STATE BAR SECTION REPORT JUVENILE LAW

VOL. 27, NO. 3

AUGUST 2013

2013 Special Legislative Issue

OFFICERS

COUNCIL

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

Newsletter Secretary: Sunni Zuniga

Website: www.juvenilelaw.org

The Texas Juvenile Justice Department and the Juvenile Law Section wish to thank the following individuals for their contributions to the *2013 Special Legislative Issue*.

Managing Editors

Nydia D. Thomas
Special Counsel
Legal Education & Technical Assistance
Texas Juvenile Justice Department

Chris Cowan
Attorney, Legal Education & Technical Assistance
Texas Juvenile Justice Department

Contributing Editors

Brett Bray
General Counsel
Texas Juvenile Justice Department

Karol Davidson
Attorney, Office of General Counsel
Texas Juvenile Justice Department

Chris Hübner
General Counsel
Travis County Juvenile Probation Department

Jill Mata
Juvenile Division Chief
Bexar County District Attorney's Office

Riley N. Shaw
Chief Prosecutor, Juvenile Division
Tarrant County District Attorney's Office

Kaci Sohrt
Director of Court Administration
Travis County Juvenile Probation Department

Ryan Kellus Turner
General Counsel & Director of Education
Texas Municipal Courts Education Center

Texans Care for Children

TABLE OF CONTENTS

Page

LEGISLATIVE FOREWORD

by Nydia D. Thomas
Special Counsel
Texas Juvenile Justice Department

The 83rd Texas Legislature 2013
Aspirational Juvenile Justice: Laying a New Foundation for Change

Well-known American author and essayist Henry David Thoreau once said of aspirations, *"If you have built castles in the air, your work need not be lost; that is where they should be. Now put the foundations under them."* The three most recent legislative cycles have been described by many as a series of tumultuous storms that untethered many of the long-standing axioms about the structure of the Texas juvenile justice system. In the light of the trilogy described in previous Special Legislative Issues, perhaps we have reached what is called the "denouement" of this dramatic narrative. In literature, this term refers to the point in the story when the unknowns have been explained and there is resolution and clarification of the tangled plot. Undoubtedly, the unusual set of circumstances that led to the dismantling of the two state agencies and the associated legislative reforms have seemed much like a dramatic narrative. However, now that we have reached a comfortable distance from recent events, juvenile justice professionals have gained a new perspective on the significance of these systemic changes and recognize the critical window of opportunity that lies ahead. To that end, we are granted permission to advance our discussion toward a new direction. Now is the time to strategize, set goals, accomplish them and raise the level of our aspirations. Thoreau's bold command to "*put the foundations under them"* is a clarion call for practitioners in Texas to transform our juvenile justice aspirations into reality.

The real story of the 83rd Legislative Session can be gleaned by closely examining the topical diversity of the proposals and bills that were filed during the session. Lessons can also be learned from the bills that did not pass. In many respects, the legislation that trended this session signals a realignment of system influences and perspectives. It forecasts the need for coordinated, child-focused, and innovative policymaking. And, in the face of limited resources and constraints on system capacity, it also imposes a measure of discipline and challenges our creativity to embark on the incremental task of achieving strategic change. Ultimately, this session emphasized the fact that we must value the institutional knowledge of those who have shaped the evolution of the system and recognize the voices of the new cadre of professionals, advocates, and policymakers who will inevitably develop expertise and begin to shape the new direction of juvenile justice in this state.

This session, we noticed a greater emphasis on legislation that echoed the core principles of the federal Juvenile Justice Delinquency Prevention Act relating to separation of juveniles from adults in secure facilities, de-institutionalization of status offenders, the reduction of disproportionate minority contact in the system, and the removal of juveniles from adult jails and lockups. These were prevalent themes as juvenile justice-related bills found their way to the proverbial hopper in 2013. In some respects, policymakers reaffirmed in **HB 670, SB 694 and HB 2862** the purpose clause contained in Chapter 51 of the Family Code as it focused on juvenile records in an effort to "remove the taint of criminality" and to ameliorate the long-term, unintended consequences of juvenile delinquency history. **SB 1114, SB 1234** (which passed, but was later vetoed by the Governor) and the trilogy of **SB 393, SB 394** and **SB 395** were bills that reexamined the underlying notions of the criminalization of children and school attendance laws in Texas. In addition, **SB 92** enhanced the jurisdictional authority of the juvenile court and its capacity to provide early intervention and programming for youth accused of engaging in CINS prostitution conduct.

HB 529 and **SB 1839** were filed in an attempt to find a workable solution for the appropriate secure facility setting to house and meet the complex needs of youth awaiting certification or pending criminal trial. Also, **HB 2038** and companion bill **SB 1032** were efforts to keep at the state's policymaking forefront the discussion regarding disproportionate minority contact in the juvenile justice system and other child-serving systems. These specific measures did not pass.

A number of bills, such as **HB 1769,** mandated the creation of task forces and committees to study a range of juvenile justice issues such as disciplinary seclusion, fingerprinting and separation of juvenile offenders. **HB 1318** was part of a larger effort to update appointed attorney reporting requirements and gather data on the efficacy of the

Fair Defense Act and related indigent defense practices in Texas. **SB 511** made one small step toward innovative, out-of-the box thinking regarding the commitment of certain juveniles to local post-adjudication secure correctional facilities and parole supervision at the county level. **HB 2733** enhanced the capacity of the Texas Juvenile Justice Department to conduct criminal history and background checks. **SB 1356** imposed additional training requirements regarding trauma-informed care and human trafficking for juvenile justice system probation, supervision, parole, and correction officers. Finally, **HB 2862** contained extensive cleanup legislation developed by a group of experienced juvenile justice stakeholders on a range of provisions throughout the Family Code. While some of these bills did not make their way through the legislative process, it is an indicator of the paradigm shift, the changing constituencies, and the practical realities that form the basis of the new foundation for the system. The 2013 issue chronicles text of the major bills impacting the juvenile justice system and contains commentary explaining the bills and any relevant history of interest. As always, any opinions expressed in the commentary provided by our contributing editors are not those of the Texas Juvenile Justice Department or the Juvenile Law Section of the State Bar.

The 83rd Legislative Session was uncharacteristic in a number of ways. In terms of the volume of legislation, this session 5,868 bills were filed in comparison to over 10,316 bills filed in 2011. Also, 1,437 bills were enacted into law and 26 were vetoed by the Governor. In many respects, the decline in bill filings is a clear indication that the Legislature was confronted with a number of vital carryover issues from the 2011 session that included grappling with the state budget as well as other politically sensitive issues such as abortion, immigration, redistricting and the 1965 Voting Rights Act, the state water supply, health care and education.

The Governor called two special sessions which have adjourned as of the date of this publication. Although the issue of capital felony punishment for persons under the age of 18 was described in the media as a juvenile justice issue, it does not fall within the purview juvenile proceedings but is, nevertheless, noteworthy. During both special sessions, **SB 23 and SB 2** were the follow-ups to legislation filed during the regular session to address certain aspects of the 2012 Supreme Court ruling in *Miller v. Alabama, 576 U.S. __132 S.Ct.2455, 183 L.Ed.2d 407(2012)* in which mandatory life without parole was declared an unconstitutionally disproportionate punishment for children. **SB 2**, filed during 2nd - 83rd Special Session, was enacted into law to conform Texas law to certain constitutional requirements set forth in *Miller*.

We are proud that the Texas Juvenile Justice Department under the leadership of Executive Director **Mike Griffiths** has wholeheartedly encouraged continued sponsorship of the Biennial Post-Legislative Conference and the production of this Special Legislative Issue as an invaluable service to juvenile justice professionals around the state. The 2013 Special Legislative Issue is a snapshot of the ever-changing juvenile justice climate and provides a level of continuity that is essential to professionals who have come to rely on the useful information needed to quickly implement statutory changes.

Much thanks to **Lisa A. Capers**, Senior Director of Administration and Training for passing the torch of greater responsibility for managing this publication to the Legal Education and Technical Assistance Division. It nevertheless, "takes a village" to successfully coordinate a major project of this nature. We commend our outstanding team of contributing editors who, despite busy schedules, kept their commitment to this project by submitting quality analyses and information. Legal Education & Technical Assistance Staff Attorney, **Chris Cowan** did a tremendous job as a managing editor and project coordinator on this Special Legislative Issue. Never underestimate the exponential power of committed people working towards a common goal! Contributing Editors **Brett Bray,** TJJD General Counsel**, Karol Davidson, Chris Hübner, Jill Mata, Kaci Sohrt, Riley Shaw, Ryan Turner,** and the team at **Texans Care for Children** did an amazing job preparing commentary on a variety of complex topics. We especially appreciate the continued dedication of former TJJD agency staffers **Kaci Sohrt** and **Chris Hübner** for remaining a vital and engaged part of our team! TJJD Office of the General Counsel, including, **Chelsea Buchholtz,** TJJD Deputy General Counsel and Attorneys **Vanessa Burgess and Karen Kennedy** also made important contributions. We would also like to extend a special thank you to **Linda Brooke**, TJJD Chief of Staff for her continuing support of this project as well as **Katrena Plummer** for gathering the TJJD Appropriations segment information. We are so fortunate to have had the capable assistance of a new member of the TJJD team **Monique Mendoza** who rolled up her sleeves and helped in the early stages of this publication. In addition, we would be remiss if we did not recognize **Kristy Almager**, now Director of the Juvenile Justice Training Academy. While Kristy has not been as involved in this project, her original publication design work and input have helped set the high standard that we will continue to emulate.

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

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

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

www.legis.state.tx.us/Home.aspx

Disclaimer

Every effort has been made to include the most significant pieces of legislation that impact juvenile justice practitioners. However, the Texas Juvenile Justice Department and the Juvenile Law Section make no express representations that the legislation excerpts contained herein comprise the entirety of legislation that was passed on any subject area or topic. The reader should consult the Texas Legislature's website for a complete presentation of all legislation enacted by the 83rd Texas Legislature.

www.capitol.state.tx.us

83rd Texas Legislative Appropriations to the Texas Juvenile Justice Department: *Building on Strengths for the Children of Texas*

Mike Griffiths
Executive Director
Texas Juvenile Justice Department

Since my appointment ten months ago as Executive Director of the Texas Juvenile Justice Department (TJJD), the agency has made significant progress in unifying the two legacy agencies to serve the children of Texas. TJJD continues to build upon our strengths to improve services to the community, juvenile probation departments, juvenile courts, prosecutors, defense attorneys, and most importantly families. In spite of appropriations reductions based on ever declining juvenile offender arrests, the agency and staff continues to provide valuable services while working with reduced resources.

TJJD submitted a biennial legislative appropriations request (LAR) to the Legislative Budget Board (LBB) before the session requesting a baseline budget of $731,231,584 (including exceptional items). TJJD's final appropriations including exceptional items were $645,735,734 over the biennium.

The following key programs were funded by the Legislature with specific line items:

- Community Corrections Diversion Program: $19,492,500 per year

- Mental Health Services: $12,804,748 per year

While there has been a decrease in juvenile offenders entering the juvenile justice system in recent years, an increasing percentage of these youth are demonstrating a greater need for mental health services. As a result, county probation departments received an increase in funding to help provide more services. Juveniles who now come into the justice system will receive more services within their own communities through this funding.

The Legislature altered Rider 29, increasing the reimbursement rate for Juvenile Justice Alterative Education Programs from $79 to $86 per day of attendance for students expelled under Section 37.007, Education Code.

In December 2012, the Behavioral Management and Treatment Task Force was created. The task force is charged with elevating youth services to improve youth culture and create purposeful treatment programs that address individual youth needs while ensuring youth accountability and positive youth development. Subcommittees were established to encompass all areas of programming within state-operated programs and services: Behavioral Management, Treatment Redesign, Accountability, Communications and Marketing, Transition and Parole Services, and Training.

During the 81st Legislative Session, House Bill 3689 required the implementation of Positive Behavioral Supports and Interventions (PBIS) in the Texas Juvenile Justice Department (formerly Texas Youth Commission) in its educational programs. In December 2012, a comprehensive report was completed that stated that PBIS appears to impact the behavior and academic outcomes of youth in secure facilities. The Behavioral Management and Treatment Task Force identified PBIS as a model to be followed as a facility-wide behavioral management model. Adopting PBIS facility-wide was a recommendation made by the Office of the Independent Ombudsman in the report, *Understanding and Addressing Youth Violence in the Texas Juvenile Justice Department*, May 2013.

To date, TJJD has revised juvenile correctional officer's employment eligibility to 21 years of age and older, requested that TDCJ conduct a safety and security review of all secure state facilities, allowed superintendents to make crucial hiring decisions, implemented unannounced monitoring visits for state facilities and programs, implemented a second Release Review Panel, and revised the behavioral management program to emphasize accountability. Due to these changes, workers compensation claims have decreased within the state secure institutions.

TJJD created a Probation & Community Service Division to county operations, established the Juvenile Justice Training Academy, and reviewed parole supervision, including the use of electronic monitoring and response to parole violations. TJJD will continue to utilize national best practices and programs for youth served in TJJD state services and preserve a strong alliance with juvenile boards, judges, probation officials, prosecutors, defense counsel, law enforcement education, behavior health organizations, and community partners to better serve the citizens of Texas.

In addition to its baseline budget, TJJD requested an additional $69,459,661 for exceptional items for the next biennium. The exceptional items that received funding are listed below:

Texas Juvenile Justice Department
Legislative Appropriations Request 2014 – 2015

Exceptional Item Requests	Amount
1. Rider 22 increase funding for the safety and security of Juvenile Correctional Officers for aggressive youth programs.	$4,300,000
2. Strategy B.1.2, State Operated Secure Operations, funding was increased to improve deferred maintenance to current state institutions.	$5,500,000
3. Funding for Juvenile Case Management System (JCMS) operations, which includes development services, grants to the Council on Urban Counties, software licenses, and computer hardware and software.	$1,600,000
4. Rider 36 provides juvenile probation department funds to better serve juvenile with mental health needs.	$25,609,496
5. Funding was requested for Re-entry Skills Development and Family Reunification for juvenile being released back into the community from state institutions.	$1,263,470
6. Strategy C.1.1, Officer of the Independent Ombudsman. TJJD requested funding to replace the loss of federal funding.	$877,662
Total, Exceptional Items	**$39,150,628**

Texas Juvenile Justice Department
2014 – 2015 Biennium
Actual Funding

Description	FY 2014	FY 2015
A. Goal: Community Juvenile Justice		
A.1.1. Strategy: Prevention and Intervention	$3,092,556	$3,092,556
A.1.2. Strategy: Basic Supervision	$46,438,285	$45,844,595
A.1.3. Strategy: Community Programs	$14,446,634	$13,096,891
A.1.4. Strategy: Pre and Post Adjudication Facilities	$58,984,173	$59,733,847
A.1.5. Strategy: Commitment Diversion	$19,846,054	$19,846,054
A.1.6. Strategy: Juvenile Justice Alternative Program	$8,614,302	$8,614,302
A.1.7. Strategy: Mental Health Services	$12,804,748	$12,804,748
Total, Goal A:	**$164,225,752**	**$163,032,993**
B. Goal: State Health Services and Facilities		
B.1.1. Strategy: Assessment, Orientation, Placement	$1,804,177	$1,804,161
B.1.2. Strategy: State-Operated Secure Operations	$81,696,939	$76,665,848
B.1.3. Strategy: Education	$17,149,827	$16,953,047
B.1.4. Strategy: Halfway House Operations	$9,423,608	$9,423,608
B.1.5. Strategy: Health Care	$10,007,986	$9,645,738
B.1.6. Strategy: Mental Health (Psychiatric Care)	$1,028,570	$989,150
B.1.7. Strategy: General Rehabilitation Treatment	$7,115,014	$6,802,468
B.1.8. Strategy: Specialized Rehabilitation Treatment	$5,724,350	$5,724,350
B.1.9. Strategy: Contract Capacity	$4,070,237	$4,039,750
B.1.10. Strategy: Parole Services	$4,055,926	$3,889,053
B.2.1. Strategy: Office of Inspector General	$2,022,196	$2,022,196
B.2.2. Strategy: Health Care Oversight	$1,124,604	$1,124,604
Total, Goal B:	**$145,223,434**	**$139,083,973**
C. Goal: Office of Independent Ombudsman		
C.1.1. Strategy: Office of Independent Ombudsman	$438,831	$438,831
Total, Goal C:	**$438,831**	**$438,831**
D. Goal: Juvenile Justice System		
D.1.1. Strategy: Training and Certification	$963,585	$963,585
D.1.2. Strategy: Monitoring and Inspections	$3,335,906	$3,335,906
D.1.3. Strategy: Interstate Agreement	283,998	$283,998
Total, Goal D:	**$4,583,489**	**$4,583,489**
E. Goal: Indirect Administration		
E.1.1. Strategy: Central Administration	$6,729,842	$6,735,362

E.1.2. Strategy: Information Resources	$5,360,576	$5,299,162
Total, Goal E:	**$12,090,418**	**$12,034,524**
Total Appropriation	**$326,561,924**	**$319,173,810**

Appropriation Riders to TJJD Budget

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

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

3. **Appropriation of Other Agency Funds.** Any unexpended balances remaining in independent School District Funds (not to exceed $155,000 and included in the amounts above), the Student Funds (not to exceed $7,500 and included in the amounts above), any gifts, grants, and donations as of August 31, 2013 and August 31, 2014 (estimated to be $0), and any revenues accruing to those funds are appropriated to those funds for the succeeding fiscal years. Funds collected by vocational training shops at the Juvenile Justice Department institutions, including unexpended balances as of August 31, 2013 (not to exceed $21,000 and included in the amounts above) are hereby appropriated for the purpose of purchasing and maintaining parts, tools, and other supplies necessary for the operation of those shops.

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

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

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

7. **Appropriation and Tracking of Title IV-E Receipts.** The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The Juvenile Justice Department (JJD) shall certify to the Texas Department of Family and Protective Services that federal financial participation can be claimed for Title IV-E services provided by counties. JJD shall direct necessary general revenue funding to ensure that the federal match for the Title IV-E Social Security Act is maximized for use by participating counties. Such federal receipts are appropriated to JJD for the purpose of reimbursing counties for services provided to eligible children. In accordance with Article IX, Section 8.03(a) of this Act, when reporting Federal Funds to the Legislative Budget Board, JJD must report funds expended in the fiscal year that funds are disbursed to counties, regardless of the year in which the claim was made to the county, received by JJD, or certified by JJD.

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

from other states and national experts in designing better foster care funding initiatives.

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

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

11. **Safety.** In stances in which regular employees of facilities operated by the Juvenile Justice Department are assigned extra duties on special tactics and response teams, supplementary payments, not to exceed $125 per month for team leaders and $100 per month for team members, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classifications and assigned salary ranges.

12. **Charges to Employees and Guests.**

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

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

13. **Juvenile Justice Department Alternative Education Program (JJAEP).** Funds transferred to the Juvenile Justice Department (JJD) pursuant to Texas Education Agency (TEA) Rider 29 and appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, shall be allocated as follows: $1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the mandated counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

    The remaining funds shall be allocated for distribution to the counties mandated by §37.007, Texas Education Code. Counties are not eligible to receive these funds until funds initially allocated at the beginning of each fiscal year have been expended at the rate of $86 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 $86 per student per day.

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

    Unspent balances in fiscal year 2014 shall be appropriated to fiscal year 2015 for the same purposes in Strategy A.1.6

    The amount of $86 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 29. The amount of $86 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 2015 to the Foundation School Fund No. 193.

