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

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

(k) A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:

(1) at an approved target range facility that is not located on a school campus; and

(2) while participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

(l) Subsection (k) does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity described by that subsection.

Commentary by Linda Brooke

Source: HB 1020

Effective Date: June 19, 2009

Applicability: Applies beginning with the 2009-2010 school year.

Summary of Changes: This new provision provides an exemption from expulsions for students who possess, exhibit or use a firearm at an approved non-campus target range while participating in a school-sponsored shooting competition or activity supported by Texas Parks and Wildlife. This new provision does not authorize a student to bring a firearm to school in order to participate in the Texas Parks and Wildlife Department sponsored or supported program.

Education Code, Sec. 37.011. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(a-1) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if:

(1) the county had a population of 125,000 or less according to the 2000 federal census; and

(2) the juvenile board of the county enters into, with the approval of the Texas Juvenile Probation Commission, a memorandum of understanding with each school district within the county that:

(A) outlines the responsibilities of the board and school districts in minimizing the number of students expelled without receiving alternative educational services; and

(B) includes the coordination procedures required by Section 37.013.

Commentary by Linda Brooke

Source: HB 1425

Effective Date: June 19, 2009

Applicability: Applies beginning with the 2009-2010 school year.

Summary of Changes: Counties with a population of 125,000 or greater (as determined by the US Census numbers) are required to operate a Juvenile Justice Alternative Education Program (JJAEP). Twenty-six counties currently fall under this mandate. With the looming US Census in 2010, it is anticipated that as many eight additional counties may fall under this mandate. These counties include: Hays, Ellis, Ector, Potter, Midland, Gregg, Grayson and Randall. In anticipation of the impact of the upcoming Census, HB 1425 was passed, which modifies Texas Education Code Section 37.011 to allow those counties which

would become a mandatory JJAEP county to opt out of operating a JJAEP if the county juvenile board enters into a memorandum of understanding (MOU) with each school district located in the county. The purpose of the MOU is to minimize the number of students expelled without receiving alternative education services. The MOU is required to outline the responsibilities of the juvenile board and school district and requires coordination procedures under Texas Education Code Section 37.013 which include: supervision and rehabilitation services, service by probation officers at the district alternative education program, recruitment of volunteers and coordination of social services. The MOU adopted by the juvenile board and the school district must be approved by the Texas Juvenile Probation Commission in order for the county to opt out of JJAEP requirements.

Education Code, Sec. 39.053. PERFORMANCE REPORT.

~~(g) In defining the required state standard [exemplary, recognized, and unacceptable performance] for the indicator described by Subsection (c)(2) [indicators under Subsections (b)(2) and (4)], the commissioner may not consider as a dropout [or as] a student [who has failed to attend school a student] whose failure to attend school results from:~~

~~(1) the student's expulsion under Section 37.007; and~~

~~(2) as applicable:~~

~~(A) adjudication as having engaged in delinquent conduct or conduct indicating a need for supervision, as defined by Section 51.03, Family Code; or~~

~~(B) conviction of and sentencing for an offense under the Penal Code.~~

~~(g-1) In computing dropout and completion rates under Subsection (c)(2), the commissioner shall exclude:~~

~~(1) students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate;~~

~~(2) students who were previously reported to the state as dropouts;~~

~~(3) students in attendance who are not in membership for purposes of average daily attendance;~~

~~(4) students whose initial enrollment in a school in the United States in grades 7 through 12 was as unschooled refugees or asylees as defined by Section 39.027(a-1);~~

~~(5) students who are in the district exclusively as a function of having been detained at a county detention facility but are otherwise not students of the district in which the facility is located; and~~

~~(6) students who are incarcerated in state jails and federal penitentiaries as adults and as persons certified to stand trial as adults.~~

Commentary by Linda Brooke

Source: HB 3

Effective Date: June 19, 2009

Applicability: Performance reports on or after the effective date.

Summary of Changes: Often times a juvenile court will order a juvenile to attend a high school equivalency certificate program (GED) when the court believes it is in the best interest of the child. However, this has had a negative impact on school districts who have been required to count these as dropouts, thus causing friction between the school district and the juvenile department. Texas Education Code Section 39.053 was modified to no longer require students who are ordered by a court to attend a high school equivalency certificate program (GED) to be counted as a dropout. This section was also modified to clearly exempt students who are in the district solely as a function of having been detained in a county detention facility but not otherwise a student of the district in which the facility is located from being counted in a district's dropout or completion rate computations.

Education Code, Sec. 39.055. STUDENT ORDERED BY A JUVENILE COURT NOT CONSIDERED FOR ACCOUNTABILITY PURPOSES.

Notwithstanding any other provision of this code, for purposes of determining the performance of a school district or campus under this chapter, a student ordered by a juvenile court into a residential program or facility operated by or under contract with the Texas Youth Commission, the Texas Juvenile Probation Commission, a juvenile board, or any other governmental entity is not considered to be a student of the school district in which the program or facility is physically located. The performance of such a student on an assessment instrument or other student achievement indicator adopted under Section 39.053 or reporting indicator adopted under Section 39.301 shall be determined, reported, and considered separately from the performance of students attending a school of the district in which the program or facility is physically located.

Commentary by Linda Brooke

Source: HB 3

Effective Date: June 19, 2009

Applicability: Applies beginning with the 2009-2010 school year.

Summary of Changes: Many juveniles placed in a pre-adjudication facility, a post-adjudication secure facility, a non-secure residential facility, a Texas Youth Commission facility or a contract facility come from outside the school district serving the facility and their placement could have an adverse impact on the accountability rating given to school districts serving the students in these facilities. Texas Education Code Section 39.955 clarifies that the performance of students served in these facilities will be

considered separately from the performance of students attending a school of the district in which the program or facility is located. Student performance is required to be determined, reported and considered separately.

Education Code, Sec. 37.110. INFORMATION REGARDING GANG-FREE ZONES.

The superintendent of each public school district and the administrator of each private elementary or secondary school located in the public school district shall ensure that the student handbook for each campus in the public school district includes information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

Commentary by Chris Hubner

Source: HB 2086

Effective Date: June 19, 2009

Applicability: Applies to public school student codes of conduct beginning with the 2009 – 2010 school year.

Summary of Changes: Public school codes of conduct must include information regarding gang-free zones and the consequences of engaging in organized criminal activity within those zones. Gang-free zones are defined in Section 71.028 of the Penal Code.

Education Code, Sec. 51.973. INFORMATION REGARDING GANG-FREE ZONES.

The governing board of each institution of higher education shall ensure that any student handbook or similar publication for the institution includes information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

Commentary by Chris Hubner

Source: HB 2086

Effective Date: June 19, 2009

Applicability: Applies to higher education student handbooks beginning with the 2009 fall semester.

Summary of Changes: Institutions of higher education must include in any student handbook information regarding gang-free zones and the consequences of engaging in organized criminal activity within those zones. Gang-free zones are defined in Section 71.028 of the Penal Code.

4. Abuse, Neglect and Exploitation Legislation

Family Code

Family Code, Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.

(a) Except as provided by Section 261.203, the [The] following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Commentary by Chris Cowan

Source: SB 1050

Effective Date: September 1, 2009

Applicability: Requests for information relating to a child fatality that occur on or after September 1, 2009.

Summary of Changes: Section 261.201 provides that reports of abuse or neglect are confidential, not subject to the Public Information Act, and may be disclosed only if ordered by a court or an administrative law judge pursuant to the requirements of Section 261.201(b) and (b-1). This amendment to Section 261.201 clarifies that certain information related to child fatalities that are under investigation by the Department of Family and Protective Services must be released as provided for in newly enacted Section 261.203.

Family Code, Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.

(b-1) On a motion of one of the parties in a contested case before an administrative law judge relating to the license or certification of a professional, as defined by Section 261.101(b), or an educator, as defined by Section 5.001, Education Code, the administrative law judge may order the disclosure of information that is confidential under this section that relates to the matter before the administrative law judge after a hearing for which notice is provided as required by Subsection (b)(2) and making the review and determination required by Subsection (b)(3). Before the department may release information under this subsection, the department must edit the information to protect the confidentiality of the identity of any person who makes a report of abuse or neglect.

Commentary by Chris Cowan

Source: HB 2876

Effective Date: June 19, 2009

Applicability: Administrative law hearings conducted on or after June 19, 2009.

Summary of Changes: Section 261.201 provides that reports of abuse or neglect are confidential, not subject to the Public Information Act, and may be disclosed only if ordered by a court pursuant to the requirements of Section 261.201(b). The new subsection provides that this confidential information may also be disclosed via an order by an administrative law judge (ALJ) if the information relates to a contested matter before the ALJ that involves the license or certification of a professional or educator. The ALJ must adhere to the same processes set out in Section 261.201(b) that are required by a civil or criminal judge prior to ordering the disclosure. The Department of Family and Protective Services must redact the information to protect the identity of the person who made the report of abuse or neglect.

Family Code, Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

Commentary by Chris Cowan

Source: SB 1182

Effective Date: September 1, 2009

Applicability: Record requests made on or after September 1, 2009.

Summary of Changes: Section 261.201 provides that reports of abuse or neglect are confidential, not subject to the Public Information Act, and may be disclosed only if ordered by a court or an administrative law judge pursuant to the requirements of Section 261.201(b) and (b-1). These new subsections provide that investigating agencies, other than the Texas Youth Commission and Texas Department of Family and Protective Services, which are covered by current existing provisions in Section 261.201 that are substantially similar to those in new Subsections (k) and (l), must provide, upon request, information concerning the reported abuse or neglect to the parent, managing conservator, other legal representative of the child, or to the child if he/she is at least 18 years old. Prior to the release, the investigating agency must redact: 1) identifying information about a victim or witness under 18 years of age (unless that victim/witness is the subject of the abuse report or is another child of the parent, conservator, or other legal representative; 2) information that is excepted from disclosure under the Public Information Act or other law; and 3) the identity of the person who reported the abuse or neglect.

Family Code, Sec. 261.203. INFORMATION RELATING TO CHILD FATALITY.

(a) Not later than the fifth day after the date the department receives a request for information about a child fatality with respect to which the department is conducting an investigation of alleged abuse or neglect, the department shall release:

(1) the age and sex of the child;

(2) the date of death;

(3) whether the state was the managing conservator of the child at the time of the child's death; and

(4) whether the child resided with the child's parent, managing conservator, guardian, or other person entitled to possession of the child at the time of the child's death.

(b) If, after a child abuse or neglect investigation is completed, the department determines a child's death was caused by abuse or neglect, the department shall promptly release the following information on request:

(1) the information described by Subsection (a), if not previously released to the person requesting the information;

(2) for cases in which the child's death occurred while the child was living with the child's parent, managing conservator, guardian, or other person entitled to possession of the child:

(A) a summary of any previous reports of abuse or neglect of the deceased child or another child made while the child was living with that parent,

managing conservator, guardian, or other person entitled to possession of the child;

(B) the disposition of any report under Paragraph (A);

(C) a description of the services, if any, that were provided by the department to the child or the child's family as a result of any report under Paragraph (A); and

(D) the results of any risk or safety assessment completed by the department relating to the deceased child; and

(3) for a case in which the child's death occurred while the child was in substitute care with the department or with a residential child-care provider regulated under Chapter 42, Human Resources Code, the following information:

(A) the date the substitute care provider with whom the child was residing at the time of death was licensed or verified;

(B) a summary of any previous reports of abuse or neglect investigated by the department relating to the substitute care provider, including the disposition of any investigation resulting from a report;

(C) any reported licensing violations, including notice of any action taken by the department regarding a violation; and

(D) records of any training completed by the substitute care provider while the child was placed with the provider.

(c) If the department is unable to release the information required by Subsection (b) before the 11th day after the date the department receives a request for the information or the date the investigation of the child fatality is completed, whichever is later, the department shall inform the person requesting the information of the date the department will release the information.

(d) After receiving a request for information required by Subsection (b), the department shall notify and provide a copy of the request to the attorney ad litem for the deceased child, if any.

(e) Before the department releases any information under Subsection (b), the department shall redact from the records any information the release of which would:

(1) identify:

(A) the individual who reported the abuse or neglect; or

(B) any other individual other than the deceased child or an alleged perpetrator of the abuse or neglect;

(2) jeopardize an ongoing criminal investigation or prosecution;

(3) endanger the life or safety of any individual; or

(4) violate other state or federal law.

(f) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

Commentary by Chris Cowan

Source: SB 1050

Effective Date: September 1, 2009.

Applicability: Request for information relating to a child fatality that occurs on or after September 1, 2009.

Summary of Changes: Newly enacted Section 261.203 provides that certain information related to a child fatality that is under investigation by the Department of Family and Protective Services (DFPS) is not confidential and must be provided to the requestor by DFPS. Summary information, such as age and sex of child, date of death, whether the State was the managing conservator of the child, and whether the child resided with a person entitled to possession of the child, must be provided within five days of a request, regardless of whether DFPS has completed its investigation. If after completion of investigation DFPS determines that the child's death was caused by abuse or neglect, more detailed information as described in Subsection (b) must be provided "promptly" to the requestor. If DFPS cannot release the information required in Subsection (b) before the 11th day after receiving a request, or after completing the investigation, whichever is later, DFPS must inform the requestor of the date it will release the information. Prior to release, DFPS must redact any information that would: 1) identify the person who reported the abuse or neglect; 2) jeopardize an ongoing criminal investigation or prosecution; 3) endanger the life or safety of any individual; or 4) violate other state or federal law.

(b) A policy required by this section must address:

(1) methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, using resources developed by the agency under Section 38.004;

(2) actions that a child who is a victim of sexual abuse should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse.

Commentary by Chris Cowan

Source: HB 1041

Effective Date: June 19, 2009.

Applicability: School district policies and student handbooks in effect on or after June 19, 2009.

Summary of Changes: This new Education Code Section is referred to as "Jenna's Law" and requires school districts to implement a policy addressing sexual abuse of children that is to be included in the district improvement plan and student handbook. The policy must address methods for increasing student, teacher, and parent awareness; actions that a sexual abuse victim should take to obtain assistance and intervention; and available counseling options.

Education Code

Education Code, Sec. 38.0041. POLICIES ADDRESSING SEXUAL ABUSE OF CHILDREN.

(a) Each school district shall adopt and implement a policy addressing sexual abuse of children to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

5. Gang Legislation

Code of Criminal Procedure

Code of Criminal Procedure, Art. 59.01. DEFINITIONS.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

- (A) used in the commission of:
 - (i) any first or second degree felony under the Penal Code;
 - (ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;
 - (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
 - (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;
- (B) used or intended to be used in the commission of:
 - (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
 - (ii) any felony under Chapter 483, Health and Safety Code;
 - (iii) a felony under Chapter 153, Finance Code;
 - (iv) any felony under Chapter 34, Penal Code;
 - (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
 - (vi) any felony under Chapter 152, Finance Code;
 - (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
 - (viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; ~~or~~
 - (ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code; or

Section 42.10, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B)

of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

Commentary by Nydia D. Thomas

Source: SB 554

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Chapter 59 of the Code of Criminal Procedure is the Texas statute that governs the seizure and forfeiture of assets obtained as a result of illegal enterprises and other criminal activities. Senate Bill 554 amends Section 59.01 of the Code of Criminal Procedure to include dog fighting as an underlying offense.

Code of Criminal Procedure, Art. 59.01. DEFINITIONS.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

- (A) used in the commission of:
 - (i) any first or second degree felony under the Penal Code;
 - (ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;
 - (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
 - (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;
- (B) used or intended to be used in the commission of:
 - (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
 - (ii) any felony under Chapter 483, Health and Safety Code;
 - (iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; ~~or~~

(ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code; or

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

Commentary by Nydia D. Thomas

Source: HB 2225

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date

Summary of Changes: Nearly every state has enacted asset forfeiture statutes that govern the seizure of property obtained as a result of illegal enterprises and other criminal activities described under the federal Racketeer Influenced Corrupt Organization Act (RICO Act) such as fraud, money laundering or drug trafficking. House Bill 2225 amends Section 59.01 of the Code of Criminal Procedure to include the unlawful transfer of firearms and firearm smuggling as an underlying offense. The proceeds from the sale or auction of property or contraband, including cash, boats, cars are often used to fund criminal justice and law enforcement operations.

Code of Criminal Procedure, Art. 59.011. ELECTION OF FORFEITURE PROCEEDING.

If property described by Article 59.01(2)(B)(x) is subject to forfeiture under this chapter and Article 18.18,

the attorney representing the state may proceed under either this chapter or that article.

Commentary by Nydia D. Thomas

Source: HB 2225

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Chapter 59 of the Code of Criminal Procedure outlines the seizure and asset forfeiture procedures in Texas. This statute outlines the proceedings that govern the seizure, sale and/or auction of property obtained as a result of illegal enterprises and other criminal activities. As amended, Section 59.011 allows prosecutors to pursue the forfeiture of contraband under either of the two existing laws, (i.e., Chapter 59 or Article 18.18 of the Code of Criminal Procedure) that authorize the disposition of seized contraband, paraphernalia, or other property.

Code of Criminal Procedure, Art. 59.011. ELECTION OF FORFEITURE PROCEEDING.

If property described by Article 59.01(2)(B)(x) is subject to forfeiture under this chapter and Article 18.18, the attorney representing the state may proceed under either provision.

Commentary by Nydia D. Thomas

Source: SB 554

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Forfeiture proceedings authorize the monetary revenue earned from the sale or auction of property or contraband to be used to fund certain governmental purposes including criminal justice and law enforcement operations. Senate Bill 554 and House Bill 2225 contain identical provisions that amend Section 59.011 to allow prosecutors to pursue the forfeiture of contraband under either of the two existing provisions, (i.e., Chapter 59 or Article 18.18 of the Code of Criminal Procedure) that authorize the disposition of seized property.

Code of Criminal Procedure, Art. 61.02. CRIMINAL COMBINATION AND CRIMINAL STREET GANG INTELLIGENCE DATABASE; SUBMISSION CRITERIA.

(a) Subject to Subsection (b), a criminal justice agency shall ~~may~~ compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs. ~~[The information may be compiled on paper, by computer, or in any other useful manner.]~~

(b) A law enforcement agency in a municipality with a population of 50,000 or more or in a county with a population of 100,000 or more shall ~~may~~ compile and maintain in a local or regional intelligence database criminal information relating to a criminal street gang as provided by Subsection (a). The information must be compiled and maintained ~~in a local or regional intelligence database only if the agency compiles and maintains the information~~ in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Subsection (c).

(b-1) Information described by this article may be compiled on paper, by computer, or in any other useful manner by a criminal justice agency or law enforcement agency.

Commentary by Karen J. Roe

Source: SB 418

Effective Date: September 1, 2009

Applicability: Applies to all entities meeting the population minimums on or after the effective date.

Summary of Changes: This amendment mandates the collection of gang intelligence information for all criminal justice agencies and law enforcement agencies in a municipality with a population of 50,000 or more or in a county with a population of 100,000 or more. Previously, collection of this information was optional. Mandatory entry of this information by large jurisdictions will improve the efforts of law enforcement officials across the state to track gang members and deter gang activity.

Code of Criminal Procedure, Art. 61.02. CRIMINAL COMBINATION AND CRIMINAL STREET GANG INTELLIGENCE DATABASE; SUBMISSION CRITERIA.

(c) Criminal information collected under this chapter relating to a criminal street gang must:

(1) be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity; and

(2) consist of:

(A) a judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang;

(B) a self-admission by the individual of criminal street gang membership that is made during a judicial proceeding; or

(C) except as provided by Subsection (d), any two of the following:

(i) a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet or other electronic format or medium to post photographs or other documentation identifying the individual as a member of a criminal street gang;

(ii) an identification of the individual as a criminal street gang member by a reliable informant or other individual;

(iii) a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;

(iv) evidence that the individual frequents a documented area of a criminal street gang and associates with known criminal street gang members;

(v) evidence that the individual uses, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of how or the means by ~~the format or medium in~~ which the symbols are displayed, that are associated with a criminal street gang that operates in an area frequented by the individual and described by Subparagraph (iv); ~~or~~

(vi) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity;

(vii) evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution; or

(viii) evidence of the individual's use of technology, including the Internet, to recruit new criminal street gang members.

(d) Evidence described by Subsections (c)(2)(C)(iv) and (vii) is not sufficient to create the eligibility of a person's information to be included in an intelligence database described by this chapter unless the evidence is combined with information described by another subparagraph of Subsection (c)(2)(C).

(e) In this article:

(1) "Family member" means a person related to another person within the third degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Section 573.024(b), Government Code.

(2) "Penal institution" means a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice, a confinement facility operated by or under contract with the Texas Youth Commission, or a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county jail.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to criminal information in an Article 61 gang intelligence database on or after the effective date.

Summary of Changes: This provision amends the Article 61 gang database criteria to clarify that a self-admission as a gang member includes a person's use of the internet or other electronic medium to post photographs or other documentation identifying the person as a gang member and adds two new criteria: 1) evidence an individual visits a known gang member in an adult or juvenile penal institution that the individual is not related to within the third degree of consanguinity; and 2) evidence of the individual's use of technology, including the Internet, to recruit new criminal street gang members. Individuals who do any two of the things listed in Article 61.02(c)(2)(C) to identify themselves as gang members can be included in a law enforcement gang database.

Code of Criminal Procedure, Art. 61.03. RELEASE OF INFORMATION.

(a) A criminal justice agency ~~[that maintains criminal information under this chapter]~~ may release on request ~~[the]~~ information maintained under this chapter ~~[on request]~~ to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding

who is entitled to the discovery of the information under Chapter 39.

(c) A [If a] local law enforcement agency described by Article 61.02(b) [compiles and maintains information under this chapter relating to a criminal street gang, the agency] shall send to the department [the] information compiled and maintained under this chapter [to the department].

Commentary by Karen J. Roe

Source: SB 418

Effective Date: September 1, 2009

Applicability: Applies to criminal information in an Article 61 gang database on or after the effective date.

Summary of Changes: This section about gang database information requires a criminal justice agency that maintains this information to release it upon request to other criminal justice agencies, a court, or a defendant during the discovery process in a criminal proceeding.

The change to Article 61.03(c) requires law enforcement authorities in cities with a population of 50,000 or more or counties with a population of 100,000 or more to send all gang database information to the Department of Public Safety.

Code of Criminal Procedure, Art. 61.04. CRIMINAL INFORMATION RELATING TO CHILD.

(b) A criminal justice agency ~~[that maintains information under this chapter]~~ may release [the] information maintained under this chapter to an attorney representing a child who is a party to a proceeding under Title 3, Family Code, if the juvenile court determines the information:

- (1) is material to the proceeding; and
- (2) is not privileged under law.

(d) The [If a local law enforcement agency collects criminal information under this chapter relating to a criminal street gang, the] governing body of a [the] county or municipality served by a [the] law enforcement agency described by Article 61.02(b) may adopt a policy to notify the parent or guardian of a child of the agency's observations relating to the child's association with a criminal street gang.

Commentary by Karen J. Roe

Source: SB 418

Effective Date: September 1, 2009

Applicability: Applies to criminal information in an Article 61 gang database on or after the effective date.

Summary of Changes: This change requires an agency that maintains a gang database to release information about a juvenile in the database to provide it to an attorney representing a juvenile if a court determines that the information is material and not subject to confidentiality provisions of any other laws. The amendment to subsection (d) allows, but does not require, large cities and counties, which are required to maintain gang databases, to adopt policies that allow them to notify parents or guardians of their observations of a child's connection to a criminal street gang.

Code of Criminal Procedure, Art. 61.06. REMOVAL OF RECORDS RELATING TO AN INDIVIDUAL OTHER THAN A CHILD.

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 after five ~~[three]~~ years if:

- (1) the information relates to the investigation or prosecution of criminal activity engaged in by an individual other than a child; and
- (2) the individual who is the subject of the information has not been arrested for criminal activity reported to the department under Chapter 60.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to criminal information in an Article 61 gang intelligence database on or after the effective date.

Summary of Changes: Changes the deadline for removing adult gang records from a law enforcement database to extend it from three to five years.

Code of Criminal Procedure, Art. 61.06. REMOVAL OF RECORDS RELATING TO AN INDIVIDUAL OTHER THAN A CHILD.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the five-year [~~three-year~~] period does not include any period during which the individual who is the subject of the information is:

(1) confined in a correctional facility operated by or under contract with the Texas Department of Criminal Justice;

(2) committed to a secure correctional facility operated by or under contract with the Texas Youth Commission, as defined by Section 51.02, Family Code; or

(3) confined in a county jail or confined in or committed to a facility operated by a juvenile board in lieu of being confined in a correctional facility operated by or under contract with the Texas Department of Criminal Justice or being committed to a secure correctional facility operated by or under contract with the Texas Youth Commission.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to criminal information in an Article 61 gang intelligence database on or after the effective date.

Summary of Changes: Changes the deadline for removing adult gang records from a law enforcement database to extend it from three to five years.

Code of Criminal Procedure, Art. 61.12. DATABASE USER TRAINING.

(a) The department shall enter into a memorandum of understanding with the United States Department of Justice or other appropriate federal department or agency to provide any person in this state who enters information into or retrieves information from an intelligence database described by this chapter with training regarding the operating principles described by 28 C.F.R. Part 23, as those principles relate to an intelligence database established or maintained under this chapter.

(b) A person in this state who enters information into or retrieves information from an intelligence database

described by this chapter shall complete continuing education training on the material described by Subsection (a) at least once for each continuous two-year period the person has primary responsibility for performing a function described by this subsection.

(c) The department shall adopt the rules necessary to implement this article.

Commentary by Karen J. Roe

Source: SB 418

Effective Date: September 1, 2009

Applicability: The Department of Public Safety must enter into a Memorandum of Understanding with the federal government no later than December 1, 2009.

Summary of Changes: This new section requires the Department of Public Safety to provide training to all criminal justice agency database users every two years regarding the operating principles described by 28 C.F.R. Part 23. This federal regulation provides consistent standards for the operation of criminal intelligence systems between states to foster accuracy and reliability of information between jurisdictions.

Family Code

Family Code, Sec. 54.0491. GANG-RELATED CONDUCT.

(a) In this section:

(1) "Criminal street gang" has the meaning assigned by Section 71.01, Penal Code.

(2) "Gang-related conduct" means conduct that violates a penal law of the grade of Class B misdemeanor or higher and in which a child engages with the intent to:

(A) further the criminal activities of a criminal street gang of which the child is a member;

(B) gain membership in a criminal street gang; or

(C) avoid detection as a member of a criminal street gang.

(b) A juvenile court, in a disposition hearing under Section 54.04 regarding a child who has been adjudicated to have engaged in delinquent conduct that is also gang-related conduct, shall order the child to participate in a criminal street gang intervention program that is appropriate for the child based on the child's level of involvement in the criminal activities of a criminal street gang. The intervention program:

(1) must include at least 12 hours of instruction; and

(2) may include voluntary tattoo removal.

(c) If a child required to attend a criminal street gang intervention program is committed to the Texas Youth Commission as a result of the gang-related conduct, the child must complete the intervention program before being discharged from the custody of or released under supervision by the commission.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This new provision mandates a 12-hour gang intervention program as a condition of probation or commitment to the Texas Youth Commission (TYC) for gang-related conduct as defined. Participation in the gang intervention program is required only if ordered by a juvenile court during a disposition hearing. Youth committed to TYC who are ordered to participate in this training must complete the intervention program prior to qualifying for TYC parole or discharge from the agency.

Government Code

Government Code, Sec. 421.082. POWERS AND DUTIES.

(e) The gang section of the center shall annually submit to the governor and the legislature a report assessing the threat posed statewide by criminal street gangs. The report must include identification of:

- (1) law enforcement strategies that have been proven effective in deterring gang-related crime; and
- (2) gang involvement in trafficking of persons.

(f) On request, the office of the attorney general, the Department of Public Safety, the Texas Department of Criminal Justice, other law enforcement agencies, and juvenile justice agencies of this state shall provide to the gang section of the center information relating to criminal street gangs, gang-related crime, and gang involvement in trafficking of persons.

(g) Any information received by the center under this section that is stored, combined with other information, analyzed, or disseminated is subject to the rules governing criminal intelligence in 28 C.F.R. Part 23.

Commentary by Chris Hubner

Source: SB 379

Effective Date: Effective immediately or June 19, 2009

Applicability: The first annual report is due not later than September 1, 2010.

Summary of Changes: Requires the Texas Fusion Center to create an annual report for the Governor and the Legisla-

ture assessing the threat posed statewide by criminal street gangs, including deterrent strategies and involvement of gangs in human trafficking. The Texas Fusion Center is the part of the Governor's Office responsible for coordination of communication strategies and other efforts that promote emergency preparedness and homeland security.

Government Code, Sec. 772.007. TEXAS ANTI-GANG GRANT PROGRAM.

(a) The criminal justice division established under Section 772.006 shall administer a competitive grant program to support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities.

(b) The grant program administered under this section must be directed toward regions of this state that have demonstrably high levels of gang violence.

(c) The criminal justice division shall award grants to qualified applicants, as determined by the division, that demonstrate a comprehensive approach that balances gang prevention, intervention, and suppression activities to reduce gang violence.

(d) The criminal justice division shall include in the biennial report required by Section 772.006(a)(9) detailed reporting of the results and performance of the grant program administered under this section.

(e) The criminal justice division may use any revenue available for purposes of this section.

Commentary by Chris Hubner

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to grants established on or after the effective date.

Summary of Changes: Requires the Governor's Criminal Justice Division to administer a competitive grant program to combat gang violence. The grants must be directed toward regions of the State that have high levels of gang violence and will be awarded to applicants who demonstrate a comprehensive approach to reducing gang violence.

Health and Safety Code

Health and Safety Code, Sec. 481.134. DRUG-FREE ZONES.

(3) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more play stations ~~[separate apparatus]~~ intended for the recreation of children, such as slides, swing sets, and teeterboards.

Commentary by Chris Hubner

Source: HB 2467

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This amendment was intended to modernize the definition of playground to ensure that crimes that occur on playgrounds can be prosecuted to the fullest extent of the law and more accurately describe the restrictions placed on convicted sexual predators.

Health and Safety Code, Sec. 481.134. DRUG-FREE ZONES.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.116(c), (d), or (e), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of [Ø] a public or private youth center, or a playground; or

(2) on a school bus.

(d) An offense otherwise punishable under Section 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, [Ø] the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, [Ø] the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, [Ø] the premises of a public or private youth center, or a playground; or

(2) on a school bus.

Commentary by Chris Hubner

Source: HB 2467

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Amends the definition of drug-free zones to include “playgrounds.”

Human Resources Code

Human Resources Code, Sec. 42.064. INFORMATION REGARDING GANG-FREE ZONES.

Each day-care center shall, in accordance with rules adopted by the executive commissioner, distribute to parents and guardians of children who attend the center information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

Commentary by Chris Hubner

Source: HB 2086

Effective Date: June 19, 2009

Applicability: Applies to day-care centers’ informational handbooks for parents or guardians on or after the effective date.

Summary of Changes: Day-care centers must include information regarding gang-free zones and the consequences of engaging in organized criminal activity within those zones for parents or guardians. Gang-free zones are defined in Section 71.028 of the Penal Code.

Penal Code

Penal Code, Sec. 15.031. Criminal Solicitation of a Minor.

(e) An offense under this section is one category lower than the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor:

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01; and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

Commentary by Chris Hubner

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This change amends the punishment range for criminal solicitation offenses committed by an adult gang member with intent to further the criminal activities of the gang or to avoid detection as a member of a gang; an offense under this section is the same category as the solicited offense.

Penal Code, Sec. 22.015. COERCING, SOLICITING, OR INDUCING GANG MEMBERSHIP.