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

14. **Funding for Additional Eligible Students in JJAEPs.** Out of funds appropriated above in Strategy A.1.6 Juvenile Justice Alternative Education Programs, a maximum of $500,000 in each fiscal year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under standards of Chapter 37,

Texas Education Code. The county is eligible to receive funding from the Juvenile Justice Department at the rate of $86 per day per student for students who are required to be expelled under §37.007 standards of Chapter 37, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

15. **JJAEP Accountability.** Out of the funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Justice Department (JJD) shall ensure that JJAEPs are held accountable for student academic and behavioral success. JJD shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2014. 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 identify those JJAEPs most successful with attending students;

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

    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. inclusions of a comprehensive five-year strategic plan for the continuing evaluation of JJAEPs which shall include oversight guidelines to improve: school district compliance with minimum program and accountability standards, attendance reporting, consistent collection of costs and program data, training, and technical assistance needs.

16. **Appropriations Transfers between Fiscal Years.** In addition to the transfer authority provided elsewhere in this Act, the Juvenile Justice Department may transfer appropriations in an amount not to exceed $20,000,000 made for fiscal year 2015 to fiscal year 2014 subject to the following conditions provided by this section:

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

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

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

17. **State-owned Housing Authorized.** The chief superintendent, assistant superintendent, and the director of security are authorized to live in state-owned housing at a rate determined by the department. Other Juvenile Justice Department employees may live in state operated housing as set forth in Article IX, §11.04, State Owned Housing, of this Act. Fees for employee housing are hereby appropriated to be used for maintaining employee housing and shall at least cover the agency cost of maintenance and utilities for the housing provided.

18. **Unexpended Balances – Hold Harmless Provisions.** Any unexpended balances as of August 31, 2014, in Strategy A.1.2, Basic Supervision (estimated to be $400,000), above are hereby appropriated to the Texas Juvenile Justice Department in fiscal year 2015 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise be affected as a result of reallocation related to population shifts.

19. **Appropriations: Refunds of Unexpended Balances from Local Juvenile Probation Departments.** The Juvenile Justice Department (JJD) shall maintain procedures to ensure that the state is refunded all unexpended and unencumbered balances of state funds held as of the close of each fiscal year by local juvenile probation departments. All fiscal year 2014 and fiscal year 2015 refunds received from local juvenile probation departments by TJJD are appropriated above in Strategy A.1.3, Community Programs. Any juvenile probation department refunds received in excess of

$1,150,000 in fiscal year 2014 and $1,150,000 in fiscal year 2015 shall lapse to the General Revenue Fund.

20. **Salaries, Education Professionals.**

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

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

c. There is hereby appropriated to JJD from any unexpended balances on hand as of August 31, 2014, funds necessary to meet the requirements of this section in fiscal year 2015 in the event adjustments are made in the salary rates specified in the Texas Education Code or in salary rates paid by the public schools where JJD facilities are located.

21. **Training for GED and Reading Skills.** From the funds appropriated above in Strategy B.1.3, Education, the Juvenile Justice Department shall prioritize reading at grade level and preparation for the GED in its educational program. A report containing statistical information regarding student performance on the Test of Adult Basic Education (TAEB) shall be submitted to the Legislative Budget Board and the Governor on or before December 1, 2014.

22. **Salary Adjustment Authorized.** Notwithstanding other provisions of this Act, the Juvenile Justice Department is authorized to adjust salaries and pay an additional evening, night, or weekend shift differential not to exceed 15 percent of the monthly pay rate of Juvenile Correctional Officers I, Juvenile Correctional Officers II, Juvenile Correctional Officers III, Juvenile Correctional Officers IV, Juvenile Correctional Officers V, and Juvenile Correctional Officers VI to rates within the designated salary group for the purpose of recruiting, employing and retaining career juvenile correctional personnel. Merit raises are permitted for all Juvenile Correctional Officers who are not receiving or are no longer eligible to receive step adjustments on the career ladder system.

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

24. **Appropriation**: Unexpended Balances of General Obligation Bond Proceeds. In addition to the amounts appropriated above are unexpended and unobligated balances of general obligation bond proceeds for projects that have been approved under the provisions of Article IX, Section 17.11 of Senate Bill 1, Eighty-first Legislature, Regular Session, 2009, remaining as of August 31, 2011 (estimated to be $0), for repair and rehabilitation for existing facilities, for the 2014-15 biennium.

In addition to the amounts appropriated above are unexpended and unobligated balances of general obligation bond proceeds for projects that have been approved under the provisions of Article IX, Sections 19.70 and 19.71 of House Bill 1, Eightieth Legislature Regular Session, 2007, remaining as of August 31, 2011, (estimated to be $0), for repair and rehabilitation of existing facilities, for the 2014-15 biennium.

Any unexpended balances in General Obligation Bond Proceeds described herein and remaining as of August 31, 2014, are hereby appropriated for the same purposes for the fiscal year beginning September 1, 2014.

25. **Managed Health Care and Mental Health Services Contract(s).** From funds appropriated above, the Juvenile Justice Department (JJD) shall develop and manage a provider contract, or contracts, to deliver the most effective managed health care and mental health (psychiatric) services for the best value. Potential

service providers shall not be entitled to pass-through funding from JJD appropriations.

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

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

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

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

    b. The report shall include information on all training, inspection, monitoring, investigation, and technical assistance activities conducted using funds appropriated in Goal A. Required elements include, but are not limited to training conferences held, practitioners trained, facilities inspected, and investigations conducted.

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

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

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

    In addition to the annual report described above, the Juvenile Justice Department shall report juvenile probation population data as requested by the Legislative Budget Board on a monthly basis for the most recent month available. The Juvenile Justice Department shall report to the Legislative Budget Board on all populations specified by the Legislative Budget Board, including, but not limited to, additions, releases, and end-of-month populations. End of fiscal year data shall be submitted indicating each reporting county to the Legislative Budget Board no later than two months after the close of each fiscal year. The Juvenile Justice Department will use Legislative Budget Board population projections for probation supervision and state correctional populations when developing its legislative appropriations request for the 2016-17 biennium.

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

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

29. **Special Needs Diversionary Program.** Funds appropriated above in Strategy A.1.3, Community Programs, may be used for specialized mental health caseloads or to provide mental health services to youth being served on specialized mental health caseloads.

30. **Harris County Leadership Academy.** Out of funds appropriated above in Strategy A.1.4, Pre and Post Ad-

judication Facilities, 1,000,000 in General Revenue Funds in each fiscal year shall be expended for the Harris County Leadership Academy.

31. **Commitment Diversion Initiatives.** Out of the funds appropriated above in Strategy A.1.5, Commitment Diversion Initiatives, $19,492,500 in General Revenue Funds in fiscal year 2014 and 19,492,500 in General Revenue Funds in fiscal year 2015, may be expended only for the purposes of providing programs for the diversion of youth from the Juvenile Justice Department, The program may include, but not limited to, residential, community-based, family, and aftercare programs. The allocation of State funding for the program is not to exceed the rate of $140 per juvenile per day. The Juvenile Justice Department shall maintain procedures to ensure that the State refunded all unexpended and unencumbered balances of State funds are the end of each fiscal year.

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

    The juvenile probation departments participating in the diversion program shall report to the Juvenile Justice Department regarding the use of funds within thirty days after the end of each quarter. The Juvenile Justice Department shall report to the Legislative Budget Board regarding the use of 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 type of services provided to youth served by the program, the average actual cost per youth commitment to the Juvenile Justice Department, any consecutive length of time over six months a juvenile served by the diversion program resides in a secure corrections facility, and the number of juveniles transferred to criminal court under Family Code, §54.02

    The Juvenile Justice Department shall maintain a mechanism for tracking youth served by the diversion program to determine the long-term success for diverting youth from state juvenile correctional incarceration and the adult criminal justice system. A report on the program's results shall be included in the report that is required under Juvenile Justice Department Rider 28 to be submitted to the Legislative Budget Board by December 1st of each year. In the report, the Juvenile Justice Department shall report the cost per day average daily population of all programs funded by Strategy A.1.2, Commitment Diversion Initiatives, for the previous fiscal year.

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

32. **Juvenile Justice Department Institution Capacity.** Funds appropriated by this Act may be used for the operation of a maximum of 1,356 Juvenile Justice Department (JJD) institution beds beginning September 1, 2013. For the purposes of this rider, the institutional capacity of 1,356 beds shall include halfway house facilities operated by JJD or contract facilities.

33. **Local Assistance.** From funds appropriated above Strategy E.1.1, Central Administration, $150,000 in fiscal year 2014 and $144,000 in fiscal year 2015 in General Revenue Funds and two full-time equivalent positions in each fiscal year shall be used to increase technical assistance on program design and evaluation for programs operated by juvenile probation departments. This shall include, but not limited to:

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

    5. assisting juvenile probation departments in developing logic models for all programs; developing recommended performance measures by program type;

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

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

    5. disseminating best practices to juvenile probation departments.

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

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

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

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

35. **Facility Closure.** Funds appropriated by this Act shall be used for the operation of no more than five Juvenile Justice Department state-operated correctional facilities as of January 1, 2014. The Juvenile Justice Department shall develop a comprehensive plan to close at least one state-operated correctional facility and submit the plan in writing, not later than September 1, 2013, to the Legislative Budget Board for approval. The plan shall:

    a. identify the state-operated correctional facility planned for closure;

    b. identify any special healthcare needs or rehabilitative treatment unique to the current residential population of the facility planned for closure;

    c. provide a detailed proposal for the relocation of the displaced population within existing facilities; and

    d. ensure that adequate security and access to adequate mental health services and rehabilitative treatment are provided at the alternate facility location.

    Legislative Budget Board approval is required prior to the expenditure of funds related to the closure of a facility or the relocation of youth to an alternate facility.

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

1. Title 3 and Related Provisions

Family Code

Family Code Sec. 32.203. CONSENT BY MINOR TO HOUSING OR CARE PROVIDED THROUGH TRANSITIONAL LIVING PROGRAM. (a) In this section, "transitional living program" means a residential services program for children provided in a residential child-care facility licensed or certified by the Department of Family and Protective Services under Chapter 42, Human Resources Code, that:

(1) is designed to provide basic life skills training and the opportunity to practice those skills, with a goal of basic life skills development toward independent living; and

(2) is not an independent living program.

(b) A minor may consent to housing or care provided to the minor or the minor's child or children, if any, through a transitional living program if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(c) Consent by a minor to housing or care under this section is not subject to disaffirmance because of minority.

(d) A transitional living program may, with or without the consent of the parent, managing conservator, or guardian, provide housing or care to the minor or the minor's child or children.

(e) A transitional living program must attempt to notify the minor's parent, managing conservator, or guardian regarding the minor's location.

(f) A transitional living program is not liable for providing housing or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the program is liable for the program's own acts of negligence.

(g) A transitional living program may rely on a minor's written statement containing the grounds on which the minor has capacity to consent to housing or care provided through the program.

(h) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

Commentary by Kaci Sohrt

Source: SB 717
Effective Date: June 14, 2013
Applicability: Applies to transitional living programs provided in a residential child-care facility licensed or certified by the Department of Family and Protective Services (DFPS) that are designed to provide basic life skills development toward independent living but that are not independent living programs.
Summary of Changes: Prior to the 83rd Legislative Session, the Senate Committee on Intergovernmental Relations was given an interim charge on homeless and runaway youth. One issue raised was the fact that minors cannot contract for housing due to their age. Even minors who are able to support themselves remain homeless because of this. This law allows homeless and runaway youth who are at least 16 and who manage their own affairs or who are parents or pregnant to legally consent to housing or care provided to them or their children through a transitional living program. The program is required to attempt to notify the minor's parent, managing conservator, or guardian of the minor's location.

Family Code Sec. 51. 02. DEFINITIONS. (8-a) "Nonsecure correctional facility" means a facility described by Section 51.126[~~, 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 Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to nonsecure correctional facilities licensed by the Texas Juvenile Justice Department.
Summary of Changes: This change in law removes from statute the definition of a nonsecure correctional facility, which was added in 2009 as a result of recommendations from the Sunset Commission to ensure a delineation between facilities regulated by the Department of Family and Protective Services (DFPS) for children in the custody of DFPS and those regulated by then Texas Juvenile Probation Commission (TJPC) for children involved in the juvenile justice system. As previously defined, nonsecure correctional facilities were limited to being used for children on probation. The removal of this definition removes that statutory limitation.

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION

(b) Conduct indicating a need for supervision is:

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

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

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

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

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

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

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

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

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

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

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: In 2011, SB 407 created laws related to Electronic Transmission of Certain Visual Material Depicting a Minor ("sexting") while HB 2015 amended the law to provide that prostitution is conduct indicating a need for supervision (CINS) rather than delinquent. Unfortunately, both bills created the same new subsections in several laws, creating confusion. HB 2862 sought to eliminate that confusion by renumbering the laws so that Family Code Section 51.03(b)(7) always refers to prostitution conduct while Section 51.03(b)(8) always refers to "sexting." Further, it adds language to make it clear that although Class B misdemeanors and higher are defined as delinquent conduct, "sexting" is always considered CINS, not delinquent conduct, regardless of the offense level. This language is consistent with what HB 2015 included to provide the same clarification for prostitution.

Family Code Sec. 51.0412. JURISDICTION OVER INCOMPLETE PROCEEDINGS. The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, a proceeding to modify disposition, a proceeding for waiver of jurisdiction and transfer to criminal court under Section 54.02(a), or a motion for transfer of determinate sentence probation to an appropriate district court if:

(1) the petition or motion [~~to modify~~] was filed while the respondent was younger than 18 [~~years of age~~] or [~~the motion for transfer was filed while the respondent was younger than~~] 19 years of age, as applicable;

(2) the proceeding is not complete before the respondent becomes 18 or 19 years of age, as applicable; and

(3) the court enters a finding in the proceeding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent became 18 or 19 years of age, as applicable.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to proceedings commenced on or after September 1, 2013, regardless of when the conduct occurred.
Summary of Changes: Current law provides that the juvenile court retains jurisdiction over a respondent in certain proceedings as long as the petition or motion to modify was filed prior to the person's 18th birthday or the motion to transfer determinate sentence probation to adult district court was filed prior to the person's 19th birthday (for offenses committed prior to September 1, 2011, the motion must be filed prior to the 18th birthday) and other criteria are met. The changes in HB 2862 seek to fill some gaps created by this statute. As amended, the statute now allows the juvenile court to retain jurisdiction in cases in which a petition to certify the respondent to stand trial as an adult has been filed prior to the respondent's 18th birthday and all other criteria are met. This is intended to create efficiencies by eliminating the need to dismiss the action and start over under the "post-18" certification procedures. In addition, it was noted that there were proceedings listed in Section 51.0412, Family Code that did not have listed in subsection (1) a corresponding petition or motion that would vest jurisdiction. Rather than seek to list each type of petition or motion, the specific language was deleted and the general terms "petition" and "motion" are now in statute.

Family Code Sec. 51.07. TRANSFER TO ANOTHER COUNTY FOR DISPOSITION. (a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03, the juvenile court may transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the

case under Section 54.04. Consent by the court of the county where the child resides is not required.

(b) For purposes of Subsection (a), while a child is the subject of a suit under Title 5, the child is considered to reside in the county in which the court of continuing exclusive jurisdiction over the child is located.

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to juvenile case transfers for disposition that occur on or after the effective date.
Summary of Changes: Title 3 of the Family Code does not specifically define the term "residence" for the purpose of dispositional transfers authorized in Section 51.07, Family Code. Juvenile justice practitioners have described problems associated with multi-system youth who are under the jurisdiction of the juvenile court and one or more child-serving entities. This is particularly the case for youth in the conservatorship of the Department of Family and Protective Services (DFPS) who have been ordered to new placements in another county during the course of juvenile proceedings. Generally, DFPS conservatorship relates back to the residence of the managing conservator or the court of continuing jurisdiction. In the event it becomes necessary later to utilize the inter-county transfer procedural mechanisms, Section 51.072 (c), Family Code preludes acceptance of a DFPS child for interim supervision. As such, the child's case must remain with the county that ordered disposition even if the child has subsequently been placed in another county by DFPS. In order to facilitate continuity of supervision, Section 51.07, Family Code adds new Subsection (b) to clarify, for the purpose of transfers for disposition, that there is a single county of residence for a child involved in both juvenile and child protective legal proceedings.

Family Code Sec. 51.072. TRANSFER OF PROBATION SUPERVISION BETWEEN COUNTIES: INTERIM SUPERVISION. (f) Not later than 10 business days after a receiving county has agreed to provide interim supervision of a child, the juvenile probation department of the sending county shall provide the juvenile probation department of the receiving county with a copy of the following documents:

(1) the petition and the adjudication and disposition orders for the child, including the child's thumbprint;

(2) the child's conditions of probation;

(3) the social history report for the child;

(4) any psychological or psychiatric reports concerning the child;

(5) the Department of Public Safety CR 43J form or tracking incident number concerning the child;

(6) any law enforcement incident reports concerning the offense for which the child is on probation;

(7) any sex offender registration information concerning the child;

(8) any juvenile probation department progress reports concerning the child and any other pertinent documentation for the child's probation officer;

(9) case plans concerning the child;

(10) the Texas Juvenile Justice Department [~~Probation Commission~~] standard assessment tool results for the child;

(11) the computerized referral and case history for the child, including case disposition;

(12) the child's birth certificate;

(13) the child's social security number or social security card, if available;

(14) the name, address, and telephone number of the contact person in the sending county's juvenile probation department;

(15) Title IV-E eligibility screening information for the child, if available;

(16) the address in the sending county for forwarding funds collected to which the sending county is entitled;

(17) any of the child's school or immunization records that the juvenile probation department of the sending county possesses; [~~and~~]

(18) any victim information concerning the case for which the child is on probation; and

(19) if applicable, documentation that the sending county has required the child to provide a DNA sample to the Department of Public Safety under Section 54.0405 or 54.0409 or under Subchapter G, Chapter 411, Government Code.

(f-2) On initiating a transfer of probation supervision under this section, for a child ordered to submit a DNA sample as a condition of probation, the sending county shall provide to the receiving county documentation of compliance with the requirements of Section 54.0405 or 54.0409 or of Subchapter G, Chapter 411, Government Code, as applicable. If the sending county has not provided the documentation required under this section within the time provided by Subsection (f), the receiving county may refuse to accept interim supervision until the sending county has provided the documentation.

(j-1) Notwithstanding Subsection (j), the sending county may request interim supervision from the receiving county that issued a directive under Subsection (i)(2). Following the conclusion of any judicial proceedings in the sending county or on the completion of any residential placement ordered by the juvenile court of the sending county, the sending and receiving counties may mutually agree to return the child to the receiving county. The sending and receiving counties may take into consideration whether:

(1) the person having legal custody of the child resides in the receiving county;

(2) the child has been ordered by the juvenile court of the sending county to reside with a parent,

guardian, or other person who resides in the sending county or any other county; and

(3) the case meets the statutory requirements for collaborative supervision.

(j-2) The period of interim supervision under Subsection (j-1) may not exceed the period under Subsection (m).

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to requests for interim supervision initiated on or after the effective date.
Summary of Changes: Youth who have been adjudicated and placed on probation for certain felonies or sex offenses are required under Sections 54.0405 and 54.0409 of the Family Code to submit a DNA sample in accordance with Chapter 411 of the Government Code. The amendment to Section 51.072, Family Code is an effort to harmonize changes made during the 81st Regular Session in 2009. New Subdivision (f) (19) adds the requirement to provide information on DNA sample submissions to the list of supporting documents required prior to acceptance of an interim supervision transfer. In a related amendment, Section (f-2) requires the sending county to provide the receiving county with documentation that the DNA sample has been collected and transmitted to the Department of Public Safety. Most notably, the juvenile probation department in the receiving county is authorized to refuse interim supervision until the sending county has documented its compliance with the requirements of Subdivision (f) (19).