(a) ~~In this section:~~

(1) ~~"Child" means an individual younger than 17 years of age.~~

(2) ~~"Criminal street gang" has the meaning assigned by Section 71.01.~~

(b) ~~A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person:~~

(1) ~~threatens the child with imminent bodily injury; or~~

(2) ~~causes bodily injury to the child.~~

(c) ~~An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.~~

Commentary by Chris Hubner

Source: HB 2187

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Repealed Texas Penal Section 22.015, as this offense is moved to Section 71.022 of the Penal Code.

Penal Code, Sec. 42.10. DOG FIGHTING.

(a) A person commits an offense if the person ~~he~~ intentionally or knowingly:

(1) causes a dog to fight with another dog;

(2) participates in the earnings of or operates a facility used for dog fighting;

(3) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;

(4) owns or possesses dog-fighting equipment with the intent that the equipment be used to train a dog for dog fighting or in furtherance of dog fighting;

(5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or

(6) ~~(5)~~ attends as a spectator an exhibition of dog fighting.

(b) In this section:

(1) "Dog[~~—~~dog] fighting" means any situation in which one dog attacks or fights with another dog.

(2) "Dog-fighting equipment" has the meaning assigned by Article 18.18(g), Code of Criminal Procedure.

(e) An offense under Subsection (a)(4), ~~(5)~~, or (6) is a Class A misdemeanor. An offense under Subsection (a)(1), (2), or (3) is a state jail felony.

Commentary by Chris Hubner

Source: SB 554

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Amends the dog fighting statute to include owning or possessing dog fighting equipment as a manner and means of committing the offense. This offense was also added to the list of offenses that qualify as engaging in organized criminal activity under Section 71.02 of the Penal Code.

Penal Code, Sec. 46.14. FIREARM SMUGGLING.

(a) A person commits an offense if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct:

(1) on more than one occasion; or

(2) for profit or any other form of remuneration.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) 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 Karen J. Roe

Source: HB 2225

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This new section creates a firearm smuggling offense prosecutable in state court. It provides a

defense for law enforcement officers who transport weapons in the course of performing their duties. The firearm smuggling offense was added to the list of offenses that constitute engaging in organized criminal activity under Section 71.02 of the Penal Code.

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, he 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, 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;

(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 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

[☞]

(13) any offense under Section 37.10; or

(14) any offense under Section 42.10.

Commentary by Chris Hubner

Source: SB 554

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Amends the engaging in organized criminal activity statute to include dog fighting as an underlying offense.

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, he 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, 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;

(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 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

[☞]

(13) any offense under Section 37.10; or

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This amendment adds the offenses of escape, facilitating escape, implements for escape and prohibited substance and items to the list of offenses that constitute engaging in organized criminal activity and can be used to enhance the penalty for an offense.

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 crim-

inal street gang, the person ~~[he]~~ 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, 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;

(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 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

[œ]

(13) any offense under Section 37.10; or

(14) any offense under Section

46.06(a)(1) or 46.14.

Commentary by Karen J. Roe

Source: HB 2225

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Amends the engaging in organized criminal activity statute to include the new firearms smuggling offense, created by Section 46.14 of the Penal Code, in the list of underlying offenses.

Penal Code, Sec. 71.022. COERCING, INDUCING, OR SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG.

Commentary by Chris Hubner

Source: HB 2187

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Heading change to reflect statute changes and merger.

Penal Code, Sec. 71.022. COERCING, INDUCING, OR SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG.

(a-1) A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person:

(1) threatens the child or a member of the child's family with imminent bodily injury; or

(2) causes bodily injury to the child or a member of the child's family.

(d) In this section:

(1) "Child" means an individual younger than 17 years of age.

(2) "Family" has the meaning assigned by Section 71.003, Family Code.

Commentary by Karen J. Roe

Source: HB 2187

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Amends the existing solicitation statute to include threats of bodily injury and causing bodily injury to both the child and the child's family members as a manner and means of committing the offense. This expands the coverage of this statute so that those who cause injury to, or threaten to injure, the family member of a child in order to persuade them to join a gang can be prosecuted.

Penal Code, Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL STREET GANGS.

(a) A person commits an offense if the person knowingly initiates, organizes, plans, finances, directs, manages, or supervises a criminal street gang or members of a criminal street gang with the intent to benefit, promote, or further the interests of the criminal street gang or to increase the person's standing, position, or status in the criminal street gang.

(b) An offense under this section is a felony of the first degree.

(c) Notwithstanding Section 71.01, in this section, "criminal street gang" means:

(1) an organization that:

(A) has more than 10 members whose names are included in an intelligence database under Chapter 61, Code of Criminal Procedure;

(B) has a hierarchical structure that has been documented in an intelligence database under Chapter 61, Code of Criminal Procedure;

(C) engages in profit-sharing among two or more members of the organization; and

(D) in one or more regions of this state served by different regional councils of government, continuously or regularly engages in conduct:

(i) that constitutes an offense listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(ii) in which it is alleged that a deadly weapon is used or exhibited during the commission of or immediate flight from the commission of any felony offense; or

(iii) that is punishable as a felony of the first or second degree under Chapter 481, Health and Safety Code; or

(2) an organization that, in collaboration with an organization described by Subdivision (1), engages in conduct or commits an offense or conspires to engage in conduct or commit an offense described by Subdivision (1)(D).

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This provision creates a new first degree felony offense of directing activities of certain criminal street gangs. This applies to groups with more than 10 documented members that have an identified hierarchy and engage in profit-sharing. An offense under this section occurs when a person plans or directs gang activity that involves an offense under Section 3(g) of Article 42.12 of the Code of Criminal Procedure, in which a deadly weapon is used, or constitutes a first or second degree felony drug offense as the underlying offense.

Penal Code, Sec. 71.028. GANG-FREE ZONES. (a) In this section:

(1) "Institution of higher education," "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(2) "Shopping mall" means an enclosed public walkway or hall area that connects retail, service, or professional establishments.

(b) This section applies to an offense listed in Section 71.02(a)(1), (4), or (7), other than burglary, theft, burglary of a motor vehicle, or unauthorized use of a motor vehicle.

(c) Except as provided by Subsection (d), the punishment prescribed for an offense described by Subsection (b) is increased to the punishment prescribed for the next highest category of offense if the actor is 17 years of age or older and it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense at a location that was:

(1) in, on, or within 1,000 feet of any:

(A) real property that is owned, rented, or leased by a school or school board;

(B) premises owned, rented, or leased by an institution of higher education;

(C) premises of a public or private youth center; or

(D) playground;

(2) in, on, or within 300 feet of any:

(A) shopping mall;

(B) movie theater;

(C) premises of a public swimming pool; or

(D) premises of a video arcade facility; or

(3) on a school bus.

(d) The punishment for an offense described by Subsection (b) may not be increased under this section if the offense is punishable under Section 71.02 as a felony of the first degree.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: These newly enacted sections create "gang-free zones," which are similar to the well-established "drug-free zones." Section 71.028 authorizes enhancement of the penalty for certain crimes committed in these zones.

Penal Code, Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA.

(a) In a prosecution of an offense for which punishment is increased under Section 71.028, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of gang-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those zones if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those zones.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the zone is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an of-

fense for which punishment is increased under Section 71.028; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Commentary by Karen J. Roe

Source: HB 2086

Effective Date: September 1, 2009

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: These newly enacted sections create “gang-free zones,” which are similar to the well-established “drug-free zones.” Section 71.029 provides a formal method to establish the boundaries of these zones by governmental units, which can approve maps drawn by city or county engineers.

6. Sex Offender Legislation

Code of Criminal Procedure

Code of Criminal Procedure, Art. 2.022. ASSISTANCE OF TEXAS RANGERS.

(a) The attorney representing the state may request the Texas Rangers division of the Department of Public Safety to provide assistance to a local law enforcement agency investigating an offense that:

(1) is alleged to have been committed by an elected officer of the political subdivision served by the local law enforcement agency; and

(2) on conviction or adjudication, would subject the elected officer to registration as a sex offender under Chapter 62.

(b) For purposes of this article, "assistance" includes investigative, technical, and administrative assistance.

Commentary by Chris Cowan

Source: HB 2130

Effective Date: June 19, 2009

Applicability: Requests for assistance on or after the effective date.

Summary of Changes: This amendment authorizes the Texas Rangers to provide assistance to a local law enforcement agency that is investigating an elected official suspected of conduct that would require sex offender registration upon conviction.

Code of Criminal Procedure, Art. 13.31. FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION STATUTE.

An offense under Chapter 62 may be prosecuted in:

(1) any county in which an element of the offense occurs;

(2) the county in which the person subject to Chapter 62 last registered, verified registration, or otherwise complied with a requirement of Chapter 62;

(3) the county in which the person required to register under Chapter 62 has indicated that the person intends to reside, regardless of whether the person establishes or attempts to establish residency in that county; ~~[or]~~

(4) any county in which the person required to register under Chapter 62 is placed under custodial arrest for an offense subsequent to the person's most recent reportable conviction or adjudication under Chapter 62; or

(5) the county in which the person required to register under Chapter 62 resides or is found by a peace officer, regardless of how long the person has been in the county or intends to stay in the county.

Commentary by Chris Cowan

Source: HB 2153

Effective Date: September 1, 2009

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This bill amends the venue options for the offense of failure to comply with sex offender registration to include the county listed in the registration as the intended residency, regardless of whether the person establishes or attempts to establish residency in that county, and the county in which the person resides or is found by a peace officer, regardless of how long the person has been in the county or intends to stay in the county.

Code of Criminal Procedure, Art. 18.07. DAYS ALLOWED FOR WARRANT TO RUN.

(a) The time allowed for the execution of a search warrant [shall be three whole days], exclusive of the day of its issuance and of the day of its execution, is:

(1) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples; or

(2) three whole days if the warrant is issued for a purpose other than that described by Subdivision (1).

(b) The magistrate issuing a search warrant under [the provisions of] this chapter shall endorse on the [such] search warrant the date and hour of its [the] issuance [of the same].

Commentary by Chris Cowan

Source: SB 743

Effective Date: September 1, 2009

Applicability: Applies to search warrants issued on or after the effective date.

Summary of Changes: This amendment extends the time period for executing a search warrant that is issued solely to search and seize a DNA specimen from three whole days to fifteen whole days.

Code of Criminal Procedure, Art. 62.001. DEFINITIONS.

(2) "Local law enforcement authority" means, as applicable, the chief of police of a municipality, ~~[or]~~ the sheriff of a county in this state, or a centralized registration authority.

(11) "Centralized registration authority" means a mandatory countywide registration location designated under Article 62.0045.

Commentary by Chris Cowan

Source: SB 2048

Effective Date: June 19, 2009.

Applicability: Applies to centralized registration authorities established on or after the effective date.

Summary of Changes: The definitions section of the Sex Offender Registration article is amended to include a provision for “centralized registration authority” and to clarify that it is a law enforcement authority.

Code of Criminal Procedure, Art. 62.001. DEFINITIONS.

(11) “Online identifier” means electronic mail address information or a name used by a person when sending or receiving an instant message, social networking communication, or similar Internet communication or when participating in an Internet chat. The term includes an assumed name, nickname, pseudonym, moniker, or user name established by a person for use in connection with an electronic mail address, chat or instant chat room platform, commercial social networking site, or online picture-sharing service.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: Applies to any person required to register on or after January 1, 2010, regardless of whether the offense or conduct occurred before, on or after January 1, 2010.

Summary of Changes: The definitions section of the Sex Offender Registration article is amended to include a provision for “online identifier”.

Code of Criminal Procedure, Art. 62.004. DETERMINATION REGARDING PRIMARY REGISTRATION AUTHORITY.

(a) Except as provided by Subsection (a-1), for [Fœ] each person subject to registration under this chapter, the department shall determine which local law enforcement authority serves as the person's primary registration authority based on the municipality or county in which the person resides or, as provided by Article 62.152, the municipality or county in which the person works or attends school.

(a-1) Notwithstanding any other provision of this chapter, if a person resides or, as described by Article 62.152, works or attends school in a county with a centralized registration authority, the centralized registration authority serves as the person's primary registration authority under this chapter, regardless of whether the person resides, works, or attends school, as applicable, in any municipality located in that county.

Commentary by Chris Cowan

Source: SB 2048

Effective Date: September 1, 2009

Applicability: Applies to any person required to register for an offense committed on or after the effective date.

Summary of Changes: This amendment provides that if a person resides, works or attends school in a county with a centralized registration authority, that registration authority serves as the person's primary registration authority, regardless of whether the person resides, works or attends school in any municipality within the county.

Code of Criminal Procedure, Art. 62.0045. CENTRALIZED REGISTRATION AUTHORITY.

(a) The commissioners court in a county with a population of 100,000 or more may designate the office of the sheriff of the county or may, through interlocal agreement, designate the office of a chief of police of a municipality in that county to serve as a mandatory countywide registration location for persons subject to this chapter.

(b) Notwithstanding any other provision of this chapter, a person who is subject to this chapter shall register under Article 62.051 or verify registration under Article 62.058 only with the centralized registration authority for the county, regardless of whether the person resides in any municipality located in that county. If the person resides in a municipality, and the local law enforcement authority in the municipality does not serve as the person's centralized registration authority, the centralized registration authority, not later than the third day after the date the person registers or verifies registration with that authority, shall provide to the local law enforcement authority in that municipality notice of the person's registration or verification of registration, as applicable, with the centralized registration authority.

Commentary by Chris Cowan

Source: SB 2048

Effective Date: June 19, 2009

Applicability: Applies to centralized registration authorities established on or after the effective date.

Summary of Changes: This new article authorizes the county commissioners' court in counties with a population of 100,000 or more to establish a centralized registration authority requiring any person required to register as a sex offender to do so at one designated agency within the county.

Code of Criminal Procedure, Art. 62.005. CENTRAL DATABASE; PUBLIC INFORMATION.

(b) The information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of any information:

(1) regarding the person's social security number or driver's license number, or any home, work, or cellular telephone number of the person;

(2) that is described ~~[required]~~ by ~~[the department under]~~ Article 62.051(c)(7) or required by the department under Article 62.051(c)(8); or

(3) that would identify the victim of the offense for which the person is subject to registration.

(j) The department, for law enforcement purposes, shall release all relevant information described by Subsection (a), including information that is not public information under Subsection (b), to a peace officer, an employee of a local law enforcement authority, or the attorney general on the request of the applicable person or entity.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: The Texas Department of Public Safety and the State of Texas shall implement as soon as practicable after September 1, 2009, but not later than January 1, 2010.

Summary of Changes: This amendment adds an exemption from public information from the sex offender registration database to include the registering person's home, work and cellular telephone numbers and online identifiers. However, this information must be released to law enforcement or the attorney general upon request.

Code of Criminal Procedure, Art. 62.0061. REQUEST FOR ONLINE IDENTIFIERS BY SOCIAL NETWORKING SITES.

(a) On request by a commercial social networking site, the department may provide to the commercial social networking site:

(1) all public information that is contained in the database maintained under Article 62.005; and

(2) notwithstanding Article 62.005(b)(2), any online identifier established or used by a person who uses the site, is seeking to use the site, or is precluded from using the site.

(b) The department by rule shall establish a procedure through which a commercial social networking site may request information under Subsection (a), including rules regarding the eligibility of commercial social networking sites to request information under Subsection (a). The department shall consult with the attorney general, other appropriate state agencies, and other appropriate entities in adopting rules under this subsection.

(c) A commercial social networking site or the site's agent:

(1) may use information received under Subsection (a) only to:

(A) prescreen persons seeking to use the site; or

(B) preclude persons registered under this chapter from using the site; and

(2) may not use any information received under Subsection (a) that the networking site obtained solely under Subsection (a) in any manner not described by Subdivision (1).

(d) A commercial social networking site that uses information received under Subsection (a) in any manner not described by Subsection (c)(1) or that violates a rule adopted by the department under Subsection (b) is subject to a civil penalty of \$1,000 for each misuse of information or rule violation. A commercial social networking site that is assessed a civil penalty under this article shall pay, in addition to the civil penalty, all court costs, investigative costs, and attorney's fees associated with the assessment of the penalty. A civil penalty assessed under this subsection shall be deposited to the compensation to victims of crime fund established under Subchapter B, Chapter 56.

(e) This article does not create a private cause of action against a commercial social networking site, including a cause of action that is based on the site:

(1) identifying, removing, disabling, blocking, or otherwise affecting the user of a commercial social networking site, based on a good faith belief that the person is required to register as a sex offender under this chapter or federal law; or

(2) failing to identify, remove, disable, block, or otherwise affect the user of a commercial social networking site who is required to register as a sex offender under this chapter or federal law.

(f) In this article, "commercial social networking site":

(1) means an Internet website that:

(A) allows users, through the creation of Internet web pages or profiles or other similar means, to provide personal information to the public or other users of the Internet website;

(B) offers a mechanism for communication with other users of the Internet website; and

(C) has the primary purpose of facilitating online social interactions; and

(2) does not include an Internet service provider, unless the Internet service provider separately operates and directly derives revenue from an Internet website described by Subdivision (1).

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: The Texas Department of Public Safety and the State of Texas shall implement as soon as practicable after September 1, 2009, but not later than January 1, 2010.

Summary of Changes: This new article defines "commercial social networking site" and authorizes DPS to provide to a commercial social networking site all public information contained in the sex offender registration database, as well any online identifiers used by a person in association

with that site. Additionally, this article also restricts the use of the database information by the networking sites and establishes penalties for using the registration information in an unauthorized manner.

Code of Criminal Procedure, Art. 62.051. REGISTRATION: GENERAL.

(c) The registration form shall require:

(1) the person's full name, ~~[each alias,]~~ date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address and each alias used by the person and any home, work, or cellular telephone number of the person;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.005(g), that is held or sought by the person;

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; ~~[and]~~

(7) the identification of any online identifier established or used by the person; and

(8) any other information required by the department.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: The Texas Department of Public Safety and the State of Texas shall implement as soon as practicable after September 1, 2009, but not later than January 1, 2010.

Summary of Changes: The sex offender registration form requirements are amended to include online identifiers and home, work and cellular telephone numbers.

Code of Criminal Procedure, Art. 62.051. REGISTRATION: GENERAL.

(c) The registration form shall require:

(1) the person's full name, including each alias, the person's date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, and shoe size, and the [home] address at which the person resides or intends to reside or, if the person does not reside or intend to reside at a physical ad-

dress, a detailed description of each geographical location at which the person resides or intends to reside;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.005(g), that is held or sought by the person;

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and

(7) any other information required by the department.

(f) Not later than the seventh day after the date on which the person is released, a [A] person for whom registration is completed under this chapter shall report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this chapter. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is complete and accurate, the person shall verify registration by signing the form. If the information is not complete or not accurate, the person shall make any necessary additions or corrections before signing the form.

(j) If a person subject to registration under this chapter is released from a penal institution without being released to parole or placed on any other form of supervision and the person does not move to the address indicated on the registration form as the person's intended residence or does not indicate an address on the registration form, the person shall, not later than the seventh day after the date on which the person is released:

(1) report in person to the local law enforcement authority for the municipality or county, as applicable, in which the person is residing and provide that authority with the address at which the person is residing or, if the person's residence does not have a physical address, a detailed description of the geographical location of the person's residence; and

(2) until the person indicates the person's current address as the person's intended residence on the registration form or otherwise complies with the requirements of Article 62.055, as appropriate, continue to report, in the manner required by Subdivision (1), to that authority not less than once in each succeeding 30-day period and provide that authority with the address at which the person

is residing or, if applicable, a detailed description of the geographical location of the person's residence.

(k) A person required to register under this chapter may not refuse or otherwise fail to provide any information required for the accurate completion of the registration form.

Commentary by Chris Cowan

Source: HB 2153

Effective Date: September 1, 2009

Applicability: Applies to any person required to register on or the effective date.

Summary of Changes: The sex offender registration form requirements related to address information are amended to include the address where the person resides, the intended address of residency, or a detailed description of each geographical location of residency or intended residency.

Code of Criminal Procedure, Art. 62.053. PRERELEASE NOTIFICATION.

(f) The local law enforcement authority shall include in the notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district any information the authority determines is necessary to protect the public, except:

(1) the person's social security number or[-] driver's license number, or any home, work, or cellular telephone number of the person; and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: Applies to pre-release notifications related to any person required to register on or after January 1, 2010, regardless of whether the offense or conduct occurred before, on or after January 1, 2010.

Summary of Changes: This amendment provides that in addition to the information currently exempted from disclosure in the existing version of the article, the local law enforcement authority shall not release a sex offender registrant's home, work and cellular telephone numbers when providing the required pre-release notification to schools.

Code of Criminal Procedure, Art. 62.053. PRERELEASE NOTIFICATION.

(a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Youth Commission shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.007 and

assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than ~~the later of~~ the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;

(B) not later than the seventh day after the date on which the person is released or the date on which the person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the applicable entity or entities as required by Article 62.051(h) or (j) or 62.055(e) ~~[juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person];~~

(C) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person; and

(F) the person must notify appropriate entities of any change in status as described by Article 62.057;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address or, if applicable, a detailed description of each geographical location where the person expects to reside on the person's release and

other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

Commentary by Chris Cowan

Source: HB 2153

Effective Date: September 1, 2009

Applicability: Applies to any sex offender required to register on or the effective date.

Summary of Changes: This bill amends the pre-release notification requirements to include notice to a person who is required to register as a sex offender and is released from a penal institution without being placed on parole or any kind of supervision that if the person does not move to the intended residence, he/she must report to the local law enforcement authority for the municipality or county where the person is residing. This amendment also provides that prior to release of a person required to register, a penal institution shall obtain the address or, if applicable, a detailed description of a geographical location where the person expects to reside.

Code of Criminal Procedure, Art. 62.055. CHANGE OF ADDRESS.

(g) The local law enforcement authority shall include in the notice to the superintendent of the public school district and the administrator of any private primary or secondary school located in the public school district any information the authority determines is necessary to protect the public, except:

(1) the person's social security number or[.] driver's license number, or any home, work, or cellular telephone number of the person; and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: Applies to notifications related to any sex offender required to register on or after January 1, 2010, regardless of whether the offense or conduct occurred before, on or after January 1, 2010.

Summary of Changes: This amendment provides that in addition to the information currently exempted from disclosure in the existing version of the article, the local law enforcement authority shall not release a registrant's home, work and cellular telephone numbers when providing the required notice to school districts of a registrant's change of address.

Code of Criminal Procedure, Art. 62.055. CHANGE OF ADDRESS; LACK OF ADDRESS.

Commentary by Chris Cowan

Source: HB 2153

Effective Date: September 1, 2009

Applicability: Chapter heading on or after the effective date.

Summary of Changes: This amendment creates a heading change only to include a provision for registrants who have no physical address.

Code of Criminal Procedure, Art. 62.055. CHANGE OF ADDRESS; LACK OF ADDRESS.

(i) If a person required to register under this chapter resides for more than seven days at a location or locations to which a physical address has not been assigned by a governmental entity, the person, not less than once in each 30-day period, shall confirm the person's location or locations by:

(1) reporting to the local law enforcement authority in the municipality where the person resides or, if the person does not reside in a municipality, the local law enforcement authority in the county in which the person resides; and

(2) providing a detailed description of the applicable location or locations.

Commentary by Chris Cowan

Source: HB 2153

Effective Date: September 1, 2009

Applicability: Applies to any sex offender required to register on or the effective date.

Summary of Changes: Requires that a registered sex offender must report to the local registering agency not less than once every 30 days to verify the geographical location of residency if the residency does not have a government issued physical address.

Code of Criminal Procedure, Art. 62.0551. CHANGE IN ONLINE IDENTIFIERS.

(a) If a person required to register under this chapter changes any online identifier included on the person's registration form or establishes any new online identifier not already included on the person's registration form, the person, not later than the later of the seventh day after the change or establishment or the first date the applicable authority by policy allows the person to report, shall report the change or establishment to the person's primary registration authority in the manner prescribed by the authority.

(b) A primary registration authority that receives information under this article shall forward information in the same manner as information received by the authority under Article 62.055.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: Applies to any sex offender required to register on or after January 1, 2010, regardless of whether the offense or conduct occurred before, on or after January 1, 2010.

Summary of Changes: Requires a registrant to report to the appropriate primary registering authority any changes or additions to the online identifiers included on the registration form within seven days of the change or addition. The primary registering authority must forward this information in the same manner required for a change of address.

Code of Criminal Procedure, Art. 62.057. STATUS REPORT BY SUPERVISING OFFICER OR LOCAL LAW ENFORCEMENT AUTHORITY.

(a) If the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising a person subject to registration under this chapter receives information to the effect that the person's status has changed in any manner that affects proper supervision of the person, including a change in the person's name, online identifiers, physical health, job or educational status, including higher educational status, incarceration, or terms of release, the supervising officer shall promptly notify the appropriate local law enforcement authority or authorities of that change. If the person required to register intends to change address, the supervising officer shall notify the local law enforcement authorities designated by Article 62.055(b). Not later than the seventh day after the date the supervising officer receives the relevant information, the supervising officer shall notify the local law enforcement authority of any change in the person's job or educational status in which the person:

(1) becomes employed, begins to carry on a vocation, or becomes a student at a particular public or private institution of higher education; or

(2) terminates the person's status in that capacity.

(b) Not later than the later of the seventh day after the date of the change or the first date the applicable authority by policy allows the person to report, a person subject to registration under this chapter shall report to the local law enforcement authority designated as the person's primary registration authority by the department any change in the person's name, online identifiers, physical health, or job or educational status, including higher educational status.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: Applies to any sex offender required to register on or after January 1, 2010, regardless of whether the offense or conduct occurred before, on or after January 1, 2010.

Summary of Changes: This amendment requires a juvenile probation officer, community supervision and corrections department officer or parole officer to report any known changes to a registrant's online identifiers to the appropriate law enforcement authority within seven days of the change or addition.

Code of Criminal Procedure, Art. 102.020. COSTS RELATED TO ~~[ON CONVICTION FOR OFFENSES REQUIRING]~~ DNA TESTING.

Commentary by Chris Cowan

Source: SB 727

Effective Date: September 1, 2009

Applicability: Chapter heading on or after the effective date.

Summary of Changes: Heading change to reflect statutory changes that broaden section to costs related to DNA testing.

Code of Criminal Procedure, Art. 102.020. COSTS RELATED TO ~~[ON CONVICTION FOR OFFENSES REQUIRING]~~ DNA TESTING.

(a) A person shall pay as a cost of court:

(1) \$250 ~~[as a court cost]~~ on conviction of an offense listed in Section 411.1471(a)(1), Government Code;

(2) ~~[-and]~~ \$50 ~~[as a court cost]~~ on conviction of an offense listed in Section 411.1471(a)(3) of that code; or

(3) \$34 on placement of the person on community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Section 11(j), Article 42.12.

(h) Except as provided by Subsection (h-1), the ~~[The]~~ comptroller shall deposit 35 percent of the funds received under this article in the state treasury to the credit of the state highway fund and 65 percent of the funds received under this article to the credit of the criminal justice planning account in the general revenue fund.

(h-1) The clerk of the court shall transfer to the comptroller any funds received under Subsection (a)(3). The comptroller shall credit the funds to the Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by defendants who are required to pay a court cost under this article.

(j) The court may waive the imposition of a court cost under this article if the court determines that the defendant is indigent and unable to pay the cost.

Commentary by Chris Cowan

Source: SB 727

Effective Date: September 1, 2009

Applicability: Applies to a person who is granted community supervision for an offense committed on or after the effective date.

Summary of Changes: This amendment provides that a person placed on community supervision, including deferred adjudication, who is required to submit a DNA sample, shall be required to pay a \$34 fee unless the court determines that the defendant is unable to pay the cost.

Family Code

Family Code, Sec. 54.0409. DNA SAMPLE REQUIRED ON CERTAIN FELONY ADJUDICATIONS.

(a) This section applies only to conduct constituting the commission of a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(2) for which it is shown that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the conduct or during immediate flight from the commission of the conduct.

(b) If a court or jury makes a disposition under Section 54.04 in which a child is adjudicated as having engaged in conduct constituting the commission of a felony to which this section applies and the child is placed on probation, the court shall require as a condition of probation that the child provide a DNA sample under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required sample under other state law.

Commentary by Chris Cowan

Source: SB 727

Effective Date: September 1, 2009

Applicability: Applies to a juvenile placed on probation on or after the effective date.

Summary of Changes: This new section requires collections of a DNA sample as a condition of juvenile probation for a felony adjudication based upon an offense listed in Article 42.12, Section 3g(a)(1) or one involving the use or exhibition of a deadly weapon.

Government Code

Government Code, Sec. 411.148. MANDATORY DNA RECORD.

(a) This section applies to:

(1) an individual, other than a juvenile,
who is:

(A) ordered by a magistrate or court to provide a DNA sample under Section 411.154 or other law, including as part of an order granting community supervision to the individual; or

(B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or

(2) a juvenile who [is], following [after]
an adjudication for conduct constituting a felony, is;

(A) confined in a facility operated by or under contract with the Texas Youth Commission; or

(B) placed on probation, if the conduct constitutes a felony described by Section 54.0409, Family Code.

(d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of Criminal Justice, that department shall collect the sample from the individual during the diagnostic process or at another time determined by the Texas Department of Criminal Justice. If an individual described by Subsection (a)(2)(A) is received into custody by the Texas Youth Commission, the youth commission shall collect the sample from the individual during the initial examination or at another time determined by the youth commission. If an individual who is required under this section or other law to provide a DNA sample is in the custody or under the supervision of another criminal justice agency, such as a community supervision and corrections department, a parole office, or a local juvenile probation department or parole office, that agency shall collect the sample from the individual at a time determined by the agency.

(f-1) The Texas Youth Commission shall notify the director that an individual described by Subsection (a)(2)(A) ~~[(a)(2)]~~ is to be released from custody not earlier than the 120th day before the individual's release date.

(j)(1) The Texas Youth Commission as soon as practicable shall cause a sample to be collected from an individual described by Subsection ~~(a)(2)(A)~~ ~~[(a)(2)]~~ if:

(A) the individual is detained in another juvenile detention facility after adjudication and before admission to the youth commission; and

(B) the youth commission determines the individual is likely to be released before being admitted to the youth commission.

(2) The administrator of the other juvenile detention facility shall cooperate with the Texas Youth Commission as necessary to allow the youth commission to perform its duties under this subsection.

(k) When a criminal justice agency of this state agrees to accept custody or supervision of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the criminal justice agency that agrees to accept custody or supervision of the individual shall collect ~~[acceptance is conditional on the individual providing]~~ a DNA sample under this subchapter if the individual was convicted of or adjudicated as having engaged in conduct constituting a felony and is otherwise required to provide a DNA sample under this section.

Commentary by Chris Cowan

Source: SB 727

Effective Date: September 1, 2009

Applicability: DNA samples collected from juveniles committed to the Texas Youth Commission (TYC) or placed on probation for a felony listed in Article 42.12, Section 3g(a)(1) or one involving the use or exhibition of a deadly weapon on or after the effective date.

Summary of Changes: This amendment requires that if a juvenile is received into the custody of TYC, the Commission shall collect the required DNA sample during the initial examination or at another time determined by the Commission. If the individual is under the supervision of another criminal justice agency, such as juvenile probation, CSCD or parole, that agency shall collect the sample at a time determined by the agency.

Government Code, Sec. 411.148. MANDATORY DNA RECORD.

~~(e) If an individual described by Subsection (a)(2) is received into custody by the Texas Youth Commission, the youth commission shall collect the sample from the individual during the initial examination or at another time determined by the youth commission.~~

Commentary by Chris Cowan

Source: SB 727

Effective Date: September 1, 2009

Applicability: Subsection (e) is repealed effective September 1, 2009, and replaced by the amendments to subsection (d).

Summary of Changes: The provisions of the repealed Subsection (e), related to the collection of DNA samples from youth in the Texas Youth Commission, are now contained in the amendments to Subsection (d).

Government Code, Sec. 508.1861. PROHIBITIONS ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS.

(a) This section applies only to a person who, on release, will be required to register as a sex offender under Chapter 62, Code of Criminal Procedure, by court order or otherwise, and:

(1) is serving a sentence for an offense under Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code;

(2) used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62, Code of Criminal Procedure; or

(3) is assigned a numeric risk level of three based on an assessment conducted under Article 62.007, Code of Criminal Procedure.

(b) If the parole panel releases on parole or to mandatory supervision a person described by Subsection (a), the parole panel as a condition of parole or mandatory supervision shall prohibit the releasee from using the Internet to:

(1) access material that is obscene as defined by Section 43.21, Penal Code;

(2) access a commercial social networking site, as defined by Article 62.0061(f), Code of Criminal Procedure;

(3) communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or

(4) communicate with another individual the releasee knows is younger than 17 years of age.

(c) The parole panel may modify at any time the condition described by Subsection (b)(4) if:

(1) the condition interferes with the releasee's ability to attend school or become or remain employed and consequently constitutes an undue hardship for the releasee; or

(2) the releasee is the parent or guardian of an individual who is younger than 17 years of age and the releasee is not otherwise prohibited from communicating with that individual.

Commentary by Chris Cowan

Source: SB 689

Effective Date: September 1, 2009

Applicability: Applies to persons released on parole or mandatory supervision on or after the effective date.

Summary of Changes: This new section authorizes the parole panel to restrict access to the internet for certain sex offenders who will be required to register upon their release if their offense: involved children; the internet was used in the commission of the offense; and the person is assigned a numeric risk level of three.

Commentary by Karen J. Roe

Penal Code

Penal Code, Sec. 21.11. INDECENCY WITH A CHILD.

(a) A person commits an offense if, with a child younger than 17 years of age ~~[and not the person's spouse]~~, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.

Commentary by Karen J. Roe

Source: HB 549

Effective Date: September 1, 2009

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Modifies the offense of indecency with a child by removing "not the person's spouse" as an element of the offense, thereby eliminating the need to ask victims in these cases whether they are married to the alleged abuser. The amendment makes being a victim's spouse an affirmative defense, which can be raised as an issue when appropriate. This change eliminates the need to affirmatively prove in each case that the victim and the defendant were not married, but still makes the defense available when applicable.

Penal Code, Sec. 21.12. IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND STUDENT.

(a) An employee of a public or private primary or secondary school commits an offense if the employee engages in:

(1) sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works ~~[and who is not the employee's spouse]~~; or

(2) conduct described by Section 33.021, with a person described by Subdivision (1), regardless of the age of that person.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the enrolled person at the time of the offense.

Source: HB 549

Effective Date: September 1, 2009

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Modifies the offense of improper relationship between educator and student by removing "not the person's spouse" as an element of the offense, thereby eliminating the need to ask victims in these cases whether they are married to the accused defendant. The amendment makes being a victim's spouse an affirmative defense, which can be raised as an issue when appropriate. This change eliminates the need to affirmatively prove in each case that the victim and the defendant were not married, but still makes the defense available when applicable.

Penal Code, Sec. 22.011. SEXUAL ASSAULT.

(1) "Child" means a person younger than 17 years of age ~~[who is not the spouse of the actor]~~.

Penal Code, Sec. 22.011. SEXUAL ASSAULT.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:

(A) [(4)] the actor was not more than three years older than the victim and at the time of the offense:

(i) [(A)] was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) [(B)] was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) [(2)] the victim:

(i) [(A)] was a child of 14 years of age or older; and

(ii) [(B)] was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

Commentary by Karen J. Roe

Source: HB 549

Effective Date: September 1, 2009

Applicability: Applies to an offense committed on or after the effective date

Summary of Changes: These changes modify the offense of sexual assault by removing "not the person's spouse" as an element of the offense, thereby eliminating the need to ask victims in these cases whether they are married to the accused defendant. The amendment makes being a victim's

spouse an affirmative defense, which can be raised as an issue when appropriate. This change eliminates the need to affirmatively prove in each case that the victim and the defendant were not married, but still makes the defense available when applicable.

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 Youth Commission, 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 is not the employee's spouse and]~~ who the employee knows is under the supervision of the department, commission, or probation department but not in the custody of the department, commission, or probation department.

(h) It is an affirmative defense to prosecution under Subsection (f) that the actor was the spouse of the individual at the time of the offense.

Commentary by Karen J. Roe

Source: HB 549

Effective Date: September 1, 2009

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Modifies the offense of violations of the civil rights of a person in custody by removing “not the person’s spouse” as an element of the offense, thereby eliminating the need to ask victims in these cases whether they are married to the accused defendant. The amendment makes being a victim’s spouse an affirmative defense, which can be raised as an issue when appropriate. This change eliminates the need to affirmatively prove in each case that the victim and the defendant were not married, but still makes the defense available when applicable.

7. Victim Legislation

Civil Practice and Remedies Code

Civil Practice and Remedies Code, Sec. 30.013. CONFIDENTIAL IDENTITY IN ACTIONS INVOLVING SEXUAL ABUSE OF A MINOR.

(a) In this section:

(1) "Confidential identity" means:

(A) the use of a pseudonym;

and

(B) the absence of any other identifying information, including address, telephone number, and social security number.

(2) "Plaintiff" means:

(A) an individual younger than 18 years of age seeking recovery of damages or other relief; and

(B) the parents or legal guardian of the individual.

(b) This section applies only to a civil action against a defendant in which a plaintiff seeks recovery of damages or other relief based on conduct described as a felony in the following sections of the Penal Code:

(1) Section 22.011 (sexual assault); or

(2) Section 22.021 (aggravated sexual assault).

(c) Except as otherwise provided by this section, in an action to which this section applies, the court shall:

(1) make it known to the plaintiff as early as possible in the proceedings of the action that the plaintiff may use a confidential identity in relation to the action;

(2) allow a plaintiff to use a confidential identity in all petitions, filings, and other documents presented to the court;

(3) use the confidential identity in all of the court's proceedings and records relating to the action, including any appellate proceedings; and

(4) maintain the records relating to the action in a manner that protects the confidentiality of the plaintiff.

(d) In a suit to which this section applies, only the following persons are entitled to know the true identifying information about the plaintiff:

(1) the judge;

(2) a party to the action;

(3) the attorney representing a party to the action; and

(4) a person authorized by a written order of a court specific to that person.

(e) The court shall order that a person entitled to know the true identifying information under Subsection (d) may not divulge that information to anyone without a written order of the court. A court shall hold a person who violates the order in contempt.

(f) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section.

(g) A plaintiff is not required to use a confidential identity as provided by this section.

Commentary by Chris Hubner

Source: SB 1930

Effective Date: September 1, 2009

Applicability: Applies to a cause of action commenced on or after the effective date.

Summary of Changes: Authorizes the use of a pseudonym by a child victim in a civil cause of action for damages against a defendant based upon a felony sexual offense and limits the persons who are entitled to know the true identity of the child victim.

Civil Practice and Remedies Code, Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY.

(c) This section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault);

(15) Section 49.08 (intoxication manslaughter); [ø]

(16) Section 21.02 (continuous sexual abuse of young child or children); or

(17) Chapter 20A (trafficking of persons).

Commentary by Chris Hubner

Source: HB 533

Effective Date: June 19, 2009

Applicability: Applies to a cause of action that accrues on or after the effective date.

Summary of Changes: This amendment adds human trafficking offense to the list of offenses that are not affected by the statutory limitations on exemplary damages.

Civil Practice and Remedies Code, Sec. 61.0021. GROUNDS FOR ATTACHMENT IN SUIT FOR SEXUAL ASSAULT.

(a) Notwithstanding any other provision of this code, attachment is available to a plaintiff who:

(1) has general grounds for issuance under Sections 61.001(2) and (3); and

(2) institutes a suit for personal injury arising as a result of conduct that violates:

(A) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(B) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

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

(D) Section 21.11, Penal Code (indecent with a child).

(b) A court may issue a writ of attachment in a suit described by Subsection (a) in an amount the court determines to be appropriate to provide for the counseling and medical needs of the plaintiff.

Commentary by Karen J. Roe

Source: HB 3246

Effective Date: September 1, 2009

Applicability: Applies to a cause of action that accrues on or after the effective date.

Summary of Changes: This new provision allows for issuance of a writ of attachment to seize assets of a defendant to pay for medical and counseling costs in a personal injury suit arising from the listed sex offenses.

Civil Practice and Remedies Code, Sec. 61.022. SPECIFIC GROUNDS.

(a) Except as provided by Subsection (a-1), to [Tø] apply for a writ of attachment, a plaintiff or the plaintiff's [his] agent or attorney must file with the court an affidavit that states:

(1) general grounds for issuance under Sections 61.001(1), (2), and (3);

(2) the amount of the demand; and

(3) specific grounds for issuance under Section 61.002.

(a-1) To apply for a writ of attachment under Section 61.0021, a plaintiff or the plaintiff's agent or attorney must file with the court an affidavit that states:

(1) general grounds for issuance under Sections 61.001(2) and (3);

(2) specific grounds for issuance under Section 61.0021(a); and

(3) the amount of the demand based on the estimated cost of counseling and medical needs of the plaintiff.

Commentary by Karen J. Roe

Source: HB 3246

Effective Date: September 1, 2009

Applicability: Applies to a cause of action that accrues on or after the effective date.

Summary of Changes: Section 61.022(a-1) is added to the existing law covering a request for a writ of attachment when there is a request to seize assets of the accused person to pay a judgment. This change requires an affidavit to be filed in cases arising out of sexual assault offenses. The affidavit must provide specific information to support the request for the writ.

Civil Practice and Remedies Code, Ch. 98. LIABILITY FOR TRAFFICKING OF PERSONS.

Sec. 98.001. DEFINITION. In this chapter, "trafficking of persons" means conduct that constitutes an offense under Chapter 20A, Penal Code.

Sec. 98.002. LIABILITY. (a) A defendant who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person is liable to the person trafficked, as provided by this chapter, for damages arising from the trafficking of that person by the defendant or venture.

(b) It is not a defense to liability under this chapter that a defendant has been acquitted or has not been prosecuted or convicted under Chapter 20A, Penal Code, or has been convicted of a different offense or of a different type or class of offense, for the conduct that is alleged to give rise to liability under this chapter.

Sec. 98.003. DAMAGES. (a) A claimant who prevails in a suit under this chapter shall be awarded:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) court costs; and

(3) reasonable attorney's fees.

(b) In addition to an award under Subsection (a), a claimant who prevails in a suit under this chapter may recover exemplary damages.

Sec. 98.004. CAUSE OF ACTION CUMULATIVE. The cause of action created by this chapter is cumulative of any other remedy provided by common law or statute.

Sec. 98.005. JOINT AND SEVERAL LIABILITY. A person who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person and is found liable under this chapter or other law for any amount of damages arising from the trafficking is jointly liable with any other defendant for the entire amount of damages arising from the trafficking.

Sec. 98.006. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons from human trafficking and provide adequate remedies to victims of human trafficking.

Commentary by Chris Hubner

Source: HB 533

Effective Date: June 19, 2009

Applicability: Applies to a cause of action that accrues on or after the effective date.

Summary of Changes: This new chapter creates a civil cause of action for damages against a person engaged in human trafficking.

Code of Criminal Procedure

Code of Criminal Procedure, Art. 17.153. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF BOND WHERE CHILD ALLEGED VICTIM.

(a) This article applies to a defendant charged with a felony offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age:

(1) Chapter 21 (Sexual Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct); or

(3) Section 43.25 (Sexual Performance by a Child).

(b) A defendant described by Subsection (a) who violates a condition of bond set under Article 17.41 and whose bail in the case is revoked for the violation may be taken into custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the defendant violated a condition of bond related to the safety of the victim of the offense or the safety of the community. If the magistrate finds that the violation occurred, the magistrate may revoke the defendant's bond and order that the defendant be immediately returned to custody. Once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. A discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.

Commentary by Karen J. Roe

Source: HB 3751

Effective Date: September 1, 2009

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The Code of Criminal Procedure authorizes law enforcement officers to arrest persons charged with family violence offenses who violate the terms of court-ordered restrictions or conditions of bond. In these cases, a court can deny release on bail when there is a threat to the safety of the victim or the community.

Newly enacted Article 17.153 authorizes denial of bond for defendants charged with certain sexual offenses when the victim is younger than 14 years of age and a court finds that there is a threat to the safety of the victim or the community.

Code of Criminal Procedure, Art. 17.292. MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION.

(c-1) In addition to the conditions described by Subsection (c), the magistrate in the order for emergency protection may impose a condition described by Article 17.49(b) in the manner provided by that article, including ordering a defendant's participation in a global positioning monitoring system or allowing participation in the system by an alleged victim or other person protected under the order.

Commentary by Karen J. Roe

Source: HB 1506

Effective Date: September 1, 2009

Applicability: Applies to orders issued for emergency protection in connection with an offense committed on or after the effective date.

Summary of Changes: This amendment to current law allows a magistrate to issue emergency protection orders in assault and family violence cases and authorizes a magistrate to require a defendant's participation in a global positioning monitoring system. A magistrate can also allow a victim or other person covered by the order to participate in a global positioning monitoring system.

Code of Criminal Procedure, Art. 17.41. CONDITION WHERE CHILD ALLEGED VICTIM.

(a) This article applies to a defendant charged with an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 [42] years of age [or younger]:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct); or

(3) Section 43.25 (Sexual Performance by a Child).

(b) Subject to Subsections (c) and (d), a [A] magistrate shall ~~may~~ require as a condition of bond for a defendant charged with an offense described by Subsection (a) ~~[of this article]~~ that the defendant not:

(1) directly communicate with the alleged victim of the offense; or

(2) go near a residence, school, or other location, as specifically described in the bond, frequented by the alleged victim.

Commentary by Karen J. Roe

Source: HB 3751

Effective Date: September 1, 2009

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Current law allows, but does not require, a magistrate to impose a no contact order as a condition of bond for assaultive or sexual offenses in which the victim is 12 years of age or younger. This amendment requires a magistrate to order a defendant charged with one of these offenses not to communicate with, and to stay away from, any victim younger than 14 years of age.

Code of Criminal Procedure, Art. 17.49. CONDITIONS FOR DEFENDANT CHARGED WITH OFFENSE INVOLVING FAMILY VIOLENCE.

(a) In this article:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Global positioning monitoring system" means a system that electronically determines and reports the location of an individual through the use of a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology. The term does not include a system that contains or operates global positioning system technology, radio frequency identification technology, or any other similar technology that is implanted in or otherwise invades or violates the individual's body.

(b) A magistrate may require as a condition of release on bond that a defendant charged with an offense involving family violence:

(1) refrain from going to or near a residence, school, place of employment, or other location, as specifically described in the bond, frequented by an alleged victim of the offense;

(2) carry or wear a global positioning monitoring system device and, except as provided by Subsection (h), pay the costs associated with operating that system in relation to the defendant; or

(3) except as provided by Subsection (h), if the alleged victim of the offense consents after receiving the information described by Subsection (d), pay the costs

associated with providing the victim with an electronic receptor device that:

(A) is capable of receiving the global positioning monitoring system information from the device carried or worn by the defendant; and

(B) notifies the victim if the defendant is at or near a location that the defendant has been ordered to refrain from going to or near under Subdivision (1).

(c) Before imposing a condition described by Subsection (b)(1), a magistrate must afford an alleged victim an opportunity to provide the magistrate with a list of areas from which the victim would like the defendant excluded and shall consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going to or near. If the magistrate imposes a condition described by Subsection (b)(1), the magistrate shall specifically describe the locations that the defendant has been ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.

(d) Before imposing a condition described by Subsection (b)(3), a magistrate must provide to an alleged victim information regarding:

(1) the victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation;

(2) the manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;

(3) any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;

(4) any sanctions that the court may impose on the defendant for violating a condition of bond imposed under this article;

(5) the procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails;

(6) community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of family violence; and

(7) the fact that the victim's communications with the court concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

(e) In addition to the information described by Subsection (d), a magistrate shall provide to an alleged victim who participates in a global positioning monitoring system under this article the name and telephone number of an appropriate person employed by a local law enforcement

agency whom the victim may call to request immediate assistance if the defendant violates a condition of bond imposed under this article.

(f) In determining whether to order a defendant's participation in a global positioning monitoring system under this article, the magistrate shall consider the likelihood that the defendant's participation will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial.

(g) An alleged victim may request that the magistrate terminate the victim's participation in a global positioning monitoring system at any time. The magistrate may not impose sanctions on the victim for requesting termination of the victim's participation in or refusing to participate in a global positioning monitoring system under this article.

(h) If the magistrate determines that a defendant is indigent, the magistrate may, based on a sliding scale established by local rule, require the defendant to pay costs under Subsection (b)(2) or (3) in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the defendant or providing the victim with an electronic receptor device.

(i) If an indigent defendant pays to an entity that operates a global positioning monitoring system the partial amount ordered by a magistrate under Subsection (h), the entity shall accept the partial amount as payment in full. The county in which the magistrate who enters an order under Subsection (h) is located is not responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent defendant.

(j) A magistrate that imposes a condition described by Subsection (b)(1) or (2) shall order the entity that operates the global positioning monitoring system to notify the court and the appropriate local law enforcement agency if a defendant violates a condition of bond imposed under this article.

(k) A magistrate that imposes a condition described by Subsection (b) may only allow or require the defendant to execute or be released under a type of bond that is authorized by this chapter.

(l) This article does not limit the authority of a magistrate to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

Commentary by Karen J. Roe

Source: HB 1506

Effective Date: September 1, 2009

Applicability: Applies to bonds issued in connection with offenses that occur on or after the effective date.

Summary of Changes: This addition to the Code of Criminal Procedure that authorizes bail allows a magistrate in a case involving family violence to require a defendant's participation in global positioning monitoring system as a

condition of bond, to pay the costs associated with such participation, and to refrain from going to or near places frequented by the victim. It requires notice to a victim about participation in global positioning system and provides other protections. Costs may be required based upon need and sliding scale established by local rule.

Code of Criminal Procedure, Art. 21.31. TESTING FOR AIDS AND CERTAIN OTHER DISEASES.

(a) A person who is indicted for or who waives indictment for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court on the court's own motion or on the request of the victim of the alleged offense, undergo a standard diagnostic test approved by the United States Food and Drug Administration for human immunodeficiency virus (HIV) infection and other sexually transmitted diseases ~~[medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense]~~. 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. On request of the victim of the alleged offense, the court shall order the defendant to undergo the test not later than 48 hours after an indictment for the offense is presented against the defendant or the defendant waives indictment. Except as provided by Subsection (b-1), the ~~[The]~~ court may require a defendant previously required under this article to undergo a diagnostic ~~[medical procedure or]~~ test on indictment for an offense to undergo a subsequent ~~[medical procedure or]~~ test only after ~~[following]~~ conviction of the offense. A ~~[The]~~ person performing a ~~[the procedure or]~~ test under this subsection shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test results ~~[result]~~ to the victim of the alleged offense and to the defendant.

(a-1) If the victim requests the testing of the defendant and a law enforcement agency is unable to locate the defendant during the 48-hour period allowed for that testing under Subsection (a), the running of the 48-hour period is tolled until the law enforcement agency locates the defendant and the defendant is present in the jurisdiction.

(b) The court shall order a person who is charged with an offense under Section 22.11, Penal Code, to undergo in the manner provided by Subsection (a) a diagnostic ~~[medical procedure or]~~ test designed to show or help show whether the person has HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code. The person charged with the offense shall pay the costs of testing under this subsection.

(b-1) If the results of a diagnostic test conducted under Subsection (a) or (b) are positive for HIV, the court shall order the defendant to undergo any necessary additional testing within a reasonable time after the test results are released.

(c) The state may not use the fact that a ~~[medical procedure or]~~ test was performed on a person under Subsection (a) or use the results of a ~~[procedure or]~~ test conducted under Subsection (a) in any criminal proceeding arising out of the alleged offense.

Commentary by Karen J. Roe

Source: HB 1985

Effective Date: September 1, 2009

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Existing law related to testing for sexually transmitted diseases requires a defendant indicted for a sex crime to undergo diagnostic testing for HIV or other sexually transmitted diseases within 48 hours of indictment or waiver of indictment. This amendment requires courts to order this testing at the request of the victim.

Article 21.31(a-1) adds a provision that tolls the requirement that a defendant be tested within 48 hours when the defendant cannot be located.

The change to Article 21.31(b-1) requires additional testing of a defendant whose initial test results are positive.

Code of Criminal Procedure, Art. 29.14. CONSIDERATION OF IMPACT ON CERTAIN VICTIMS.

(a) In this article, "victim" means the victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence as defined by Section 71.004, Family Code.

(b) On request by the attorney representing the state, a court that considers a motion for continuance on the part of the defendant shall also consider the impact of the continuance on the victim. On request by the attorney representing the state or by counsel for the defendant, the court shall state on the record the reason for granting or denying the continuance.

Commentary by Karen J. Roe

Source: HB 2236

Effective Date: September 1, 2009

Applicability: Applies to criminal proceedings that commence on or after the effective date.

Summary of Changes: This new provision requires the court to consider the impact of a continuance upon a child victim. Upon request of either party, the court must state the reason for granting or denying the continuance on the record.

Code of Criminal Procedure, Art. 38.072. HEARSAY STATEMENT OF CHILD VICTIM.

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child ~~[42 years of age or]~~ younger than 14 years of age:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct);~~or~~

(3) Section 43.25 (Sexual Performance by a Child); or

(4) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), or (3) of this section.

Commentary by Chris Cowan

Source: HB 2846

Effective Date: September 1, 2009

Applicability: Criminal proceedings commenced on or after the effective date.

Summary of Changes: Article 38.072 governs the admissibility of outcry statements. The first person over the age of 18 to whom a child makes a statement about being the victim of sexual/assaultive offenses may testify as to that statement, irrespective of hearsay evidentiary rules that would otherwise prevent the testimony. This amendment expands the use of outcry statements by increasing the age of the child victim who makes the statement to younger than 14 years, rather than 12 years as currently provided in the statute. In addition to the actual offenses currently listed in Article 38.072 for which outcry statements may be admitted, the amendment adds the offense of criminal attempt, if the offense attempted is one currently provided for in the statute, which include those in Chapters 21 and 22, and Sections 25.02 and 43.25.

Code of Criminal Procedure, Art. 38.072. HEARSAY STATEMENT OF CHILD ABUSE VICTIM.

(a) This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) [(4)] were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) [(2)] were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.

Commentary by Chris Cowan

Source: HB 2846

Effective Date: September 1, 2009

Applicability: Applies to criminal proceedings commenced on or after the effective date.

Summary of Changes: Article 38.072 governs the admissibility of outcry statements. The first person over the age of 18 to whom a child makes a statement about being the victim of sexual/assaultive offenses may testify as to that statement, irrespective of hearsay evidentiary rules that would otherwise prevent the testimony. This amendment allows outcry witnesses to testify during the sentencing phase of a trial about extraneous offenses involving a child against whom a crime was committed by the defendant, provided that the testimony is otherwise admissible under evidentiary rules.

Code of Criminal Procedure, Art. 42.01. JUDGMENT.

Sec. 1. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment shall reflect:

1. The title and number of the case;
2. That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or, where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;
3. The plea or pleas of the defendant to the offense charged;
4. Whether the case was tried before a jury or a jury was waived;
5. The submission of the evidence, if any;
6. In cases tried before a jury that the jury was charged by the court;
7. The verdict or verdicts of the jury or the finding or findings of the court;
8. In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;
9. In the event of conviction where death or any punishment is assessed that the defendant be sen-

tenced to death, a term of confinement or community supervision, or to pay a fine, as the case may be;

10. In the event of conviction where the imposition of sentence is suspended and the defendant is placed on community supervision, setting forth the punishment assessed, the length of community supervision, and the conditions of community supervision;

11. In the event of acquittal that the defendant be discharged;

12. The county and court in which the case was tried and, if there was a change of venue in the case, the name of the county in which the prosecution was originated;

13. The offense or offenses for which the defendant was convicted;

14. The date of the offense or offenses and degree of offense for which the defendant was convicted;

15. The term of sentence;

16. The date judgment is entered;

17. The date sentence is imposed;

18. The date sentence is to commence and any credit for time served;

19. The terms of any order entered pursuant to Article 42.08 of this code that the defendant's sentence is to run cumulatively or concurrently with another sentence or sentences;

20. The terms of any plea bargain;

21. Affirmative findings entered pursuant to Subdivision (2) of Subsection (a) of Section 3g of Article 42.12 of this code;

22. The terms of any fee payment ordered under Article 42.151 of this code;

23. The defendant's thumbprint taken in accordance with Article 38.33 of this code;

24. In the event that the judge orders the defendant to repay a reward or part of a reward under Articles 37.073 and 42.152 of this code, a statement of the amount of the payment or payments required to be made;

25. In the event that the court orders restitution to be paid to the victim, a statement of the amount of restitution ordered and:

(A) the name and address of a person or agency that will accept and forward restitution payments to the victim ~~[and the permanent mailing address of the victim at the time of the judgment]~~; or

(B) if the court specifically elects to have payments made directly to the crime victim, ~~[determines that the inclusion of] the [victim's] name and permanent address [in the judgment is not in the best interest] of the victim at the time of judgment~~ ~~[- the name and address of a person or agency that will accept and forward restitution payments to the victim]~~;

26. In the event that a presentence investigation is required by Section 9(a), (b), (h), or (i), Article 42.12 of this code, a statement that the presentence investigation was done according to the applicable provision;

27. In the event of conviction of an offense for which registration as a sex offender is required under Chapter 62, a statement that the registration requirement of that chapter applies to the defendant and a statement of the age of the victim of the offense;

28. The defendant's state identification number required by Section 60.052(a)(2), if that number has been assigned at the time of the judgment; and

29. The incident number required by Section 60.052(a)(4), if that number has been assigned at the time of the judgment.

Commentary by Chris Hubner

Source: HB 4464

Effective Date: September 1, 2009

Applicability: Applies to all judgments entered on or after the effective date.

Summary of Changes: Code of Criminal Procedure requirements for a judgment have been amended so a court order does not have to include a victim's name if restitution payments are accepted by a named agent for the victim.

Code of Criminal Procedure, Art. 42.037. RESTITUTION.

(g)(1) The court may require a defendant to make restitution under this article within a specified period or in specified installments. If the court requires the defendant to make restitution in specified installments, in addition to the installment payments, the court may require the defendant to pay a one-time restitution fee of \$12, \$6 of which the court shall retain for costs incurred in collecting the specified installments and \$6 of which the court shall order to be paid to the compensation to victims of crime fund.

(2) The end of the period or the last installment may not be later than:

(A) the end of the period of probation, if probation is ordered;

(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; or

(C) five years after the date of sentencing in any other case.

(3) If the court does not provide otherwise, the defendant shall make restitution immediately.

(4) Except as provided by Subsection (n), the order of restitution must require the defendant to: (i) make restitution directly to the person or agency that will accept and forward restitution payments to the victim or other person eligible for restitution under this article, including the compensation to victims of crime fund; (ii) make restitution directly to the victim or other person eligible for restitution under this article, including the compensation to victims of crime fund; [;] or (iii) [to] deliver the amount or property due as restitution to a community supervision and corrections department for transfer to the victim or person.

Commentary by Chris Hubner

Source: HB 4464

Effective Date: September 1, 2009

Applicability: Applies to orders of restitution related to offenses committed on after the effective date.

Summary of Changes: This amendment clarifies that orders of restitution must require the defendant to make restitution directly to the person or agency that will accept and forward restitution payments to the victim, or other person eligible for restitution, make restitution directly to the victim or other person eligible for restitution or deliver the amount of property due as restitution to a community supervision and corrections department for transfer to the victim or person.

Code of Criminal Procedure, Art. 56.01. DEFINITIONS.

(3) "Victim" means a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another.

Commentary by Karen J. Roe

Source: HB 1372

Effective Date: June 19, 2009

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This amendment expands the current definition of "victim" found in the Code of Criminal Procedure to add victims of human trafficking so they are entitled to rights available to other crime victims.

Code of Criminal Procedure, Art. 56.02. CRIME VICTIMS' RIGHTS.

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole; and

(14) to the extent [except as] provided by Articles 56.06 and 56.065 [Article 56.06(a)], for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the [sexual] assault is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility [within 96 hours of the assault].

Commentary by Karen J. Roe

Source: HB 2626

Effective Date: June 19, 2009

Applicability: Applies to forensic examinations conducted on or after the effective date.

Summary of Changes: This amendment to the current list of crime victim rights adds the right to a forensic medical examination when the sexual assault is reported to law enforcement officials within 96 hours or the examination is otherwise conducted at a health care facility.

Code of Criminal Procedure, Art. 56.02. CRIME VICTIMS' RIGHTS.

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by

the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole; ~~and~~

(14) except as provided by Article 56.06(a), for a victim of a sexual assault, the right to a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault; and

(15) for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004, Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by counsel for the defendant, the court shall state on the record the reason for granting or denying the continuance.

Commentary by Karen J. Roe

Source: HB 2236

Effective Date: September 1, 2009

Applicability: Applies to criminal proceedings that commence on or after the effective date.

Summary of Changes: Article 56.02(a)(15) adds the right to have the court consider the impact of a continuance upon a child victim of an assaultive offense to the existing list of victim's rights found in the Code of Criminal Procedure.

Code of Criminal Procedure, Art. 56.04. VICTIM ASSISTANCE COORDINATOR; CRIME VICTIM LIAISON.

(f) The commissioners court may approve a program in which the crime victim liaison or victim assistance coordinator may offer not more than 10 hours of post-trial psychological counseling for a person who serves as a juror or an alternate juror in a criminal ~~the~~ trial ~~of an offense under Section 19.02, 19.03, 21.11, 22.011, 22.021, 43.05, 43.25, or 43.251, Penal Code,~~ involving graphic evidence or testimony and who requests the post-trial psychological counseling not later than the 180th day after the date on which the jury in the trial is dismissed. The crime victim liaison or victim assistance coordinator may provide the counseling using a provider that assists local criminal justice agencies in providing similar services to victims.

Commentary by Karen J. Roe

Source: HB 608

Effective Date: September 1, 2009

Applicability: Applies to all criminal trials or juvenile adjudication hearings in which a jury is selected on or after the effective date.

Summary of Changes: This provision broadens juror counseling services to all criminal cases in which graphic evidence or testimony is admitted. Previously, counseling services were only available for jurors who heard evidence in a case involving the offenses listed.

Code of Criminal Procedure, Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS.

Commentary by Chris Cowan

Source: HB 2626

Effective Date: June 19, 2009.

Applicability: Chapter heading on or after the effective date.

Summary of Changes: Heading change to reflect that there are now separate provisions for victims who have and who have not (newly enacted Article 56.065) reported the sexual assault relating to the medical examination to law enforcement.

Code of Criminal Procedure, Art. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS NOT REPORTED ASSAULT; COSTS.

(a) In this article:

(1) "Crime laboratory" has the meaning assigned by Article 38.35.

(2) "Department" means the Department of Public Safety.

(3) "Sexual assault examiner" and "sexual assault nurse examiner" have the meanings assigned by Section 420.003, Government Code.