New Subsections (j-1) and (j-2) amend Section 51.072, Family Code to permit the return of a child to the receiving county during the period of interim supervision. As amended, the statute gives guidance to inter-county transfer officers for making the agreement to return the child to the receiving county. Specifically, the inter-county transfer officers may consider the child's circumstances, including whether: 1) the person having legal custody of the child resides in the receiving county; 2) whether the child has been ordered by the juvenile court to reside with a parent or other person in the sending county or another county; and 3) the case meets the statutory requirements of collaborative supervision. Subsection (j-2) clarifies that the term of interim supervision under Subsection (j-1) may not exceed the 180-day time frame in which jurisdiction transfers to the receiving county. These provisions were added in response to continuity of supervision issues cited by juvenile justice practitioners who have expressed concerns about the limited options of the sending county after conducting a modification proceeding for a child who has been returned pursuant to a directive to resume supervision for a probation violation or the commission of a new offense. Affording the sending county the ability to return the child to the current county of residence (i.e., back to the receiving county) would facilitate continuity of services and offer the best opportunity for effective supervision at the local level. This change in the interim supervision process would lend support to effective, meaningful community-based supervision.

Family Code Sec. 51.101. APPOINTMENT OF ATTORNEY AND CONTINUATION OF REPRESENTATION. (a) If an attorney is appointed under Section 54.01(b-1) or (d) to represent a child at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

Commentary by Nydia Thomas

Source: HB 1318
Effective Date: September 1, 2013
Applicability: Applies only to a detention hearing that is held for a child taken into custody on or after the effective date.
Summary of Changes: Under prior law, when a child was released after the initial detention hearing, the juvenile judge was not required to appoint counsel until after a formal petition was filed. Although nothing specifically precluded the court from appointing counsel earlier to represent a child who was not in custody, this legislative change is seen as promoting efficiency in the processing of juvenile cases. As amended, Section 51.101(a) specifies that an attorney who is appointed under Section 54.01(b-1) [prior to the initial detention hearing] or Section 54.01(d) [in the absence of a parent or guardian at the detention hearing] continues to represent the child until the case is terminated, the family retains other counsel, or the juvenile court appoints a new attorney. Release of the child from detention does not terminate the attorney's representation.

Family Code Sec. 51.12. PLACE AND CONDITIONS OF DETENTION. (a) Except as provided by Subsection (h), a child may be detained only in a:

(1) juvenile processing office in compliance with Section 52.025;

(2) place of nonsecure custody in compliance with Article 45.058, Code of Criminal Procedure;

(3) certified juvenile detention facility that complies with the requirements of Subsection (f);

(4) secure detention facility as provided by Subsection (j); [~~or~~]

(5) county jail or other facility as provided by Subsection (l); or

(6) nonsecure correctional facility as provided by Subsection (j-1).

(j-1) After being taken into custody, a child may be detained in a nonsecure correctional facility until the

child is released under Section 53.01, 53.012, or 53.02 or until a detention hearing is held under Section 54.01(a), if:

(1) the nonsecure correctional facility has been appropriately registered and certified;

(2) a certified secure detention facility is not available in the county in which the child is taken into custody;

(3) the nonsecure correctional facility complies with the short-term detention standards adopted by the Texas Juvenile Justice Department; and

(4) the nonsecure correctional facility has been designated by the county juvenile board for the county in which the facility is located.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to detentions occurring on or after September 1, 2013.
Summary of Changes: Several counties operate nonsecure correctional facilities but not certified secure detention facilities. This change in law provides that if there is no certified secure detention facility in a county, a child may be detained in a non-secure correctional facility that has been certified and registered with the Texas Juvenile Justice Department (TJJD), that complies with the short-term detention standards adopted by TJJD, and that has been designated by the county juvenile board as a non-secure correctional facility. Unless released earlier, the child may only be detained in the non-secure facility until the first detention hearing is held. If detained at that hearing, the child must be moved to a certified secure detention facility.

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

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date. This Act takes effect December 1, 2013.
Summary of Changes: Under Section 51.13(d), a felony adjudication resulting in a commitment or sentence to the Texas Juvenile Justice Department (TJJD) constitutes a prior felony conviction in criminal court under the repeat offender provisions contained in Section 12.42, Penal Code. This amendment also makes a commitment to a post-adjudication secure correctional facility under newly enacted Section 54.04011 a felony conviction for adult enhancement purposes. The word "only" in Section 51.13(d) makes it clear that "a juvenile felony adjudication does not constitute a prior felony conviction for any purposes other than for the repeat offender statute." Dawson, *Texas Juvenile Law*, 8th ed., p. 382.

Amended Section 51.13(d) also deletes a reference to Section 12.42(e), Penal Code, which was repealed in 2011 and re-codified as Section 12.425, Penal Code. That provision authorizes enhancement of a state jail felony based on prior felony convictions, which include felonies for which a person was committed to the former Texas Youth Commission or TJJD. While SB 511 properly references Section 12.425 in its amendment to Section 51.13(d), HB 2862, which also amends subsection (d), does not incorporate Section 12.425. Nevertheless, the amendments to Section 51.13 do not appear to conflict and can be read harmoniously.

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

(e) A finding that a child engaged in conduct indicating a need for supervision as described by Section 51.03(b)(8) [~~51.03(b)(7)~~] is a conviction only for the purposes of Sections 43.261(c) and (d), Penal Code.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: The amendment in Subsection (e) is a conforming amendment to the changes to Family Code Section 51.03 so that all references in law to the "sexting" offense are now Family Code 51.03(b)(8) (See Family Code 51.03 discussion). The amendments in Subsection (d) reflect the proper name of the state agency and delete a reference to Penal Code Section 12.42(e), which was repealed in 2011 and recodified as Penal Code Section 12.425. It is the provision that allows for enhancement of a state jail felony based on prior felony convictions, which

include felonies for which a person was committed to the Texas Youth Commission or Texas Juvenile Justice Department. While HB 2862 did not include the addition of Penal Code Section 12.425 to Family Code Section 51.13, SB 511 did. This does not appear to be a conflict as the changes can be read harmoniously.

Family Code Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION. (a) At any stage of the proceedings under this title, including when a child is initially detained in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility, the juvenile court may, at its discretion or at the request of the child's parent or guardian, order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by a disinterested expert, including a physician, psychiatrist, or psychologist, qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation, to determine whether the child has a mental illness as defined by Section 571.003, Health and Safety Code, [~~or~~] is a person with mental retardation as defined by Section 591.003, Health and Safety Code, or suffers from chemical dependency as defined by Section 464.001, Health and Safety Code. If the examination is to include a determination of the child's fitness to proceed, an expert may be appointed to conduct the examination only if the expert is qualified under Subchapter B, Chapter 46B, Code of Criminal Procedure, to examine a defendant in a criminal case, and the examination and the report resulting from an examination under this subsection must comply with the requirements under Subchapter B, Chapter 46B, Code of Criminal Procedure, for the examination and resulting report of a defendant in a criminal case.

(b) If, after conducting an examination of a child ordered under Subsection (a) and reviewing any other relevant information, there is reason to believe that the child has a mental illness or mental retardation or suffers from chemical dependency, the probation department shall refer the child to the local mental health or mental retardation authority or to another appropriate and legally authorized agency or provider for evaluation and services, unless the prosecuting attorney has filed a petition under Section 53.04.

(c) If, while a child is under deferred prosecution supervision or court-ordered probation, a qualified professional determines that the child has a mental illness or mental retardation or suffers from chemical dependency and the child is not currently receiving treatment services for the mental illness, [~~or~~] mental retardation, or chemical dependency, the probation department shall refer the child to the local mental health or mental retardation authority or to another appropriate and legally authorized agency or provider for evaluation and services.

(d) A probation department shall report each referral of a child to a local mental health or mental retardation authority or another agency or provider made under Subsection (b) or (c) to the Texas Juvenile Justice Department [~~Texas Juvenile Probation Commission~~] in a format specified by the department [~~commission~~].

Commentary by Chris Cowan

Source: HB 144
Effective Date: September 1, 2013
Applicability: Applies to requests for examinations on or after the effective date.
Summary of Changes: Section 51.20 allows a juvenile court, at any stage of the proceedings, to order a child referred to the court or alleged by a petition to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by an expert to determine if the child has a mental illness or is a person with mental retardation. HB 144 amends Section 51.20 to add chemical dependency to the list the list of conditions for which an examination can be ordered by the court and additionally allows the examination to be ordered by the court if requested by the parent or guardian. Chemical dependency is defined in the Health and Safety Code as abuse of alcohol or a controlled substance; psychological or physical dependence on alcohol or a controlled substance; or addiction to alcohol or a controlled substance. The bill explicitly clarifies that "any stage of the proceedings" includes when a child is detained in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility. The bill also adds chemical dependency to the list of conditions for which a probation department must refer a child to the local mental health authority and authorizes the referral to be made "to another appropriate and legally authorized provider" in addition to the local mental health authority.

Family Code Sec. 52.0151. BENCH WARRANT; ATTACHMENT OF WITNESS IN CUSTODY. (a) If a witness is in a placement in the custody of the Texas Juvenile Justice Department [~~Youth Commission~~], a juvenile secure detention facility, or a juvenile secure correctional facility, the court may issue a bench warrant or direct that an attachment issue to require a peace officer or probation officer to secure custody of the person at the placement and produce the person in court. Once the person is no longer needed as a witness or the period prescribed by Subsection (c) has expired without extension, the court shall order the peace officer or probation officer to return the person to the placement from which the person was released.

(c) A witness held in custody under this section may be placed in a certified juvenile detention facility for a period not to exceed 30 days. The length of placement may be extended in 30-day increments by the court that issued the original bench warrant. If the placement is not extended, the period under this section expires and the witness may be returned as provided by Subsection (a).

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to the detention of a witness that occurs on or after September 1, 2013, regardless of whether any prior event connected to the proceeding, action, or decision occurred before September 1, 2013.
Summary of Changes: During the 79th Legislative Session in 2005, Family Code Section 52.0151 and Code of Criminal Procedure Article 24.011 were added, authorizing the issuance of bench warrants for witnesses in the custody of then Texas Youth Commission (TYC) or in a juvenile secure detention or correctional facility. Depending on whether or not they are 17, these witnesses are placed in juvenile detention or in county jail. Juvenile practitioners have been seeking guidance on situations in which a witness is held for a long period of time awaiting the proceeding where he or she is to testify. This change in law provides that witnesses held in juvenile detention may be held for only 30 days unless the court that issued the bench warrant extends that time period. Corresponding changes were made in Code of Criminal Procedure Article 24.011.

Family Code Sec. 53.045. OFFENSES ELIGIBLE FOR DETERMINATE SENTENCE [~~VIOLENT OR HABITUAL OFFENDERS~~]

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: In current law, children given a determinate sentence and placed on probation or committed to the Texas Juvenile Justice Department (TJJD) are referred to as "violent or habitual offenders." In practice, they are commonly referred to as "determinate sentence offenders." This can cause confusion in locating the statutes and in understanding that "violent or habitual" refers to determinate sentencing. In an effort to eliminate this confusion, the term "violent or habitual" offenses and offenders has been amended to use the phrase "determinate sentence."

Family Code Sec. 54.01. DETENTION HEARING. (b-1) Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

(d) A detention hearing may be held without the presence of the child's parents if the court has been unable to locate them. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child, subject to the requirements of Subsection (b-1).

Commentary by Nydia Thomas

Source: SB 1318
Effective Date: September 1, 2013
Applicability: Applies only to a detention hearing that is held for a child taken into custody on or after the effective date.
Summary of Changes: Sections 54.01 (b-1) and (d), Family Code are corollary provisions to the amendments in Section 51.101 relating to the appointment of counsel and continuation of representation. As amended, Section 54.01(b-1) requires the juvenile court to appoint an attorney to represent a juvenile offender who has been taken into custody within a reasonable time before the first detention hearing if the child qualifies for court appointed counsel.

Family Code Sec. 54.011. DETENTION HEARINGS FOR STATUS OFFENDERS AND NONOFFENDERS; PENALTY. (e) A status offender may be detained for a necessary period, not to exceed the period allowed under the Interstate Compact for Juveniles [~~five days~~], to enable the child's return to the child's home in another state under Chapter 60.

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to detention hearings for a child under the Uniform Interstate Compact for Juveniles that occur on or after the effective date.
Summary of Changes: The Uniform Interstate Compact for Juveniles (UICJ), as adopted by Texas and codified in Chapter 60 of the Family Code, sets out specific time periods for returning a juvenile to the home state. The length of time a child may be held under the UICJ could be different depending upon factors such as whether the child is returning voluntarily or involuntarily and whether due process must be provided. In some circumstances, detention of a child is authorized for a period in excess of the five (5) days described under current law. As such, the time frame provided under prior Texas law did not always align with other compacting states. Since the time frames vary from one state jurisdiction to another, the terms of the compact control. Section 54.011, Family Code amends Subsection (e) to reference the Uniform Interstate Compact for Juveniles (UICJ) rules and removes the reference to the five-day period required to arrange for the return of the child under prior law. This change ensures that Texas law conforms to the UICJ provisions and accounts for other factors that may impact the length of time a child may be held for processing under the compact.

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

(h-1) If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to a person under the age of 17 who is certified as an adult and detained in a juvenile detention facility pending trial for an offense committed on or after September 1, 2011.
Summary of Changes: In 2011, SB 1209 was passed, which allowed for persons under the age of 17 who had been certified to stand trial as adults to be detained in a juvenile detention facility pending trial. Inherent in being certified to stand trial as an adult is the constitutional right to bail. This provision clarifies that the juvenile court is responsible for setting bail at the time the court orders the person detained in a juvenile detention facility.

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

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) [~~of this section~~]. The person's parent, custodian, guardian, or guardian ad litem is not considered a party to a proceeding under Subsection (j) and it is not necessary to provide the parent, custodian, guardian, or guardian ad litem with notice.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to a petition for waiver of jurisdiction and discretionary transfer to criminal court filed on or after September 1, 2013.
Summary of Changes: Family Code Section 54.02(j) applies to a proceeding seeking to certify a person who is at least 18 years of age as an adult for prosecution for an offense that occurred when the person was a juvenile. Currently, Subsection 54.02(k) requires that the same notice provisions that apply to a child must be met for the person who is 18 or over, including providing notice to the person's parent, guardian, custodian, or guardian ad litem. This change provides that notice to the parent, guardian, custodian, or guardian ad litem is no longer necessary. The purpose of the change is to create efficiencies, reduce costs, and give recognition to the fact that a person who is 18 is legally an adult and can determine whether or not to involve his parents in his legal matters.

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

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) [~~of this section~~]. Except as otherwise provided by this subsection, a waiver of jurisdiction under Subsection (j) may be made without the necessity of conducting the diagnostic study or complying with the requirements of discretionary transfer proceedings under Subsection (d). If requested by the attorney for the person at least 10 days before the transfer hearing, the court shall order that the person be examined pursuant to Section 51.20(a) and that the results of the examination be provided to the attorney for the person and the attorney for the state at least five days before the transfer hearing.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to a petition for waiver of jurisdiction and discretionary transfer to criminal court filed on or after September 1, 2013.
Summary of Changes: Family Code Section 54.02(d) currently applies to every proceeding in which the prosecution is seeking to certify the respondent to stand trial as an adult. Section 54.02(d) requires the court, prior to the certification hearing, to order and obtain a complete diagnostic study, social evaluation, and full investigation of the respondent, his circumstances, and the circumstances of the alleged offense. The purpose of this study, in part, is for the court to have information to determine if the person is sophisticated enough to be tried as an adult. This change in law in Section 54.02(l) provides that in a "post-18" year-old certification, the decision to certify may be made without conducting the diagnostic study or complying with the other requirements of Subsection (d). However, if the defense attorney makes a request at least 10 days before the hearing, the court is required to order an examination under Family Code Section 51.20(a). Prior to this legislative session, and at the time this amendment was drafted, that subsection related to an evaluation to determine whether the child had a mental illness or was a person with mental retardation. However, that subsection was amended via HB 144, and now includes an evaluation as to whether or not the child suffers from chemical dependency. See discussion under Family Code Section 51.20.

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

(s) If a child is transferred to criminal court under this section, only the petition for discretionary transfer, the order of transfer, and the order of commitment, if any, are a part of the district clerk's public record.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to a petition for waiver of jurisdiction and discretionary transfer to criminal court filed on or after September 1, 2013.
Summary of Changes: When a person is certified to stand trial as an adult, questions frequently arise regarding which records are to be a part of the adult court record. Section 54.02(s) was added to address this. It specifies that only the petition for transfer, order of transfer, and order of commitment (to jail or juvenile detention pending trial) are a part of the clerk's public record. This change helps to keep confidential the diagnostic study, social evaluation, and any other examinations conducted as part of the certification and transfer process. Unfortunately, language specifying that any other juvenile court records are to be held under seal by the district clerk was deleted in committee; therefore, it may be advisable for any records not enumerated in this statute to remain with the clerk of the juvenile court in order to prevent accidental release.

Family Code Sec. 54.04. DISPOSITION HEARING (b) At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. On or before the second day before the date of [~~Prior to~~] the disposition 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 disposition. The court may order counsel not to reveal items to the child or the child's 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.

(d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

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

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

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

(i) a suitable foster home;

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

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

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony and if the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Juvenile Justice Department [~~Youth Commission~~] without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Juvenile Justice Department [~~Youth Commission~~] with a possible transfer to the Texas Department of Criminal Justice for a term of:

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

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

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

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

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

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

(6) if applicable, the court or jury may make a disposition under Subsection (m).

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to conduct that occurs on or after September 1, 2013.
Summary of Changes: Family Code Section 54.04(b) currently requires the court to provide the defense attorney, prior to the disposition hearing, access to all written material the court intends to consider in disposition. This amendment specifies that access must be provided at least two days before the hearing and the same access is to be provided to the prosecutor.

Family Code Section 54.04(d) sets out the possible disposition options available to the court. This amendment adds placement in a registered nonsecure correctional facility as a disposition option. It bears noting that this provision is not consistent with Section 54.04(d)(1)(B), which allows out-of-home placement only while on probation and only if the court makes certain findings.

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

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

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

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

(i) a suitable foster home;

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

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

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

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

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

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

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

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

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

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

(q) If a court or jury sentences a child to commitment in the Texas Juvenile Justice Department or a post-adjudication secure correctional facility [~~Youth Commission~~] under Subsection (d)(3) for a term of not more than 10 years, the court or jury may place the child on probation under Subsection (d)(1) as an alternative to making the disposition under Subsection (d)(3). The court shall prescribe the period of probation ordered under this subsection for a term of not more than 10 years. The court may, before the sentence of probation expires, extend the probationary period under Section 54.05, except that the sentence of probation and any extension may not exceed 10 years. The court may, before the child's 19th birthday, discharge the child from the sentence of probation. If a sentence of probation ordered under this subsection and any extension of probation ordered under Section 54.05 will continue after the child's 19th birthday, the court shall discharge the child from the sentence of probation on the child's 19th birthday unless the court transfers the child to an appropriate district court under Section 54.051.

(z) Nothing in this section may be construed to prohibit a juvenile court or jury in a county to which Section 54.04011 applies from committing a child to a post-adjudication secure correctional facility in accordance with that section after a disposition hearing held in accordance with this section.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amendments to Section 54.04 make commitment to a post-adjudication secure correctional facility under Section 54.04011(c)(1) a disposition option for an indeterminate sentence felony, as well as for a determinate sentence felony under Section 54.04011(c)(2). Such a commitment is also a modification of disposition option for determinate sentence probation under Section

54.04(q). New Subsection (z) states that nothing in Section 54.04 prohibits a juvenile court or jury in a county to which Section 54.04011 applies from committing a child to a post-adjudication secure correctional facility following a Section 54.04 disposition hearing.

Family Code Sec. 54.04011. COMMITMENT TO POST-ADJUDICATION SECURE CORRECTIONAL FACILITY. (a) In this section, "post-adjudication secure correctional facility" means a facility operated by or under contract with a juvenile board or local juvenile probation department under Section 152.0016, Human Resources Code.