(b) This article applies to the following health care facilities that provide diagnosis or treatment services to victims of sexual assault:

(1) a general or special hospital licensed under Chapter 241, Health and Safety Code;

(2) a general or special hospital owned by this state;

(3) an outpatient clinic; and

(4) a private physician's office.

(c) In accordance with Subchapter B, Chapter 420, Government Code, and except as provided by Subsection (e), a health care facility shall conduct a forensic medical examination of the victim of an alleged sexual assault if:

(1) the victim arrives at the facility within 96 hours after the assault occurred;

(2) the victim consents to the examination; and

(3) at the time of the examination the victim has not reported the assault to a law enforcement agency.

(d) The department shall pay the appropriate fees, as set by attorney general rule, for the forensic portion of the medical examination and for the evidence collection kit if a physician, sexual assault examiner, or sexual assault nurse examiner conducts the forensic portion of the examination within 96 hours after the alleged sexual assault occurred. The attorney general shall reimburse the department for fees paid under this subsection.

(e) If a health care facility does not provide diagnosis or treatment services to victims of sexual assault, the facility shall refer a victim seeking a forensic medical examination under Subsection (c) to a health care facility that provides services to those victims.

(f) The department may develop procedures regarding the submission or collection of additional evidence of the alleged sexual assault other than through an examination as described by this article.

(g) The department shall develop procedures for the transfer and preservation of evidence collected under this article to a crime laboratory or other suitable location designated by the public safety director of the department. The receiving entity shall preserve the evidence until the earlier of:

(1) the second anniversary of the date the evidence was collected; or

(2) the date the victim or a legal representative of the victim signs a written consent to release the evidence.

(h) The victim may not be required to:

(1) participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination under this article; or

(2) pay for the forensic portion of the medical examination or for the evidence collection kit.

(i) The attorney general and the department each shall adopt rules as necessary to implement this article.

Commentary by Karen J. Roe

Source: HB 2626

Effective Date: June 19, 2009

Applicability: Applies to forensic examinations conducted on or after the effective date.

Summary of Changes: This new provision authorizes medical facilities to provide forensic examinations to victims of sexual assault who have not reported the offense to law enforcement if treatment is sought within 96 hours of the offense. It requires the Department of Public Safety to develop procedures for the examination process and the preservation of evidence. A victim who obtains an examination under this provision cannot be required to partici-

pate in prosecution in return for receiving the examination or be forced to pay for the cost of the examination.

Code of Criminal Procedure, Art. 56.11. NOTIFICATION TO VICTIM OR WITNESS OF RELEASE OR ESCAPE OF DEFENDANT.

(a-1) The Texas Department of Criminal Justice, in the case of an inmate released on parole or to mandatory supervision following a term of imprisonment for an offense described by Subsection (c), or a community supervision and corrections department supervising a defendant, in the case of a defendant convicted of an offense described by Subsection (c) and subsequently released on community supervision, shall notify a victim or witness described by Subsection (a) whenever the inmate or defendant, if subject to electronic monitoring as a condition of release, ceases to be electronically monitored.

(d) It is the responsibility of a victim or witness desiring notification of the defendant's release to provide the Texas Department of Criminal Justice, ~~or~~ the sheriff, or the community supervision and corrections department supervising the defendant, as appropriate, with the e-mail address, mailing address, and telephone number of the victim, witness, or other person through whom the victim or witness may be contacted and to notify the appropriate department or the sheriff of any change of address or telephone number of the victim, witness, or other person. Information obtained and maintained by the Texas Department of Criminal Justice, ~~or~~ a sheriff, or a community supervision and corrections department under this subsection is privileged and confidential.

(e) The Texas Department of Criminal Justice, ~~or~~ the sheriff, or the community supervision and corrections department supervising the defendant, as appropriate:

(1) shall make a reasonable attempt to give any notice required by Subsection (a) or (a-1):

(A) not later than the 30th day before the date the defendant completes the sentence and is released or ceases to be electronically monitored as a condition of release; or

(B) immediately if the defendant escapes from the correctional facility; and

(2) may give any notice required by Subsection (a) or (a-1) by e-mail, if possible.

(f) An attempt by the Texas Department of Criminal Justice, ~~or~~ the sheriff, or the community supervision and corrections department supervising the defendant to give notice to a victim or witness at the victim's or witness's last known mailing address or, if notice via e-mail is possible, last known e-mail address, as shown on the records of the appropriate department or agency, constitutes a reasonable attempt to give notice under this article.

Commentary by Karen J. Roe

Source: HB 1003

Effective Date: September 1, 2009

Applicability: Applies to notices regarding inmates or defendants ordered to submit to electronic monitoring on or after the effective date.

Summary of Changes: This amendment to existing notification laws requires the Texas Department of Criminal Justice or the community supervision and corrections department to notify the victims of assaultive offenses when a defendant on parole or mandatory supervision is released from conditions of electronic monitoring.

Code of Criminal Procedure, Art. 56.37. TIME FOR FILING.

(e) For a claim that is based on criminally injurious conduct in violation of Chapter 19, Penal Code, the claimant must file an application not later than three years after the date the identity of the victim is established by a law enforcement agency.

Commentary by Karen J. Roe

Source: HB 2916, SB 808 (identical changes made to same provision by both bills)

Effective Date: June 19, 2009

Applicability: Applies to claims for compensation by victims identified by law enforcement on or after January 1, 2009.

Summary of Changes: Article 56.37(e) is added to current provisions governing the time for filing claims for crime victim compensation to extend the time for filing claims based on murder, capital murder, manslaughter or criminally negligent homicide from the three-year period allowed for other offenses to three years after a victim's identity is established.

Code of Criminal Procedure, Art. 56.61. COMPENSATION FOR CERTAIN CRIMINALLY INJURIOUS CONDUCT PROHIBITED; EXCEPTION.

(a) Except as provided by Subsection (b), the ~~The~~ attorney general may not award compensation for pecuniary ~~economic~~ loss arising from criminally injurious conduct that occurred before January 1, 1980.

(b) The attorney general may award compensation for pecuniary loss arising from criminally injurious conduct that occurred before January 1, 1980, if:

(1) the conduct was in violation of Chapter 19, Penal Code;

(2) the identity of the victim is established by a law enforcement agency on or after January 1, 2009, and the pecuniary loss was incurred with respect to the victim's funeral or burial on or after that date; and

(3) the claimant files the application for compensation within the limitations period provided by Article 56.37(e).

Commentary by Karen J. Roe

Source: HB 2916, SB 808 (identical changes made to same provision by both bills)

Effective Date: June 19, 2009

Applicability: Applies to claims for compensation by victims identified by law enforcement on or after January 1, 2009.

Summary of Changes: Article 56.61(b) is added to authorize victim compensation for funeral or burial costs in connection with criminally injurious conduct that occurred before January 1, 1980 for homicide offenses in which the identity of the victim is not established until after January 1, 2009.

Code of Criminal Procedure, Ch. 57C. SEALING OF COURT RECORDS CONTAINING MEDICAL INFORMATION FOR CERTAIN CHILD VICTIMS

Art. 57C.01. DEFINITIONS. In this chapter:

(1) "Child" means a person who is younger than 18 years of age.

(2) "Medical records" means any information used or generated by health care providers, including records relating to emergency room treatment, rehabilitation therapy, or counseling.

Art. 57C.02. SEALING OF RECORDS. (a) Except as provided by Subsection (c), on a motion filed by a person described by Subsection (b), the court shall seal the medical records of a child who is a victim of an offense described by Section 1, Article 38.071.

(b) A motion under this article may be filed on the court's own motion or by:

(1) the attorney representing the state;

(2) the defendant; or

(3) the parent or guardian of the victim or, if the victim is no longer a child, the victim.

(c) The court is not required to seal the records described by this article on a finding of good cause after a hearing held under Subsection (d).

(d) The court shall grant the motion without a hearing unless the motion is contested not later than the seventh day after the date the motion is filed.

(e) Medical records sealed under this chapter are not open for inspection by any person except:

(1) on further order of the court after:

(A) notice to a parent or guardian of the victim whose information is sealed or, if the victim is no longer a child, notice to the victim; and

(B) a finding of good cause;

(2) in connection with a criminal or civil proceeding as otherwise provided by law; or

(3) on request of a parent or legal guardian of the victim whose information is being sealed or, if the victim is no longer a child, on request of the victim.

(f) A clerk of court is not liable for any failure to seal medical records after a motion under this chapter is granted, except on a showing of bad faith.

Commentary by Karen J. Roe

Source: HB 4136

Effective Date: June 19, 2009

Applicability: Applies to Motions to Seal filed on or after the effective date.

Summary of Changes: Article 57C is added to the Code of Criminal Procedure to allow courts to seal medical records in cases involving assaultive or sexual offenses when the victim is younger than 18 years of age.

Article 57C.02(b) allows a request for sealing of medical records for a child victim to be made by a prosecutor, the defendant, a parent or guardian of the victim, or the victim if over the age of 18.

Sections (c) and (d) require a court to seal the medical records when a request to do so is not contested within seven days. If a request to seal records is contested, a court has the discretion to deny the request to seal records, upon a showing of good cause.

Article 57C.02(e) defines the circumstances under which the records can be viewed after sealing.

Family Code

Family Code, Sec. 57.003. DUTIES OF JUVENILE BOARD AND VICTIM ASSISTANCE COORDINATOR.

(g) The juvenile board, with the approval of the commissioners court of the county, may approve a program in which the victim assistance coordinator may offer not more than 10 hours of post-trial psychological counseling for a person who serves as a juror or an alternate juror in an adjudication hearing involving graphic evidence or testimony and who requests the post-trial psychological counseling not later than the 180th day after the date on which the jury in the adjudication hearing is dismissed. The victim assistance coordinator may provide the counseling using a provider that assists local juvenile justice agencies in providing similar services to victims.

Commentary by Karen J. Roe

Source: HB 608

Effective Date: September 1, 2009

Applicability: Applies to all juvenile adjudication hearings in which a jury is selected on or after the effective date if program is approved by the commissioners court.

Summary of Changes: Section 57.003(g) is added to authorize local juvenile boards and commissioners courts to approve jury counseling services to juvenile adjudication hearings in which graphic evidence or testimony is admitted. This provision also reflects a change in the heading of

the section to show the additional duties of the victim assistance coordinator.

Government Code

Government Code, Sec. 531.382. VICTIM ASSISTANCE PROGRAM ESTABLISHED.

The commission shall develop and implement a program designed to assist domestic victims, including victims who are children, in accessing necessary services. The program must consist of at least the following components:

(1) a searchable database of assistance programs for domestic victims, including programs that provide mental health services, other health services, services to meet victims' basic needs, case management services, and any other services the commission considers appropriate, that may be used to match victims with appropriate resources;

(2) the grant program described by Section 531.383;

(3) recommended training programs for judges, prosecutors, and law enforcement personnel; and

(4) an outreach initiative to ensure that victims, judges, prosecutors, and law enforcement personnel are aware of the availability of services through the program.

Commentary by Karen J. Roe

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Applies to all victim assistance programs on or after the effective date. This act does not provide an appropriation.

Summary of Changes: The Health and Human Services Commission enabling legislation is amended to require it to establish a victim assistance program for domestic victims, defined as citizens and permanent legal residents of the United States. The assistance program includes a searchable database of services, a grant program, recommended training for court participants, and an outreach initiative.

Government Code, Sec. 531.383. GRANT PROGRAM.

(a) Subject to available funds, the commission shall establish a grant program to award grants to public and nonprofit organizations that provide assistance to domestic victims, including organizations that provide public awareness activities, community outreach and training, victim identification services, and legal services.

(b) To apply for a grant under this section, an applicant must submit an application in the form and manner prescribed by the commission. An applicant must describe in the application the services the applicant intends to provide to domestic victims if the grant is awarded.

(c) In awarding grants under this section, the commission shall give preference to organizations that have experience in successfully providing the types of services for which the grants are awarded.

(d) A grant recipient shall provide reports as required by the commission regarding the use of grant funds.

(e) Not later than December 1 of each even-numbered year, the commission shall submit a report to the legislature summarizing the activities, funding, and outcomes of programs awarded a grant under this section and providing recommendations regarding the grant program.

Commentary by Karen J. Roe

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Subject to available funds, applies to all victim assistance programs and services on or after the effective date.

Summary of Changes: This new provision authorizes a grant program for public and non-profit service providers focusing on the needs of domestic victims, to be managed by the Health and Human Services Commission.

Government Code, Sec. 531.384. TRAINING PROGRAMS.

The commission, with assistance from the Office of Court Administration of the Texas Judicial System, the Department of Public Safety, and local law enforcement agencies, shall create training programs designed to increase the awareness of judges, prosecutors, and law enforcement personnel of the needs of domestic victims, the availability of services under this subchapter, the database of services described by Section 531.382, and potential funding sources for those services.

Commentary by Karen J. Roe

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Applies to training needs on or after the effective date or availability.

Summary of Changes: The Health and Human Services Commission must create a training program for court and law enforcement personnel to increase awareness of the needs of domestic victims and the services available to them.

Government Code, Sec. 531.385. FUNDING.

(a) The commission may use appropriated funds and may accept gifts, grants, and donations from any sources for purposes of the victim assistance program established under this subchapter.

(b) The commission shall conduct a study regarding additional funding strategies for the victim assistance program. In conducting the study, the commission, in cooperation with appropriate governmental entities, shall

identify appropriate revenue streams, which may include revenue derived from:

(1) revenue streams similar to those used to fund crime victims' compensation under Subchapter B, Chapter 56, Code of Criminal Procedure;

(2) imposing additional court costs on defendants on conviction of certain offenses;

(3) imposing additional fees on the filing of civil cases;

(4) acquiring from law enforcement agencies the proceeds from assets seized or forfeited under state or federal law; and

(5) any other source identified by the commission.

(c) The commission shall submit a report regarding the results of the study conducted under Subsection (b) to the 82nd Legislature not later than December 1, 2010. The report must include the commission's findings regarding appropriate revenue streams for the victim assistance program, proposed legislation necessary to receive the revenue for that purpose, and proposed legislation regarding the establishment of a dedicated account to which the revenue may be credited.

(d) This subsection and Subsections (b) and (c) expire January 1, 2011.

Commentary by Karen J. Roe

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Report requirements are limited to the study, which is due December 1, 2010.

Summary of Changes: The Health and Human Services Commission may fund the assistance program for domestic victims through appropriated funds or gifts. The agency must conduct a study of future funding sources and report its findings to the Legislature.

Health and Safety Code

Health and Safety Code, Sec. 323.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES.

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1) a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested [approved] by a law enforcement agency under Article 56.06, Code of Criminal Procedure, or is conducted under Article 56.065, Code of Criminal Procedure;

(2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3) access to a sexual assault program advocate, if available, as provided by Article 56.045, Code of Criminal Procedure;

(4) the information form required by Section 323.005;

(5) a private treatment room, if available;

(6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and

(7) the name and telephone number of the nearest sexual assault crisis center.

Commentary by Karen J. Roe

Source: HB 2626

Effective Date: June 19, 2009

Applicability: Applies to forensic examinations conducted on or after the effective date.

Summary of Changes: This provision amends the current law about emergency services for survivors of sexual assault to require health care facilities to conduct a forensic examination for a victim upon request. It eliminates the previous requirement of law enforcement notification or approval prior to the examination.

Health and Safety Code, Sec. 323.005. INFORMATION FORM.

(a) The department shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications; and

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation, including:

(A) a statement that:

(i) a law enforcement agency will pay for the forensic portion of an [the] examination requested by the agency under Article 56.06, Code of Criminal Procedure, and for the evidence collection kit; or

(ii) the Department of Public Safety will pay the appropriate fees for the forensic portion of an examination conducted under Article 56.065, Code of Criminal Procedure, and for the evidence collection kit; and

(B) reimbursement information for the medical portion of the examination;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide; and

(7) information regarding postexposure prophylaxis for HIV infection.

Commentary by Karen J. Roe

Source: HB 2626

Effective Date: June 19, 2009

Applicability: Applies to forensic examinations conducted on or after the effective date.

Summary of Changes: Section 323.005(a)(4) requires the addition of a statement that the Department of Public Safety will pay for the appropriate fees for forensic examinations and evidence collection kits for survivors that have not reported the assault to law enforcement to existing crime victim compensation information forms.

Property Code

Property Code, Sec. 92.0161. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN SEX OFFENSES.

(a) In this section, "occupant" has the meaning assigned by Section 92.016.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term after the tenant complies with Subsection (c).

(c) If the tenant is a victim of sexual assault or a parent or guardian of a victim of sexual assault under Section 22.011, Penal Code, aggravated sexual assault under Section 22.021, Penal Code, or continuous sexual abuse of a child under Section 21.02, Penal Code, that takes place during the preceding six-month period on the premises or at any dwelling on the premises, the tenant shall provide to the landlord or the landlord's agent a copy of:

(1) documentation of the assault or abuse of the victim from a licensed health care services provider who examined the victim;

(2) documentation of the assault or abuse of the victim from a licensed mental health services provider who examined or evaluated the victim;

(3) documentation of the assault or abuse of the victim from an individual authorized under Chapter 420, Government Code, who provided services to the victim; or

(4) documentation of a protective order issued under Chapter 7A, Code of Criminal Procedure.

(d) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) the tenant provides a copy of the relevant documentation described by Subsection (c) to the landlord;

(2) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

(3) the 30th day after the date the tenant provided notice under Subdivision (2) expires; and

(4) the tenant vacates the dwelling.

(e) Except as provided by Subsection (g), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(f) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal to the amount of one month's rent plus \$500, and attorney's fees.

(g) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving sexual assault or sexual abuse."

(h) A tenant may not waive a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this chapter.

Commentary by Karen J. Roe

Source: SB 83

Effective Date: Effective January 1, 2010

Applicability: Applies to a lease that is executed or renewed on or after the effective date.

Summary of Changes: This section is added to the Property Code to allow sexual assault victims to move out of rental property without penalty or liability for future rent when the assault occurred on the premises. A victim must provide a landlord with documentation of the assault and 30 days notice of intent to vacate the dwelling.

Property Code, Sec. 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING FAMILY VIOLENCE.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under

the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c) and ~~[obtains and]~~ provides the landlord or the landlord's agent a copy of one or more of the following orders protecting the tenant or an occupant from family violence ~~[committed by a cotenant or occupant of the dwelling]~~:

(1) a temporary injunction issued under Subchapter F, Chapter 6, Family Code; ~~[or]~~

(2) a temporary ex parte order issued under Chapter 83, Family Code; or

(3) a protective order issued under Chapter 85, Family Code.

(c) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) a judge signs an order described by Subsection (b);

(2) the tenant provides ~~[has delivered]~~ a copy of the relevant documentation described by Subsection (b) [order] to the landlord; ~~[and]~~

(3) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

(4) the 30th day after the date the tenant provided notice under Subdivision (3) expires; and

(5) the tenant vacates ~~[has vacated]~~ the dwelling.

(c-1) If the family violence is committed by a cotenant or occupant of the dwelling, a tenant may exercise the right to terminate the lease under the procedures provided by Subsection (b)(1) or (3) and Subsection (c), except that the tenant is not required to provide the notice described by Subsection (c)(3).

Commentary by Karen J. Roe

Source: SB 83

Effective Date: Effective January 1, 2010

Applicability: Applies to a lease that is executed or renewed on or after the effective date.

Summary of Changes: This amendment to the section of the Property Code that allows a tenant to vacate a rental property without liability for future rent is expanded to allow this procedure in cases in which a protective order has been obtained based on a clear and present danger of family violence.

Section 92.016(c) clarifies the requirements about notice that must be provided by the tenant.

Section 92.061(c-1) gives a tenant the right to vacate a dwelling without giving 30 days notice if the family violence is committed by someone who lives in the residence.

8. Open Government Legislation

Code of Criminal Procedure

Code of Criminal Procedure, Art. 38.02. EFFECT UNDER PUBLIC INFORMATION LAW OF RELEASE OF CERTAIN INFORMATION.

A release of information by an attorney representing the state to defense counsel for a purpose relating to the pending or reasonably anticipated prosecution of a criminal case is not considered a voluntary release of information to the public for purposes of Section 552.007, Government Code, and does not waive the right to assert in the future that the information is excepted from required disclosure under Chapter 552, Government Code.

Commentary by Nydia D. Thomas

Source: HB 1360

Effective Date: June 19, 2009

Applicability: Releases of information on or after June 19, 2009.

Summary of Changes: Criminal files maintained by a county or district attorney's office often contain reports that might reveal sensitive information, including the names of witnesses and others assisting the investigation and prosecution of a criminal case. Prosecutors have been reluctant to voluntarily release criminal case records to defense counsel in order to avoid the unintended consequences of Section 552.007 of the Government Code (Voluntary Disclosure of Certain Information When Disclosure Not Required) which would have the effect of making the shared information subject to public disclosure.

House Bill 1360 adds Article 38.02 of the Code of Criminal Procedure to resolve that the release of information related to the pending or reasonably anticipated prosecution of a criminal case by an attorney for the state to defense counsel would not constitute a voluntary release of information under the Public Information Act. It further clarifies that a release under this provision does not waive a future right to assert that the information is excepted from disclosure.

Local Government Code

Local Government Code, Sec. 205.010. SECURITY BREACH NOTIFICATION BY LOCAL GOVERNMENT.

(a) In this section:

(1) "Breach of system security" has the meaning assigned by Section 521.053, Business & Commerce Code.

(2) "Sensitive personal information" has the meaning assigned by Section 521.002, Business & Commerce Code.

(b) A local government that owns, licenses, or maintains computerized data that includes sensitive personal information shall comply, in the event of a breach of system security, with the notification requirements of Section 521.053, Business & Commerce Code, to the same extent as a person who conducts business in this state.

Commentary by Nydia D. Thomas

Source: HB 2004

Effective Date: September 1, 2009 (Sections 521.053 and 521.002 of the Business & Commerce Code went into effect on April 1, 2009).

Applicability: Security breaches occurring on or after September 1, 2009. Security breaches prior to September 1, 2009 are governed by the law in effect on the date the breach occurred.

Summary of Changes: This bill amends Section 205.010 of the Local Government Code to require a local governmental entity or a governing body such as a county juvenile board and associated juvenile probation departments that maintain computerized data to notify individuals about whom information is gathered that the security, confidentiality or integrity of the system has been breached. Many state and local governments own, license, or maintain databases that may contain personal or protected health information.

This amendment is intended to address the compromise of, or unauthorized access to, sensitive personal information such as name, social security number, driver's license, health and financial information, fingerprints and other unique biometric data. Sections 521.053 and 521.002 of the Business & Commerce Code define a "breach of security" and "sensitive personal information", respectively, as well as outline the statutory procedures which must be followed by a local government to provide immediate and timely written or electronic notification to affected persons. An identical amendment applicable to state agencies, Section 2054.1125 of the Government Code, was enacted this session. As a result of these amendments, state and local governments must adhere to the same legislatively mandated notification procedures that are required of business and commercial entities in Texas.

Government Code

Government Code, Sec. 552.024. ELECTING TO DISCLOSE ADDRESS AND TELEPHONE INFORMATION.

(c) If the employee or official or former employee or official chooses not to allow public access to the information:

(1) [§] the information is protected under Subchapter C; and

(2) the governmental body may redact the information from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(c-1) If, under Subsection (c)(2), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(c-2) A governmental body that redacts or withholds information under Subsection (c)(2) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

Commentary by Nydia D. Thomas

Source: SB 1068

Effective Date: June 4, 2009

Applicability: Requests on or after June 4, 2009.

Summary of Changes: The Public Information Act (Act) excepts from disclosure personal information pertaining to current and former officials or public employees of a governmental body such as the home address, home telephone number, social security number or other information that reveals whether the person has family members. Under the Act, Section 552.024 of the Government Code requires an employee to execute, within fourteen (14) days of employment or taking office, a signed writing that prohibits access to this information by the public. Although the employee or official may have made this election under the statute, public information officers were, under prior law, required to request a decision from the Office of the Attorney General (OAG) before withholding or redacting personal or identifying information.

Senate Bill 1068 amends Section 552.024 by adding Subsections (c-1) and (c-2) to allow information to be redacted or withheld without first requesting a letter ruling from the attorney general. A requestor that objects to the redaction or withholding of information will be entitled to seek a decision from the attorney general. A governmental body that redacts or withholds information must complete a form (to be developed by the OAG) that provides: 1) a description of the information redacted or withheld; 2) a citation to Section 552.024; and 3) instructions on how the requestor may seek a decision from the attorney general. In addition to the requirements set forth in the amendment, procedures and deadlines applicable to the requestor and governmental body will be established by the attorney general. This amendment allows the requestor or governmental body to appeal a decision of the attorney general to the Travis County District Court.

Government Code, Sec. 552.1175. CONFIDENTIALITY OF ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR A PROSECUTOR'S OFFICE.

(f) A governmental body may redact information that must be withheld under Subsection (b) from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(g) If, under Subsection (f), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this

subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(h) A governmental body that redacts or withholds information under Subsection (f) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

Commentary by Nydia D. Thomas

Source: SB 1068

Effective Date: June 4, 2009

Applicability: Requests on or after June 4, 2009.

Summary of Changes: Section 552.1175 of the Government Code applies specifically to the personal information maintained by a governmental body that reveals the home address, home telephone number, social security number and family information belonging to a peace officer, county jailer, security officer or an employee of a prosecutor's office, a community supervision and corrections department or the Texas Department of Criminal Justice. The records pertaining to juvenile probation and supervision officers are not protected under this statute. Other individuals listed in this section, may complete a form and present evidence of his or her status as a peace officer or other named official to the governmental body in order to restrict the disclosure of certain personal information. Although the individual elected to shield information under the statute, public information officers were, under prior law, required to request a decision from the Office of the Attorney General (OAG) before withholding or redacting personal or identifying information.

Senate Bill 1068 amends Section 552.1175 by adding Subsections (f), (g) and (h) to allow information to be redacted or withheld without first requesting a letter ruling from the attorney general. A requestor that objects to the redaction or withholding of information would be entitled to seek a decision from the attorney general. A governmental body that redacts or withholds information must complete a form (to be developed by the OAG) that

provides: 1) a description of the information redacted or withheld; 2) a citation to Section 552.1175; and 3) instructions on how the requestor may seek a decision from the attorney general. In addition to the requirements set forth in this amendment, procedures and deadlines applicable to the requestor and governmental body will be established by the attorney general. This amendment authorizes the requestor or governmental body to appeal a decision of the attorney general to Travis County District Court.

Government Code, Sec. 552.151. EXCEPTION: PUBLIC EMPLOYEE OR OFFICER PERSONAL SAFETY.

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Commentary by Nydia D. Thomas

Source: SB 1068

Effective Date: June 4, 2009

Applicability: Requests on or after June 4, 2009.

Summary of Changes: Section 552.151 establishes a new exception under the Public Information Act. As amended, a governmental body may raise Section 552.151 of the Government Code as an exception to disclosure in order to prevent the release of information pertaining to a public employee or officer if the possibility exists that the individual may be subjected to a substantial threat of physical harm as a result of its release.

Government Code, Sec. 552.263. BOND FOR PAYMENT OF COSTS OR CASH PREPAYMENT FOR PREPARATION OF COPY OF PUBLIC INFORMATION.

(a) An officer for public information or the officer's agent may require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if:

(1) the officer for public information or the officer's agent has provided the requestor with the ~~required~~ written itemized statement required under Section 552.2615 detailing the estimated charge for providing the copy; and

(2) ~~if~~ the charge for providing the copy of the public information specifically requested by the requestor is estimated by the governmental body to exceed:

(A) ~~(4)~~ \$100, if the governmental body has more than 15 full-time employees; or

(B) ~~(2)~~ \$50, if the governmental body has fewer than 16 full-time employees.

Commentary by Nydia D. Thomas

Source: SB 1182

Effective Date: September 1, 2009 [Section 2 of this bill (not discussed here) takes effect on September 1, 2010.]

Applicability: Requests on or after September 1, 2009.

Summary of Changes: As amended, Section 552.263 of the Government Code authorizes a governmental body to require a deposit or bond for payment of the cost of providing public information if the requestor has been provided with a written itemized cost estimate required under Section 552.2615 of the Government Code and the charges will exceed the amount of \$100 or \$50.00. The authorized deposit threshold is determined by the number of full-time employees of the governmental body.

Government Code, Sec. 552.274. REPORTS BY ATTORNEY GENERAL AND STATE AGENCIES ON COST OF COPIES.

(a) The attorney general shall:

(1) biennially update a report prepared by the attorney general about the charges made by state agencies for providing copies of public information; and

(2) provide a copy of the updated report on the attorney general's open records page on the Internet not later than March 1 of each even-numbered year.

Commentary by Nydia D. Thomas

Source: SB 1182

Effective Date: September 1, 2009

Applicability: Requests on or after September 1, 2009.

Summary of Changes: Each governmental body subject to the Public Information Act must adhere to the administrative rules adopted by the Office of the Attorney General contained in Title 1 Texas Administrative Code, Chapter 70 that prescribe the costs and procedures for providing information to the public. As amended, Section 552.274 of the Government Code requires the attorney general to prepare a report every two years that details the charges made by state agencies for providing copies of public information. The statute requires the report to be made available on the website maintained by the Office of the Attorney General not later than March 1st of each even number year.

Government Code, Sec. 552.301. REQUEST FOR ATTORNEY GENERAL OPINION.

(e-1) A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Commentary by Nydia D. Thomas

Source: SB 1182

Effective Date: September 1, 2009

Applicability: Requests on or after September 1, 2009

Summary of Changes: This bill amends Subsection 552.301(e-1) of the Government Code to require a governmental body that submits a written brief or comments in support of exceptions to disclosure under the Public Information Act to send a copy of the brief to the requestor not later than the 15th business day after receiving the written request.

Government Code, Sec. 2054.1125. SECURITY BREACH NOTIFICATION BY STATE AGENCY.

(a) In this section:

(1) "Breach of system security" has the meaning assigned by Section 521.053, Business & Commerce Code.

(2) "Sensitive personal information" has the meaning assigned by Section 521.002, Business & Commerce Code.

(b) A state agency that owns, licenses, or maintains computerized data that includes sensitive personal information shall comply, in the event of a breach of system security, with the notification requirements of Section 521.053, Business & Commerce Code, to the same extent as a person who conducts business in this state.

Commentary by Nydia D. Thomas

Source: HB 2004

Effective Date: September 1, 2009 (Sections 521.053 and 521.002 of the Business & Commerce Code took effect on April 1, 2009)

Applicability: Security breaches occurring on or after September 1, 2009. Security breaches prior to September 1, 2009 are governed by the law in effect on the date the breach occurred.

Summary of Changes: This bill amends Section 2054.1125 of the Government Code to require state agencies that maintain computerized data to notify individuals about whom information is gathered that the security, confidentiality or integrity of the system has been breached. Many state and local governments own, license, or maintain databases that may contain personal or protected health information. This amendment is intended to address the compromise or unauthorized access to sensitive personal information such as name, social security number, driver's license, health and financial information, fingerprints and other unique biometric data.

Sections 521.053 and 521.002 of the Business and Commerce Code define a "breach of security" and "sensitive personal information", respectively, as well as outline the statutory procedures which must be followed by a state agency to provide immediate and timely written or elec-

tronic notification to affected persons. An identical amendment applicable to local governments in Section 521.010 of the Local Government Code was enacted this session. As a result of these amendments, state and local

governments must adhere to the same legislatively mandated notification procedures that are required of business and commercial entities in Texas.

9. Justice of the Peace and Municipal Court Legislation

Alcoholic Beverage Code

Alcoholic Beverage Code, Sec. 106.03. SALE TO MINORS.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid proof of identification that contains [Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing] a physical description and photograph consistent with the minor's [his] appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency [for the purpose of inducing the person to sell him an alcoholic beverage]. The proof of identification may include a driver's license or identification card issued by the Department of Public Safety, a passport, or a military identification card.

Commentary by Mark Goodner and Katherine Tefft

Source: SB 693

Effective Date: June 19, 2009

Applicability: For trials that commence on or after the effective date regardless of when the offense was committed.

Summary of Changes: Those who sell alcoholic beverages to minors were previously shielded from culpability if the minor displayed an apparently valid Texas driver's license or identification card containing only a physical description of the individual. This amendment changes the contours of the shield by providing that the proof of identification contain a physical description and photograph of the individual and be issued by a governmental agency (including other states and the federal government).

Code of Criminal Procedure

Code of Criminal Procedure, Art. 4.14. JURISDICTION OF MUNICIPAL COURT.

(f) A municipality with a population of 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 Mark Goodner and Katherine Tefft

Source: SB 1504

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: A municipality with a population of 1.9 million or more may now enter into agreements with adjacent municipalities providing for concurrent municipal court jurisdiction over state law offenses committed on or near the boundary (within 200 yards) of the municipalities. Houston is the only municipality with a population of 1.9 million or more; thus, this bill only affects Houston and contiguous municipalities.

Code of Criminal Procedure, Art. 13.045. ON THE BOUNDARIES OF CERTAIN MUNICIPALITIES.

An offense punishable by fine only that is committed on the boundary, or within 200 yards of the boundary, of contiguous municipalities that have entered into an agreement authorized by Article 4.14(f) and Section 29.003(h), Government Code, may be prosecuted in either of those municipalities.

Commentary by Mark Goodner and Katherine Tefft

Source: SB 1504

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: Offenses committed within 200 yards of contiguous municipalities may be prosecuted in either jurisdiction provided that the contiguous municipalities have entered into an agreement relating to the dual jurisdiction.

Code of Criminal Procedure, Art. 14.031. Public Intoxication.

(a) In lieu of arresting an individual who is not a child, as defined by Section 51.02, Family Code, and who commits an offense under Section 49.02, Penal Code, a peace officer may release the [an] individual if:

(1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and

(2) the individual:

(A) is released to the care of an adult who agrees to assume responsibility for the individual; or

(B) verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse, and the program admits the individual for treatment.

(b) A magistrate may release from custody an individual who is not a child, as defined by Section 51.02, Family Code, and who is arrested under Section 49.02, Penal Code, if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (a) of this article.

Commentary by Mark Goodner and Katherine Tefft

Source: HB 558

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: This amendment now specifically prohibits peace officers from releasing a child to a responsible adult in lieu of arrest under Article 14.031 of the Code of Criminal Procedure. Although children may not be released in the same manner adults may be when charged with public intoxication, it should be noted that children may still be released to a parent, guardian, custodian, or other responsible adult under Article 45.058 of the Code of Criminal Procedure.

Code of Criminal Procedure, Art. 45.058. CHILDREN TAKEN INTO CUSTODY.

(a) A child may be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code, if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14 [~~other than public intoxication~~].

(f) A child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14 [~~other than public intoxication~~] may be presented or detained in a detention facility designated by the juvenile court under Section 52.02(a)(3), Family Code, only if:

(1) the child's non-traffic case is transferred to the juvenile court by a justice or municipal court under Section 51.08(b), Family Code; or

(2) the child is referred to the juvenile court by a justice or municipal court for contempt of court under Article 45.050.

(g) Except as provided by Subsection (g-1), a [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 [~~other than public intoxication~~], punishable by fine only.

(g-1) 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 conduct constituting a violation of Section 49.02, Penal Code, only if the officer releases the child to the child's parent, guardian, custodian, or other responsible adult.

Commentary by Mark Goodner and Katherine Tefft

Source: HB 558

Effective Date: September 1, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: Previously, Article 45.058 allowed peace officers to release a child for any fine-only misdemeanor other than public intoxication (although municipal and justice courts did not have jurisdiction over the offense). Now that municipal and justice courts will have jurisdiction over the public intoxication of children, Article 45.058 is amended to allow peace officers to release a child to a parent, guardian, custodian, or other responsible adult for any fine-only offense including public intoxication. It should be noted that while peace officers may not generally issue a citation for public intoxication, the amended 45.058 allows them to issue a field service citation to a child for public intoxication only when they release the child to a parent, guardian, custodian, or other responsible adult.

Government Code

Government Code, Sec. 29.003. JURISDICTION.

(h) A municipality with a population of 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 Mark Goodner and Katherine Tefft

Source: SB 1504

Effective Date: September 1, 2009

Applicability: Offenses committed on or after the effective date.

Summary of Changes: This section places the same language that was added to Article 4.14 of the Code of Criminal Procedure into the Government Code.

Government Code, Sec. 22.1105. JUDICIAL INSTRUCTION RELATED TO CERTAIN ALLEGED CHILD OFFENDERS.

(a) Each judge of a court with jurisdiction to hear a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only, other than a traffic offense or public intoxication or a violation of a penal ordinance of a political subdivision other than a traffic offense, shall complete a course of instruction related to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act (20 U.S.C. Section

1400 et seq.) every judicial academic year that ends in a 0 or a 5.

(b) The court of criminal appeals shall adopt the rules necessary to provide for the training required under Subsection (a). The rules must require a judge described by Subsection (a) to complete two hours of the required training every judicial academic year that ends in a 0 or a 5 as part of the training the judge is required to complete under rules adopted by the court of criminal appeals or other law.

(c) In adopting the rules, the court of criminal appeals may consult with the supreme court and with professional groups and associations in this state that have expertise in the subject matter to obtain the recommendations of those groups or associations for instructional content.

Commentary by Mark Goodner and Katherine Tefft

Source: HB 1793

Effective Date: September 1, 2009

Applicability: Judges who are in office on the effective date of the bill are not required to complete the required judicial training before September 1, 2010, which marks the beginning of the 2011 academic year. Thus, only judges who take office after September 1, 2009 but before the end of the 2010 judicial academic year (August 31, 2010), must complete the two hours of specialized training. All other judges must complete the training in the 2015 academic year.

Summary of Changes: This bill aims to educate those judges who often see children that end up in court due to family welfare issues or disabilities. Municipal judges and justices of the peace will have to complete two hours of training related to child welfare and the Individuals with Disabilities Education Act (IDEA) in every judicial academic year ending in zero or five. The Court of Criminal Appeals is required to adopt the rules necessary to provide for such training not later than March 10, 2010. While during Session this bill was couched in terms of education exclusively for the municipal judges and justices of the peace, the language of Section 22.1105 of the Government Code is actually broader, and includes all judges who may hear a complaint against a child alleging a fine only misdemeanor.

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.

Commentary by Mark Goodner and Katherine Tefft

Source: SB 407

Effective Date: May 30, 2009

Applicability: Constitutional county courts in counties with a population of two million or more.

Summary of Changes: Certain counties will now have more flexibility in appointing and using magistrates for the

purpose of adjudicating criminal complaints alleging failure to attend school and parent contributing to nonattendance cases. The original authorization for the use of truancy magistrates only allowed for the use of full-time magistrates. The amendment now allows the appointment of part-time magistrates. Despite the misnomer, such magistrates do not have jurisdiction to hear civil petitions alleging Truancy as contemplated in the Family Code. Dallas County is the currently the only county that uses the "truancy magistrate court" that was made available by law in 2003.

Government Code, Sec. 411.081. APPLICATION OF SUBCHAPTER.

(f-1) In this subsection, "child" has the meaning assigned by Section 51.02, Family Code. Notwithstanding any other provision of this subchapter, on conviction of a child for a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03, Family Code, the convicting court shall immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies for criminal justice purposes, to an agency or entity listed in Subsection (j), or to the person who is the subject of the order.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under 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 Youth Commission;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or 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;

(18) the Texas Juvenile Probation Commission;

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

(20) the Texas State Board of Public Accountancy;

(21) the Texas Department of Licensing and Regulation;

(22) the Health and Human Services Commission;

(23) the Department of Aging and Disability Services; ~~and~~

(24) the Texas Education Agency;

(25) the Guardianship Certification Board; and

(26) a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code.

(j) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (f-1) to the following agencies or entities only:

(1) the Texas Youth Commission;

(2) the Texas Juvenile Probation Commission;

(3) the Department of State Health Services, a local mental health or mental retardation authority, or a community center providing services to persons with mental illness or retardation;

(4) the Department of Family and Protective Services;

(5) a juvenile probation department;

(6) a municipal or county health department;

(7) a public or nonprofit hospital or hospital district;

(8) a county department that provides services to at-risk youth or their families;

(9) a children's advocacy center established under Section 264.402, Family Code;

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

(11) a safe house providing shelter to children in harmful situations.

Commentary by Mark Goodner and Katherine Tefft

Source: SB 1056

Effective Date: June 19, 2009

Applicability: Convictions that occur on or after the effective date regardless of when the offense was committed.

Summary of Changes: S.B. 1056 was a surprise to most, yet it contains the same content of another bill (S.B. 2224) that appeared dead toward the end of Session. It adds Subsection 411.081(f-1) and mandates that criminal courts immediately issue a nondisclosure order on the conviction of a child for a misdemeanor offense punishable by fine only. (Currently, nondisclosure orders were available to persons placed on deferred adjudication.) It is important to note that this amendment only pertains to the conviction of a "child" (as defined by Section 51.02 of the Family Code). Thus, it does not apply to the popular minor in consumption or possession charges or tobacco charges against 17-20-year-olds. Nor does it apply to a child who successfully completes a form of probation pursuant to Chapter 45 of the Code of Criminal Procedure (i.e., deferred disposition, completion of teen court, commitment of chemically dependent persons, or a driving safety course). This bill has been hotly debated since its passage.

Records of a child in juvenile court are already confidential, and this amendment extends that confidentiality to criminal court records (which until now were subject to the common-law right of inspection just like adult records). The bill also adds Subsection (j) specifying the only agencies or entities to which a criminal justice agency may disclose information protected by the nondisclosure order. Criminal justice agencies can still access the records despite the nondisclosure order for purposes of enhancements or similar acts.

Further, the bill provides that a child convicted of a fine-only misdemeanor before the effective date may petition the court for a nondisclosure order, which the court shall issue upon petition.

Government Code, Sec. 411.0851. DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL HISTORY RECORD INFORMATION; CIVIL LIABILITY.

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) or (f-1).

Commentary by Mark Goodner and Katherine Tefft

Source: SB 1056

Effective Date: June 19, 2009

Applicability: Convictions that occur on or after the effective date regardless of when the offense was committed.

Summary of Changes: This section conforms to the change requiring nondisclosure orders on all convictions of a child for fine-only misdemeanors.

Government Code, Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY.

Commentary by Mark Goodner and Katherine Tefft

Source: SB 1056

Effective Date: June 19, 2009

Applicability: Convictions that occur on or after the effective date regardless of when the offense was committed.

Summary of Changes: This is another conforming change affecting the public disclosure of information under the Public Information Act.

Government Code, Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY.

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) or (f-1).

Commentary by Mark Goodner and Katherine Tefft

Source: SB 1056

Effective Date: June 19, 2009

Applicability: Convictions that occur on or after the effective date regardless of when the offense was committed.

Summary of Changes: This is yet another conforming change. Information subject to the required order of nondisclosure under amended Government Code Section 411.081(f-1) is excepted from required public disclosure under the Public Information Act.

Government Code, Sec. 552.1425. CIVIL PENALTY: DISSEMINATION OF CERTAIN CRIMINAL HISTORY INFORMATION.

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) or (f-1).

Commentary by Mark Goodner and Katherine Tefft

Source: SB 1056

Effective Date: June 19, 2009

Applicability: Convictions that occur on or after the effective date regardless of when the offense was committed.

Summary of Changes: This is another conforming change affecting the Public Information Act, consistent with the amendments to Government Code Secs. 411.081 and 411.0851.

10. Texas Juvenile Probation Commission Provisions

Human Resources Code, Sec. 141.011. COMPOSITION OF THE COMMISSION.

(a) The commission consists of:

- (1) two district court judges who sit as juvenile court judges;
- (2) two county judges or commissioners;
- ~~and~~
- (3) one chief juvenile probation officer;
- (4) one mental health treatment professional licensed under Subtitle B or I, Title 3, Occupations Code;
- (5) one educator, as that term is defined by Section 5.001, Education Code;
- (6) one member who represents an organization that advocates on behalf of juvenile offenders or victims of delinquent or criminal conduct; and
- (7) one member ~~[five members]~~ of the public who is ~~[are]~~ not an employee ~~[employees]~~ in the criminal or juvenile justice system and is recognized in the community for the person's interest in youth.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Governor appointments to the Texas Juvenile Probation Commission (TJPC) Board for vacancies occurring on or after the effective date.

Summary of Changes: Section 141.011 is part of the enabling legislation for TJPC and controls the membership of the TJPC governing board. There was much discussion during the Sunset review process about the composition of the board and the discussion continued to the House and Senate committees that worked on the Sunset bill (HB 3689). Various ideas were proposed and most of the discussion focused around how many, if any, chief juvenile probation officers (CJPO) should be placed on the board. The ideas ranged from no CJPO representation to as many as three CJPOs on the board. A number of other individuals were discussed for membership including educators, mental health professions, prosecutors, defense attorneys, etc.

Ultimately, the final bill requires four newly identified representatives for board membership. These include one CJPO, one mental health professional, one educator, and one advocate. The public members were decreased from five to one to include these new individuals. The board still must have two juvenile court judges and one county judge or county commissioner on the board per the existing statute.

The timeline for the new board members will vary. Currently, TJPC has three board member terms that will become vacant August 31, 2009. Two of these posi-

tions are the mandatory juvenile court judge and county commissioner slots, so the appointments to those two openings will not include any of the four new members. One public member is also expiring August 31, 2009. This board member could potentially be re-appointed as the individual did not get to serve a full term as he was appointed to fill the vacancy when a former board member left prior to his term ending. The Governor will ultimately decide whether to re-appoint this board member or whether to appoint one of the possible new four statutorily mandated representatives. The next vacancies on the TJPC board will occur August 31, 2011 unless members resign prior to that time.

Human Resources Code, Sec. 141.012. SUNSET PROVISION.

(a) The Texas Juvenile Probation Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2011 ~~[2009]~~.

(b) In the review of the Texas Juvenile Probation Commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall focus its review on the following:

(1) the commission's compliance with Chapter 263 (S.B. 103), Acts of the 80th Legislature, Regular Session, 2007;

(2) requirements placed on the agency by legislation enacted by the 81st Legislature, Regular Session, 2009, that becomes law, including implementation of programs for the diversion of youth from the Texas Youth Commission; and

(3) initiatives of the commission and the Texas Youth Commission in coordinating activities and services to better integrate Texas Juvenile Probation Commission, Texas Youth Commission, and county juvenile justice functions, including joint strategic planning, the sharing of youth data across youth-serving agencies, assessment and classification of youth, and collection of data on probation outcomes.

(c) In its report to the 82nd Legislature, the sunset commission may include any recommendations it considers appropriate. This subsection and Subsection (b) expire September 1, 2011.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Sunset reviews of the Texas Juvenile Probation Commission (TJPC) on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of TJPC. Most every Texas state agency is

legally required to undergo Sunset review every 10-12 years. The Sunset review determines if an agency is still viable, effective and necessary or if it is time for the "sun to set" on the agency (i.e., abolish the agency). Both TJPC and the Texas Youth Commission (TYC) went through the Sunset review process in 2008 in preparation for the formal review during the 2009 legislative session. This section reauthorizes TJPC for another two years. This TJPC provision (and an identical one for TYC) set the next Sunset review date as 2011, which is a two-year review cycle instead of a 10-12 year cycle. The purpose of the expedited review is to gauge the progress made by TYC and TJPC on the major reforms made during the 2007 and 2009 legislative sessions. The scope of the Sunset review is limited by Subsection (b) to include a mandatory review of each agency's compliance with Senate Bill 103 from the 2007 session as well as any new mandates or responsibilities given by the 2009 Texas Legislature. Both TJPC and TYC will have to again be reauthorized in 2011 to continue in existence.

Human Resources Code, Sec. 141.014. RESTRICTIONS ON COMMISSION APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT.

(a) A person may not be ~~[is not eligible for appointment or service as]~~ a public member of the commission if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the commission ~~[or receiving funds from the commission];~~ ~~[or]~~

(2) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses;

(3) is registered, certified, or licensed by a regulatory agency in the field of criminal or juvenile justice; or

(4) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of criminal or juvenile justice; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice ~~[An officer, employee, or paid consultant of a trade association in the field~~

~~of criminal or juvenile justice may not be a member or employee of the commission].~~

(c) ~~[A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of criminal or juvenile justice may not be a commission member or a commission employee, including exempt employees, compensated at grade 17 or over according to the position classification schedule under the General Appropriations Act.~~

~~[(d)]~~ A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation in or on behalf of a profession related to the operation of the commission.

(d) ~~[(e)]~~ In this section, "Texas trade association" means a ~~[nonprofit]~~ cooperative and and ~~[;]~~ voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual or professional problems and in promoting their common interest.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Governor appointments to the Texas Juvenile Probation Commission (TJPC) Board for vacancies occurring on or after the effective date.

Summary of Changes: Section 141.014 is part of the enabling legislation for TJPC and addresses the restrictions on who can serve on the agency governing board. This section was amended as a result of the Sunset review process and the amendments clarify the restrictions on board appointment and commission employment.

Subsection (a) regulates the appointment of public members on the TJPC board. As a result of legislative changes made in the 2009 session, the TJPC board will only have one public member per statute. Subsection (a) clarifies what disqualifies a public member from appointment to the board.

Subsection (b) governs both board membership and also employment with TJPC in an executive, administrative or professional capacity. Persons who work for a Texas trade association in the field of criminal or juvenile justice (or their spouse) are prohibited from appointment to the board or from employment with TJPC. Subsection (d) defines Texas trade association.

Subsection (c) prohibits registered lobbyists from being appointed as a board member of the commission or from serving as general counsel to the commission.

Human Resources Code, Sec. 141.0145. TRAINING FOR COMMISSION MEMBERS.

(a) ~~A [To be eligible to take office as a member of the commission, a] person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes [must complete at least one course of] a training program that complies with this section.~~

(b) The training program must provide information to the person regarding:

(1) the ~~[enabling] legislation that created the commission [and its policymaking body to which the person is appointed to serve];~~

(2) the programs operated by the commission;

(3) the roles ~~[role]~~ and functions of the commission;

(4) ~~[the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;~~

~~[(5)] the [current] budget of [for] the commission;~~

~~[(5) [(6)] the results of the most recent formal audit of the commission;~~

~~[(6) [(7)] the requirements of law relating to open meetings, public information, administrative procedure, and conflicts of interest [the:~~

~~[(A) open meetings law, Chapter 551, Government Code;~~

~~[(B) open records law, Chapter 552, Government Code; and~~

~~[(C) administrative procedure law, Chapter 2001, Government Code]; and~~

~~[(7) [(8) the requirements of the conflict of interests laws and other laws relating to public officials; and~~

~~[(9)] any applicable ethics policies adopted by the commission or the Texas Ethics Commission.~~

(c) A person appointed to the commission is entitled to reimbursement, as provided in the General Appropriations Act, for travel expenses incurred in attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office [as provided by the General Appropriations Act and as if the person were a member of the commission].

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Persons appointed or reappointed to the Texas Juvenile Probation Commission (TJPC) board on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of TJPC by amending Section 141.0145

addressing mandatory training required for TJPC board members. Subsection (a) makes clear that a board member must complete the required training before that individual can vote, deliberate or be counted in the quorum requirement for a board meeting. Subsection (b) lists the mandatory training that board members must receive. Subsection (c) authorizes the agency to reimburse the board member for travel required to attend the mandatory training.

Human Resources Code, Sec. 141.017. REMOVAL OF COMMISSION MEMBER.

(a) It is a ground for removal from the commission if a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 141.011;

(2) does not maintain during service on the commission the qualifications required by Section 141.011 ~~[is not eligible for appointment to or service on the commission as provided by Section 141.014(a)];~~

(3) is ineligible for membership under Section 141.014 ~~[violates a prohibition established by Section 141.014(b), (c), or (d)];~~

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the term for which the member is appointed ~~[because of illness or disability];~~ or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer ~~[chairman]~~ of the commission of the potential ground. The presiding officer ~~[chairman]~~ shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer ~~[chairman]~~, the director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Grounds for removal that exist on or after the effective date.

Summary of Changes: Section 141.017 is part of the Texas Juvenile Probation Commission's enabling legislation and governs the removal of commission board members. The amendments to this section are primarily technical cleanups. This section details the grounds for removal of a board member from the Commission board.

Human Resources Code, Sec. 141.022. ADVISORY COUNCIL ON JUVENILE SERVICES.

(b) The advisory council shall report any determinations made under Subsection (c) to the members of the commission appointed under Section 141.011 [the director].

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Texas Juvenile Probation Commission (TJPC) Advisory Council reports on or after the effective date.

Summary of Changes: Section 141.022 is part of TJPC's enabling legislation and governs the composition and duties of the TJPC Advisory Council. This amendment requires the council to provide their reports to the agency governing board members instead of the agency director.

Human Resources Code, Sec. 141.024. ANNUAL REPORTS.

(a) The commission shall report annually to the governor and the legislature on the commission's operations and the condition of probation services in the state during the previous year. The report:

(1) may include recommendations; and

(2) must include:

(A) an evaluation of the effectiveness of the community-based programs operated under Section 54.0401, Family Code; and

(B) information comparing the cost of a child participating in a program described by Paragraph (A) with the cost of committing the child to the Texas Youth Commission.

Commentary by Chris Hubner

Source: SB 1374

Effective Date: September 1, 2009

Applicability: Reports due on or after the effective date.

Summary of Changes: The Texas Juvenile Probation Commission (TJPC) must report annually to the governor and the legislature on the commission's operations and the condition of probation services in Texas. Effective September 1, 2009, TJPC will be required to include additional information in its report regarding the effectiveness of community-based programs under Section 54.0401, as well as providing a comparison of the cost of a child participating in a community-based program with the cost of committing the child to the Texas Youth Commission.

Human Resources Code, Sec. 141.027. COMPLAINTS.

(a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission, other than complaints received under Section 141.049. The commission shall maintain information about parties to the complaint, the subject matter of the

complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the complaint parties of the status of the complaint until final disposition.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Complaints filed against the Texas Juvenile Probation Commission (TJPC) on or after the effective date.

Summary of Changes: Section 141.027 is a new provision added to TJPC's enabling legislation that addresses complaints regarding TJPC or local probation department programs or services. Subsection (a) clarifies what information is to be kept on each complaint and facilitates an electronic data collection system as opposed to manual files. Subsection (b) requires TJPC to provide information about the agency's procedures for complaint investigation and resolution. Subsection (c) requires TJPC to periodically notify the complaint parties on the status of the complaint until final disposition.

Human Resources Code, Sec. 141.028. USE OF TECHNOLOGY.

The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Texas Juvenile Probation Commission (TJPC) technology policy created or revised on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the TJPC by adding new Section 141.028 addressing the use of technology. The new provision requires TJPC to implement a policy regarding the use of appropriate technological solution to improve the agency's ability to perform its functions. A requirement of the new policy will be to ensure the public is able to interact with TJPC via the Internet. TYC's enabling legislation was amended to add Section 61.028 which is the identical provision to 141.028.

Human Resources Code, Sec. 141.029. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION.

(a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Policy regarding negotiated rulemaking and alternative dispute resolution created or modified on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the Texas Juvenile Probation Commission (TJPC) by adding new Section 141.029 addressing the use of negotiated rulemaking and alternative dispute resolution (ADR). This new section requires TJPC to develop and implement a policy to encourage the use of negotiated rulemaking for all agency rules. Additionally, the policy is to encourage the use of alternative dispute resolution procedures when appropriate for internal and external agency disputes within TJPC's jurisdiction. The board must designate a trained person to coordinate this policy, serve as the resource for training on implementation of negotiated rulemaking or ADR, and to collect data regarding the effectiveness of these procedures. Negotiated rulemaking is a formalized process to seek stakeholder input in the development of agency rules. TJPC has informally done this process for many years by utilizing field workgroups to assist in creating or modifying standards.

Human Resources Code, Sec. 141.042. RULES GOVERNING JUVENILE BOARDS, PROBATION DEPARTMENTS, PROBATION OFFICERS, PROGRAMS, AND FACILITIES.

(a) The commission shall adopt reasonable rules that provide:

(1) minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services;

(2) a code of ethics for probation and detention officers and for the enforcement of that code;

(3) appropriate educational, preservice and in-service training, and certification standards for probation and detention officers or court-supervised community-based program personnel;

(4) subject to Subsection (d), minimum standards for public and private juvenile pre-adjudication secure detention facilities, public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board or governmental unit, [and] private juvenile post-adjudication secure correctional facilities operated under a contract with a governmental unit, except those facilities exempt from certification by Section 42.052(g), and nonsecure correctional facilities operated by or under contract with a governmental unit; and

(5) minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee.

(d) In adopting rules under Subsection (a)(4), the commission shall ensure that the minimum standards for facilities described by Subsection (a)(4) are designed to ensure that juveniles confined in those facilities are provided the rights, benefits, responsibilities, and privileges to which a juvenile is entitled under the United States Constitution, federal law, and the constitution and laws of this state. The minimum standards must include a humane physical and psychological environment, safe conditions of confinement, protection from harm, adequate rehabilitation and education, adequate medical and mental health treatment, and due process of law.

(e) Juvenile probation departments shall use the mental health screening instrument selected by the commission for the initial screening of children under the jurisdiction of probation departments who have been formally referred to the department. The commission shall give priority to training in the use of this instrument in any preservice or in-service training that the commission provides for probation officers. A clinical assessment by a licensed mental health professional may be substituted for the mental health screening instrument selected by the commission if the clinical assessment is performed in the time prescribed by the commission[~~— Juvenile probation departments shall report data from the use of the screening in-~~].

~~instrument or the clinical assessment to the commission in a format and in the time prescribed by the commission].~~

(f) A juvenile probation department must, before the disposition of a child's case and using a validated risk and needs assessment instrument or process provided or approved by the commission, complete a risk and needs assessment for each child under the jurisdiction of the juvenile probation department.

(h) A juvenile board that does not accept state aid funding from the commission under Section 141.081 shall report to the commission each month on a form provided by the commission the same data as that required of counties accepting state aid funding regarding juvenile justice activities under the jurisdiction of the juvenile board. If the commission makes available free software to the juvenile board for the automation and tracking of juveniles under the jurisdiction of the juvenile board, the commission may require the monthly report to be provided in an electronic format adopted by ~~rule by~~ the commission.

(i) A juvenile probation department shall report data from the use of the screening instrument or clinical assessment under Subsection (e) and the risk and needs assessment under Subsection (f) to the commission in the format and at the time prescribed by the commission.

(j) The commission shall adopt rules to ensure that youth in the juvenile justice system are assessed using the screening instrument or clinical assessment under Subsection (e) and the risk and needs assessment under Subsection (f).

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Texas Juvenile Probation Commission (TJPC) rules passed on or after the effective date.

Summary of Changes: Section 141.042 is part of TJPC's enabling legislation and is the primary statute giving TJPC rulemaking authority in a variety of areas. Various substantive amendments were made to this section.

Subsection (a) details the rulemaking authorization for TJPC. Subsection (a)(4) was amended to clarify that secure pre and post facilities include those operated by a juvenile board or any other governmental unit, which could include a city, county or other governmental entity. This amendment specifically also adds nonsecure correctional facilities that are operated by or under a contract with a governmental unit (See discussion in Family Code Section 51.126).

Subsection (d) is a new subsection and addresses the definition of "minimum standards" as it relates to juvenile facilities (i.e., secure pre and post facilities and nonsecure facilities). This new subsection clarifies that minimum standards mean standards designed to ensure that confined juveniles are provided the rights, benefits, responsibilities

and privileges to which a youth is entitled under the US Constitution, federal law, and the Constitution and laws of Texas. The new language further requires TJPC's minimum standards to include a humane physical and psychological environment, safe conditions of confinement, protection from harm, adequate rehabilitation and education, adequate medical and mental health treatment and due process of law.

Subsection (e) is current law regarding the use of the MAYSI mental health screening instrument. This subsection only has a technical change of moving the data collection component of the statute to new Subsection (i) discussed below.

Subsection (f) requires the use of a mandatory risk and needs assessment on each child under the jurisdiction of the juvenile probation department. The risk assessment must be administered to every juvenile prior to disposition of the juvenile's case. The risk assessment instrument must be a validated assessment instrument provided by or approved by TJPC. TJPC is currently piloting a risk and needs assessment instrument developed by the commission. Once validated, this web-based instrument will be provided free of charge to all local juvenile probation departments for use. TJPC will also approve various vendor purchased risk and needs assessment instruments on a case by case basis (e.g., Assessments.com).

Subsection (i) requires all juvenile probation departments to report data from the use of the mental health screening instrument (i.e., MAYSI) or the clinical assessment if that is used instead [Subsection (e)]. This is current law as it relates to the mental health screening/assessment. The new part of this subsection is that data from the risk and needs assessment must be reported to TJPC by all probation departments in the manner and time prescribed by TJPC. As the risk and needs instrument will ultimately be web-based, TJPC will receive this data automatically in real time.

Subsection (j) gives TJPC rulemaking authority for the mandatory assessment/screening processes described in Subsections (e) and (f). It is mandatory that TJPC promulgate rules for these processes.

Human Resources Code, Sec. 141.0471. COORDINATED STRATEGIC PLANNING COMMITTEE [PLAN FOR JUVENILE JUSTICE SYSTEM].

(a) The director ~~[commission]~~ and the executive director of the Texas Youth Commission shall jointly appoint a strategic planning committee to biennially develop a coordinated strategic plan which shall guide, but not substitute for, the strategic plans developed individually by the agencies. The director and the executive director of the Texas Youth Commission are co-presiding officers of the strategic planning committee.

(b) The director shall appoint four members to the strategic planning committee. The director shall appoint at least:

(1) one committee member who represents the interests of families of juvenile offenders;

(2) one committee member who represents the interests of local juvenile probation departments; and

(3) one committee member who is a mental health treatment professional licensed under Subtitle B or I, Title 3, Occupations Code.

(c) The executive director of the Texas Youth Commission shall appoint four members to the strategic planning committee. The executive director shall appoint at least:

(1) one committee member who represents the interests of juvenile offenders;

(2) one committee member who represents the interests of the victims of delinquent or criminal conduct; and

(3) one committee member who is an educator as defined by Section 5.001, Education Code.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Strategic planning process on or after the effective date.

Summary of Changes: Section 141.0471 is part of the Texas Juvenile Probation Commission's (TJPC) enabling legislation and addresses the required coordinated strategic plan between TJPC and the Texas Youth Commission (TYC) that is required biennially. This section was substantially modified this session to create a new coordinated strategic planning committee between the two agencies. Subsection (a) requires the directors of TJPC and TYC to jointly appoint a strategic planning committee. The TYC and TJPC executive directors are the co-presiding officers of this committee.

Subsection (b) requires the TJPC executive director to appoint four members to the committee. Three of these members are identified to include a member who represents families of juvenile offenders, a member who represents local juvenile probation departments, and a member who is a mental health professional.

Subsection (c) requires the TYC executive director to appoint four members to the committee. Three of these members are identified to include a member who represents the interests of juvenile offenders, a member who represents victims, and a member who is an educator.