(b) This section applies only to a county in which the juvenile board or local juvenile probation department operates or contracts for the operation of a post-adjudication secure correctional facility.

(c) After a disposition hearing held in accordance with Section 54.04, the juvenile court of a county to which this section applies may commit a child who is found to have engaged in delinquent conduct that constitutes a felony to a post-adjudication secure correctional facility:

(1) without a determinate sentence, if:

(A) the child is found to have engaged in conduct that violates a penal law of the grade of felony and the petition was not approved by the grand jury under Section 53.045;

(B) the child is found to have engaged in conduct that violates a penal law of the grade of felony and the petition was approved by the grand jury under Section 53.045 but the court or jury does not make the finding described by Section 54.04(m)(2); or

(C) the disposition is modified under Section 54.05(f); or

(2) with a determinate sentence, if:

(A) the child is found to have engaged in conduct that included a violation of a penal law listed in Section 53.045 or that is considered habitual felony conduct as described by Section 51.031, the petition was approved by the grand jury under Section 53.045, and, if applicable, the court or jury makes the finding described by Section 54.04(m)(2); or

(B) the disposition is modified under Section 54.05(f).

(d) Nothing in this section may be construed to prohibit:

(1) a juvenile court or jury from making a disposition under Section 54.04, including:

(A) placing a child on probation on such reasonable and lawful terms as the court may determine, including placement in a public or private post-adjudication secure correctional facility under Section 54.04(d)(1)(B)(iii); or

(B) placing a child adjudicated under Section 54.04(d)(3) or (m) on probation for a term of not more than 10 years, as provided in Section 54.04(q); or

(2) the attorney representing the state from filing a motion concerning a child who has been placed on probation under Section 54.04(q) or the juvenile court from holding a hearing under Section 54.051(a).

(e) The provisions of 37 T.A.C. Section 343.610 do not apply to this section.

(f) This section expires on December 31, 2018.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Expiration Date: December 31, 2018
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: SB 511 continues the trend, begun in 2007, of diverting youthful offenders from commitment to the Texas Juvenile Justice Department (TJJD) and keeping them closer to home in community-based programs and facilities. The idea of community-based secure correctional facilities accepting juvenile felony offenders in the same manner as TJJD was modeled on Sec. 54.0401, Family Code (Community-Based Programs). As originally conceived, it was viewed as an extension of the community-based programs concept and was intended to apply to counties with a population of at least 335,000 that had a post-adjudication secure correctional facility. That would have included 12 counties containing 16 of the state's 33 post-adjudication secure correctional facilities. However, as the bill wound through the legislative process, its scope was narrowed to include only Travis County. As such, it is essentially a five-year pilot project with an effective date of December 1, 2013, and an expiration date of December 31, 2018.

Newly enacted Section 54.04011, Family Code, states that following a disposition hearing "the juvenile court of a county to which this section applies [i.e., Travis County]" *may* commit both indeterminate and determinate sentenced felony offenders to a local post-adjudication secure correctional facility. The statute applies only to a secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department under new Section 152.0016, Human Resources Code. The statutory language is discretionary; the juvenile court in Travis County does not have to commit juvenile felony offenders to the local secure correctional facility; in fact, it may legally commit such offenders to TJJD. However, a youth who is committed to the local secure facility cannot be transferred to TJJD.

Section 54.04011 does not prohibit a juvenile court or jury from placing a juvenile felony offender on indeterminate or determinate sentence probation; nor does it prohibit the

State from filing a motion to modify determinate sentence probation under Section 54.04(q); or the juvenile court from conducting a transfer of determinate sentence probation hearing under Section 54.051(a).

Section 54.04011(e) makes it clear that the provisions of 37 Texas Administrative Code Section 343.610 do not apply, meaning that youth who are placed on probation in the Travis County post-adjudication secure correctional facility do not have to be physically segregated from youth who are committed to the facility under the new law. This was an important concession since it was deemed prohibitively expensive for a juvenile board or local juvenile probation department to provide separate housing, staff and programming for what will likely be a relatively small population of committed offenders. Housing and detention classifications, as well as programmatic needs assessments, will be conducted for each resident to ensure the safety of youth and staff, and the most appropriate and needed services considering the youth's custody level and treatment needs.

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

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: This is a conforming amendment to the changes to Family Code Section 51.03 so that all references in law to the "sexting" offense are now Family Code 51.03(b)(8) (See Family Code 51.03 discussion).

Family Code Sec. 54.0482. TREATMENT OF RESTITUTION PAYMENTS. (a) A juvenile probation department that receives a payment to a victim as the result of a juvenile court order for restitution shall immediately:

(1) deposit the payment in an interest-bearing account in the county treasury; and

(2) notify the victim [~~by certified mail, sent to the last known address of the victim,~~] that a payment has been received.

(b-1) If the victim does not make a claim for payment on or before the 30th day after the date of being notified under Subsection (a), the juvenile probation department shall notify the victim by certified mail, sent to the last known address of the victim, that a payment has been received.

(e) If a victim claims a payment on or before the fifth anniversary of the date on which the juvenile probation department mailed a notice to the victim under Subsection (b-1) [~~(a)~~], the juvenile probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment.

(f) If a victim does not claim a payment on or before the fifth anniversary of the date on which the juvenile probation department mailed a notice to the victim under Subsection (b-1) [~~(a)~~], the department:

(1) has no liability to the victim or anyone else in relation to the payment; and

(2) shall transfer the payment from the interest-bearing account to a special fund of the county treasury, the unclaimed juvenile restitution fund.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to all restitution payments received on or after September 1, 2013, regardless of the date of the conduct for which the restitution was ordered.
Summary of Changes: Under current law, the juvenile probation department is required to provide notice via certified mail to the victim every time a restitution payment is made. The purpose of providing notice via certified mail is to prove notice as given in those instances in which the victim does not claim the payment and the money escheats to the county. In instances in which the probation department victim claims the payments and can be notified that a payment has been received using methods other than certified mail, strict compliance with this law poses an unnecessary expense on probation departments. HB 2862 amends this law to allow the juvenile probation department to provide notice that a payment has been received in any manner. Notice via certified mail is only required if the victim has not claimed the payment within 30 days of the initial notice and is still required in order for an unclaimed payment to escheat to the county. The purpose of this change is to provide efficiencies and savings to juvenile probation departments.

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

(f) Except as provided by Subsection (j), a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony may be modified so as to commit the child to the Texas Juvenile Justice Department or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, [~~Youth Commission~~] if the court after a hearing to modify disposition finds by a preponderance of

the evidence that the child violated a reasonable and lawful order of the court. A disposition based on a finding that the child engaged in habitual felony conduct as described by Section 51.031 or in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) may be modified to commit the child to the Texas Juvenile Justice Department or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, [~~Youth Commission~~] with a possible transfer to the Texas Department of Criminal Justice for a definite term prescribed by, as applicable, Section 54.04(d)(3) or Section 152.0016(g), Human Resources Code, if the original petition was approved by the grand jury under Section 53.045 and if after a hearing to modify the disposition the court finds that the child violated a reasonable and lawful order of the court.

(j) If, after conducting a hearing to modify disposition without a jury, the court finds by a preponderance of the evidence that a child violated a reasonable and lawful condition of probation ordered under Section 54.04(q), the court may modify the disposition to commit the child to the Texas Juvenile Justice Department [~~Youth Commission~~] under Section 54.04(d)(3) or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, for a term that does not exceed the original sentence assessed by the court or jury.

(m) If the court places the child on probation outside the child's home or commits the child to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code [~~Youth Commission~~], the court:

(1) shall include in the court's order a determination that:

(A) it is in the child's best interests to be placed outside the child's home;

(B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the child's home and to make it possible for the child to return home; and

(C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation; and

(2) may approve an administrative body to conduct a permanency hearing pursuant to 42 U.S.C. Section 675 if required during the placement or commitment of the child.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amended Section 54.05(b) adds commitment to a post-adjudication secure correctional facility under Section 54.04011 as a disposition that does not automatically terminate when a child turns 18. Instead, such commitments, for indeterminate and determinate sentence felonies, as well as modifications of such dispositions, terminate at age 19. The amendment to Section 54.05(m) requires a juvenile court to make the same out-of-home placement findings for commitments to a post-adjudication secure correctional facility under Section 152.0016, Human Resources Code, as required for commitments to the Texas Juvenile Justice Department.

Family Code Sec. 54.05. HEARING TO MODIFY DISPOSITION. (e) After the hearing on the merits or facts, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of other witnesses. On or before the second day before the date of [~~Prior to~~] the hearing to modify disposition, 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 deciding whether to modify disposition. The court may order counsel not to reveal items to the child or 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 Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to conduct that occurs on or after September 1, 2013.
Summary of Changes: Current law requires the court to provide the defense attorney, prior to a hearing to modify disposition, access to all written material the court intends to consider in disposition. This amendment specifies that access must be provided at least two days before the hearing and the same access is to be provided to the prosecutor.

Family Code Sec. 54.051. TRANSFER OF DETERMINATE SENTENCE PROBATION TO APPROPRIATE DISTRICT COURT. (b) The hearing must be conducted before the person's [~~child's~~] 19th birthday, or before the person's 18th birthday if the offense for which the person was placed on probation occurred before September 1, 2011, and must be conducted in the same manner as a hearing to modify disposition under Section 54.05.

(d-1) After a transfer to district court under Subsection (d), only the petition, the grand jury approval, the judgment concerning the conduct for which the person was placed on determinate sentence probation, and the transfer order are a part of the district clerk's public record.

(e) A district court that exercises jurisdiction over a person [~~child~~] transferred under Subsection (d) shall place the person [~~child~~] on community supervision under Article 42.12, Code of Criminal Procedure, for the remainder of the person's [~~child's~~] probationary period and under conditions consistent with those ordered by the juvenile court.

(e-2) If a person [~~child~~] who is placed on community supervision under this section violates a condition of that supervision or if the person [~~child~~] violated a condition of probation ordered under Section 54.04(q) and that probation violation was not discovered by the state before the person's [~~child's~~] 19th birthday, the district court shall dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case. If the judge revokes community supervision, the judge may reduce the prison sentence to any length without regard to the minimum term imposed by Section 23(a), Article 42.12, Code of Criminal Procedure.

(e-3) The time that a person [~~child~~] serves on probation ordered under Section 54.04(q) is the same as time served on community supervision ordered under this section for purposes of determining the person's [~~child's~~] eligibility for early discharge from community supervision under Section 20, Article 42.12, Code of Criminal Procedure.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Changes to Section 54.051(d-1) are applicable to records created on, before, or after September 1, 2013. The other changes are clarifying in nature.
Summary of Changes: In 2011, SB 1208 modified the law so that the age at which a person's determinate sentence probation could be transferred to adult court was 19 rather than 18. This change applied only to offenses committed on or after September 1, 2011. Those who read Family Code Section 54.051 without knowing the applicability date believed juvenile court had jurisdiction over persons on determinate sentence probation until age 19, regardless of offense date. This resulted in some courts losing jurisdiction over individuals, thereby unable to transfer their probation to adult court. The change in Section 54.051(b) places the offense date into law so that it is clear that if the offense occurred prior to September 1, 2011, the transfer hearing must be conducted before the person's 18th birthday. Subsections (e), (e-2), and (e-3) apply to a person whose determinate sentence probation has been transferred to adult court. Because this person no longer meets the definition of a child under the Family Code, references to child were amended and now read "person."

When a person's determinate sentence probation is transferred from juvenile court, where court records are confidential, to adult court, where court records are open to the public, a common question is, "What is the status of the records?" Section 54.051(d-1) was added to clarify that only certain records from juvenile court become a part of the district clerk's public records. Unfortunately, language specifying that any other juvenile court records are to be held under seal by the district clerk was deleted in committee. Absent that language, it may be advisable for any records not enumerated in this statute to remain with the clerk of the juvenile court in order to prevent accidental release.

Family Code Sec. 54.051. TRANSFER OF DETERMINATE SENTENCE PROBATION TO APPROPRIATE DISTRICT COURT. (i) If the juvenile court exercises jurisdiction over a person who is 18 or 19 years of age or older, as applicable, under Section 51.041 or 51.0412, the court or jury may, if the person is otherwise eligible, place the person on probation under Section 54.04(q). The juvenile court shall set the conditions of probation and immediately transfer supervision of the person to the appropriate court exercising criminal jurisdiction under Subsection (e).

Commentary by Kaci Sohrt

Effective Date: September 1, 2013
Applicability: This is a nonsubstantive clarification.
Summary of Changes: In 2011, SB 1208 extended the age of juvenile court jurisdiction for those on determinate sentence probation from 18 to 19. This statute was inadvertently overlooked at that time. This amendment brings it into conformity with the prior statutory changes.

Family Code Sec. 54.052. CREDIT FOR TIME SPENT IN DETENTION FACILITY FOR CHILD WITH DETERMINATE SENTENCE. (a) This section applies only to a child who is committed to:

(1) the Texas Juvenile Justice Department [~~Youth Commission~~] under a determinate sentence under Section 54.04(d)(3) or (m) or Section 54.05(f); or

(2) a post-adjudication secure correctional facility under a determinate sentence under Section 54.04011(c)(2).

(b) The judge of the court in which a child is adjudicated shall give the child credit on the child's sentence for the time spent by the child, in connection with the conduct for which the child was adjudicated, in a secure detention facility before the child's transfer to a Texas Juvenile Justice Department [~~Youth Commission~~] facility or a post-adjudication secure correctional facility, as applicable.

(d) The Texas Juvenile Justice Department or the juvenile board or local juvenile probation department operating or contracting for the operation of the post-adjudication secure correctional facility under Section 152.0016, Human Resources Code, as applicable, [~~Youth Commission~~] shall grant any credit under this section in computing the child's eligibility for parole and discharge.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amended Section 54.052 assures that determinate sentence youth who are committed to a post-adjudication secure correctional facility under Section 54.04011(c)(2) will receive credit toward their sentence for time spent in a secure detention facility in connection with the conduct for which they were adjudicated. Similarly, they must be granted such credit under Section 54.052 toward their eligibility for parole and discharge.

Family Code Sec. 54.11. RELEASE OR TRANSFER HEARING. (a) On receipt of a referral under Section 244.014(a), Human Resources Code, for the transfer to the Texas Department of Criminal Justice of a person committed to the Texas Juvenile Justice Department under Section 54.04(d)(3), 54.04(m), or 54.05(f), [~~or~~] on receipt of a request by the Texas Juvenile Justice Department under Section 245.051(d), Human Resources Code, for approval of the release under supervision of a person committed to the Texas Juvenile Justice Department under Section 54.04(d)(3), 54.04(m), or 54.05(f), or on receipt of a referral under Section 152.0016(g), Human Resources Code, the court shall set a time and place for a hearing on the release of the person.

(h) The hearing on a person who is referred for transfer under Section 152.0016(j) or 244.014(a), Human Resources Code, shall be held not later than the 60th day after the date the court receives the referral.

(i) On conclusion of the hearing on a person who is referred for transfer under Section 152.0016(j) or 244.014(a), Human Resources Code, the court may, as applicable, order:

(1) the return of the person to the Texas Juvenile Justice Department or post-adjudication secure correctional facility; or

(2) the transfer of the person to the custody of the Texas Department of Criminal Justice for the completion of the person's sentence.

(j) On conclusion of the hearing on a person who is referred for release under supervision under Section 152.0016(g) or 245.051(c), Human Resources Code, the court may, as applicable, order the return of the person to the Texas Juvenile Justice Department or post-adjudication secure correctional facility:

(1) with approval for the release of the person under supervision; or

(2) without approval for the release of the person under supervision.

(k) In making a determination under this section, the court may consider the experiences and character of the person before and after commitment to the Texas Juvenile Justice Department or post-adjudication secure correctional facility [~~youth commission~~], the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the Texas Juvenile Justice Department, county juvenile board, local juvenile probation department, [~~youth commission~~] and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amended Section 54.11 attempts to place the local juvenile probation department on the same footing as the Texas Juvenile Justice Department (TJJD) with regard to referring determinate sentence offenders to juvenile court for possible release under parole supervision or transfer to the Texas Department of Criminal Justice (TDCJ). In amended Section 54.11(a), however, the referenced Section 152.0016(g), Human Resources Code, only addresses release under parole supervision, along with Section 152.0016(h). Referral of a youth to juvenile court by a juvenile probation department for possible transfer to TDCJ is addressed in Section 152.0016(j). This is clarified in amended Sections 54.11(h) and (i), which accurately reference new Section 152.0016(j) relating to possible transfer to TDCJ. Considering the legislative intent behind SB 511, it is clear the local juvenile probation department has the same authority to refer a determinate sentence felony offender to juvenile court for possible release under supervision or transfer to TDCJ as TJJD.

Family Code Sec. 54.11. RELEASE OR TRANSFER HEARING. (b) The court shall notify the following of the time and place of the hearing:

(1) the person to be transferred or released under supervision;

(2) the parents of the person;

(3) any legal custodian of the person, including the Texas Juvenile Justice Department [~~Youth Commission~~];

(4) the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings;

(5) the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family; and

(6) any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.

(d) At a hearing under this section the court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, or employees of the Texas Juvenile Justice Department [~~Youth Commission~~], in addition to the testimony of witnesses. On or before the fifth day [~~At least one day~~] before the date of the hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court. All written matter is admissible in evidence at the hearing.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to offenses that occur on or after September 1, 2013.
Summary of Changes: Under current law, certain written reports may be considered by the court in a transfer or release hearing regarding a determinate sentence offender at the Texas Juvenile Justice Department (TJJD). Those reports must be given to the defense attorney at least one day prior to the hearing. This change specifies that both written reports and supporting documents may be considered at the hearing, all such written material is admissible, and the defense attorney must be given the documents five days in advance of the hearing.

Family Code Sec. 56.03. APPEAL BY STATE IN CASES OF OFFENSES ELIGIBLE FOR DETERMINATE SENTENCE [~~VIOLENT OR HABITUAL OFFENDER~~].

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: In current law, children given a determinate sentence and placed on probation or committed to the Texas Juvenile Justice Department (TJJD) are referred to as “violent or habitual offenders.” In practice, they are commonly referred to as “determinate sentence offenders.” This can cause confusion in locating the statutes and in understanding that “violent or habitual” refers to determinate sentencing. In an effort to eliminate this confusion, the term “violent or habitual” offenses and offenders has been amended to use the phrase “determinate sentence.”

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 123, Government [~~469, Health and Safety~~] Code, or former law. 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.

Commentary by Kaci Sohrt

Source: SB 462
Effective Date: September 1, 2013
Applicability: This is a non-substantive change to a statutory reference.
Summary of Changes: This was part of an extensive bill relocating statutes relating to specialty courts into one location in the Government Code. Legislation impacting drug courts was moved from Health and Safety Code Chapter 469 to Government Code Chapter 123. Family Code Section 58.003(c-1), which governs sealing of juvenile records after successful completion of a drug court program was amended to reflect this change.

Family Code Sec. 58.003. SEALING OF RECORDS. (c-5) [~~(c-3)~~] Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, or taken into custody to determine whether the child engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, if the child attends and successfully completes an educational program described by Section 37.218, Education Code, or another equivalent educational program. 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-6) [~~(c-4)~~] A prosecuting attorney or juvenile probation department may maintain until a child's 17th birthday a separate record of the child's name and date of birth and the date on which the child successfully completed the educational program, if the child's records are sealed under Subsection (c-5) [~~(c-3)~~]. 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 to a child the relief authorized in Subsection (a), (c-1), [~~or~~] (c-3), or (c-5) at any time after final discharge of the child or after the last official action in the case if there was no adjudication, subject, if applicable, 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.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: In 2011, SB 407 created laws related to Electronic Transmission of Certain Visual Material Depicting a Minor ("sexting") while HB 2015 amended the law to provide that prostitution is conduct indicating a need for supervision (CINS) rather than delinquent. Unfortunately, both bills created the same new subsections in several laws, creating confusion. In addition to duplicative numbering in Family Code Section 51.03(b)(7) (See discussion above), those two bills each created new Subsections (c-3) and (c-4) in Family Code Section 58.003. To eliminate confusion, the sealing provisions related to "sexting" have been renumbered as (c-5) and (c-6) and Subsection (d) has been amended to reference the newly renumbered Subsection (c-5). There were no substantive changes related to how these records are sealed.