Human Resources Code, Sec. 141.0472. COORDINATED STRATEGIC PLAN; ADOPTION OF PLAN.

(a) ~~[(b)]~~ The coordinated strategic plan developed by the strategic planning committee under Section 141.0471 must ~~[shall]~~:

(1) identify short-term and long-term policy goals;

(2) identify time frames and strategies for meeting the goals identified under Subdivision (1);

(3) estimate population projections, including projections of population characteristics;

(4) estimate short-term and long-term capacity, programmatic, and funding needs;

(5) describe intensive service and surveillance parole pilot programs to be jointly developed;

(6) include an evaluation of aftercare services emphasizing concrete outcome measures, including recidivism and educational progress;

(7) identify objective criteria for the various decision points throughout the continuum of juvenile justice services and sanctions to guard against disparate treatment of minority youth; ~~[and]~~

(8) identify cross-agency outcome measures by which to evaluate the effectiveness of the system generally;

(9) include a plan of implementation for the development of common data sources and data sharing among the commission, juvenile probation departments, the Texas Youth Commission, the Department of Family and Protective Services, the Department of State Health Services, the Health and Human Services Commission, the Texas Education Agency, and other state agencies that serve youth in the juvenile justice system;

(10) include the development of new, or the improvement of existing, validated risk assessment instruments;

(11) include strategies to determine which programs are most effective in rehabilitating youth in the juvenile justice system;

(12) include planning for effective aftercare programs and services, including ensuring that youth in the juvenile justice system have personal identification and appropriate referrals to service providers; and

(13) track performance measures to illustrate the costs of different levels of treatment and to identify the most cost-effective programs in each component of the juvenile justice system in this state.

(b) In addition to the information described by Subsection (a), the coordinated strategic plan must include specific processes and procedures for routinely communicating juvenile justice system information between the commission and the Texas Youth Commission and determining opportunities to coordinate practices for improving outcomes for youth.

(c) The governing boards ~~[board]~~ of the commission ~~[Texas Juvenile Probation Commission]~~ and the ~~[executive commissioner of the]~~ Texas Youth Commission

shall review and adopt the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Coordinated strategic plans developed on or after the effective date.

Summary of Changes: Section 141.0472 is part of the Texas Juvenile Probation Commission's (TJPC) enabling legislation and details the requirements of the mandatory coordinated strategic plan between TJPC and TYC. This section was substantially amended this session to include five additional components of the strategic plan.

The plan must now address the development of common data sources and data sharing between not only TYC and TJPC but also among various other youth-serving agencies including DFPS, DSHS, HHSC, TEA and any other agencies that serve youth in the juvenile justice system. Additionally, the plan must address the development of validated risk assessment instruments, strategies to determine which rehabilitation programs are effective, planning for aftercare programs and services, and the tracking of performance measures for juvenile justice programs and services.

Lastly, the coordinated strategic plan must include specific processes and procedures for efficient communication between TYC and TJPC and for determining opportunities for both agencies to coordinate their practices for improved outcomes for youth.

Subsection (c) was amended to make some technical changes but also now requires the governing boards of both agencies to not only adopt the plan, but to also review the plan prior to adoption.

Human Resources Code, Sec. 141.049. COMPLAINTS RELATING TO JUVENILE BOARDS.

(a) The commission shall maintain a system to promptly and efficiently act on a ~~[keep an information file about each]~~ complaint filed with the commission relating to a juvenile board funded by the commission. The commission shall maintain information about parties to the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The commission shall make information available describing the commission's procedures for the investigation and resolution of a complaint filed with the commission relating to a juvenile board funded by the commission.

(c) The commission shall investigate the allegations in the complaint and make a determination of whether

there has been a violation of the commission's rules relating to juvenile probation programs, services, or facilities.

(d) ~~[(b)]~~ If a written complaint is filed with the commission relating to a juvenile board funded by the commission, the commission~~[- at least quarterly and until final disposition of the complaint,]~~ shall periodically notify the complainant and the juvenile board of the status of the complaint until final disposition, unless notice would jeopardize an undercover investigation.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Complaints relating to juvenile boards received on or after the effective date.

Summary of Changes: Section 141.049 of the Texas Juvenile Probation Commission's (TJPC) enabling legislation addresses complaints regarding local juvenile boards. The modifications to Subsection (a) clarify what information is to be kept on each complaint and facilitate an electronic data collection system as opposed to manual files. Subsection (b) requires TJPC to provide information about the agency's procedures for complaint investigation and resolution. Subsection (d) requires TJPC to periodically notify the complaint parties on the status of the complaint until final disposition.

Human Resources Code, Sec. 141.050. CONTRACT STANDARDS.

(c) The commission shall consider the past performance of a juvenile board when contracting with the juvenile board for local probation services other than basic probation services. In addition to the contract standards described by Subsection (a), a contract with a juvenile board for probation services other than basic probation services must:

(1) include specific performance targets for the juvenile board based on the juvenile board's historic performance of the services; and

(2) require a juvenile board to report on the juvenile board's success in meeting the performance targets described by Subdivision (1).

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Contracts between the Texas Juvenile Probation Commission (TJPC) and local juvenile boards on or after the effective date.

Summary of Changes: Subsection 141.050 is part of TJPC's enabling legislation and relates to contract standards that affect TJPC funding contracts with local juvenile boards. This section was originally enacted in 1997 as part of the Sunset review process completed on the agency that legislative session. This amendment adds Subsection (c)

that requires TJPC to consider the past performance of local juvenile boards when contracting with the boards for probation services other than basic probation services. Basic probation services are the grants that are the foundation of a probation department and serve as the basic operational funding to establish the probation department infrastructure.

These contracts must include specific performance targets for the boards based on the board's historic performance. Additionally, the contracts must require the juvenile boards to report on their success in meeting the stated performance measures.

Human Resources Code, Sec. 141.056. STUDY OF ALTERNATIVES TO JUVENILE JUSTICE SYSTEM FOR CHILDREN WHO ENGAGE IN ACTS OF PROSTITUTION.

(a) The director shall establish a committee to evaluate alternatives to the juvenile justice system, such as government programs, faith-based programs, and programs offered by nonprofit organizations, for children who are accused of engaging in acts of prostitution.

(b) The director shall determine the size of the committee. The committee must be composed of:

(1) members of the Texas Juvenile Probation Commission, the Texas Youth Commission, and other relevant state agencies as determined by the director;

(2) members of the legislature;

(3) members of nongovernmental organizations that provide programs and services to combat and prevent trafficking of persons as described by Section 20A.02, Penal Code, in this state, including the following with respect to that trafficking:

(A) programs to promote public awareness;

(B) programs to identify and provide services to victims;

(C) legal services; and

(D) community outreach and training programs; and

(4) other juvenile justice experts.

(c) Not later than January 1, 2011, the committee shall prepare and deliver to each member of the legislature a report that includes the results of the study and recommendations for alternatives to the juvenile justice system for children who are accused of engaging in acts of prostitution.

(d) This section expires June 1, 2011.

Commentary by Chris Hubner

Source: HB 4009

Effective Date: September 1, 2009

Applicability: Committee must be established not later than October 1, 2009.

Summary of Changes: New Section 141.056, Human Resources Code, requires the Texas Juvenile Probation Commission's (TJPC) executive director to establish a committee to evaluate alternatives to the juvenile justice system for children accused of engaging in acts of prostitution. Alternatives may include government and faith-based programs, and programs offered by nonprofit organizations. The committee must include: 1) members of TJPC, Texas Youth Commission and other relevant state agencies; 2) members of the legislature; 3) members of nongovernmental organizations that provide programs and services to combat and prevent trafficking of persons; and 4) other juvenile justice experts. By January 1, 2011, the committee must prepare and deliver a report to each member of the legislature. The report must include the results of the study and recommendations concerning any proposed alternatives to the juvenile justice system for these children.

Human Resources Code, Sec. 141.057. DATA COLLECTION.

(a) The commission shall collect comprehensive data concerning the outcomes of local probation programs throughout the state.

(b) Data collected under Subsection (a) must include:

(1) a description of the types of programs and services offered by a juvenile probation department, including a description of the components of each program or service offered; and

(2) to the extent possible, the rate at which juveniles who enter or complete juvenile probation are later committed to the custody of the state.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Data collections procedures and processes of the Texas Juvenile Probation Commission (TJPC) on or after the effective date.

Summary of Changes: Section 141.057 is a new provision added to TJPC's enabling legislation that addresses data collection. As a result of the Sunset review process during the 2009 legislative session, a great deal of focus was placed on community-based programs and services that can be used to divert youth from commitment to the Texas Youth Commission (TYC). Additional funding was provided by legislative appropriations to enable TJPC to pass additional grants to local juvenile probation departments to establish new local programs to divert youth from TYC. As a result of this new funding initiative, extensive data collection is now required on these community based programs and services. Subsection (a) requires TJPC to collect comprehensive data about local probation programs statewide.

Subsection (b) requires that the data include a description of the types of programs and services offered by local juvenile probation departments including a description of the components of each program or service. Additionally, TJPC must collect data on the rate at which juveniles served by these programs and services are ultimately committed to TYC.

Human Resources Code, Sec. 141.058. QUARTERLY REPORT ON ABUSE, NEGLECT, AND EXPLOITATION.

(a) On January 1, 2010, and quarterly after that date, the commission shall prepare and deliver a report to the board concerning the final outcome of any complaint received under Section 261.405, Family Code, that concerns the abuse, neglect, or exploitation of a juvenile. The report must include a summary of the actions performed by the commission and any applicable juvenile board or juvenile probation department in resolving the complaint.

(b) A report prepared under Subsection (a) is public information under Chapter 552, Government Code, only to the extent authorized by that chapter.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Abuse, neglect and exploitation reports of the Texas Juvenile Probation Commission (TJPC) beginning January 1, 2010.

Summary of Changes: Section 141.058 is a new section in TJPC's enabling legislation that requires quarterly reports on abuse, neglect and exploitation (ANE) be presented to the agency's governing board. Subsection (a) requires TJPC to prepare a report quarterly on the final outcome of all abuse, neglect and exploitation complaints investigated by TJPC. The report must include a summary of the actions performed by TJPC as well as any actions taken by the local juvenile probation department or juvenile board resolving the complaint.

Information pertaining to abuse, neglect and exploitation investigations is considered confidential under Section 261.201 of the Family Code and may not be released to the public. In contrast, the aggregate statewide statistical data compiled and maintained by TJPC relating to the incidence of ANE in a juvenile justice program or facility operated by or under the authority of the juvenile board is public information under Section 261.402 of the Family Code. TJPC's administrative rules also authorize the release of the number, nature and disposition of ANE allegations (37 Texas Administrative Code Sec. 349.62). As amended, Subsection (b) permits TJPC to release to the public the quarterly ANE reports generated in compliance with new Section 141.058. The quarterly reports are deemed public only to the extent authorized under the Texas Public Information Act (Chapter 552 of the Government

Code) or other applicable laws and would, therefore, exclude confidential information.

Human Resources Code, Sec. 141.059. RESIDENTIAL TREATMENT FACILITY.

(a) The commission may contract with a local mental health and mental retardation authority that, on April 1, 2009, had an unutilized or underutilized residential treatment facility, for the establishment of a residential treatment facility for juveniles with mental illness or emotional injury who, as a condition of juvenile probation, are ordered by a court to reside at the facility and receive education services at the facility. The commission may work in cooperation with the local mental health and mental retardation authority to provide mental health residential treatment services for juveniles residing at a facility established under this section.

(b) A residential treatment facility established under this section must provide juveniles receiving treatment at the facility:

(1) a short-term program of mental health stabilization that does not exceed 150 days in duration; and

(2) all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code.

(c) If a residential treatment facility established under this section is unable to provide adequate and sufficient educational opportunities and services to juveniles residing at the facility, the facility may not continue to operate beyond the end of the school year in which the opportunities or services provided by the facility are determined to be inadequate or insufficient.

(d) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the State Board of Education shall grant a charter on the application of a residential treatment facility established under this section for a school chartered for the purposes of this section.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Facility established on or after the effective date for school year beginning 2009-2010.

Summary of Changes: Section 141.059 is a new section added to the Texas Juvenile Probation Commission's (TJPC) enabling legislation regarding the establishment of a residential treatment facility. TJPC has been involved in an initiative to create a mental health residential treatment facility in East Texas at the old Peavy Switch facility. This facility is located outside of Lufkin, Texas near Diboll.

The Peavy Switch project would provide approximately 25 inpatient treatment beds for juvenile offenders with moderate mental health needs. TJPC requested legislative appropriations to provide mental health services to those juveniles who cannot be served in the community due to a combination of their mental health issues and their conduct in the community. Subsection (a) provides TJPC with specific statutory authorization to establish this facility. TJPC received \$1,000,000 in appropriations for this project. The facility will be operated by the Burke Center, the local mental health authority of the Deep East Texas Region. The timeframe for opening of the facility is projected to be the summer of 2010.

Subsection (b) authorizes the short term care of juveniles in this facility up to 150 days. It further requires that juveniles residing in this facility must receive all educational opportunities and services, including special education, to which they are legally entitled.

Subsection (c) makes clear that if the facility cannot provide the legally required educational components to youth residing in the facility, the facility may not continue to operate.

Subsection (d) requires the State Board of Education to grant a charter to the facility to operate the school in the facility. There was concern among legislators that this facility might have a disproportionate impact on the small, local school district; thus, the need for a charter school status in this legislation.

Human Resources Code, Chap. 141. SUBCHAPTER D. PROVISIONS RELATING TO CERTAIN [JUVENILE PROBATION] OFFICERS AND EMPLOYEES

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Chapter heading on or after the effective date.

Summary of Changes: This chapter heading was amended to broaden the scope of the chapter given the provisions in Subchapter D apply not only to juvenile probation officers but to other employees in the juvenile justice system including juvenile detention officers. This is a technical cleanup to the chapter header.

Human Resources Code, Sec. 141.061. MINIMUM STANDARDS FOR PROBATION OFFICERS.

(a) To be eligible for appointment as a probation officer, a person who was not employed as a probation officer before September 1, 1981, must:

- (1) be of good moral character;
- (2) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(3) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the commission; or

(B) one year of experience in full-time case work, counseling, or community or group work:

(i) in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons; and

(ii) that the commission determines provides the kind of experience necessary to meet this requirement;

(4) have satisfactorily completed the course of preservice training or instruction and any continuing education required by the commission;

(5) have passed the tests or examinations required by the commission; and

(6) possess the level of certification required by the commission.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009.

Applicability: Officers appointed on or after the effective date.

Summary of Changes: Section 141.061 is part of TJPC's enabling legislation and contains the minimum standards for appointment as a juvenile probation officer. This section was originally enacted in 1989 and the amendment this session simply makes clear that juvenile probation officers must complete certain amounts of continuing education as required by TJPC. This statutory clarification follows the current practice per TJPC administrative rules that has been in place for many years.

Human Resources Code, Sec. 141.0612. MINIMUM STANDARDS FOR CERTAIN EMPLOYEES OF NONSECURE CORRECTIONAL FACILITIES.

(a) The commission by rule shall adopt certification standards for persons who are employed in nonsecure correctional facilities that accept only juveniles who are on probation and that are operated by or under contract with a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code.

(b) The certification standards adopted under Subsection (a) must be substantially similar to the certification requirements for detention officers under Section 141.0611.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Non-secure correctional staff certifications on or after the effective date based upon promulgation of administrative rules by Texas Juvenile Probation Commission (TJPC).

Summary of Changes: Section 141.0612 is a new statute added to TJPC's enabling legislation that addresses minimum standards for individuals providing supervision of youth in non-secure correctional facilities. During the Sunset review process, non-secure correctional facilities operated by juvenile boards and local juvenile probation departments that serve only juvenile offenders were the focus of study and analysis. There are approximately eight of these type facilities that currently exist. These facilities could and some argue should have been licensed by the Texas Department of Family and Protective Services (DFPS), the state entity that licenses all non-secure residential treatment facilities for children. Some non-secure juvenile facilities have in fact went through the process to become DFPS licenses, but most have not and thus, the facility is not currently regulated by any state oversight entity.

TJPC's current administrative rules (i.e., standards) apply to secure juvenile pre-adjudication detention facilities and post-adjudication correctional facilities. The Sunset Commission ultimately recommended that TJPC should promulgate standards for non-secure correctional facilities that serve only juvenile offenders. Additionally, the recommendation was that correctional staff in these facilities should be certified much like juvenile probation and detention officers are required to be state certified by TJPC. This new section requires the certification of staff in these non-secure juvenile correctional facilities.

Subsection (a) requires TJPC to promulgate and adopt certification standards (i.e., administrative rules) for youth care workers in these facilities. Subsection (b) requires the new standards to be substantially similar to the certification standards for detention officers in secure facilities.

Human Resources Code, Sec. 141.064. REVOCATION OR SUSPENSION OF CERTIFICATION.

(a) The commission may revoke or suspend a certification, or reprimand a certified officer;

(1) [;] for a violation of this chapter or a commission rule; or

(2) if, under Subsection (c), a panel determines that continued certification of the person threatens juveniles in the juvenile justice system.

(b) The commission may place on probation a person whose certification is suspended. If the suspension is probated, the commission may require the person to:

(1) report regularly to the commission on matters that are the basis of the probation; and

(2) continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(c) The director may convene, in person or telephonically, a panel of three commission members to determine if a person's continued certification threatens juveniles in the juvenile justice system. If the panel determines that the person's continued certification threatens juveniles in the juvenile justice system, the person's license is temporarily suspended until an administrative hearing is held as soon as possible under Subsection (d). The director may convene a panel under this subsection only if the danger posed by the person's continued certification is imminent. The panel may hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) A person is entitled to a hearing before the State Office of Administrative Hearings [commission or a hearings officer appointed by the commission] if the commission proposes to suspend or revoke the person's certification.

(e) A person may appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County. The standard of review is under the substantial evidence rule. [The commission shall prescribe procedures by which each decision to suspend or revoke is made by or is appealable to the commission.]

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Revocations, suspensions and hearings regarding certified probation and detention officers on or after the effective date.

Summary of Changes: Section 141.064 is part of the Texas Juvenile Probation Commission's (TJPC) enabling legislation regarding the revocation or suspension of the certification status of juvenile probation and detention officers. This section has been in effect since 1989 but was substantially amended and lengthened this session. As a part of the Sunset review process, the revocation and suspension procedures for certified officers were studied extensively. The Sunset Commission report and ultimately the final Sunset bill put into place a procedure where TJPC can immediately suspend a certified officer if the commission finds that the person is a threat to juveniles in the system. Normally, a person's certification can only be suspended through the administrative due process procedures. This expedited suspension is to be used in extreme cases where

youth are not safe from the individual in question. The individual will be afforded an administrative hearing as soon as possible and will receive all their due process rights.

Subsection (a) authorizes this expedited suspension of a certified officer. Subsection (b) authorizes TJPC to put the individual on probation with certain conditions as needed and appropriate. Subsection (c) requires a panel of three commission board members to make the decision to immediately suspend a certification if the person in fact is a threat to juveniles. The panel is authorized to meet via a telephonic meeting if necessary. Subsection (d) provides that all discipline cases will be heard by the State Office of Administrative Hearings (SOAH). Subsection (e) clarifies that a person may appeal a ruling of SOAH to district court in the county the person resides or in Travis County and the standard of review is the substantial evidence rule.

Human Resources Code, Sec. 141.066. CARRYING OF FIREARM BY CERTAIN OFFICERS PROHIBITED.

(b) This section does not apply to:

(1) an employee of the Texas Youth Commission; or

(2) a juvenile probation officer authorized to carry a firearm under Section 142.006.

Commentary by Chris Hubner

Source: SB 1237

Effective Date: June 19, 2009

Applicability: Conduct that occurs on or after the effective date.

Summary of Changes: New Section 141.066(b)(2), Human Resources Code, exempts a juvenile probation officer who is authorized to carry a firearm, as provided in newly enacted Section 142.006, from the prohibition against carrying a firearm.

Human Resources Code, Sec. 141.081. DETERMINATION OF AMOUNT OF STATE AID.

(d) The commission by rule shall, not later than September 1, 2010, establish one or more basic probation services funding formulas and one or more community corrections funding formulas. The funding formulas established under this subsection must include each grant for which the commission, on or before September 1, 2009, established an allocation formula.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Funding formulas methodologies for all Texas Juvenile Probation Commission (TJPC) grants on or after September 1, 2009.

Summary of Changes: Section 141.081 is part of TJPC's enabling legislation and was originally enacted in 1989. Subsection (d) was added this legislative session and requires the TJPC to put the agency's funding formulas in administrative rule (i.e., the Texas Register process). This requirement is effective for all agency grants that are administered by TJPC on or after September 1, 2009. The agency has until September 1, 2010 to promulgate and pass these administrative rules.

Health and Safety Code, Sec. 614.018. CONTINUITY OF CARE FOR JUVENILES WITH MENTAL IMPAIRMENTS.

(a) The Texas Juvenile Probation Commission, the Texas Youth Commission, the Department of Public Safety, the Department of State Health Services, the Department of Aging and Disability Services, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Youth Commission, the Texas Juvenile Probation Commission, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or mental retardation authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Memorandum of understanding developed on or after the effective date.

Summary of Changes: Mental health issues in the juvenile justice population are significant and pose challenges to the effective rehabilitation of youth. The Texas Juvenile Probation Commission (TJPC) estimates that 33.2% of those supervised under deferred prosecution or probation in FY 2008 were mentally ill. Of those estimated to be mentally ill in FY 2008, approximately 37.4% received mental health services during FY 2008. New Section 614.018 in the Health and Safety Code attempts to bring the majority of youth-serving state agencies together via a memorandum of understanding (MOU) to address the continuity of care for juveniles with mental impairments.

Subsection (a) details the various entities that are to enter into the MOU. The entities include the alphabet soup of state agencies (i.e., TJPC, TYC, DPS, DSHS, DARS, DFPS, TEA) and local juvenile probation departments. The Texas Correctional office on offenders with Medical and Mental Impairments (within the Texas Department of Criminal Justice) is the organization that is charged with coordinating and monitoring the development of the MOU. TCOOMMI has a similar MOU in the adult system and that MOU will be used as a starting point to develop the juvenile MOU under this section.

Subsection (b) address exactly what the MOU must address between the listed entities. The MOU must establish methods for identifying juveniles with mental impairments, collecting and report the data to the relevant office. Additionally, and even more importantly, the MOU must develop interagency rules, policies and procedures to delineate the coordination of care and exchange of information between the entities and identify the services needed.

Subsection (c) defines "continuity of care and service program" for purposes of this section.

Health and Safety Code, Sec. 614.017. EXCHANGE OF INFORMATION.

(a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impair-

ment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Information exchanges occurring on or after the effective date.

Summary of Changes: Chapter 614 of the Health and Safety Code establishes the Texas Correctional Office on offenders with Medical and Mental Impairments (TCOOMMI) under the governance of the Texas Board of Criminal Justice. Section 614.017 is the information exchange authorization in the adult system for offenders with mental impairments. Juvenile terminology was added to allow the exchange of juvenile information between the entities in the above discussed MOU.

Health and Safety Code, Sec. 614.017. EXCHANGE OF INFORMATION.

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

- (A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;
- (B) the Board of Pardons and Paroles;
- (C) the Department of State Health Services;
- (D) the Texas Juvenile Probation Commission;
- (E) the Texas Youth Commission;
- (F) the Department of Assistive and Rehabilitative Services;
- (G) the Texas Education Agency;
- (H) the Commission on Jail Standards;
- (I) the Department of Aging and Disability Services;
- (J) the Texas School for the Blind and Visually Impaired;

(K) community supervision and corrections departments and local juvenile probation departments;

(L) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(M) local jails regulated by the Commission on Jail Standards;

(N) a municipal or county health department;

(O) a hospital district;

(P) a judge of this state with jurisdiction over juvenile or criminal cases;

(Q) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(R) the Health and Human Services Commission;

(S) the Department of Information Resources; ~~and~~

(T) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and

(U) the Department of Family and Protective Services.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Information exchanges occurring on or after the effective date.

Summary of Changes: The amendments to this section include juvenile terminology and include local juvenile probation departments to those entities that can share information about offenders with special needs or mental impairments.

Family Code

Family Code, Sec. 51.02. DEFINITIONS.

(8-a) "Nonsecure correctional facility" means a facility, other than a secure correctional facility, that accepts only juveniles who are on probation and that is operated by or under contract with a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Nonsecure facilities operated on or after the effective date.

Summary of Changes: Section 51.02 contains the definitions used in the Texas Juvenile Justice Code. New Subsection 8-a defines nonsecure correctional facilities for purposes of the Family Code Section 51.126 discussed below. These nonsecure correctional facilities are solely for youth on probation and are not facilities that serve youth under the conservatorship of the Texas Department of Family and Protective Services (DFPS). Many DFPS licensed facilities serve youth on probation but serve foster children as well.

Family Code, Sec. 51.126. NONSECURE CORRECTIONAL FACILITIES.

(a) A nonsecure correctional facility for juvenile offenders may be operated only by:

(1) a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code; or

(2) a private entity under a contract with a governmental unit in this state.

(b) In each county, each judge of the juvenile court and a majority of the members of the juvenile board shall personally inspect, at least annually, all nonsecure correctional facilities that are located in the county and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities and to the Texas Juvenile Probation Commission that the facility or facilities are suitable or unsuitable for the confinement of children. In determining whether a facility is suitable or unsuitable for the confinement of children, the juvenile court judges and juvenile board members shall consider:

(1) current monitoring and inspection reports and any noncompliance citation reports issued by the Texas Juvenile Probation Commission, including the report provided under Subsection (c), and the status of any required corrective actions; and

(2) the other factors described under Sections 51.12(c)(2)-(7).

(c) The Texas Juvenile Probation Commission shall annually inspect each nonsecure correctional facility. The Texas Juvenile Probation Commission shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the confinement of children in accordance with minimum professional standards for the confinement of children in nonsecure confinement promulgated by the Texas Juvenile Probation Commission or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

(d) A governmental unit or private entity that operates or contracts for the operation of a juvenile nonsecure correctional facility in this state under Subsection (a), except for a facility operated by or under contract with the Texas Youth Commission, shall:

(1) register the facility annually with the Texas Juvenile Probation Commission; and

(2) adhere to all applicable minimum standards for the facility.

(e) The Texas Juvenile Probation Commission may deny, suspend, or revoke the registration of any facility required to register under Subsection (d) if the facility fails to:

(1) adhere to all applicable minimum standards for the facility; or

(2) timely correct any notice of noncompliance with minimum standards.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Operations of nonsecure juvenile correctional facilities on or after the effective date.

Summary of Changes: Section 51.126 is a new section added to the Family Code. During the Sunset review process, non-secure correctional facilities operated by juvenile boards and local juvenile probation departments that serve only juvenile offenders were the focus of study and analysis. There are approximately eight of these type facilities that currently exist. These facilities could and some argue should have been licensed by the Texas Department of Family and Protective Services (DFPS), the state entity that licenses all non-secure residential treatment facilities for children. Some non-secure juvenile facilities have in fact went through the process to become DFPS licenses, but most have not and thus, these facilities are not currently regulated by any state oversight entity.

TJPC's current administrative rules (i.e., standards) apply to secure juvenile pre-adjudication detention facilities and post-adjudication correctional facilities. The Sun-

set Commission ultimately recommended that TJPC should promulgate standards for non-secure correctional facilities that serve only juvenile offenders. Section 51.126 puts this procedure into place and also puts other regulations in place similar to those required for secure pre-adjudication detention facilities and post-adjudication correctional facilities. It is a companion statute to Section 51.12 and 51.125 of the Family Code that govern secure juvenile facilities.

Subsection (a) clearly defines who can operate a non-secure correctional facility for youth. Only a governmental unit or a private entity under contract with a government unit can operate a correctional facility.

Subsection (b) requires nonsecure correctional facilities to be certified as suitable for the confinement of children. The local juvenile court judges and a majority of the juvenile board members in the county where the facility is located must certify the facility annually. In determining suitability, the judges and board members must consider the statutory list of factors contained in Section 51.12(c).

Subsection (c) requires the Texas Juvenile Probation Commission (TJPC) to annually inspect each facility and determine compliance with minimum standards. TJPC must provide a compliance report to each juvenile court judge in the county where the facility is located. This report must indicate whether the facility is suitable or unsuitable for the confinement of children.

Subsection (d) requires each nonsecure correctional facility to be registered with TJPC annually and comply with minimum standards.

Subsection (e) authorizes TJPC to deny, suspend, or revoke the registration of any facility if the facility fails to adhere to applicable minimum standards or fails to timely correct a notice of noncompliance with standards.

11. Texas Youth Commission Provisions

Human Resources Code, Chapter 61. TEXAS YOUTH COMMISSION ~~[COUNCIL]~~

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Chapter heading on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the Texas Youth Commission (TYC). The change is a technical cleanup that should have happened many years ago. It changes the name of Chapter 61 to Texas Youth Commission. The name Texas Youth Council has not been used for several decades.

Human Resources Code, Sec. 61.001. DEFINITIONS.

(3) "Board" means the board of the commission appointed under Section 61.024.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: TYC governing board on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the Texas Youth Commission (TYC). In 2007, Senate Bill 103 made sweeping changes at TYC. One of those changes was to abolish the agency governing board in favor of an advisory board structure with an executive commissioner appointed to head TYC. This governance model would only remain in effect if the 2009 Texas Legislature continued it; the legislature did not and agency governance reverted back to a governing board and an appointed executive director for the agency. This addition in Subsection (3) of the definition of "Board" formalizes this governance mechanism.

Human Resources Code, Sec. 61.020. SUNSET PROVISION.

(a) The Texas Youth Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2011 [2009].

(b) In the review of the Texas Youth Commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall focus its review on:

(1) the commission's compliance with Chapter 263 (S.B. 103), Acts of the 80th Legislature, Regular Session, 2007;

(2) requirements placed on the agency by legislation enacted by the 81st Legislature, Regular Ses-

sion, 2009, that becomes law, including implementation of programs for the diversion of youth from the commission; and

(3) initiatives of the commission and the Texas Juvenile Probation Commission in coordinating activities and services to better integrate Texas Youth Commission, Texas Juvenile Probation Commission, and county juvenile justice functions, including joint strategic planning, the sharing of youth data across youth-serving agencies, assessments and classification of youth, and collection of data on probation outcomes.

(c) In its report to the 82nd Legislature, the sunset commission may include any recommendations it considers appropriate. This subsection and Subsection (b) expire September 1, 2011.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Sunset reviews of the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of TYC. Most every Texas state agency is legally required to undergo Sunset review every 10-12 years. The Sunset review determines if an agency is still viable, effective and necessary or if it is time for the "sun to set" on the agency (i.e., abolish the agency). Both the Texas Juvenile Probation Commission (TJPC) and TYC went through the Sunset review process in 2008 in preparation for the formal review during the 2009 legislative session. This section reauthorizes TYC for another two years.

This TYC provision (and an identical one for TJPC) set the next Sunset review date as 2011, which is a two-year review cycle instead of a 10-12 year cycle. The purpose of the expedited review is to gauge the progress made by TYC and TJPC on the major reforms made during the 2007 and 2009 legislative sessions. The scope of the Sunset review is limited by Subsection (b) to include a mandatory review of each agency's compliance with Senate Bill 103 from the 2007 session as well as any new mandates or responsibilities given by the 2009 Texas Legislature. Both TJPC and TYC will have to again be reauthorized in 2011 to continue in existence.

Human Resources Code, Sec. 61.024. GOVERNANCE OF COMMISSION.

(a) Notwithstanding any other provision of this chapter, effective September 1, 2009, the commission is governed by a board that consists of seven members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or

national origin of the appointees. The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Designations of board presiding officer on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the Texas Youth Commission (TYC). This new addition simply codifies what is the normal procedure for designating a presiding officer of a state agency governing board. Historically, the Governor designates the presiding officer (Chair) and that individual serves at the pleasure of the Governor. This new provision clarifies this long-standing practice in the TYC enabling legislation.

Human Resources Code, Sec. 61.025. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT.

(a) A person may not be a member of the board or employed by the board as the executive director if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of criminal or juvenile justice;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) A person may not be a board member and may not be a commission employee who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of criminal or juvenile justice; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice.

(c) A person may not be a member of the board or act as the general counsel to the board or the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activi-

ties for compensation on behalf of a profession related to the operation of the commission.

(d) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Persons appointed or reappointed to the Texas Youth Commission (TYC) board on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the TYC by adding new Section 61.025 that addresses the restrictions on board membership and employment. This is basically a standard conflict of interest provision that is common for most state agency governing boards in one form or another. Subsection (a) addresses persons who cannot be a board member or be employed as executive director of TYC. These prohibitions also apply to the spouse of the person being considered for board membership or as executive director. Subsection (b) establishes prohibitions that apply regarding trade associations in the criminal or juvenile justice arena. Subsection (c) prohibits lobbyists from being board members or acting as general counsel to the TYC board or commission. Subsection (d) defines trade associations for purposes of this statute.

Human Resources Code, Sec. 61.026. REMOVAL OF BOARD MEMBERS.

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 61.024(b);

(2) does not maintain during service on the board the qualifications required by Section 61.024(b);

(3) is ineligible for membership under Section 61.025;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the

governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Ground for removal that occurs on or after the effective date. A ground for removal that occurs before the effective date is governed by the law in effect immediately before that date.

Summary of Changes: This provision amends the enabling legislation of the Texas Youth Commission (TYC) by adding new Section 61.026 addressing the removal of board members from the TYC governing board. Subsection (a) defines the grounds for removal from the board. Subsection (b) makes clear that actions of the board are still legal and effective even if a ground for removal exists regarding a current board member. Subsection (c) requires the TYC executive director to notify the presiding officer of the board if the director has knowledge that a ground for removal exists regarding a board member. If the grounds for removal apply to the presiding officer, the executive director is required to notify the next highest ranking officer of the board who will notify the governor and attorney general.

Human Resources Code, Sec. 61.027. TRAINING FOR BOARD MEMBERS.

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs, functions, rules, and budget of the commission;

(3) the results of the most recent formal audit of the commission;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(5) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the

program occurs before or after the person qualifies for office.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Persons appointed or reappointed to the Texas Youth Commission (TYC) board on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of TYC by adding new Section 61.027 addressing mandatory training required for TYC board members. Subsection (a) makes clear that a board member must complete the required training before that individual can vote, deliberate or be counted in the quorum requirement for a board meeting. Subsection (b) lists the mandatory training that board members must receive. Subsection (c) authorizes the agency to reimburse the board member for travel required to attend the mandatory training.

Human Resources Code, Sec. 61.028. USE OF TECHNOLOGY.

The board shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Texas Youth Commission (TYC) technology policy created or revised on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of TYC by adding new Section 61.028 addressing the use of technology. The new provision requires TYC to implement a policy regarding the use of appropriate technological solution to improve the agency's ability to perform its functions. A requirement of the new policy will be to ensure the public is able to interact with TYC via the Internet. TJPC's enabling legislation was amended to add Section 141.028 which is the identical provision to 61.028.

Human Resources Code, Sec. 61.029. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION.

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code,

to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Policy regarding negotiated rulemaking and alternative dispute resolution created or modified on or after the effective date.

Summary of Changes: This provision amends the enabling legislation of the Texas Youth Commission (TYC) by adding new Section 61.029 addressing the use of negotiated rulemaking and alternative dispute resolution (ADR). This new section requires TYC to develop and implement a policy to encourage the use of negotiated rulemaking for all agency rules. Additionally, the policy is to encourage the use of alternative dispute resolution procedures when appropriate for internal and external agency disputes within TYC's jurisdiction. The board must designate a trained person to coordinate this policy, serve as the resource for training on implementation of negotiated rulemaking or ADR, and to collect data regarding the effectiveness of these procedures. Negotiated rulemaking is a formalized process to seek stakeholder input in the development of agency rules.

Human Resources Code, Sec. 61.0352. DIVISION OF RESPONSIBILITY.

The ~~board [executive commissioner]~~ shall develop and implement policies that clearly separate the policymaking responsibilities of the ~~board [executive commissioner]~~ and the management responsibilities of the staff of the commission.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Appointed governing board of the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: This amendment is a technical cleanup necessary because the governance of TYC has now

reverted back to a governing board structure with an executive director instead of an advisory board structure with an executive commissioner appointed by the Governor.

Human Resources Code, Sec. 61.0422. COMPLAINTS REGARDING SERVICES.

(a) The commission shall maintain a system to promptly and efficiently act on a [keep a file about each written] complaint filed with the commission by a person, other than a child receiving services from the commission or the child's parent or guardian, that the commission has authority to resolve. The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The commission shall make information available describing the commission's [provide to the person filing the complaint and the persons or entities complained about the commission's policies and] procedures for [pertaining to] complaint investigation and resolution.

(c) The commission~~[- at least quarterly and until final disposition of the complaint,]~~ shall periodically notify the ~~[person filing the]~~ complaint parties ~~[and the persons or entities complained about]~~ of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation.

(d) ~~[(b) The commission shall keep information about each file required by Subsection (a). The information must include:~~

- ~~[(1) the date the complaint is received;~~
- ~~[(2) the name of the complainant;~~
- ~~[(3) the subject matter of the complaint;~~
- ~~[(4) a record of all persons contacted in relation to the complaint;~~
- ~~[(5) a summary of the results of the review or investigation of the complaint; and~~
- ~~[(6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.~~

~~[(e)]~~ The commission shall keep information about each written complaint filed with the commission by a child receiving services from the commission or the child's parent or guardian. The information must include:

- (1) the subject matter of the complaint;
- (2) a summary of the results of the review or investigation of the complaint; and
- (3) the period of time between the date the complaint is received and the date the complaint is closed.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Complaints filed against the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: Section 61.0422 of TYC's enabling legislation addresses complaints regarding TYC services. The modifications to Subsection (a) clarify what information is to be kept on each complaint and facilitate an electronic data collection system as opposed to manual files. Subsection (b) requires TYC to provide information about the agency's procedures for complaint investigation and resolution. Subsection (c) requires TYC to periodically notify the complaint parties on the status of the complaint until final disposition. Subsection (d) addresses the information that must be kept if the complaint is filed by a child receiving TYC services or the child's parent or guardian.

Human Resources Code, Sec. 61.0423. PUBLIC HEARINGS.

(a) The board ~~[executive commissioner]~~ shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board ~~[executive commissioner or the executive commissioner's designee]~~ and to speak on any issue under the jurisdiction of the commission.

(b) The board ~~[executive commissioner]~~ shall ensure that the location of public hearings held in accordance with this section is rotated between municipalities in which a commission facility is located or that are in proximity to a commission facility.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Texas Youth Commission (TYC) board appointed on or after the effective date.

Summary of Changes: This amendment is a technical cleanup necessary because the governance of TYC has now reverted back to a governing board structure with an executive director instead of an advisory board structure with an executive commissioner appointed by the Governor. This section places the responsibility for public hearings on the agency governing board instead of the former executive commissioner.

Human Resources Code, Sec. 61.0451. OFFICE OF INSPECTOR GENERAL.

(a) The office of inspector general is established at the commission for the purpose of investigating:

(1) crimes committed by commission employees, including parole officers employed by or under a contract with the commission; and

(2) crimes and delinquent conduct committed at a facility operated by the commission, ~~[or at]~~ a residential facility operated by another entity under a contract with the commission, or any facility in which a child committed to the custody of the commission is housed or receives medical or mental health treatment.

(i) The office of inspector general shall immediately report to the executive director ~~[commissioner]~~, the ~~[advisory]~~ board, the governor's general counsel, and the state auditor;

(1) any particularly serious or flagrant problem concerning the administration of a commission program or operation; or

(2) any interference by the executive director ~~[commissioner or]~~ an employee of the commission, a facility described by Subsection (a)(2), or an officer or employee of a facility described by Subsection (a)(2) with an investigation conducted by the office.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Investigations occurring on or after the effective date.

Summary of Changes: This amendment is a technical cleanup necessary because the governance of the Texas Youth Commission (TYC) has now reverted back to a governing board structure with an executive director instead of an advisory board structure with an executive commissioner appointed by the Governor. This section was also amended to make clear that the Office of Inspector General has jurisdiction to investigate crimes in any facility where a TYC youth receives medical or mental health services, which includes facilities not owned by TYC or under a contract with TYC (e.g., hospitals, psychiatric hospitals, state hospitals, etc.).

Human Resources Code, Sec. 61.0455. DETECTION AND MONITORING OF CELLULAR TELEPHONES.

(a) The commission may own and the office of the inspector general may possess, install, operate, or monitor an electronic, mechanical, or other device, as defined by Article 18.20, Code of Criminal Procedure.

(b) The inspector general shall designate in writing the commissioned officers of the office of inspector general who are authorized to possess, install, operate, and monitor electronic, mechanical, or other devices for the commission.

(c) An investigative or law enforcement officer or other person, on request of the office of inspector general, may assist the office in the operation and monitoring of an interception of wire, oral, or electronic communications if the investigative or law enforcement officer or other person:

(1) is designated by the executive commissioner for that purpose; and

(2) acts in the presence and under the direction of a commissioned officer of the inspector general.

Commentary by Chris Hubner

Source: HB 3228

Effective Date: September 1, 2009

Applicability: Conduct occurring on or after the effective date.

Summary of Changes: Newly added Section 61.0455, Human Resources Code, authorizes the Texas Youth Commission to own and the Office of the Inspector General (OIG) to possess, install, operate or monitor an “electronic, mechanical, or other device,” as defined in Article 18.20(4), Code of Criminal Procedure. Such devices may be used for the nonconsensual interception of wire, oral or electronic communications. The OIG must designate in writing the commissioned officers in its employ who are authorized to possess, install, operate and monitor such devices for TYC. Other investigators, officers or persons, at the request of the OIG, may assist in the operation and monitoring of an interception of wire, oral or electronic communications, if such person is officially designated for that purpose and acts in the presence and under the direction of an OIG commissioned officer.

Human Resources Code, Sec. 61.067. INFORMATION PROVIDED TO COMMITTING COURT.

(a) If a court that commits a child to the commission requests, in the commitment order, that the commission keep the court informed of the progress the child is making while committed to the commission, the commission shall provide the court with periodic updates on the child's progress.

(b) A report provided under Subsection (a) may include any information the commission determines to be relevant in evaluating the child's progress, including, as applicable, information concerning the child's treatment, education, and health.

(c) A report provided under this section may not include information that is protected from disclosure under state or federal law.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Requests for information for youth committed on or after the effective date.

Summary of Changes: Texas Youth Commission's (TYC) enabling legislation was amended by the addition of new Section 61.067 that requires TYC to provide the committing court with periodic updates on a youth's progress while in TYC. The committing court must request this information in the commitment order. The progress report may include any information that TYC determines is relevant, including information about the child's treatment, education and health.

TYC may not release any information that is deemed confidential under state or federal law. There are a variety of state and federal laws addressing confidentiality of youth records. These include the following:

1. Human Immunodeficiency Virus Services Act (Chap. 85, Health and Safety Code) requirements for maintaining the confidentiality of HIV and its related conditions;
2. Communicable Disease Prevention & Control Act (Vernon's Ann. Civ. Stat. Art. 81.001, et seq.);
3. Federal regulations implementing 42 USCA Section 290 et seq, related to the confidentiality of certain records of Youth with alcohol or other drug problems in certain federally assisted programs; and
4. Health Insurance Portability & Accountability Act (Public Law 104-191, 104th Congress) and Standards for Privacy of Individually Identifiable Health Information (§§160.102, 160.103, 160.202, 164.104, 164.500, 164.501; 164.504).

Human Resources Code, Sec. 61.0731. INFORMATION AVAILABLE TO CHILDREN, PARENTS, AND OTHERS.

(d) Notwithstanding Subsection (a), if the Department of Family and Protective Services has been appointed managing conservator for a child, the commission shall disclose records and other information concerning the child to the department as provided by department rules.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date.

Summary of Changes: New Section 61.0731(d) states that if the Texas Department of Family and Protective Services (DFPS) has been appointed managing conservator for a child who has been committed to TYC, then DFPS must receive disclosure of records and other information pertaining to the child from TYC as provided by DFPS rules.

Human Resources Code, Sec. 61.0763. RIGHTS OF PARENTS.

(e) The commission shall ensure that if the Department of Family and Protective Services has been appointed managing conservator of a child, the department is given the same rights as the child's parent under the parent's bill of rights developed under this section.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date

Summary of Changes: New Section 61.0763(e) mandates that TYC afford DFPS the same rights as the child's parent under the parent's bill of rights if DFPS has been appointed managing conservator of a child.

Human Resources Code, Sec. 61.0766. REPORT CONCERNING FOSTER CHILDREN COMMITTED TO COMMISSION.

(a) Not later than the 10th day before the date of a permanency hearing under Subchapter D, Chapter 263, Family Code, or a placement review hearing under Subchapter F, Chapter 263, Family Code, regarding a child for whom the Department of Family and Protective Services has been appointed managing conservator, a commission caseworker shall submit a written report regarding the child's commitment to the commission to:

- (1) the court;
- (2) the Department of Family and Protective Services;
- (3) any attorney ad litem or guardian ad litem appointed for the child; and
- (4) any volunteer advocate appointed for the child.

(b) The report required by Subsection (a) must include:

- (1) the results of any assessments of the child during the child's commitment to the commission, including assessments of the child's emotional, mental, educational, psychological, psychiatric, medical, or physical needs;
- (2) information regarding the child's placement in particular programs administered by the commission; and
- (3) a description of the child's progress in programs administered by the commission.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: "Dually managed" youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date

Summary of Changes: Newly enacted Section 61.0766(a), Human Resources Code, requires that a TYC caseworker submit a written report regarding a child's commitment to TYC at least 10 days before the date of a permanency hearing concerning a child for whom the Texas Department of Family and Protective Services (DFPS) has been appointed managing conservator. TYC's report must be submitted to

the court, DFPS, any attorney ad litem or guardian ad litem, and any volunteer advocate who has been appointed for the child.

New Section 61.0766(b), Human Resources Code, mandates that the TYC caseworker's report include: 1) the results of any assessments made during the child's TYC commitment; 2) information about the child's placement in particular programs administered by TYC; and 3) a description of the child's progress in such TYC programs.

Human Resources Code, Sec. 61.0767. RULES REGARDING SERVICES FOR FOSTER CHILDREN.

(a) The commission and the executive commissioner of the Health and Human Services Commission shall jointly adopt rules to ensure that a child for whom the Department of Family and Protective Services has been appointed managing conservator receives appropriate services while the child is committed to the commission or released under supervision by the commission.

(b) The rules adopted under this section must require the commission and the Department of Family and Protective Services to cooperate in providing appropriate services to a child for whom the Department of Family and Protective Services has been appointed managing conservator while the child is committed to the commission or released under supervision by the commission, including:

- (1) medical care, as defined by Section 266.001, Family Code;
- (2) mental health treatment and counseling;
- (3) education, including special education;
- (4) case management;
- (5) drug and alcohol abuse assessment or treatment;
- (6) sex offender treatment; and
- (7) trauma informed care.

(c) The rules adopted under this section must require:

- (1) the Department of Family and Protective Services to:
 - (A) provide the commission with access to relevant health and education information regarding a child; and

- (B) require a child's caseworker to visit the child in person at least once each month while the child is committed to the commission;

- (2) the commission to:

- (A) provide the Department of Family and Protective Services with relevant health and education information regarding a child;

- (B) permit communication, including in person, by telephone, and by mail, between a child committed to the commission and:

- (i) the Department of Family and Protective Services; and

(ii) the attorney ad litem, the guardian ad litem, and the volunteer advocate for the child; and

(C) provide the Department of Family and Protective Services and any attorney ad litem or guardian ad litem for the child with timely notice of the following events relating to the child:

(i) a meeting designed to develop or revise the individual case plan for the child;

(ii) in accordance with any participation protocols to which the Department of Family and Protective Services and the commission agree, a medical appointment at which a person authorized to consent to medical care must participate as required by Section 266.004(i), Family Code;

(iii) an education meeting, including admission, review, or dismissal meetings for a child receiving special education;

(iv) a grievance or disciplinary hearing for the child;

(v) a report of abuse or neglect of the child; and

(vi) a significant medical condition of the child, as defined by Section 266.005, Family Code; and

(3) the Department of Family and Protective Services and the commission to participate in transition planning for the child through release from detention, release under supervision, and discharge.

Commentary by Chris Hubner

Source: HB 1629

Effective Date: May 23, 2009

Applicability: “Dually managed” youth in Texas Youth Commission (TYC) custody or on TYC parole supervision on or after the effective date

Summary of Changes: New Section 61.0767, Human Resources Code, mandates that the Health and Human Services Commission (HHSC) and the Department of Protective and Regulatory Services (DFPS) jointly adopt rules to ensure that children who are committed to TYC or released on TYC parole, and who are under the legal custody of DFPS, receive appropriate services while committed to TYC or released on TYC parole. DFPS and TYC are required to cooperate in providing appropriate services to such “dually managed” youth, which include: 1) medical care; 2) mental health treatment and counseling; 3) education, including special education; 4) case management; 5) drug and alcohol abuse assessment or treatment; 6) sex offender treatment; and 7) trauma informed care.

The rules adopted must also require that DFPS and TYC share relevant health and education information regarding a child and ensure monthly visits by a DFPS caseworker with a child who is committed to TYC. In turn, a child under commitment to TYC must be allowed to com-

municate with DFPS, the attorney ad litem, guardian ad litem, and the volunteer advocate for the child. Additionally, TYC must provide these parties with timely notice of the following events concerning the child: 1) meetings to develop or revise the child’s individual case plan; 2) medical appointments at which a person who is authorized to consent to medical care must participate; 3) educational meetings, including ARDs for youth receiving special education; 4) grievance or disciplinary hearings for the child; 5) reports of abuse or neglect of the child; and 6) any significant medical condition of the child. Finally, DFPS and TYC must participate in transition planning for the child through release from detention, release under TYC parole supervision and discharge.

Human Resources Code, Sec. 61.08131. COMPREHENSIVE REENTRY AND REINTEGRATION PLAN FOR CHILDREN; STUDY AND REPORT.

(a) The commission shall develop a comprehensive plan to reduce recidivism and ensure the successful reentry and reintegration of children into the community following a child's release under supervision or final discharge, as applicable, from the commission.

(b) The comprehensive reentry and reintegration plan developed under this section must provide for:

(1) an assessment of each child committed to the commission to determine which skills the child needs to develop to be successful in the community following release under supervision or final discharge;

(2) programs that address the assessed needs of each child;

(3) a comprehensive network of transition programs to address the needs of children released under supervision or finally discharged from the commission;

(4) the identification of providers of existing local programs and transitional services with whom the commission may contract under this section to implement the reentry and reintegration plan; and

(5) subject to Subsection (c), the sharing of information between local coordinators, persons with whom the commission contracts under this section, and other providers of services as necessary to adequately assess and address the needs of each child.

(c) A child's personal health information may be disclosed under Subsection (b)(5) only in the manner authorized by Section 61.0731 or other state or federal law, provided that the disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

(d) The programs provided under Subsections (b)(2) and (3) must:

(1) be implemented by highly skilled staff who are experienced in working with reentry and reintegration programs for children;

(2) provide children with:

(A) individualized case management and a full continuum of care;

(B) life-skills training, including information about budgeting, money management, nutrition, and exercise;

(C) education and, if a child has a learning disability, special education;

(D) employment training;

(E) appropriate treatment programs, including substance abuse and mental health treatment programs; and

(F) parenting and relationship-building classes; and

(3) be designed to build for children post-release and post-discharge support from the community into which the child is released under supervision or finally discharged, including support from agencies and organizations within that community.

(e) The commission may contract and coordinate with private vendors, units of local government, or other entities to implement the comprehensive reentry and reintegration plan developed under this section, including contracting to:

(1) coordinate the supervision and services provided to children during the time children are in the custody of the commission with any supervision or services provided children who have been released under supervision or finally discharged from the commission;

(2) provide children awaiting release under supervision or final discharge with documents that are necessary after release or discharge, including identification papers, medical prescriptions, job training certificates, and referrals to services; and

(3) provide housing and structured programs, including programs for recovering substance abusers, through which children are provided services immediately following release under supervision or final discharge.

(f) To ensure accountability, any contract entered into under this section must contain specific performance measures that the commission shall use to evaluate compliance with the terms of the contract.

(g) The commission shall ensure that each reentry and reintegration plan developed for a child under Section 61.0814 is coordinated with the comprehensive reentry and reintegration plan developed under this section.

(h) The commission shall conduct and coordinate research to determine whether the comprehensive reentry and reintegration plan developed under this section reduces recidivism rates.

(i) Not later than December 1 of each even-numbered year, the commission shall deliver a report of the results of research conducted or coordinated under Subsection (h) to the lieutenant governor, the speaker of the house of representatives, and the standing committees of each house of the legislature with primary jurisdiction over juvenile justice and corrections.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Youth released from the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: Section 61.08131 is a comprehensive new section in TYC's enabling legislation regarding re-entry and reintegration plans for youth being discharged from TYC. Subsection (a) requires TYC to develop a comprehensive plan to reduce recidivism and ensure successful re-entry and reintegration of youth back into the community once they leave TYC custody.

Subsection (b) requires the plan developed to include an assessment of each child committed to TYC, programs that address assessed needs of each child, a network of transition programs to address the youth's needs, identification of providers with whom TYC can contract for services, and information sharing between service providers and TYC.

Subsection (c) authorizes TYC to release health information about the child provided the disclosure does not violate HIPPA rules.

Subsection (d) details the required components of the programs to ensure youth have individualized case management and a continuum of care, training and treatment to meet their needs in the community setting.

Subsection (e) allows TYC to contract with various entities to provide these re-entry and reintegration programs and services. TYC may contract with private vendors, units of local government (e.g., counties, cities, juvenile probation departments, etc.) and other entities.

Subsection (f) requires TYC to include specific performance measures in any contract with external entities for re-entry and reintegration programs and services.

Subsection (g) requires that TYC must ensure that the re-entry and reintegration plan developed under Section 61.08131 is coordinated with the plan developed under Section 61.0814, which was similar to a provision added in the 2007 legislative session per Senate Bill 103.

Subsection (h) requires TYC to conduct research to determine whether re-entry and reintegration plans are reducing recidivism rates for youth committed to TYC.

Subsection (i) requires TYC to provide legislative leadership a report regarding the recidivism research results by December 1 prior to each legislative session. The first of these reports will be due on or before December 1, 2010 prior to the 2011 legislative session.

Human Resources Code, Sec. 61.08141. INFORMATION PROVIDED TO COURT BEFORE RELEASE.

(a) In addition to providing the court with notice of release of a child under Section 61.081(e), as soon as possible but not later than the 30th day before the date the commission releases the child, the commission shall provide the court that committed the child to the commission;

(1) a copy of the child's reentry and reintegration plan developed under Section 61.0814; and

(2) a report concerning the progress the child has made while committed to the commission.

(b) If, on release, the commission places a child in a county other than the county served by the court that committed the child to the commission, the commission shall provide the information described by Subsection (a) to both the committing court and the juvenile court in the county where the child is placed after release.

(c) If, on release, a child's residence is located in another state, the commission shall provide the information described by Subsection (a) to both the committing court and a juvenile court of the other state that has jurisdiction over the area in which the child's residence is located.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Youth released from the Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: Section 61.08141 is a new section in TYC's enabling legislation that requires TYC to provide certain information about a youth to the committing court prior to the youth's release from TYC. Subsection (a) requires that TYC provide the committing court with information about the youth no later than 30 days before the youth is to be released from TYC. This information must include a copy of the child's re-entry and reintegration plan and a progress report about the child while at TYC.

Subsection (b) addresses the situation where a youth is going back to a county other than the one that committed the child. It requires TYC to send the above information to both the original committing court and the juvenile court in the county where the youth will be placed after release.

Subsection (c) addresses the situation when a youth will be placed in another state to reside after being released from TYC. It requires TYC to send the above information to both the original committing court and the juvenile court of the other state where the youth will be placed after release.

TYC is actively developing a comprehensive re-entry and reintegration plan to be used with each youth upon release from a residential program. The agency is

working to develop and implement these plans, which will incorporate an individualized assessment of each youth's risk and protective factors, as quickly as possible, and hopes to implement these requirements by early 2010.

Human Resources Code, Sec. 61.0911. COORDINATED STRATEGIC PLAN.

The Texas Youth Commission shall biennially develop with the Texas Juvenile Probation Commission a coordinated strategic plan in the manner described by Sections [as required by Section] 141.0471 and 141.0472.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Strategic plans due on or after the effective date.

Summary of Changes: The amendments to this section are technical cleanup to reference a new section regarding coordinated strategic planning. New Section 141.0472 was added to the enabling legislation of the Texas Juvenile Probation Commission (TJPC) and is the section that details exactly what the coordinated strategic plan must include between TYC and TJPC. This section simply requires TYC and TJPC to biennially develop a coordinated strategic plan. This has been the law for these agencies since 1995. However, the depth and breadth of the strategic plan was greatly enhanced as a result of the Sunset review process of both agencies that occurred during the 2009 legislative session.

Human Resources Code, Sec. 61.098. CERTAIN CRIMES CONCERNING THE COMMISSION.

(b) As appropriate, the district attorney, criminal district attorney, or county attorney representing the state in criminal matters before the district or inferior courts of the county who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, may request that the special prosecution unit prosecute, or assist in the prosecution of, the offense or delinquent conduct.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Prosecutions on or after the effective date.

Summary of Changes: Section 61.098 was originally added as a part of Senate Bill 103 during the 2007 legislative session and details the responsibilities of the special prosecution unit at the Texas Department of Criminal Justice (TDCJ). The special prosecutor is authorized to prosecute offenses committed on TYC or TDCJ property or by offenders in TYC or TDCJ custody. This amendment authorizes local criminal prosecutors the authority to request the

assistance of the special prosecutor. Thus, the local prosecutor can either request the special prosecutor to totally handle the prosecution or they can simply ask for assistance as needed.

Human Resources Code, Sec. 63.025. ADMISSION OF AND PAYMENT FOR SERVICES PROVIDED TO JUVENILES RESIDING IN ANOTHER COUNTY.

The board of trustees may provide that juveniles who reside outside the boundaries of a county that participated in the formation of the facility may be admitted to the facility. However, the charges to the county of residence of the juvenile may be billed at a rate higher than that charged to a county that participated in the formation of the facility.

Commentary by Chris Huber

Source: SB 1969

Effective Date: September 1, 2009

Applicability: Chapter heading on or after the effective date.

Summary of Changes: Section 63.025, Human Resources Code, is amended to simply expand the heading from “Juveniles Residing in Another County” to “Admission of and Payment for Services Provided to Juveniles Residing in Another County”. This amendment makes no substantive change.

Human Resources Code, Sec. 63.027. LIMITATION ON PERIOD FOR JUVENILE'S RESIDENCE.

The court will include in its order the length of time that the juvenile will reside in the facility, which will not exceed a period of one year. At the conclusion of the one-year period, the court will make a determination as to whether the juvenile will benefit from further residence within the facility. The court may then order the juvenile to be placed into the facility for additional time not to exceed one year.

Commentary by Chris Hubner

Source: SB 1969

Effective Date: September 1, 2009

Applicability: Chapter heading on or after the effective date.

Summary of Changes: Section 63.027, Human Resources Code, formerly entitled “Length of Time of Juvenile’s Residence” is amended to make a terminology change to: Limitation on Period for Juvenile’s Residence. This amendment makes no substantive change.

Human Resources Code, Sec. 64.054. SUNSET PROVISION.

(a) The office is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which the Texas Youth Commission

is [state agencies abolished in 2009 and every 12th year after 2009 are] reviewed.

(b) Notwithstanding Subsection (a), the Sunset Advisory Commission shall focus its review of the office on compliance with requirements placed on the office by legislation enacted by the 81st Legislature, Regular Session, 2009, that becomes law. This subsection expires September 1, 2011.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Operations of the Office of the Independent Ombudsman (OIO) on or after the effective date.

Summary of Changes: This section is the Sunset provision for the Office of the Independent Ombudsman (OIO) at the Texas Youth Commission (TYC). The OIO’s Sunset review date is set by this provision to coincide with the period in which TYC undergoes Sunset review. Subsection (b) reauthorizes the OIO for another two years and places the next Sunset review in 2011, which is when TYC and TJPC will undergo Sunset review again. The scope of the Sunset review is also limited as it relates to the OIO and is to focus on new legislation passed during the 2009 legislature that affect or give new duties/responsibilities to the OIO.

Human Resources Code, Sec. 64.058. RULEMAKING AUTHORITY.

(a) The office by rule shall establish policies and procedures for the operations of the office of independent ombudsman.

(b) The office and the commission shall adopt rules necessary to implement Section 64.060, including rules that establish procedures for the commission to review and comment on reports of the office and for the commission to expedite or eliminate review of and comment on a report due to an emergency or a serious or flagrant circumstance described by Section 64.055(b).

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Operation of the Office of Independent Ombudsman (OIO) on or after the effective date.

Summary of Changes: Section 64.058 is the enabling legislation for the OIO and provides the authorization for the OIO to make administrative rules for the operation of the office. Subsection (b) was added to authorize the OIO to promulgate rules necessary to implement new Section 64.060 (discussed below), which relates to allowing TYC to review and comment on reports issued by the OIO.

Human Resources Code, Sec. 64.060. REVIEW AND FORMAT OF REPORTS.

(a) The office shall accept, both before and after publication, comments from the commission concerning the following types of reports published by the office under this chapter:

(1) the office's quarterly report under Section 64.055(a);

(2) reports concerning serious or flagrant circumstances under Section 64.055(b); and

(3) any other formal reports containing findings and making recommendations concerning systemic issues that affect the commission.

(b) The commission may not submit comments under Subsection (a) after the 30th day after the date the report on which the commission is commenting is published.

(c) The office shall ensure that reports described by Subsection (a) are in a format to which the commission can easily respond.

(d) After receipt of comments under this section, the office is not obligated to change any report or change the manner in which the office performs the duties of the office.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Reports issued by the Office of Independent Ombudsman (OIO) on or after the effective date.

Summary of Changes: New Section 64.060 is part of the OIO enabling legislation and governs the review and format of reports by the OIO. Subsection (a) requires the OIO to accept, both before and after publication, comments from TYC concerning reports issued by the OIO.

Subsection (b) gives TYC up to 30 days to comment on a published OIO report.

Subsection (c) requires the OIO to ensure the reports are in a format to which TYC can easily respond.

Subsection (d) makes clear the OIO does not have to change a report based on receipt of TYC comments.

Human Resources Code, Sec. 64.061. COMPLAINTS.

(a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that relate to the operations or staff of the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Complaints filed against the Office of Independent Ombudsman (OIO) on or after the effective date.