Family Code Sec. 58.003. SEALING OF RECORDS. (g-1) Statistical data [~~Any records~~] collected or maintained by the Texas Juvenile Justice Department, including statistical data submitted under Section 221.007, Human Resources Code, is [~~are~~] not subject to a sealing order issued under this section.

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to applications for sealing orders and sealing orders entered on or after the effective date.
Summary of Changes: Section 58.003(g-1), Family Code clarifies that statistical data maintained by the Texas Juvenile Justice Department (TJJD) cannot be sealed. Under prior law, Subsection (g-1) applied to the aggregated probation statistical records of the former Texas Juvenile Probation Commission. In 2011, a conforming change updated the agency name in accordance with the system merger mandated under SB 653 [82nd R.S.] without accounting for the fact that the former Texas Youth Commission maintained individual-level institutional records. This amendment confirms that TJJD's community-based and institutional statistical data are exempt from sealing. Physical and electronic records relating to youth committed to a TJJD state institution are not subject to this exemption.

Family Code Sec. 58.007. PHYSICAL RECORDS OR FILES. (b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to records created on, before, or after September 1, 2013.
Summary of Changes: This is a conforming change related to the creation of Family Code Section 54.051(d-1), which provides that after a person's determinate sentence probation is transferred to adult court, the petition, grand jury approval, judgment concerning the conduct for which the person was placed on determinate sentence probation, and transfer order are a part of the district clerk's public record. This provision provides that such records are excepted from the limitations on release that are generally applicable to juvenile court records. This exception applies only after the determinate sentence probation is transferred to adult court.

Family Code Sec. 58.007. PHYSICAL RECORDS OR FILES. (b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied [~~are open to inspection~~] only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Commentary by Nydia Thomas

Source: SB 670
Effective Date: May 24, 2013
Applicability: Applies to requests for inspection and copies of juvenile physical files and records that occur on or after the immediate effective date.
Summary of Changes: Section 58.007(b) clarifies that physical files and records pertaining to juvenile proceedings may be copied by certain persons and entities listed under the Title 3 exceptions to confidentiality. The amendment strikes the "open to inspection" language in order to provide uniformity in the level of access to juvenile records throughout the state. As it relates to prosecutorial records, the amendment authorizes a child's defense attorney to inspect as well as make copies of the offense reports in the district attorney's case file.

Family Code Sec. Section 58.110. REPORTING. (c) The clerk of the court exercising jurisdiction over a juvenile offender's case shall report the disposition of the case to the department. [~~A clerk of the court who violates this subsection commits an offense. An offense under this subsection is a Class C misdemeanor.~~]

Commentary by Kaci Sohrt

Source: HB 1435
Effective Date: September 1, 2013
Applicability: Applies to a failure to report the disposition of a case to DPS on or after the effective date of this Act.
Summary of Changes: Family Code Section 58.110(c) requires the clerk of a juvenile court to report the disposition of each case to DPS. A failure to do so is a Class C misdemeanor. While there is a similar reporting requirement for adult offenses, a failure to do so is not a law violation. This amendment removes the law violation related to a failure to report a disposition in juvenile court, creating parity between the two requirements.

Family Code Sec. 58.203. CERTIFICATION. (a) The department shall certify to the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if:

(1) the person is at least 17 years of age;

(2) the juvenile case did not include [~~violent or habitual felony~~] conduct resulting in determinate sentence proceedings in the juvenile court under Section 53.045; and

(3) the juvenile case was not certified for trial in criminal court under Section 54.02.

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies statutory references to violent and habitual offenders on or after the effective date.
Summary of Changes: Section 58.203(a) makes a conforming change in the restricted access statute and removes the statutory reference to "violent and habitual offender" and replaces it with the term "determinate sentence" consistent with common terminology. Related conforming changes are contained in amended Section 53.045, Family Code and Section 244.014, Human Resources Code.

Family Code Sec. 58.204. RESTRICTED ACCESS ON CERTIFICATION. (b) On certification of records in a case under Section 58.203, the department may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; [~~or~~]

(2) for research purposes, by the Texas Juvenile Justice Department;

(3) by the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records;

(4) with the permission of the juvenile court at the request of the person who is the subject of the records; or

(5) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit [~~Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council~~].

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to requests for restricted access records created before, on, or after the effective date.
Summary of Changes: Section 58.204, Family Code describes the entities that the Department of Public Safety may provide access to information that has been certified as eligible for restricted access in the juvenile justice information system (JJIS). Although a juvenile's record may have been placed on restricted access, delinquency history may become available to a potential employer or other person, from federal databases or commercial entities that conduct background checks. Without the ability to identify

the scope of existing delinquency history, the juvenile may be left unprotected and may remain at the mercy of countless unknown record holders. While the subject of the records cannot waive the statutory benefits of restricted access, the juvenile should be permitted to access his or her records when needed.

Subsection (b)(3) authorizes the release of restricted access records to the subject of the record with leave of the juvenile court (i.e., permission by court order). Subsection (b)(4) authorizes, at the request of the person who is the subject of the records, access by means of juvenile court order. A court order preserves the integrity of the prohibition against waiver and prevents employers, universities, or other entities from compelling applicants to obtain and produce delinquency history as a condition of employment or acceptance. Related Subsection (b)(5) prohibits the use of records that have been placed on restricted access as a tool to exclude evidence of facts that have been put into issue in a civil suit. Other non-substantive changes in Subsection (b)(2) update the name of the Texas Juvenile Justice Department.

Family Code Sec. 58.204. RESTRICTED ACCESS ON CERTIFICATION. (b) On certification of records in a case under Section 58.203, the department may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; [~~or~~]

(2) for research purposes, by the Texas Juvenile Justice Department [~~Probation Commission, the Texas Youth Commission,~~] or the Criminal Justice Policy Council; or

(3) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

Commentary by Nydia Thomas

Source: HB 694
Effective Date: June 14, 2013
Applicability: Applies to requests for restricted access juvenile justice information system (JJIS) records created before, on, or after the effective date.
Summary of Changes: Section 58.204(b)(3) was amended to authorize the Department of Public Safety (DPS) to disclose restricted access delinquency history information contained in the juvenile justice information system (JJIS) database to military personnel, including recruiters, for the state national guard or any branch of the armed forces of the United States. This provision requires, for the limited purpose of military enlistment, the applicant to provide written permission to DPS to authorize the release of juvenile delinquency summary history. It is important to note that recruiters currently have similar access under the authority of Section 58.106, Family Code, but only for records that have not been placed on restricted access.

Family Code Sec. 58.207. JUVENILE COURT ORDERS ON CERTIFICATION. (a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

(A) if the respondent was committed to the Texas Juvenile Justice Department [~~Youth Commission~~], records maintained by the department [~~commission~~];

(B) records maintained by the juvenile probation department;

(C) records maintained by the clerk of the court;

(D) records maintained by the prosecutor's office; and

(E) records maintained by a law enforcement agency; and

(2) the juvenile probation department to make a reasonable effort to notify the person who is the subject of records for which access has been restricted of the action restricting access and the legal significance of the action for the person, but only if the person has requested the notification in writing and has provided the juvenile probation department with a current address.

(b) Except as provided by Subsection (c), on [~~On~~] receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

(c) Subsection (b) does not apply if:

(1) the subject of an order issued under Subsection (a)(1) is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department; or

(2) the agency has received notice that the records are not subject to restricted access under Section 58.211.

(d) Notwithstanding Subsection (b) and Section 58.206(b), with the permission of the subject of the records, an agency listed in Subsection (a)(1) may permit the state military forces or the United States military forces to have access to juvenile records held by that agency. On receipt of a request from the state military forces or the United States military forces, an agency may provide access to juvenile records held by that agency in the same manner authorized by law for records that have not been restricted under Subsection (a).

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to requests for restricted access records created before, on, or after the effective date.
Summary of Changes: In 2011, the legislature lowered eligibility for restricted access from age 21 to 17, but did not carve out an exception for juveniles on active probation, under the jurisdiction of the juvenile court, or committed to the custody of the Texas Juvenile Justice Department (TJJD). Section 58.207(c) suspends the requirement to comply with an order of restricted access to facilitate the exchange of information for purposes of continued supervision and services for child who remains under the court's jurisdiction or in state custody. As enacted, this provision does not give clear guidance for uniform implementation. Until a statewide best practices can be developed, any local restricted access implementation plan should take into account: 1) a mechanism for the possible issuance of a suspension order or other similar directive; 2) a method to track a child's discharge and/or the last official action of the court, if there was no adjudication; 3) consideration of eligibility under Section 58.211, Family Code, 4) an efficient and timely process for signing and entry of the restricted access order at the time of discharge; and 5) dissemination of required notifications. After discharge and entry of the restricted access order, the receiving entities may maintain and process the records pursuant to the restricted access statute.

New Subsection (d) would allow certain agencies to share information with the military after the youth's records have been placed on restricted access. Related amendments to Section 58.204 (b)(3) and Subsection (d) contained in HB 694 are discussed under Title 3 and Related Codes. A nonsubstantive conforming amendment in Subsection (a) updates references to the Texas Juvenile Justice Department.

Family Code Sec. 58.207. JUVENILE COURT ORDERS ON CERTIFICATION. (a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

(A) if the respondent was committed to the Texas Juvenile Justice Department [~~Youth Commission~~], records maintained by the department [~~commission~~];

(B) records maintained by the juvenile probation department;

(C) records maintained by the clerk of the court;

(D) records maintained by the prosecutor's office; and

(E) records maintained by a law enforcement agency; and

(2) the juvenile probation department to make a reasonable effort to notify the person who is the subject of records for which access has been restricted of the action restricting access and the legal significance of the action for the person, but only if the person has requested the notification in writing and has provided the juvenile probation department with a current address.

(c) Notwithstanding Subsection (b) of this section and Section 58.206(b), with the written permission of the subject of the records, an agency under Subsection (a)(1) may allow military personnel, including a recruiter, of this state or the United States to access juvenile records in the same manner authorized by law for records to which access has not been restricted under this section.

Commentary by Nydia Thomas

Source: HB 694
Effective Date: June 14, 2013
Applicability: Applies to requests for disclosure of restricted access information for purposes of military recruitment that occur on or before the immediate effective date.
Summary of Changes: For many rehabilitated juvenile offenders, enlistment in the armed forces may be an important life-enhancing vocational opportunity. In addition to age, citizenship, physical fitness, education and trainability, every potential recruit must meet the military enlistment eligibility standards for criminal and moral history. To the extent permitted by law, juvenile justice system personnel have expressed frustration concerning the inability to assist youth in navigating the implications of a history of juvenile delinquency. This change in law authorizes the Texas Juvenile Justice Department, juvenile probation department, court clerk, prosecutor's office, or law enforcement agency to disclose restricted summary juvenile information to military personnel, including a recruiter from the national guard or one of the branches of the United States armed forces in the same manner authorized by law for records to which access has not been restricted.

Family Code Sec. 59.009. SANCTION LEVEL SIX. (a) For a child at sanction level six, the juvenile court may commit the child to the custody of the Texas Juvenile Justice Department or a post-adjudication secure correctional facility under Section 54.04011(c)(1) [~~Youth Commission~~]. The department, juvenile board, or local juvenile probation department, as applicable, [~~commission~~] may:

(1) require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than nine months or more than 24 months unless the department, board, or probation department [~~commission~~] extends the period and the reason for an extension is documented;

(2) require the child to make restitution to the victim of the child's conduct or perform community

service restitution appropriate to the nature and degree of the harm caused and according to the child's ability, if there is a victim of the child's conduct;

(3) require the child and the child's parents or guardians to participate in programs and services for their particular needs and circumstances; and

(4) if appropriate, impose additional sanctions.

(b) On release of the child under supervision, the Texas Juvenile Justice Department [~~Youth Commission~~] parole programs or the juvenile board or local juvenile probation department operating parole programs under Section 152.0016(c)(2), Human Resources Code, may:

(1) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of release under supervision;

(2) require a parole officer to closely monitor the child for not less than six months; and

(3) if appropriate, impose any other conditions of supervision.

(c) The Texas Juvenile Justice Department, juvenile board, or local juvenile probation department [~~Youth Commission~~] may discharge the child from the [~~commission's~~] custody of the department, board, or probation department, as applicable, on the date the provisions of this section are met or on the child's 19th birthday, whichever is earlier.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amended Section 59.009 makes a child at sanction level six eligible for an indeterminate sentence commitment to a post-adjudication secure correctional facility under Section 54.04011(c)(1). All other requirements that apply to indeterminate sentence youth committed to the Texas Juvenile Justice Department (TJJD) apply to this youth population as well.

Family Code Sec. 59.010. SANCTION LEVEL SEVEN. (a) For a child at sanction level seven, the juvenile court may certify and transfer the child under Section 54.02 or sentence the child to commitment to the Texas Juvenile Justice Department [~~Youth Commission~~] under Section 54.04(d)(3), 54.04(m), or 54.05(f) or to a post-adjudication secure correctional facility under Section 54.04011(c)(2). The department, juvenile board, or local juvenile probation department, as applicable, [~~commission~~] may:

(1) require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than 12 months or more than 10 years unless the department, board, or probation department [~~commission~~] extends the period and the reason for the extension is documented;

(2) require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of harm caused and according to the child's ability, if there is a victim of the child's conduct;

(3) require the child and the child's parents or guardians to participate in programs and services for their particular needs and circumstances; and

(4) impose any other appropriate sanction.

(b) On release of the child under supervision, the Texas Juvenile Justice Department [~~Youth Commission~~] parole programs or the juvenile board or local juvenile probation department parole programs under Section 152.0016(c)(2), Human Resources Code, may:

(1) impose highly structured restrictions on the child's activities and requirements for behavior of the child as conditions of release under supervision;

(2) require a parole officer to monitor the child closely for not less than 12 months; and

(3) impose any other appropriate condition of supervision.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amended Section 59.010 makes a child at sanction level seven eligible for a determinate sentence commitment to a post-adjudication secure correctional facility under Section 54.04011(c)(2). All other requirements that apply to determinate sentence youth committed to TJJD apply to this youth population as well.

Family Code Sec. 61.0031. TRANSFER OF ORDER AFFECTING PARENT OR OTHER ELIGIBLE PERSON TO COUNTY OF CHILD'S RESIDENCE. (d) The juvenile court to which the order has been transferred shall require the parent or other eligible person to appear before the court to notify the person of the existence and terms of the order, unless the permanent supervision hearing under Section 51.073(c) has been waived. Failure to do so renders the order unenforceable.

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to the entry of transfer of probation supervision court orders and proceedings that occur on or after the effective date.
Summary of Changes: Section 61.0031(d), Family Code is intended to maintain the enforceability of inter-county transfer of probation supervision court orders affecting a parent or other eligible person by eliminating the notice and appearance requirement under Section 61.0031(d), Family Code when permanent supervision is finalized by an agreed order. In 2007, Section 51.073(c) authorized waiver of the permanent supervision hearing when the receiving county adopts the original terms and conditions ordered by the sending county. This change harmonizes Section 61.003(d) with the earlier amendments to the inter-county transfer statutes.

Alcoholic Beverage Code

Alcoholic Beverage Code Sec. 1.04. DEFINITIONS. (15) "Beer" means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight[~~, and does not include a beverage designated by label or otherwise by a name other than beer~~].

Commentary by Riley Shaw

Source: SB 1090
Effective Date: September 1, 2013
Applicability: Applies to references in law to beer on or after the effective date.
Summary of Changes: Beer has been redefined as beer, except different.

Alcoholic Beverage Code Sec. 106. 115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION. (a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Department of State Health Services under this section or a drug and alcohol driving awareness program approved by the Texas Education Agency [~~Texas Commission on Alcohol and Drug Abuse~~]. On conviction of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend an [~~the~~] alcohol awareness program or a drug and alcohol driving awareness program described by this subsection. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend an [~~the~~] alcohol awareness program or a drug and alcohol driving awareness program described by this subsection. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Department of State Health Services [~~Texas Commission on Alcohol and Drug Abuse~~]:

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

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

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

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

Commentary by Riley Shaw

Source: HB 1020
Effective Date: June 14, 2013
Applicability: Applies to dispositional orders on or after the immediate effective date.
Summary of Changes: The Court may now order the completion of a drug and alcohol driving awareness program in lieu of the regular “alcohol awareness program” for the offenses of public intoxication, purchase of alcohol by a minor, minor in consumption, driving under the influence-minor, minor in possession and possession of a fake ID.

Code of Criminal Procedure

Code of Criminal Procedure Art. 4. 19. TRANSFER OF PERSON CERTIFIED TO STAND TRIAL AS AN ADULT [~~CHILD~~]. (a) Notwithstanding the order of a juvenile court to detain a person under the age of 17 who has been certified to stand trial as an adult [~~child~~] in a certified juvenile detention facility under Section 54.02(h), Family Code, the judge of the criminal court having jurisdiction over the person [~~child~~] may order the person [~~child~~] to be transferred to an adult [~~another~~] facility [~~and treated as an adult as provided by this code~~]. A child who is transferred to an adult facility must be detained under conditions meeting the requirements of Section 51.12, Family Code.

(b) On the 17th birthday of a person described by Subsection (a) who is detained in a certified juvenile deten-

tion facility under Section 54.02(h), Family Code, the judge of the criminal court having jurisdiction over the person shall order the person to be transferred to an adult facility.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to a person under the age of 17 certified to stand trial as an adult for an offense occurring on or after September 1, 2011.
Summary of Changes: In 2011, SB 1209 amended Family Code Section 54.02 to allow a juvenile court judge to order a person under the age of 17 who has been certified to stand trial as an adult to be housed in a juvenile detention facility pending trial or until the adult court orders the person transferred to adult jail under Code of Criminal Procedure Article 4.19.

Additionally, SB1209 added one sentence to Family Code Section 51.12(f) that both allowed these youth to be housed in juvenile detention without being sight and sound separated from the other juveniles housed there while at the same time required them to be sight and sound separated from adults if held in adult jail. Prior to 2011, Section 51.12(f) read as follows, "Children and adults are separated by sight and sound only if they are unable to see each other and conversation between them is not possible. The separation must extend to all areas of the facility, including sally ports and passageways, and those areas used for admission, counseling, sleeping, toileting, showering, dining, recreational, educational, or vocational activities, and health care. The separation may be accomplished through architectural design." The sentence added by SB 1209 was: "A person who has been transferred for prosecution in criminal court under Section 54.02 and is under 17 years of age is considered a child for the purposes of this subsection." Simply put, if a person is under 17 and pending trial, he is considered a child for the purposes of the detention requirements present in Family Code Section 51.12(f).

A request for an opinion from the Attorney General was submitted regarding whether or not Section 51.12(f) applied when a person under 17 who had been certified to stand trial as an adult was housed in adult jail due to the language in 4.19 that said if the person was transferred to adult jail, he or she was to be treated as an adult as provided by the Code of Criminal Procedure. In Opinion GA-0927, the Attorney General stated that the sight and sound separation provisions of Section 51.12(f) do apply based on both legislative intent behind SB 1209 and the fact that the Code of Criminal Procedure does not govern conditions of detention.