Summary of Changes: Section 64.061 is a new section in the OIO's enabling legislation that addresses complaints regarding OIO operations or staff. Subsection (a) clarifies what information is to be kept on each complaint and facilitates an electronic data collection system as opposed to manual files. Subsection (b) requires the OIO to provide information about the agency's procedures for complaint investigation and resolution. Subsection (c) requires the OIO to periodically notify the complaint parties on the status of the complaint until final disposition. This new provision is similar to provisions for both the Texas Youth Commission and Texas Juvenile Probation Commission.

Human Resources Code, Sec. 64.104. MEMORANDUM OF UNDERSTANDING.

(a) The office and the commission shall enter into a memorandum of understanding concerning:

(1) the most efficient manner in which to share information with one another; and

(2) the procedures for handling overlapping monitoring duties and activities performed by the office and the commission.

(b) The memorandum of understanding entered into under Subsection (a), at a minimum, must:

(1) address the interaction of the office with that portion of the commission that conducts an internal audit under Section 61.0331;

(2) address communication between the office and the commission concerning individual situations involving children committed to the commission and how those situations will be documented and handled;

(3) contain guidelines on the office's role in relevant working groups and policy development decisions at the commission;

(4) ensure opportunities for sharing information between the office and the commission for the purposes of assuring quality and improving programming within the commission; and

(5) preserve the independence of the office by authorizing the office to withhold information concerning matters under active investigation by the office from the commission and commission staff and to report the information to the governor.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Operations of the Office of Independent Ombudsman (OIO) and Texas Youth Commission (TYC) on or after the effective date.

Summary of Changes: Section 64.104 is a new section in the OIO's enabling legislation that addresses a required memorandum of understanding (MOU) with TYC concerning several key areas. Subsection (a) requires the MOU to address efficient information sharing between the two entities and the procedures for handling overlapping monitoring duties.

Subsection (b) details the minimum requirements of the MOU in various substantive areas including interaction and communication between the entities and respective roles of each entity regarding policy development. A key concept made clear is that the OIO's independence must be preserved.

Education Code

Education Code, Sec. 30.106. READING AND BEHAVIOR PLAN.

(a) Because learning and behavior are inextricably linked and learning and improved behavior correlate with decreased recidivism rates, the Texas Youth Commission shall not only fulfill the commission's duties under state and federal law to provide general and special educational services to students in commission educational programs but also shall implement a comprehensive plan to improve the reading skills and behavior of those students.

(b) To improve the reading skills of students in Texas Youth Commission educational programs, the commission shall:

(1) adopt a reliable battery of reading assessments that:

(A) are based on a normative sample appropriate to students in commission educational programs;

(B) are designed to be administered on an individual basis; and

(C) allow school employees to:
(i) evaluate performance in each essential component of effective reading instruction, including phonemic awareness, phonics, fluency, vocabulary, and comprehension;

(ii) monitor progress in areas of deficiency specific to an individual student; and

(iii) provide reading performance data;

(2) administer the assessments adopted under Subdivision (1):

(A) at periodic intervals not to exceed 12 months, to each student in a commission educational program; and

(B) at least 15 days and not more than 30 days before a student is released from the commission;

(3) provide at least 60 minutes per school day of individualized reading instruction to each student in a commission educational program who exhibits deficits in reading on the assessments adopted under Subdivision (1):

(A) by trained educators with expertise in teaching reading to struggling adolescent readers; and

(B) through the use of scientifically based, peer-reviewed reading curricula that:

(i) have proven effective in improving the reading performance of struggling adolescent readers;

(ii) address individualized and differentiated reading goals; and

(iii) include each of the essential components of effective reading instruction, including phonemic awareness, phonics, fluency, vocabulary, and comprehension;

(4) require each teacher in a commission regular or special educational program who teaches English language arts, reading, mathematics, science, social studies, or career and technology education to be trained in incorporating content area reading instruction using empirically validated instructional methods that are appropriate for struggling adolescent readers; and

(5) evaluate the effectiveness of the commission's plan to increase reading skills according to the following criteria:

(A) an adequate rate of improvement in reading performance, as measured by monthly progress monitoring using curricular-based assessments in each of the essential components of effective reading instruction, including phonemic awareness, phonics, fluency, vocabulary, and comprehension;

(B) a significant annual rate of improvement in reading performance, disaggregated by subgroups designated under commission rule, as measured using the battery of reading assessments adopted under Subdivision (1); and

(C) student ratings of the quality and impact of the reading plan under this subsection, as measured on a student self-reporting instrument.

(c) To increase the positive social behaviors of students in Texas Youth Commission educational programs and to create an educational environment that facilitates learning, the commission shall:

(1) adopt system-wide classroom and individual positive behavior supports that incorporate a continuum of prevention and intervention strategies that:

(A) are based on current behavioral research; and

(B) are systematically and individually applied to students consistent with the demonstrated level of need;

(2) require each teacher and other educational staff member in a commission educational program to be trained in implementing the positive behavior support system adopted under Subdivision (1); and

(3) adopt valid assessment techniques to evaluate the effectiveness of the positive behavior support system according to the following criteria:

(A) documentation of school-related disciplinary referrals, disaggregated by the type, location, and time of infraction and by subgroups designated under commission rule;

(B) documentation of school-related disciplinary actions, including time-out, placement in security, and use of restraints and other aversive control measures, disaggregated by subgroups designated under commission rule;

(C) validated measurement of systemic positive behavioral support interventions; and

(D) the number of minutes students are out of the regular classroom because of disciplinary reasons.

(d) The Texas Youth Commission shall consult with faculty from institutions of higher education who have expertise in reading instruction for adolescents, in juvenile corrections, and in positive behavior supports to develop and implement the plan under Subsections (b) and (c).

(e) A student in a Texas Youth Commission educational program may not be released on parole from the commission unless the student participates, to the extent required by commission rule, in the positive behavior support system under Subsection (c). A student in a commission educational program who exhibits deficits in reading on the assessments adopted under Subsection (b)(1) must also participate in reading instruction to the extent required by this section and by commission rule before the student may be released on parole.

(f) Not later than December 1, 2010, the Texas Youth Commission shall report to the legislature concerning:

(1) the effectiveness of the commission's reading plan based on the criteria specified by Subsection (b)(5); and

(2) the implementation of the positive behavior support system plan under Subsection (c).

(g) Not later than December 1, 2012, the Texas Youth Commission shall report to the legislature concerning the effectiveness of the positive behavior support system based on the criteria specified by Subsection (c)(3).

(h) Subsections (f) and (g) and this subsection expire January 1, 2013.

Commentary by Lisa Capers

Source: HB 3689

Effective Date: June 19, 2009

Applicability: Admissions to Texas Youth Commission (TYC) on or after January 1, 2010.

Summary of Changes: New Section 30.106 has been added to the Education Code and provides a variety of mandates to TYC regarding reading and behavior plans for youth in TYC custody. Chapter 30 of the Education Code relates to state and regional programs and services. Subchapter E applies specifically to TYC facilities.

TYC has always implemented reading programs and behavioral management strategies throughout their facilities. This new section recognizes the growing importance of effective and enhanced reading initiatives and positive behavioral support systems on a youth's successful rehabilitation and long-term recidivism. Subsection (a) reiterates that not only must TYC fulfill all state and federal mandates related to a youth's educational opportunities, but that TYC must implement a comprehensive plan to improve the reading skills and behavior of students in TYC.

Subsection (b) requires TYC to do several key things: 1) adopt a reliable battery of reading assessments that is normed on TYC students; 2) administer the assessments to youth periodically during stay in TYC and prior to release; 3) provide at least 60 minutes of individualized reading instruction each day to students who show reading deficits; 4) require TYC regular and special education teachers to be trained in incorporating content area reading instruction; and 5) evaluate the effectiveness of the TYC plan to increase reading skills according to set criteria. The battery of assessments under this subsection must be adopted by TYC no later than November 1, 2009 and TYC must begin administering the battery of reading assessments to students no later than January 1, 2010.

Subsection (c) focuses on increasing positive social behavior of TYC youth and creating a positive learning environment at TYC. TYC is required to 1) adopt a system-wide classroom and individual positive behavior support system; 2) require teachers and educational staff to be trained in implementing the system; and 3) adopt valid assessment techniques to evaluate the effectiveness of the behavior support system using set criteria.

Subsection (d) requires TYC to consult with faculty from higher education institutions who have expertise in reading instruction programs and behavior support systems.

Subsection (e) mandates that a youth cannot be released on TYC parole unless the student participates in the positive behavior support system. A student must also have participated in the reading instruction program prior

to parole if the student showed deficits in reading on the assessments given to the student. Subsection (e) applies to youth released on or after September 1, 2010.

Subsection (f) requires TYC to report to the legislature on the effectiveness of the reading program and the implementation of the positive behavior support system.

This report is due no later than December 1, 2010 which is immediately preceding the 2011 legislative session.

Subsection (g) requires TYC to report to the legislature on the effectiveness of the positive behavior support system using specified criteria. This report is due no later than December 1, 2012.

12. Miscellaneous Provisions

Government Code

Government Code, Ch. 535. PROVISION OF HUMAN SERVICES AND OTHER SOCIAL SERVICES THROUGH FAITH- AND COMMUNITY-BASED ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 535.001. DEFINITIONS. In this chapter:

(1) "Community-based initiative" includes a social, health, human services, or volunteer income tax assistance initiative operated by a community-based organization.

(2) "Community-based organization" means a nonprofit corporation or association that is located in close proximity to the population the organization serves.

(3) "Faith-based initiative" means a social, health, or human services initiative operated by a faith-based organization.

(4) "Faith-based organization" means a nonprofit corporation or association that:

(A) is operated through a religious or denominational organization, including an organization that is operated for religious, educational, or charitable purposes and that is operated, supervised, or controlled, wholly or partly, by or in connection with a religious organization; or

(B) clearly demonstrates through the organization's mission statement, policies, or practices that the organization is guided or motivated by religion.

(5) "State Commission on National and Community Service" means the entity used as authorized by 42 U.S.C. Section 12638(a) to carry out the duties of a state commission under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.).

Sec. 535.002. PURPOSE. The purpose of this chapter is to strengthen the capacity of faith- and community-based organizations and to forge stronger partnerships between those organizations and state government for the legitimate public purpose of providing charitable and social services to persons in this state.

Sec. 535.003. CONSTRUCTION. This chapter may not be construed to:

(1) exempt a faith- or community-based organization from any applicable state or federal law; or

(2) be an endorsement or sponsorship by this state of the religious character, expression, beliefs, doctrines, or practices of a faith-based organization.

Sec. 535.004. APPLICABILITY OF CERTAIN FEDERAL LAW. A power authorized or duty imposed under this chapter must be performed in a manner that is consistent with 42 U.S.C. Section 604a.

[Sections 535.005-535.050 reserved for expansion]

SUBCHAPTER B. GOVERNMENTAL LIAISONS FOR FAITH- AND COMMUNITY-BASED ORGANIZATIONS

Sec. 535.051. DESIGNATION OF FAITH- AND COMMUNITY-BASED LIAISONS. (a) The executive commissioner, in consultation with the governor, shall designate one employee from the commission and from each health and human services agency to serve as a liaison for faith- and community-based organizations.

(b) The chief administrative officer of each of the following state agencies, in consultation with the governor, shall designate one employee from the agency to serve as a liaison for faith- and community-based organizations:

(1) the Office of Rural Community Affairs;

(2) the Texas Commission on Environmental Quality;

(3) the Texas Department of Criminal Justice;

(4) the Texas Department of Housing and Community Affairs;

(5) the Texas Education Agency;

(6) the Texas Juvenile Probation Commission;

(7) the Texas Veterans Commission;

(8) the Texas Workforce Commission;

(9) the Texas Youth Commission; and

(10) other state agencies as determined by the governor.

Sec. 535.052. GENERAL DUTIES OF LIAISONS. (a) A faith- and community-based liaison designated under Section 535.051 shall:

(1) identify and remove unnecessary barriers to partnerships between the state agency the liaison represents and faith- and community-based organizations;

(2) provide information and training, if necessary, for employees of the state agency the liaison represents regarding equal opportunity standards for faith- and community-based organizations seeking to partner with state government;

(3) facilitate the identification of practices with demonstrated effectiveness for faith- and community-based organizations that partner with the state agency the liaison represents;

(4) work with the appropriate departments and programs of the state agency the liaison represents to conduct outreach efforts to inform and welcome faith- and community-based organizations that have not traditionally formed partnerships with the agency;

(5) coordinate all efforts with the governor's office of faith-based and community initiatives and provide information, support, and assistance to that office as requested to the extent permitted by law and as feasible; and

(6) attend conferences sponsored by federal agencies and offices and other relevant entities to become and remain informed of issues and developments regarding faith- and community-based initiatives.

(b) A faith- and community-based liaison designated under Section 535.051 may coordinate and interact with statewide organizations that represent faith- or community-based organizations as necessary to accomplish the purposes of this chapter.

Sec. 535.053. INTERAGENCY COORDINATING GROUP. (a) The interagency coordinating group for faith- and community-based initiatives is composed of each faith- and community-based liaison designated under Section 535.051 and a liaison from the State Commission on National and Community Service.

(b) The commission employee designated as a liaison under Section 535.051 is the presiding officer of the interagency coordinating group.

(c) The interagency coordinating group shall:

(1) meet periodically at the call of the presiding officer;

(2) work across state agencies and with the State Commission on National and Community Service to facilitate the removal of unnecessary interagency barriers to partnerships between state agencies and faith- and community-based organizations; and

(3) operate in a manner that promotes effective partnerships between those agencies and organizations to serve residents of this state who need assistance.

Sec. 535.054. REPORTS. (a) A liaison designated under Section 535.051 shall:

(1) provide periodic reports to the executive commissioner or other chief executive officer who designated the liaison, as applicable, on a schedule determined by the person who designated the liaison; and

(2) report annually to the governor's office of faith- and community-based initiatives and as necessary to the State Commission on National and Community Service regarding the liaison's efforts to comply with the duties imposed under Sections 535.052 and 535.053.

(b) Each report made under Subsection (a)(2) must be made available to the public through posting on the office of the governor's Internet website, and the reports may be aggregated into a single report for that purpose.

[Sections 535.055-535.100 reserved for expansion]

SUBCHAPTER C. RENEWING OUR COMMUNITIES ACCOUNT

Sec. 535.101. DEFINITION. In this subchapter, "account" means the renewing our communities account.

Sec. 535.102. PURPOSES OF SUBCHAPTER. Recognizing that faith- and community-based organizations provide a range of vital charitable services to persons in this state, the purposes of this subchapter are to:

(1) increase the impact and effectiveness of those organizations;

(2) forge stronger partnerships between those organizations and state government so that communi-

ties are empowered to serve persons in need and community capacity for providing services is strengthened; and

(3) create a funding mechanism that builds on the established efforts of those organizations and operates to create new partnerships in local communities for the benefit of this state.

Sec. 535.103. RENEWING OUR COMMUNITIES ACCOUNT. (a) The renewing our communities account is an account in the general revenue fund that may be appropriated only to the commission for the purposes and activities authorized by this subchapter and for reasonable administrative expenses under this subchapter.

(b) The account consists of:

(1) all money appropriated for the purposes of this subchapter;

(2) any gifts, grants, or donations received for the purposes of this subchapter; and

(3) interest earned on money in the account.

(c) The account is exempt from the application of Section 403.095.

(d) The purposes of the account are to:

(1) increase the capacity of faith- and community-based organizations to provide charitable services and to manage human resources and funds;

(2) assist local governmental entities in establishing local offices to promote faith- and community-based initiatives; and

(3) foster better partnerships between state government and faith- and community-based organizations.

Sec. 535.104. POWERS AND DUTIES REGARDING ACCOUNT. (a) The commission shall:

(1) contract with the State Commission on National and Community Service to administer funds appropriated from the account in a manner that:

(A) consolidates the capacity of and strengthens national service and community and faith- and community-based initiatives; and

(B) leverages public and private funds to benefit this state;

(2) develop a competitive process to be used in awarding grants from account funds that is consistent with state law and includes objective selection criteria;

(3) oversee the delivery of training and other assistance activities under this subchapter;

(4) develop criteria limiting awards of grants under Section 535.105(1)(A) to small and medium-sized faith- and community-based organizations that provide charitable services to persons in this state;

(5) establish general state priorities for the account;

(6) establish and monitor performance and outcome measures for persons to whom grants are awarded under this subchapter; and

(7) establish policies and procedures to ensure that any money appropriated from the account to the

commission that is allocated to build the capacity of a faith-based organization or for a faith-based initiative, including money allocated for the establishment of the advisory committee under Section 535.108, is not used to advance a sectarian purpose or to engage in any form of proselytization.

(b) Instead of contracting with the State Commission on National and Community Service under Subsection (a)(1), the commission may award account funds appropriated to the commission to the State Commission on National and Community Service in the form of a grant.

(c) Any funds awarded to the State Commission on National and Community Service under a contract or through a grant under this section must be administered in the manner required by this subchapter, including Subsection (a)(1).

(d) The commission or the State Commission on National and Community Service, in accordance with the terms of the contract or grant, as applicable, may:

(1) directly, or through agreements with one or more entities that serve faith- and community-based organizations that provide charitable services to persons in this state:

(A) assist faith- and community-based organizations with:

(i) writing or managing grants through workshops or other forms of guidance;

(ii) obtaining legal assistance related to forming a corporation or obtaining an exemption from taxation under the Internal Revenue Code; and

(iii) obtaining information about or referrals to entities that provide expertise in accounting, legal, or tax issues, program development matters, or other organizational topics;

(B) provide information or assistance to faith- and community-based organizations related to building the organizations' capacity for providing services;

(C) facilitate the formation of networks, the coordination of services, and the sharing of resources among faith- and community-based organizations;

(D) in cooperation with existing efforts, if possible, conduct needs assessments to identify gaps in services in a community that present a need for developing or expanding services;

(E) work with faith- and community-based organizations to identify the organizations' needs for improvements in their internal capacity for providing services;

(F) provide faith- and community-based organizations with information on and assistance in identifying or using practices with demonstrated effectiveness for delivering charitable services to persons, families, and communities and in replicating charitable

services programs that have demonstrated effectiveness; and

(G) encourage research into the impact of organizational capacity on program delivery for faith- and community-based organizations;

(2) assist a local governmental entity in creating a better partnership between government and faith- and community-based organizations to provide charitable services to persons in this state; and

(3) use funds appropriated from the account to provide matching money for federal or private grant programs that further the purposes of the account as described by Section 535.103(d).

(e) The commission shall monitor the use of the funds administered by the State Commission on National and Community Service under a contract or through a grant under this section to ensure that the funds are used in a manner consistent with the requirements of this subchapter. Records relating to the award of a contract or grant to the State Commission on National and Community Service, or to grants awarded by that entity, and records relating to other uses of the funds are public information subject to Chapter 552.

(f) If the commission contracts with or awards a grant to the State Commission on National and Community Service under this section, this subchapter may not be construed to:

(1) release that entity from any regulations or reporting or other requirements applicable to a contractor or grantee of the commission;

(2) impose regulations or reporting or other requirements on that entity that do not apply to other contractors or grantees of the commission solely because of the entity's status;

(3) alter the nonprofit status of that entity or the requirements for maintaining that status; or

(4) convert that entity into a governmental entity because of the receipt of account funds through the contract or grant.

Sec. 535.105. ADMINISTRATION OF ACCOUNT FUNDS. If under Section 535.104 the commission contracts with or awards a grant to the State Commission on National and Community Service, that entity:

(1) may award grants from funds appropriated from the account to:

(A) faith- and community-based organizations that provide charitable services to persons in this state for capacity-building purposes; and

(B) local governmental entities to provide seed money for local offices for faith- and community-based initiatives; and

(2) shall monitor performance and outcome measures for persons to whom that entity awards grants using the measures established by the commission under Section 535.104(a)(6).

Sec. 535.106. REPORTS AND PUBLIC INFORMATION. (a) The commission shall provide a link

on the commission's Internet website to the Internet website of the State Commission on National and Community Service if the commission contracts with or awards a grant to that entity under Section 535.104. The entity's Internet website must provide:

(1) a list of the names of each person to whom the entity awarded a grant from money appropriated from the account and the amount and purpose of the grant; and

(2) information regarding the methods by which the public may request information about those grants.

(b) If awarded a contract or grant under Section 535.104, the State Commission on National and Community Service must provide to the commission periodic reports on a schedule determined by the executive commissioner. The schedule of periodic reports must include an annual report that includes:

(1) a specific accounting with respect to the use by that entity of money appropriated from the account, including the names of persons to whom grants have been awarded and the purposes of those grants; and

(2) a summary of the efforts of the faith- and community-based liaisons designated under Section 535.051 to comply with the duties imposed by and the purposes of Sections 535.052 and 535.053.

(c) The commission shall post the annual report made under Subsection (b) on the commission's Internet website and shall provide copies of the report to the governor, the lieutenant governor, and the members of the legislature.

Sec. 535.107. TASK FORCE ON STRENGTHENING NONPROFIT CAPACITY. (a) The executive commissioner, in consultation with the governor, shall establish a task force to make recommendations for strengthening the capacity of faith- and community-based organizations for managing human resources and funds and providing services. The members of the task force must include:

(1) representatives from state agencies, nonprofit organizations, the academic community, and the foundation community; and

(2) other individuals who have expertise that would be valuable to the task force.

(b) Using money appropriated from the account, the task force shall hold at least three public hearings in various geographic areas of this state, at least one of which must be outside of Central Texas. The task force shall hear testimony at the hearings regarding strengthening the capacity of faith- and community-based organizations to manage human resources and funds and provide services.

(c) The task force is not required to hold a public hearing if the remaining money appropriated from the account to the commission for the state fiscal biennium is insufficient for the performance of the duties or activities under this subchapter.

(d) The task force shall present a report and legislative recommendations to the House Committee on Human Services or its successor, the House Committee on Public Health or its successor, and the Senate Health and Human Services Committee or its successor not later than September 1, 2010, regarding its recommendations.

(e) This section expires September 1, 2011.

Sec. 535.108. RENEWING OUR COMMUNITIES ACCOUNT ADVISORY COMMITTEE. (a) The executive commissioner shall appoint leaders of faith- and community-based organizations in this state to serve on the renewing our communities account advisory committee. The advisory committee members must be representative of the religious, cultural, and geographic diversity of this state and the diversity of organization types and sizes in this state.

(b) The advisory committee shall make recommendations to the executive commissioner regarding the powers and duties with respect to the account as described by Section 535.104.

(c) Except as otherwise provided by this subsection, the advisory committee shall meet at least twice each calendar year. The advisory committee is not required to meet if the remaining amount appropriated from the account to the commission for the state fiscal biennium is insufficient for the performance of any duties or activities under this subchapter.

(d) Chapter 2110 does not apply to the advisory committee.

(e) The advisory committee is subject to Chapter 551.

Commentary by Karen J. Roe

Source: HB 492

Effective Date: May 30, 2009

Applicability: Agency liaisons must be appointed no later than December 1, 2009. The inter-agency coordinating group must meet no later than February 1, 2010.

Summary of Changes: This legislation creates a system to encourage faith- and community-based organizations to foster partnerships with state agencies to provide charitable and social services. It requires nine state agencies, including the Texas Juvenile Probation Commission and the Texas Youth Commission, to appoint liaison officers responsible for encouraging faith- and community-based organizations to provide services to health and human service agencies. It creates a "Renewing Our Communities Account," funded through state appropriations, gifts, grants and donations, which can be used to foster partnerships and promote faith-based initiatives.

Administrative officers of the listed agencies, and any others designated by the Governor, must select an employee to serve as a liaison for faith- and community-based organizations. Each liaison is responsible for coordinating efforts to encourage initiatives with charitable organiza-

tions to provide services. The liaisons are required to meet and work together as part of an inter-agency coordinating group to remove barriers to partnerships between their agencies and faith- and community-based groups, and to periodically report on their efforts.

These efforts will be funded by the Renewing Our Communities account. The Health and Human Services Commission is required to enter into a contract with the State Commission on National and Community Service (which runs the federal AmeriCorps program) to administer and distribute the funds, and develop criteria for the awards of grants. The Health and Human Services Commission must provide information about grant recipients and the purpose for which money is awarded on its website.

Health and Safety Code

Health and Safety Code, Ch. 115. TASK FORCE FOR CHILDREN WITH SPECIAL NEEDS.

Sec. 115.001. DEFINITIONS. In this chapter:

(1) "Children with special needs" means children younger than 22 years of age diagnosed with a chronic illness, intellectual or other developmental disability, or serious mental illness.

(2) "Commission" means the Health and Human Services Commission.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Task force" means the Interagency Task Force for Children with Special Needs established under this chapter.

Sec. 115.002. TASK FORCE FOR CHILDREN WITH SPECIAL NEEDS. The governor, or the governor's designee, shall oversee the task force created and administered by the commission to improve the coordination, quality, and efficiency of services for children with special needs.

Sec. 115.003. DUTIES. The task force shall:

(1) not later than September 1, 2010, coordinate with federal agencies to compile a list of opportunities to increase flexible funding for services for children with special needs, including alternative funding sources and service delivery options;

(2) conduct a review of state agency policies and procedures related to service delivery for children with special needs;

(3) perform a needs assessment, including public hearings to identify service delivery gaps, system entry points, and service obstacles; and

(4) develop a five-year plan to improve the coordination, quality, and efficiency of services for children with special needs under Section 115.004.

Sec. 115.004. TASK FORCE PLAN. (a) In developing the five-year plan under this chapter, the task force shall:

(1) identify the party responsible for each action set forth in the plan and set deadlines for implementation of each recommendation;

(2) create benchmarks to measure progress toward goals and objectives;

(3) consult with the Legislative Budget Board to coordinate relevant cost studies and account for long-term savings of short-term child investments;

(4) consult with personnel from other states to identify best practices;

(5) consult with the state demographer and relevant federal agencies to account for future demographic trends;

(6) consult with pediatric specialists and other health care providers to determine best medical practices;

(7) coordinate with mental health and developmental disability advocates; and

(8) develop a timeline for plan implementation.

(b) The plan created under this chapter must provide recommendations to:

(1) maximize the use of federal funds available to this state for the purposes described by Section 115.002;

(2) reduce the number of families who experience crisis due to insufficient and ineffective interventions or services or lack of coordination and planning of interventions or services;

(3) improve families' ability to navigate the system through improved coordination between service providers and increased outreach;

(4) remove barriers to local coordination of services and supports;

(5) evaluate the feasibility of creating an interagency legally authorized representative program to provide support services for children with special needs;

(6) improve early detection and intervention services;

(7) increase the number of community-based options for children with special needs;

(8) improve accountability for each agency represented on the task force and other service providers;

(9) reduce existing fragmentation of service delivery to reflect best practices and eliminate ineffective interventions;

(10) reduce service gaps and overlap;

(11) improve data management;

(12) prevent unnecessary parental relinquishment of custody;

(13) create a core set of quality measures to determine quality of care and improvements to quality of life; and

(14) improve availability of high-quality community-based acute and long-term care services and supports.

Sec. 115.005. MEMORANDUM OF UNDERSTANDING. The governor's office and each agency represented on the task force shall enter into a memorandum of understanding to implement the task force's duties under this chapter.

Sec. 115.006. REPORT. (a) The task force shall submit a biennial report on the progress of each agency represented on the task force in accomplishing the goals described by Section 115.002 to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The report must include:

(1) stakeholder input, including testimony from parents in each health and human services district;

(2) progress toward meeting each goal outlined in the plan under Section 115.004;

(3) current barriers that prevent accomplishing each goal listed in Subdivision (2);

(4) additional resource needs;

(5) current resources that could be redirected for more efficient and effective use;

(6) amendments to the plan under this chapter;

(7) recommendations and proposed legislation to help fulfill the goals of this chapter; and

(8) feasibility statements on related recommendations.

(c) The task force shall publish the report on the commission's website.

Sec. 115.007. COMPOSITION. (a) The task force consists of:

(1) the commissioner, the executive director or director, or a deputy or assistant commissioner of:

(A) the commission, designated by the executive commissioner;

(B) the Department of Aging and Disability Services, designated by the commissioner of that agency;

(C) the Department of Assistive and Rehabilitative Services, designated by the commissioner of that agency;

(D) the division of early childhood intervention services, designated by the commissioner of the Department of Assistive and Rehabilitative Services;

(E) the Department of Family and Protective Services, designated by the commissioner of that agency;

(F) the Department of State Health Services, designated by the commissioner of that agency;

(G) the Texas Education Agency, designated by the commissioner of that agency;

(H) the Texas Youth Commission, designated by the executive commissioner of that agency;

(I) the Texas Juvenile Probation Commission, designated by the executive director of that agency; and

(J) the Texas Correctional Office on Offenders with Medical or Mental Impairments, designated by the director of that office; and

(2) eight nonvoting members who are:

(A) a representative of a local mental health authority or a local mental retardation authority, appointed by the governor;

(B) two members of the house of representatives, appointed by the speaker of the house of representatives;

(C) two senators, appointed by the lieutenant governor; and

(D) three parents or consumer advocates, one each appointed by the commission, the Texas Education Agency, and the Texas Youth Commission.

(b) The members of the task force appointed under Subsection (a)(2)(D) may serve a five-year term or may elect to serve for a shorter period.

Sec. 115.008. MEETINGS. (a) The task force shall meet at least once each quarter.

(b) The task force shall provide an opportunity for statewide public participation in at least two meetings in each calendar year.

(c) All meetings of the task force shall be conducted in accordance with Chapter 551, Government Code.

Sec. 115.009. INTERAGENCY COORDINATOR; STAFF. (a) The governor shall appoint an interagency coordinator from the commission as the presiding officer of the task force.

(b) The interagency coordinator shall hire a full-time director and administrative assistant to support the duties and functions of the task force.

Sec. 115.010. TASK FORCE DIRECTOR. The task force director hired by the interagency coordinator under Section 115.009 shall:

(1) prepare on behalf of the task force the plan and reports required under this chapter;

(2) work with each task force representative to schedule meetings and deadlines relevant to the representative's agency; and

(3) work with the interagency coordinator to assign subcommittee leadership positions under Section 115.011.

Sec. 115.011. SUBCOMMITTEES. (a) The interagency coordinator, assisted by the task force director, shall establish subcommittees to address:

(1) early childhood detection and intervention;

(2) education;

(3) health care;

(4) transitioning youth;

(5) crisis prevention and intervention;

(6) juvenile justice;

(7) long-term, community-based services and supports; and

(8) mental health.

(b) Each subcommittee shall include at least one task force member to serve as chair. Consistent with the purpose of each subcommittee, members shall consult with relevant subject matter experts, relevant advocacy organizations, staff from related agencies, and parents or consumers who have used related services.

(c) Each subcommittee shall report the subcommittee's findings and related recommendations at a task force meeting at least once each year. On a biennial basis, the subcommittee shall provide a written report with findings and recommendations not less than two months before the scheduled release of the task force report under this chapter.

Sec. 115.012. SUNSET PROVISION. The Interagency Task Force for Children With Special Needs is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the task force is abolished and this chapter expires September 1, 2015.

Commentary by Chris Hubner

Source: SB 1824

Effective Date: September 1, 2009

Applicability: Organizational meeting must be held not later than September 30, 2009.

Summary of Changes: In Texas, there is currently no strategic plan for coordinating services for children with special needs. Senate Bill 1824 creates the Task Force for Children with Special Needs designed to improve the coordination, quality and efficiency of services for children and youth under age 22 who suffer from serious mental illness, developmental disabilities and chronic illness. The Task Force is comprised of state agency leaders, legislators, a representative of a local mental health or mental retardation authority, and parents or consumer advocates. The Task Force must develop a five-year plan to improve services for children with special needs, and must also establish subcommittees to focus on specific issues such as education, healthcare, transitioning youth, early childhood detection and intervention, juvenile justice and mental health.