The revisions to Code of Criminal Procedure Article 4.19 in HB 2862 accomplish two things. First, they make it clear that a person under 17 who is held in adult jail must be sight and sound separated from adults to the extent required in Family Code Section 51.12(f). Although the statute now refers simply to Section 51.12, it is important to recognize that the only provision in Section 51.12 that applies to a person under 17 held in adult jail is Section 51.12(f). It also bears noting that this provision does not require separate staff for adults and children. That is addressed in Section 51.12(g), which is not applicable to individuals certified as adults who are held in adult jails.

Secondly, the revisions address the question of what to do with a person still in juvenile detention pending trial when that person turns 17. Newly added subsection (b) makes it clear that in such instance, the judge in the adult district court shall order the person transferred to the adult jail on the person's 17th birthday. This is necessary because once the person turns 17, he is no longer a child for the purposes of Section 51.12(f), which means that he cannot be commingled with children in juvenile detention.

Code of Criminal Procedure Art. 24.011. SUBPOENAS; CHILD WITNESS. (c) If the witness is in a placement in the custody of the Texas Juvenile Justice Department [~~Youth Commission~~], a juvenile secure detention facility, or a juvenile secure correctional facility, the court may issue a bench warrant or direct that an attachment issue to require a peace officer or probation officer to secure custody of the person at the placement and produce the person in court. When the person is no longer needed as a witness or the period prescribed by Subsection (d-1) has expired without extension, the court shall order the peace officer or probation officer to return the person to the placement from which the person was released.

(d-1) A witness younger than 17 years of age held in custody under this article may be placed in a certified juvenile detention facility for a period not to exceed 30 days. The length of placement may be extended in increments of 30 days by the court that issued the original bench warrant. If the placement is not extended, the period under this article expires and the witness may be returned as provided by Subsection (c).

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to the detention of a witness that occurs on or after September 1, 2013, regardless of whether any prior event connected to the proceeding, action, or decision occurred before September 1, 2013.
Summary of Changes: During the 79th Legislative Session in 2005, Family Code Section 52.0151 and Code of Criminal Procedure Article 24.011 were added, authorizing the issuance of bench warrants for witnesses in the custody of then TYC or in juvenile secure detention or correctional facility. Depending on whether or not they are 17, these witnesses are placed in juvenile detention or in county jail. Juvenile practitioners have been seeking guidance on situa-

tions in which a witness is held for a long period of time awaiting the proceeding where he or she is to testify. This change in law provides that witnesses held in juvenile detention may be held for only 30 days unless the court that issued the bench warrant extends that time period. Corresponding changes were made in Family Code Section 52.0151.

Code of Criminal Procedure Art. 13.25. COMPUTER CRIMES. (b) An offense under Chapter 33, Penal Code, may be prosecuted in:

(1) the county of the principal place of business of the owner or lessee of a computer, computer network, or computer system involved in the offense;

(2) any county in which a defendant had control or possession of:

(A) any proceeds of the offense; or

(B) any books, records, documents, property, negotiable instruments, computer programs, or other material used in furtherance of the offense; [~~or~~]

(3) any county from which, to which, or through which access to a computer, computer network, computer program, or computer system was made in violation of Chapter 33, whether by wires, electromagnetic waves, microwaves, or any other means of communication; or

(4) any county in which an individual who is a victim of the offense resides.

Commentary by Riley Shaw

Source: SB 222
Effective Date: September 1, 2013
Applicability: Applies only to a criminal case in which the indictment, information, or complaint is presented to the court on or after the effective date. A criminal case in which the indictment, information, or complaint was presented to the court before the effective date is governed by the law in effect when the indictment, information, or complaint was presented, and the former law is continued in effect for that purpose.
Summary of Changes: For the offenses breach of computer security, online solicitation of minor, tampering with electronic voting machines, and online impersonation, venue was expanded to include the county of residence of any victim of the offense.

Code of Criminal Procedure Art. 26.04. PROCEDURES FOR APPOINTING COUNSEL. (j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record; [~~and~~]

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

Commentary by Nydia Thomas

Source: HB 1318
Effective Date: September 1, 2014
Applicability: Applies to attorneys eligible for juvenile and criminal court appointments on or after the effective date.
Summary of Changes: As part of the Fair Defense Act, juvenile boards are authorized to make an attorney appointment list available to the public under Section 51.10(j), Family Code. Beginning in October, 2014, attorneys eligible for court appointments to represent children under Title 3, Family Code must submit no later than October 15th of each year, information for the preceding fiscal year, that describes the percentage of the attorney's practice time dedicated to work based on appointments accepted in the county. This provision also applies to attorneys appointed in criminal matters under the adult procedures for appointing counsel described in Article 26, Code of Criminal Procedure. The Texas Indigent Defense Commission (TIDC) will make a form available to attorneys in order to facilitate compliance with this reporting requirement. This form and related information will be posted in the near future on the TIDC website www.txcourts.gov/tidc.

Code of Criminal Procedure Art. 38.37. EVIDENCE OF EXTRANEOUS OFFENSES OR ACTS.

(1) if committed against a child under 17 years of age:

(A) Chapter 21 (Sexual Offenses);

(B) Chapter 22 (Assaultive Offenses); or

(C) Section 25.02 (Prohibited Sexual Conduct); or

(2) if committed against a person younger than 18 years of age:

(A) Section 43.25 (Sexual Performance by a Child);

(B) Section 20A.02(a)(7) or (8); or

(C) Section 43.05(a)(2) (Compelling Prostitution).

(b) [~~Sec. 2.~~] Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

(1) the state of mind of the defendant and the child; and

(2) the previous and subsequent relationship between the defendant and the child.

Sec. 2. (a) Subsection (b) applies only to the trial of a defendant for:

(1) an offense under any of the following provisions of the Penal Code:

(A) Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex Trafficking of a Child);

(B) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(C) Section 21.11 (Indecency With a Child);

(D) Section 22.011(a)(2) (Sexual Assault of a Child);

(E) Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);

(F) Section 33.021 (Online Solicitation of a Minor);

(G) Section 43.25 (Sexual Performance by a Child); or

(H) Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(2) an attempt or conspiracy to commit an offense described by Subdivision (1).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2-a, evidence that the defendant has committed a separate offense described by Subsection (a)(1) or (2) may be admitted in the trial of an alleged offense described by Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant.

Sec. 2-a. Before evidence described by Section 2 may be introduced, the trial judge must:

(1) determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the separate offense beyond a reasonable doubt; and

(2) conduct a hearing out of the presence of the jury for that purpose.

Sec. 3. The [~~On timely request by the defendant, the~~] state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2 not later than the 30th day before the date of the defendant's trial [~~in the same manner as the state is required to give notice under Rule 404(b), Texas Rules of Evidence~~].

Commentary by Riley Shaw

Source: SB 12
Effective Date: September 1, 2013
Applicability: Applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date. The admissibility of evidence in a criminal proceeding that commences before the effective date is covered by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose.
Summary of Changes: In the trial of most sex offenses involving a child victim, unadjudicated extraneous sex offenses involving a child victim are admissible in guilt/innocence for any relevant purpose, including character and acts performed in conformity. The Court must conduct hearing out of the presence of the jury to determine if the evidence of the extraneous offense is sufficient to support a finding of guilt beyond a reasonable doubt.

Code of Criminal Procedure Art. 38.48. EVIDENCE IN PROSECUTION FOR TAMPERING WITH WITNESS OR PROSPECTIVE WITNESS INVOLVING FAMILY VIOLENCE. (a) This article applies to the prosecution of an offense under Section 36.05, Penal Code, in which:

(1) the underlying official proceeding involved family violence, as defined by Section 71.004, Family Code; or

(2) the actor is alleged to have violated Section 36.05, Penal Code, by committing an act of family violence against a witness or prospective witness.

(b) In the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, each party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor's conduct coerced the witness or prospective witness, including the nature of the relationship between the actor and the witness or prospective witness.

Commentary by Riley Shaw

Source: SB 1360
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: If a person tampers with a witness in a family violence case by committing more family violence, then each party may offer evidence that is relevant, including nature of the relationship evidence, in order to determine whether the conduct coerced the witness.

Art. 38.49. FORFEITURE BY WRONGDOING. (a) A party to a criminal case who wrongfully procures the unavailability of a witness or prospective witness:

(1) may not benefit from the wrongdoing by depriving the trier of fact of relevant evidence and testimony; and

(2) forfeits the party's right to object to the admissibility of evidence or statements based on the unavailability of the witness as provided by this article through forfeiture by wrongdoing.

(b) Evidence and statements related to a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of a witness or prospective witness are admissible and may be used by the offering party to make a showing of forfeiture by wrongdoing under this article, subject to Subsection (c).

(c) In determining the admissibility of the evidence or statements described by Subsection (b), the court shall determine, out of the presence of the jury, whether forfeiture by wrongdoing occurred by a preponderance of the evidence. If practicable, the court shall make the determination under this subsection before trial using the procedures under Article 28.01 of this code and Rule 104, Texas Rules of Evidence.

(d) The party offering the evidence or statements described by Subsection (b) is not required to show that:

(1) the actor's sole intent was to wrongfully cause the witness's or prospective witness's unavailability;

(2) the actions of the actor constituted a criminal offense; or

(3) any statements offered are reliable.

(e) A conviction for an offense under Section 36.05 or 36.06, Penal Code, creates a presumption of forfeiture by wrongdoing under this article.

(f) Rule 403, Texas Rules of Evidence, applies to this article. This article does not permit the presentation of character evidence that would otherwise be inadmissible under he Texas Rules of Evidence or other applicable law

Commentary by Riley Shaw

Source: SB 1360
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: If a person wrongfully procures the unavailability of a witness, the person waives his/her objection to the admissibility of the witness' statement and evidence.

Code of Criminal Procedure Art. 39.14. (a) Subject to the restrictions provided by Section 264.408, Family Code, and Article 39.15 of this code, as soon as practicable after receiving a timely request from the defendant the state shall [~~Upon motion of the defendant showing good cause therefor 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 the electronic duplication, copying, and [~~or~~] photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements [~~statement~~] of the defendant or a witness, including witness statements of law enforcement officers but not including[~~, (except written statements of witnesses and except~~] the work product of counsel for the state in the case and their investigators and their notes or report[~~)~~], or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that[~~, which~~] constitute or contain evidence material to any matter involved in the action and that [~~which~~] are in the possession, custody, or control of the state or any person under contract with the state [~~State or any of its agencies~~]. The state may provide to the defendant electronic duplicates of any documents or other information described by this article. 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 granted to the defendant under this article do [~~herein granted shall~~] not extend to written communications between the state and an agent, representative, or employee of the state. This article does not authorize [~~State or any of its agents or representatives or employees. Nothing in this Act shall authorize~~] the removal of the documents, items, or information [~~such evidence~~] from the possession of the state [~~State~~], and any inspection shall be in the presence of a representative of the state [~~State~~].

(c) If only a portion of the applicable document, item, or information is subject to discovery under this article, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The state shall inform the defendant that a portion of the document, item, or information has been withheld or redacted. On request of the defendant, the court shall conduct a hearing to determine whether withholding or redaction is justified under this article or other law.

(d) In the case of a pro se defendant, if the court orders the state to produce and permit the inspection of a document, item, or information under this subsection, the state shall permit the pro se defendant to inspect and review the document, item, or information but is not required to allow electronic duplication as described by Subsection (a).

(e) Except as provided by Subsection (f), the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant may not disclose

to a third party any documents, evidence, materials, or witness statements received from the state under this article unless:

(1) a court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or

(2) the documents, evidence, materials, or witness statements have already been publicly disclosed.

(f) The attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this section, the defendant may not be the agent for the attorney representing the defendant.

(g) Nothing in this section shall be interpreted to limit an attorney's ability to communicate regarding his or her case within the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness, including name, except as provided in Subsections (e) and (f), address, telephone number, driver's license number, social security number, date of birth, and bank account information or any information that by reference would make it possible to identify a victim or a witness. Nothing in this subsection shall prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purposes of making a good faith complaint.

(h) Notwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.

(i) The state shall electronically record or otherwise document any document, item, or other information provided to the defendant under this article.

(j) Before accepting a plea of guilty or nolo contendere, or before trial, each party shall acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the defendant under this article.

(k) If at any time before, during, or after trial the state discovers any additional document, item, or information required to be disclosed under Subsection (h), the state shall promptly disclose the existence of the document, item, or information to the defendant or the court.

(l) A court may order the defendant to pay costs related to discovery under this article, provided that costs may not exceed the charges prescribed by Subchapter F, Chapter 552, Government Code.

(m) To the extent of any conflict, this article prevails over Chapter 552, Government Code.

(n) This article does not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required under this article.

Commentary by Riley Shaw

Source: SB 1611
Effective Date: January 1, 2014
Applicability: Applies to the prosecution of an offense committed on or after the effective date.
Summary of Changes: This bill creates a statutory "open file" policy regarding information in the possession of the State. There are a number of limitations and exceptions and new procedures that will require additional work by both the prosecution and defense prior to any plea or trial. In short, it dramatically changes discovery practice in both criminal and juvenile proceedings. Read it carefully.

Code of Criminal Procedure Art. 45. 0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS. (f) The court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(8) [~~51.03(b)(7)~~], Family Code, while the person was a child.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: This is a conforming amendment to the changes to Family Code Section 51.03 so that all references in law to the "sexting" offense are now Family Code 51.03(b)(8) (See Family Code 51.03 discussion).

Government Code

Government Code Sec. 23.101. PRIMARY PRIORITIES. (a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with the following actions given preference over other criminal actions:

(A) criminal actions against defendants who are detained in jail pending trial;

(B) criminal actions involving a charge that a person committed an act of family violence, as defined by Section 71.004, Family Code;

(C) an offense under:

(i) Section 21.02 or 21.11, Penal Code;

(ii) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iii) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iv) Section 25.06, Penal Code;

(v) Section 43.25, Penal Code; or

(vi) Section 20A.03, Penal Code;

(D) an offense described by Article 62.001(6)(C) or (D), Code of Criminal Procedure; and

(E) criminal actions against persons [~~children~~] who are detained as provided by Section 51.12, Family Code, after transfer for prosecution in criminal court under Section 54.02, Family Code;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Subtitle B, Title 4, Family Code;

(5) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims and claims under the Federal Employers' Liability Act and the Jones Act;

(6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code;

(7) actions in which the claimant has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis; and

(8) appeals brought under Section 42.01 or 42.015, Tax Code, of orders of appraisal review boards of appraisal districts established for counties with a population of less than 175,000.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a clarification.
Summary of Changes: As part of the changes regarding detention of persons under age 17 who are certified to stand trial as adults made by SB 1209 in 2011, Government Code Section 23.101 was amended to add proceedings involving these individuals to the list of actions to be given priority. However, it referred to them as "children." While they are considered "children" for the purposes of detention under Family Code Section 51.12(f), they are not considered "children" for the purpose of the criminal action. Therefore, Section 23.101 was amended to refer to them as "persons" to eliminate confusion.

Government Code Sec. 79.036. INDIGENT DEFENSE INFORMATION. (a) Not [~~In each county, not~~] later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county [~~the following information~~] shall prepare [~~be prepared~~] and provide [~~provided~~] to the commission:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any plan or proposal submitted to the commissioners court under Article 26.044, Code of Criminal Procedure;

(3) any plan of operation submitted to the commissioners court under Article 26.047, Code of Criminal Procedure;

(4) any contract for indigent defense services required under rules adopted by the commission relating to a contract defender program;

(5) [~~(2)~~] any revisions to rules, [~~or~~] forms, plans, proposals, or contracts previously submitted under this section; or

(6) [~~(3)~~] verification that rules, [~~and~~] forms, plans, proposals, or contracts previously submitted under this section still remain in effect.

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure.

Commentary by Nydia Thomas

Source: HB 1318
Effective Date: September 1, 2014
Applicability: Applies to indigent defense reporting submission dates specified in legislation on or after the effective date.
Summary of Changes: Under Title 3 of the Family Code, juvenile boards must ensure quality and ease of access to legal representation by indigent juveniles and their families under the Texas Fair Defense Act. In 2011, the legislature authorized the establishment of the Texas Indigent Defense Commission (TIDC) to set standards and administer grants to fund indigent services throughout the state. During the 83rd Regular Session, the legislature amended the reporting requirements for county indigent defense plans described in Subsection 79.036 (a), Government Code. The amendments specify that beginning November 2013, each county will be required to submit to the TIDC in odd-numbered years: 1) any plan or proposal submitted to commissioners court to establish a public defender's office; 2) any plans for the operation of a managed counsel program; and 3) any contract for indigent defense services. The county entity responsible for compliance with the TIDC requirements must also submit information regarding the efficacy of and any revisions to previously submitted plans, proposals or contracts. In a related provision, not included in this issue, TIDC will conduct a study that will review best practices and policies for establishing maximum allowable caseloads and appropriate time allocation for effective representation. TIDC will publish its findings in a report no later than January 1, 2015. Related Section (a-1) requires each county to prepare and provide information that describes for the preceding fiscal year the number of appointments under Title 3 of the Family Code and criminal proceedings made to each attorney accepting appointments in the county and the information provided by attorneys who have submitted the information required under Article 26.04(j)(4), Code of Criminal Procedure (discussed in this issue).

Government Code Sec. 411.1410. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: UNITED STATES ARMED FORCES. (a) In this section, "agency of the United States armed forces" means the United States Army, the United States Navy, the United States Marine Corps, the United States Coast Guard, or the United States Air Force.

(b) Subject to Subsection (c), an agency of the United States armed forces, including a recruiter for the agency, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant for enlistment in the United States armed forces.

(c) An agency of the United States armed forces is entitled to criminal history record information under Subsection (b) only if the agency submits to the department a signed statement from the applicant that authorizes the agency to obtain the information.

(d) Criminal history record information obtained by an agency of the United States armed forces under Subsection (b) may not be released to any person or agency except on court order or with the consent of the person who is the subject of the criminal history record information.

(e) An agency of the United States armed forces shall destroy criminal history record information obtained under Subsection (b) after the purpose for which the information was obtained is accomplished.

Commentary by Nydia Thomas

Source: HB 694
Effective Date: June 14, 2013
Applicability: Applies to requests for criminal history and juvenile delinquency history information for purposes of military recruitment that occur on or before the immediate effective date.
Summary of Changes: Newly added Section 411.1410, Government Code authorizes agencies of the armed forces of the United States to obtain summary criminal history information (including juvenile delinquency history) from the Department of Public Safety upon submission of a signed release from the applicant authorizing the disclosure. Under this provision, military recruiters join the long list of criminal justice agencies and public and private organizations that are permitted access to unsealed, unrestricted juvenile information in the statewide database. As amended, Section 411.1410 (e), Government Code provides for the destruction of the information after the purpose for which it was obtained has been accomplished and prohibits the release to any person except on court order or with the consent of the person who is the subject of the records.

Health and Safety Code

Health and Safety Code Sec. 481.104. PENALTY GROUP 3. (a) Penalty Group 3 consists of:

(1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Methylphenidate and its salts; and

Phenmetrazine and its salts;

(2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a

derivative of barbituric acid not otherwise described by this subsection;

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any penalty group;

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

Alprazolam;
Amobarbital;
Bromazepam;
Camazepam;
Chlordiazepoxide;
Chlorhexadol;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;
Delorazepam;
Diazepam;
Estazolam;
Ethyl loflazepate;
Fludiazepam;
Flurazepam;
Glutethimide;
Halazepam;
Haloxzolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;

Lysergic acid, including its salts, isomers, and salts of isomers;

Lysergic acid amide, including its salts, isomers, and salts of isomers;

Mebutamate;
Medazepam;
Methyprylon;
Midazolam;
Nimetazepam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;

Pentazocine, its salts, derivatives, or compounds or mixtures thereof;

Pentobarbital;
Pinazepam;
Prazepam;
Quazepam;
Secobarbital;
Sulfondiethylmethane;
Sulfonethylmethane;
Sulfonmethane;
Temazepam;
Tetrazepam;

Tiletamine and zolazepam in combination, and its salts. (some trade or other names for a tiletamine-zolazepam combination product: Telazol, for tiletamine: 2-(ethylamino)- 2-(2-thienyl)-cyclohexanone, and for zolazepam: 4-(2- fluorophenyl)-6, 8-dihydro-1,3,8,-trimethylpyrazolo-[3,4- e](1,4)-d diazepin-7(1H)-one, flupyrazapon);

Triazolam;
Zaleplon;
Zolpidem; and
Zopiclone;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

Barbital;
Chloral betaine;
Chloral hydrate;
Ethchlorvynol;
Ethinamate;
Meprobamate;
Methohexital;
Methylphenobarbital (Mephobarbital);
Paraldehyde;
Petrichloral; and
Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;
Cathine [(+)-norpseudoephedrine];
Chlorphentermine;
Clortermine;
Diethylpropion;
Fencamfamin;
Fenfluramine;
Fenproporex;
Mazindol;
Mefenorex;
Modafinil;
Pemoline (including organometallic complexes and their chelates);
Phendimetrazine;
Phentermine;
Pipradrol;
Sibutramine; and
SPA [(-)-1-dimethylamino-1,2-diphenylethane];

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene (Alpha-(+)-4-dimethylamino- 1,2-diphenyl-3-methyl-2-propionoxybutane); [~~and~~]

(9) an anabolic steroid, including any drug or hormonal substance, or any substance that is chemically or pharmacologically related to testosterone, other than an estrogen, progestin, dehydroepiandrosterone, or corticosteroid, and promotes muscle growth, including the following drugs and substances and any salt, ester, or ether of the following drugs and substances:

Androstanediol;
Androstanedione;
Androstenediol;
Androstenedione;
Bolasterone;
Boldenone;
Calusterone;
Clostebol;
Dehydrochlormethyltestosterone;
Delta-1-dihydrotestosterone;
Dihydrotestosterone (4-dihydrotestosterone);
Drostanolone;
Ethylestrenol;
Fluoxymesterone;
Formebulone;
Furazabol;
13beta-ethyl-17beta-hydroxygon-4-en-3-one;
4-hydroxytestosterone;
4-hydroxy-19-nortestosterone;
Mestanolone;
Mesterolone;
Methandienone;
Methandriol;
Methenolone;
17alpha-methyl-3beta, 17 beta-dihydroxy-5alpha- androstane;
17alpha-methyl-3alpha, 17 beta-dihydroxy-5alpha- androstane;
17alpha-methyl-3beta, 17beta-dihydroxyandrost-4- ene;
17alpha-methyl-4-hydroxynandrolone;
Methyldienolone;
Methyltestosterone;
Methyltrienolone;
17alpha-methyl-delta-1-dihydrotestosterone;
Mibolerone;
Nandrolone;
Norandrostenediol;
Norandrostenedione;
Norbolethone;
Norclostebol;
Norethandrolone;
Normethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
Stanozolol;
Stenbolone;

Testolactone;
Testosterone;
Tetrahydrogestrinone; and
Trenbolone; and

(10) Salvia divinorum, unless unharvested and growing in its natural state, meaning all parts of that plant, whether growing or not, the seeds of that plant, an extract from a part of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant, its seeds, or extracts, including Salvinorin A.

Commentary by Riley Shaw

Source: HB 124
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Added salvia divinorum plants native to Mexico, together with their parts and extracts, to the list of prohibited substances found in Penalty Group 3.

Health and Safety Code Sec. 841. 003. SEXUALLY VIOLENT PREDATOR. (b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(1) the person:

(A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(B) enters a plea of guilty or nolo contendere for a sexually violent offense in return for a grant of deferred adjudication;

(C) is adjudged not guilty by reason of insanity of a sexually violent offense; or

(D) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Juvenile Justice Department [~~Youth Commission~~] under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(A) is convicted, but only if the sentence for the offense is imposed; or

(B) is adjudged not guilty by reason of insanity.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: As originally filed, SB 511 amended Section 841.003(b), Health and Safety Code, such that an adjudication for engaging in a sexually violent determinate sentence offense and commitment to a post-adjudication secure correctional facility would qualify a person toward repeat sexually violent offender status. (The statute also requires a subsequent conviction as an adult, or a not guilty by reason of insanity verdict, before any juvenile adjudication can count toward the two qualifying convictions needed to declare someone a sexually violent predator.) However, a House committee substitute removed the provision pertaining to commitment to a local post-adjudication secure correctional facility. Consequently, such commitments, unlike commitments to TJJD, do not qualify a person for repeat sexually violent offender status under the sexually violent predator statute.

Human Resources Code

Human Resources Code Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION. (a) This section applies only to a county that has a population of more than one million and less than 1.5 million.

(b) In this section, "post-adjudication secure correctional facility" means a facility operated by or under contract with a juvenile board or local juvenile probation department in accordance with Section 51.125, Family Code.

(c) A juvenile board shall establish a policy that specifies whether the juvenile board or a local juvenile probation department that serves a county to which this section applies may:

(1) operate or contract for the operation of a post-adjudication secure correctional facility to confine children committed to the facility under Section 54.04011, Family Code; and

(2) operate a program through which a child committed to a post-adjudication secure correctional facility under Section 54.04011, Family Code, may be released under supervision and place the child in the child's home or in any situation or family approved by the juvenile board or local juvenile probation department.

(d) Before placing a child in the child's home under Subsection (c)(2), the juvenile board or local juvenile probation department shall evaluate the home setting to determine the level of supervision and quality of care that is available in the home.

(e) A juvenile board or a local juvenile probation department shall accept a person properly committed to it by a juvenile court under Section 54.04011, Family Code, in the same manner in which the Texas Juvenile Justice Department accepts a person under Section 54.04(e), Family Code, even though the person may be 17 years of age or older at the time of the commitment.

(f) A juvenile board or a local juvenile probation department shall establish a minimum length of stay for each child committed without a determinate sentence under Section 54.04011(c)(1), Family Code, in the same manner that the Texas Juvenile Justice Department determines a minimum length of stay for a child committed to the department under Section 243.002.

(g) Except as provided by Subsection (h), if a child is committed to a post-adjudication secure correctional facility under Section 54.04011(c)(2), Family Code, the local juvenile probation department may not release the child under supervision without approval by the juvenile court that entered the order of commitment under Section 54.04011, Family Code, unless the child has been confined not less than:

(1) 10 years for capital murder;

(2) three years for an aggravated controlled substance felony or a felony of the first degree;

(3) two years for a felony of the second degree; and

(4) one year for a felony of the third degree.

(h) The juvenile board or local juvenile probation department may release a child who has been committed to a post-adjudication secure correctional facility with a determinate sentence under Section 54.04011(c)(2), Family Code, under supervision without approval of the juvenile court that entered the order of commitment if not more than nine months remain before the child's discharge as provided by Section 245.051(g).

(i) The juvenile board or local juvenile probation department may resume the care and custody of any child released under supervision at any time before the final discharge of the child in accordance with the rules governing the Texas Juvenile Justice Department regarding resumption of care.

(j) After a child committed to a post-adjudication secure correctional facility with a determinate sentence under Section 54.04011(c)(2), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the juvenile board or local juvenile probation department operating or contracting for the operation of the facility may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if the child has not completed the sentence and:

(1) the child's conduct, regardless of whether the child was released under supervision through a program established by the board or department, indicates that the welfare of the community requires the transfer; or

(2) while the child was released under supervision:

(A) a juvenile court adjudicated the child as having engaged in delinquent conduct constituting a felony offense;

(B) a criminal court convicted the child of a felony offense; or

(C) the child's release under supervision was revoked.

(k) A juvenile board or local juvenile probation department operating or contracting for the operation of a post-adjudication secure correctional facility under this section shall develop a comprehensive plan for each child committed to the facility under Section 54.04011, Family Code, regardless of whether the child is committed with or without a determinate sentence, to reduce recidivism and ensure the successful reentry and reintegration of the child into the community following the child's release under supervision or final discharge from the facility, as applicable.

(l) This section expires on December 31, 2018.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Expiration Date: December 31, 2018
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: SB 511 continues the trend, begun in 2007, of diverting youthful offenders from commitment to the Texas Juvenile Justice Department (TJJD) and keeping them closer to home in community-based programs and facilities. The idea of community-based secure correctional facilities accepting juvenile felony offenders in the same manner as TJJD was modeled on Section 54.0401, Family Code (Community-Based Programs). As originally conceived, it was viewed as an extension of the community-based programs concept and was intended to apply to counties with a population of at least 335,000 that had a post-adjudication secure correctional facility. That would have included 12 counties containing 16 of the state's 33 post-adjudication secure correctional facilities. However, as the bill wound through the legislative process, its scope was narrowed to include only Travis County. As such, it is essentially a five-year pilot project with an effective date of December 1, 2013, and an expiration date of December 31, 2018.

Newly enacted Section 152.0016, Human Resources Code, applies only to a county that has a population of more than one million and less than 1.5 million, i.e., Travis County. At the suggestion of the Conference of Urban Counties, Subsection (c) states that the juvenile board *must* first establish a policy specifying whether it or a local juvenile probation department *may* 1) operate a secure correctional facility for the purpose of accepting committed felony offenders; and 2) operate a parole supervision program for such youth. While a juvenile board does not have to authorize that a local secure correctional facility operate for the stated purpose, before it does the juvenile board must first establish a policy to that effect.

Section 152.0016(e) states that a juvenile board or local juvenile probation department must accept a person properly committed to its post-adjudication secure correctional facility "in the same manner in which [TJJD] accepts a person…"

The rest of the statute makes it clear that committed felony offenders are to be treated "in the same manner" as youth who are committed to TJJD. This includes:

- Establishing minimum lengths of stay for indeterminate sentence offenders;
- Adhering to the statutory release requirements for determinate sentence offenders;
- Conducting home studies before releasing youth on parole supervision;
- Resumption of care and custody (parole revocation) requirements;
- Referral to juvenile court for release or transfer hearings for determinate sentence offenders; and
- Developing a comprehensive plan for each committed offender to reduce recidivism and ensure the youth's successful reentry and reintegration into the community.

Human Resources Code Sec. 152.0751. EDWARDS COUNTY. (d) The juvenile board of Edwards County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Edwards County may agree to operate together. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Commentary by Chris Cowan

Source: SB 1832
Effective Date: June 14, 2013
Applicability: Applies to juvenile board composition and operation on or after the effective date.
Summary of Changes: SB 1832 amends the Human Resources Code to authorize the juvenile board of Edwards County and juvenile boards of neighboring counties to agree to operate jointly. The bill additionally authorizes jointly operating juvenile boards to appoint one fiscal officer to receive and disburse funds for the boards.

Human Resources Code Sec. 152.0771. EL PASO COUNTY. (a) The juvenile board of El Paso County is composed of:

(1) the county judge or:

(A) a member of the commissioners court designated by the county judge; or

(B) an individual who is not a member of the commissioners court and who is designated by the county judge and approved by the commissioners court by majority vote;

(2) each family district court judge;

(3) each juvenile court judge;

(4) up to five judges on the "El Paso Council of Judges" to be elected by majority vote of that council;

(5) a municipal judge from El Paso County selected by the chairman of the juvenile board of El Paso County; and

(6) a justice of the peace in El Paso County selected by the chairman of the juvenile board of El Paso County.

Commentary by Chris Cowan

Source: HB 1334
Effective Date: June 14, 2013
Applicability: Applies to juvenile board composition and operation on or after the effective date.
Summary of Changes: Currently, Section 152.0771 provides that the El Paso county judge is a member of the juvenile board. HB 1334 provides that the county judge may designate either a member of the commissioners court to serve on the board in place of the county judge, or person who is not a member of the commissioners court if approved by a majority of the commissioners court.

Human Resources Code Sec. 152.2361. UPSHUR COUNTY. (a) The Upshur County Juvenile Board is composed of the county judge and[,] the district judge [~~judges~~] in Upshur County[~~, and the judges of any statutory court in the county designated as a juvenile court~~].

(b) The county judge of Upshur County is the chairman of the board and its chief administrative officer [~~juvenile board shall elect one of its members as chairman at its first regular meeting of each calendar year~~].

(c), (e), (f), (g), (h), (i), (j), (k), and (m), Human Resources Code, are repealed.

Commentary by Chris Cowan

Source: HB 3161
Effective Date: June 14, 2013

Applicability: Applies to juvenile board composition and operation on or after the effective date.
Summary of Changes: HB 3161 amends Section 152.2361 to reflect that the board is only composed of the county judge and the district judge, clarifying that those are the only two judges in the Upshur County. The bill also designates the county judge of Upshur County as the chairman of the board and its chief administrative officer, dispensing with the requirement for the board to elect one of its members as chairman at its first regular meeting of each calendar year. Additionally, HB 3161 repeals provisions governing the Upshur County Juvenile Board specifically and repeals a provision that had exempted the board from statutory provisions governing juvenile boards generally.

Human Resources Code Sec. 152.2391. VAL VERDE COUNTY. (a) The juvenile board of Val Verde County is composed of the county judge, [~~and~~] the district judges in Val Verde County, and the judge of the County Court at Law of Val Verde County.

Commentary by Chris Cowan

Source: HB 3952
Effective Date: September 1, 2013
Applicability: Applies to juvenile board composition and operation on or after the effective date.
Summary of Changes: HB 3952 amends Section 152.2391 to include the judge of the County Court at Law of Val Verde County among the members of the juvenile board of Val Verde County.

Human Resources Code Sec. 221.003. RULES CONCERNING MENTAL HEALTH SCREENING INSTRUMENT AND RISK AND NEEDS ASSESSMENT INSTRUMENT; ADMISSIBILITY OF STATEMENTS. (c) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at any adjudication [~~other~~] hearing. The person administering the mental health screening instrument or initial risk and needs assessment instruments shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any adjudication [~~other~~] hearing.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to the admissibility of a statement made on or after September 1, 2013.
Summary of Changes: Provides that any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at any adjudication hearing, rather than at any other hearing. Requires the person administering the mental health screening instrument or initial risk and needs assessment instruments to inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any adjudication hearing, rather than at any other hearing. This change means the information is admissible at the disposition hearing, which is necessary to ensure the child's needs can be properly addressed in disposition.

Human Resources Code Sec. 243. 005. INFORMATION PROVIDED BY COMMITTING COURT. In addition to the information provided under Section 243.004, a court that commits a child to the department shall provide the department with a copy of the following documents:

(1) the petition and the adjudication and disposition orders for the child, including the child's thumbprint;

(2) if the commitment is a result of revocation of probation, a copy of the conditions of probation and the revocation order;

(3) the social history report for the child;

(4) any psychological or psychiatric reports concerning the child;

(5) the contact information sheet for the child's parents or guardian;

(6) any law enforcement incident reports concerning the offense for which the child is committed;

(7) any sex offender registration information concerning the child;

(8) any juvenile probation department progress reports concerning the child;

(9) any assessment documents concerning the child;

(10) the computerized referral and case history for the child, including case disposition;

(11) the child's birth certificate;

(12) the child's social security number or social security card, if available;

(13) the name, address, and telephone number of the court administrator in the committing county;

(14) Title IV-E eligibility screening information for the child, if available;

(15) the address in the committing county for forwarding funds collected to which the committing county is entitled;

(16) any of the child's school or immunization records that the committing county possesses;

(17) any victim information concerning the case for which the child is committed; [~~and~~]

(18) any of the child's pertinent medical records that the committing court possesses;

(19) the Texas Juvenile Justice Department standard assessment tool results for the child;

(20) the Department of Public Safety CR-43J form or tracking incident number concerning the child; and

(21) documentation that the committing court has required the child to provide a DNA sample to the Department of Public Safety.

Commentary by Nydia Thomas

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to commitments to the Texas Juvenile Justice Department that occur on or after the effective date.
Summary of Changes: This conforming amendment in Section 243.005, Human Resources Code outlines the supporting documentation that must be forwarded to the Texas Juvenile Justice Department (TJJD) by the juvenile court when a child has been committed to TJJD. Subdivision (19) requires the juvenile court to provide, prior to commitment, the child's assessment results on TJJD's standard assessment instrument. Subdivision 20 requires the committing court to provide the child's tracking incident number and the Department of Public Safety's CR-43J form. Subdivision 21 requires that documentation that confirms the collection of the DNA sample required under Subchapter G, Chapter 411, Government Code and Sections 54.0405 and 54.0409, Family Code.

Human Resources Code Sec. 244. 014. REFERRAL OF DETERMINATE SENTENCE [~~VIOLENT AND HABITUAL~~] OFFENDERS FOR TRANSFER

.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: This is a non-substantive clarification.
Summary of Changes: In current law, children given a determinate sentence and placed on probation or committed to the Texas Juvenile Justice Department (TJJD) are referred to as "violent or habitual offenders." In practice, they are commonly referred to as "determinate sentence offenders." This can cause confusion in locating the statutes and in understanding that "violent or habitual" refers to determinate sentencing. In an effort to eliminate this confusion, the term "violent or habitual" offenses and offenders has been amended to use the phrase "determinate sentence."

Penal Code

Penal Code Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR FIRST, SECOND, OR THIRD DEGREE FELONY.

(f) For the purposes of Subsections (a), (b), and (c)(1), [~~and (e),~~] an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Juvenile Justice Department [~~Youth Commission~~] under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, or to a post-adjudication secure correctional facility under Section 54.04011, Family Code, is a final felony conviction.

Commentary by Chris Hübner

Source: SB 511
Effective Date: December 1, 2013
Applicability: The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.
Summary of Changes: Amended Section 12.42(f), Penal Code, makes commitment to a post-adjudication secure correctional facility under Section 54.04011 a felony conviction for adult enhancement purposes, just like a commitment to the Texas Juvenile Justice Department (TJJD). "Juvenile probation, even with placement outside the home, does not count. The commitment can be either an indeterminate commitment or a determinate sentence." Dawson, *Texas Juvenile Law*, 8th ed., p. 382. In an apparent oversight, amended Section 12.42(f) does not reference Section 12.425, Penal Code, the re-codification of Section 12.42(e), which pertains to state jail felony enhancements. Similarly, Section 12.425, Penal Code, was not amended to include delinquent conduct commitments.

Penal Code Sec. 22.01. ASSAULT. (1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

Commentary by Riley Shaw

Source: HB 705
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: It is now a 3rd degree felony to assault emergency room personnel who are providing emergency care.

Penal Code Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE.

(a-1) For purposes of Subsection (a)(5), possession of a pet, companion animal, or assistance animal by a person means:

(1) actual care, custody, control, or management of a pet, companion animal, or assistance animal by the person; or

(2) constructive possession of a pet, companion animal, or assistance animal owned by the person or for which the person has been the primary caregiver.

Commentary by Riley Shaw

Source: SB 555
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Clarifies what "possession" of a pet, etc., means for purposes of a protective order.

Penal Code Sec. 34.01. DEFINITIONS. (2) "Funds" includes:

(A) coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue;

(B) United States silver certificates, United States Treasury notes, and Federal Reserve System notes;

(C) an official foreign bank note that is customarily used and accepted as a medium of exchange in a foreign country and a foreign bank draft; and

(D) currency or its equivalent, including an electronic fund, a personal check, a bank check, a traveler's check, a money order, a bearer negotiable instrument, a bearer investment security, a bearer security, a [~~or~~] certificate of stock in a form that allows title to pass on delivery, or a stored value card as defined by Section 604.001, Business & Commerce Code.

Commentary by Riley Shaw

Source: HB 1523
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Adds "stored value" cards to the definition of currency for purposes of money laundering statutes.

Penal Code Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law or rule requiring that reporting, or [~~was~~] a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action.

Commentary by Riley Shaw

Source: SB 124
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Adds student and teacher data stored electronically through the PEIMS System (Public Education Information Management System) to the definition of governmental record for purposes of the tampering statute.

Penal Code Sec. 39.03. OFFICIAL OPPRESSION. (d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law requiring that reporting.

Commentary by Riley Shaw

Source: SB 124
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Makes tampering with PEIMS by a public servant a 3rd degree felony instead of a Class A misdemeanor under the Official Oppression Statute.

Penal Code Sec. 42.062. INTERFERENCE WITH EMERGENCY REQUEST FOR ASSISTANCE [~~TELEPHONE CALL~~].

(a) An individual commits an offense if the individual knowingly prevents or interferes with another individual's ability to place an emergency [~~telephone~~] call or to request assistance, including a request for assistance using an electronic communications device, in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(b) An individual commits an offense if the individual recklessly renders unusable an electronic communications device, including a telephone, that would otherwise be used by another individual to place an emergency [~~telephone~~] call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(d) In this section, "emergency" means a condition or circumstance in which any individual is or is reasonably believed by the individual making a [~~telephone~~] call or requesting assistance to be in fear of imminent assault or in which property is or is reasonably believed by the individual making the [~~telephone~~] call or requesting assistance to be in imminent danger of damage or destruction.

Commentary by Riley Shaw

Source: HB 1972
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Expands the definition of "telephone" to include electronic communication devices, and the offense now covers requests for help made from such devices.

Penal Code Sec. 42.07. HARASSMENT. (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person [~~he~~]:

(1) initiates communication [~~by telephone, in writing, or by electronic communication~~] and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, [~~by telephone, in writing, or by electronic communication,~~] in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's [~~his~~] family or household, or the person's [~~his~~] property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section; or

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

Commentary by Riley Shaw

Source: HB 1606
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: This amendment is an effort by the Legislature to clarify existing statutory language. The offense now encompasses threats communicated by any means.

Penal Code Sec. 42.072. STALKING. (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know [~~believes~~] the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person to [~~fear~~]:

(A) fear bodily injury or death for himself or herself;

(B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship; [~~or~~]

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

(d) In this section:

(1) "Dating [~~, "dating~~] relationship," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(2) "Property" includes a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code.

Commentary by Riley Shaw

Source: HB 1606
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Greatly expands the offense of "stalking" to include causing fear of offenses against a person's pet, and also now includes "harassment" by conduct that makes a person feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

Penal Code Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. (a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays [~~fails to conceal~~] the handgun in plain view of another person in a public place.

(h) It is a defense to prosecution under Subsection (a) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9.

Commentary by Riley Shaw

Source: SB 299
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Unlawful Carrying of a Weapon by licensed holder- it is now only an offense if the licensed holder intentionally displays the weapon in public in plain view (rather than committing the offense by merely failing to conceal the weapon).

Penal Code Sec. 46.05. PROHIBITED WEAPONS. (a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;
(2) a machine gun;
(3) a short-barrel firearm;
(4) a firearm silencer;
(5) [~~a switchblade knife;~~
[~~(6)~~] knuckles;
(6) [~~(7)~~] armor-piercing ammunition;
(7) [~~(8)~~] a chemical dispensing device;
(8) [~~(9)~~] a zip gun; or
(9) [~~(10)~~] a tire deflation device.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a [~~switchblade knife, springblade knife,~~] short-barrel firearm[~~,~~] or tire deflation device solely as an antique or curio;

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b); or

(3) was incidental to dealing with a tire deflation device solely for the purpose of making the device available to an organization, agency, or institution listed in Subsection (b).

(e) An offense under Subsection (a)(1), (2), (3), (4), (6), (7), or (8)[~~, or (9)~~] is a felony of the third degree. An offense under Subsection (a)(9) [~~(a)(10)~~] is a state jail felony. An offense under Subsection (a)(5) [~~or (6)~~] is a Class A misdemeanor.

Commentary by Riley Shaw

Source: HB 1862
Effective Date: September 1, 2013
Applicability: Applies to an offense committed on or after the effective date.
Summary of Changes: Switchblade knives are no longer illegal.

2. Legislation Affecting the Texas Juvenile Justice Department

Government Code

Government Code Sec. 411.1141. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS JUVENILE JUSTICE DEPARTMENT [~~YOUTH COMMISSION~~]. (a) The Texas Juvenile Justice Department is entitled to obtain from the department criminal history record information maintained by the department that relates to:

(1) a person described by Section 242.010(b), Human Resources Code;

(2) an applicant for a certification from the Texas Juvenile Justice Department;

(3) a holder of a certification from the Texas Juvenile Justice Department;

(4) a child committed to the custody of the Texas Juvenile Justice Department by a juvenile court;

(5) a person requesting visitation access to a facility of the Texas Juvenile Justice Department; or

(6) any person, as necessary to conduct an evaluation of the home under Section 245.051(a), Human Resources Code.

(b) Criminal history record information obtained by the Texas Juvenile Justice Department [~~Youth Commission~~] under Subsection (a) may not be released to any person except:

(1) on court order;

(2) with the consent of the entity or person who is the subject of the criminal history record information;

(3) for purposes of an administrative hearing held, or an investigation conducted, by the Texas Juvenile Justice Department [~~Youth Commission~~] concerning the person who is the subject of the criminal history record information; [~~or~~]

(4) a juvenile board by which a certification applicant or holder is employed; or

(5) as provided by Subsection (c) or (f).

(c) The Texas Juvenile Justice Department [~~Youth Commission~~] is not prohibited from releasing criminal history record information obtained under Subsection (a) to:

(1) the person who is the subject of the criminal history record information; or

(2) a business entity or person described by Subsection (a)(1) [~~(a)(4) or (a)(5)~~] who uses or intends to use the services of the volunteer or intern or employs or is considering employing the person who is the subject of the criminal history record information.

(d) The Texas Juvenile Justice Department [~~Youth Commission~~] may charge an entity or a person who requests criminal history record information under Subsection (c)(2) [~~(a)(4) or (a)(5)~~] a fee in an amount necessary to cover the costs of obtaining the information on the person's or entity's behalf.

(e) After a person is certified by the Texas Juvenile Justice Department, the Texas Juvenile Justice Department shall destroy the criminal history record information that relates to a person described by Subsection (a)(2).

(f) The Texas Juvenile Justice Department is not prohibited from disclosing criminal history record information obtained under Subsection (a) in a criminal proceeding or in a hearing conducted by the Texas Juvenile Justice Department.

Commentary by Brett Bray

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to the authority of the Texas Juvenile Justice Department (TJJD) to access criminal history information maintained by the Texas Department of Public Safety (DPS) on or after the effective date.
Summary of Changes: Section 411.1141 contains the statutory provisions that allow TJJD access to criminal history information maintained by DPS. This section combines the statutory authority of the prior Texas Juvenile Probation Commission and Texas Youth Commission to access to criminal history information into a single statutory provision conferring the rights to TJJD. Included is the authority of TJJD to disclose criminal history information under limited circumstances. This section gives TJJD additional access to criminal history information concerning a juvenile committed to TJJD, individuals seeking visitation access to TJJD facilities, and individuals residing in homes of juveniles as part of TJJD responsibility to conduct home evaluations.

Section 411.137, Government Code, is repealed.

Commentary by Nydia Thomas

Source: HB 2733
Effective Date: September 1. 2013
Applicability: This repeal is a conforming change.
Summary of Changes: This provision repeals the statutory authority of the former Texas Juvenile Probation Commission to access criminal history information. In 2013, the language from the two predecessor state juvenile justice agencies was combined in amended Section 411.1141, Government Code discussed above.

Human Resources Code

Human Resources Code Sec. 203. 0081. ADVISORY COUNCIL ON JUVENILE SERVICES. (a) The advisory council on juvenile services consists of:

(1) the executive director of the department or the executive director's designee;

(2) the director of probation services of the department or the director's designee;

(3) the director of state programs and facilities of the department or the director's designee;

(4) the executive commissioner of the Health and Human Services Commission or the commissioner's designee;

(5) [~~(4)~~] one representative of the county commissioners courts appointed by the board;

(6) [~~(5)~~] two juvenile court judges appointed by the board; and

(7) [~~(6)~~] seven chief juvenile probation officers appointed by the board as provided by Subsection (b).

Commentary by Nydia Thomas

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to TJJD Advisory Council member appointments on or after the effective date.
Summary of Changes: Section 203.0081 of the Human Resources Code describes the structure, composition, appointment process, length of service and purpose of the Advisory Council on Juvenile Services. In 2011, Senate Bill 653 [82nd R.S.] expanded the representation of the advisory council. After the juvenile justice system merger, the position of director of state programs and facilities was added to the organizational structure. The division director oversees TJJD's secure facilities, halfway houses, performance accountability, youth services contracts and integrated state operated programs and services. This change in law amends Section 203.0081(a)(3), Human Resource Code to authorize the addition of one member to represent the perspective and interests of state programs and institutions on the TJJD Advisory Council.

Human Resources Code Sec. 203.016. DATA REGARDING PLACEMENT IN DISCIPLINARY SECLUSION. (a) In this section:

(1) "Disciplinary seclusion" means the separation of a resident from other residents for disciplinary reasons and the placement of the resident alone in an area from which egress is prevented for more than 90 minutes.

(2) "Juvenile facility" means a facility that serves juveniles under juvenile court jurisdiction and that is operated as a pre-adjudication secure detention facility, a short-term detention facility, or a post-adjudication secure correctional facility.

(b) The department shall collect the following data during the annual registration of juvenile facilities and make the data publicly available:

(1) the number of placements in disciplinary seclusion lasting at least 90 minutes but less than 24 hours;

(2) the number of placements in disciplinary seclusion lasting 24 hours or more but less than 48 hours; and

(3) the number of placements in disciplinary seclusion lasting 48 hours or more.

Commentary by Brett Bray

Source: SB 1003
Effective Date: September 1, 2013
Expiration Date: February 1, 2015
Applicability: Applies to TJJD data collection on the use of administrative segregation in juvenile facilities and appointment of an independent third-party to conduct a review of facilities' use of adult and juvenile administrative segregation and related statistics on or after the effective date.
Summary of Changes: The original version of SB 1003 would have created a Task Force to review administrative segregation and seclusion policies in detention facilities across the state. The Task Force would have been charged with developing methods to reduce the number of inmates and juveniles affected by those policies and to increase services (including mental health) offered to that population. The final version instead requires the Criminal Justice Legislative Oversight Committee to appoint an independent third party to conduct a review of the administrative segregation policies of facilities throughout the state only if there are funds from gifts, grants and donations available for such a purpose. The appointed independent third party must provide a report concerning segregation practices and recommendations to reduce the segregation population, divert persons with mental illness from such segregation and decrease the length of time persons remain in segregation. The Act expires February 1, 2015. As it impacts the juvenile justice system, this portion of the bill would include review of only secure detention facilities.

Additionally, the final version of this bill created a requirement for the Texas Juvenile Justice Department (TJJD) to collect data concerning the use of administrative segregation at juvenile facilities (secure and short-term detention and post-adjudication secure correctional) and to have that information publicly available. This will likely require the creation of administrative processes for juvenile probation departments and facility administrators, including a data reporting requirement regarding the

number of children, reasons, and duration that must be included in a reporting mechanism.

Human Resources Code Sec. 203.016. DATA REGARDING PLACEMENT IN DISCIPLINARY SECLUSION. (a) In this section:

(1) "Disciplinary seclusion" means the separation of a resident from other residents for disciplinary reasons and the placement of the resident alone in an area from which egress is prevented for more than 90 minutes.

(2) "Juvenile facility" means a facility that serves juveniles under juvenile court jurisdiction and that is operated as a pre-adjudication secure detention facility, a short-term detention facility, or a post-adjudication secure correctional facility.

(b) The department shall collect the following data during the annual registration of juvenile facilities and make the data publicly available:

(1) the number of placements in disciplinary seclusion lasting at least 90 minutes but less than 24 hours;

(2) the number of placements in disciplinary seclusion lasting 24 hours or more but less than 48 hours; and

(3) the number of placements in disciplinary seclusion lasting 48 hours or more.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to disciplinary seclusions on or after September 1, 2013.
Summary of Changes: There is concern that county juvenile detention facilities are placing children in disciplinary exclusion for extended periods of time and possibly for minor misbehavior. Recent research suggests that disciplinary seclusion can be counterproductive to rehabilitation as well as harmful to traumatized juveniles or those with mental health concerns. This newly added statute requires the collection of data regarding disciplinary seclusion in order to provide a better understanding of any potential issues.

Human Resources Code Sec. 221. 002. GENERAL RULES GOVERNING JUVENILE BOARDS, PROBATION DEPARTMENTS, PROBATION OFFICERS, PROGRAMS, AND FACILITIES. (c-1) In adopting rules under Subsection (a)(3), the board shall require probation officers, juvenile supervision officers, and court-supervised community-based program personnel to receive trauma-informed care training. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

Commentary by Nydia Thomas

Source: SB 1356
Effective Date: September 1, 2013
Applicability: Applies to mandatory pre-service trainings that occur on or after the effective date.
Summary of Change: Human Resources Code Section 221.002 (c-1) requires the Texas Juvenile Justice Department (TJJD) board to adopt administrative rules that require juvenile probation officers, juvenile supervision officers, and court-supervised community-based program personnel to receive trauma-informed care training. The training must be based on best practices and provide knowledge of how to interact with juveniles who have experienced traumatic events. In recent years, mental health professionals have highlighted the long-term effects of traumatic childhood experiences (i.e., abuse and neglect, violence, disasters, sudden death of a relative or friend) and the implications on the psychological and emotional well-being of children. Studies suggest that the exposure to multiple traumatic events may increase the risk for substance abuse, depression, suicide and delinquent behavior. The amendment to Section 221.002, Human Resources Code and related provisions are a response by policymakers to ensure that juvenile justice practitioners and child-serving professionals receive trauma-informed care training to develop skills in recognizing signs of traumatic stress in children and facilitating appropriate intervention services and programs.

Human Resources Code Sec. 221.0035. BEST PRACTICES TO IDENTIFY AND ASSESS VICTIMS OF SEX TRAFFICKING. (a) In this section, "sex trafficking" means an offense under Section 20A.02(a)(7), Penal Code.

(b) The department shall evaluate the practices and screening procedures used by juvenile probation departments for the early identification of juveniles who are victims of sex trafficking for the purpose of developing a recommended set of best practices that may be used by a juvenile probation department to improve the juvenile probation department's ability to identify a juvenile who is a victim of sex trafficking.

(c) Best practices may include:

(1) examining a juvenile's referral history, including whether the juvenile has a history of running away from home or has been adjudicated for previous offenses;

(2) making inquiries into a juvenile's history of sexual abuse;

(3) assessing a juvenile's need for services, including counseling through a rape crisis center or other counseling; and

(4) asking the juvenile a series of questions designed to determine whether the juvenile is at high risk of being a victim of sex trafficking.

Commentary by Nydia Thomas

Source: SB 1356
Effective Date: September 1, 2013
Applicability: Applies to best practices and screening procedures developed by the Texas Juvenile Justice Department on or after the effective date.
Summary of Changes: Newly added Section 221.0035, Human Resources Code requires the Texas Juvenile Justice Department (TJJD) to evaluate the practices and screening procedures used by local juvenile probation departments for early identification of juveniles who are at risk as victims of sex trafficking. Section 221.0035 requires TJJD to develop a recommended set of best practices that may be used to improve the department's ability to identify victims of sex trafficking. Sex trafficking of children under Section 20A.02 (a)(7), Penal Code occurs when a person causes a child to engage in, or become the victim of, specific prohibited conduct. The language in the statute also provides guidance on the key components of implementing best practices, including examining the child's history of referrals and adjudications; inquiring about prior history of sexual abuse; assessing the need for rape crisis counseling or other counseling; and asking questions to ascertain whether the juvenile is at high risk of being or becoming a victim of sex trafficking.

Human Resources Code Sec. 221. 0061. TRAUMA-INFORMED CARE TRAINING. The department shall provide trauma-informed care training during the preservice training the department provides for juvenile probation officers, juvenile supervision officers, juvenile correctional officers, and juvenile parole officers. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

Commentary by Nydia Thomas

Source: SB 1356
Effective Date: September 1, 2013
Applicability: Applies to mandatory pre-service trainings that occur on or after the effective date.
Summary of Changes: This is a corollary statutory amendment to Section 221.002 discussed above. Newly added Section 221.0061, Human Resources Code requires the Texas Juvenile Justice Department (TJJD) to add a mandatory training module on trauma-informed care during the preservice training for juvenile probation officers, juvenile supervision officers, juvenile correctional officers and juvenile parole officers.

Human Resources Code Sec. 222. 003. MINIMUM STANDARDS FOR CERTAIN EMPLOYEES OF NONSECURE CORRECTIONAL FACILITIES. (a) The board 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.

Commentary by Kaci Sohrt

Source: HB 2862
Effective Date: September 1, 2013
Applicability: Applies to nonsecure correctional facilities certified under Family Code Section 51.126.
Summary of Changes: This is a conforming change related to the deletion of the definition of a nonsecure facility in Family Code Section 51.02.

Human Resources Code Sec. 242. 002. EVALUATION OF TREATMENT PROGRAMS; AVAILABILITY. (b) On or before December 31 of each even-numbered year, the department shall make a report on the effectiveness of the programs to the Legislative Budget Board.

(d) If the department is unable to offer or make available programs described by Subsection (a) in the manner provided by Subsection (c), the department shall, not later than December 31 [~~January 10~~] of each even-numbered [~~odd-numbered~~] year, provide the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report explaining:

(1) which programs are not offered or are unavailable; and

(2) the reason the programs are not offered or are unavailable.

Commentary by Brett Bray

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to TJJD treatment effectiveness reports due on or after the effective date.
Summary of Changes: Section 242.002 specifies when the Texas Juvenile Justice Department (TJJD) must submit treatment effectiveness reports to legislative standing committees. The treatment effectiveness reports review the effectiveness of TJJD programs for rehabilitation and re-establishment in the community of juveniles committed to TJJD. TJJD must now submit the treatment effectiveness report on or before December 31st of each even-numbered year.

Human Resources Code Sec. 242. 009. JUVENILE CORRECTIONAL OFFICERS; STAFFING. (b) The department shall provide each juvenile correctional officer employed by the department with at least 300 hours of training, which must include on-the-job training, before the officer independently commences the officer's duties at the facility. The training must pro-

vide the officer with information and instruction related to the officer's duties, including information and instruction concerning:

(1) the juvenile justice system of this state, including the juvenile correctional facility system;

(2) security procedures;

(3) the supervision of children committed to the department;

(4) signs of suicide risks and suicide precautions;

(5) signs and symptoms of the abuse, assault, neglect, and exploitation of a child, including sexual abuse, [~~and~~] sexual assault, and human trafficking, and the manner in which to report the abuse, assault, neglect, or exploitation of a child;

(6) the neurological, physical, and psychological development of adolescents;

(7) department rules and regulations, including rules, regulations, and tactics concerning the use of force;

(8) appropriate restraint techniques;

(9) the Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601, et seq.);

(10) the rights and responsibilities of children in the custody of the department;

(11) interpersonal relationship skills;

(12) the social and cultural lifestyles of children in the custody of the department;

(13) first aid and cardiopulmonary resuscitation;

(14) counseling techniques;

(15) conflict resolution and dispute mediation, including de-escalation techniques;

(16) behavior management;

(17) mental health issues; [~~and~~]

(18) employee rights, employment discrimination, and sexual harassment; and

(19) trauma-informed care.

Commentary by Nydia Thomas

Source: SB 1356
Effective Date: September 1, 2013
Applicability: Applies to mandatory pre-service trainings that occur on or after the effective date.
Summary of Changes: Section 242.009 of the Human Resources Code conforms to amendments that enhance the training requirements and best practices relating to trauma-informed care and human trafficking. Section 242.009, Human Resources Code requires the Texas Juvenile Justice Department (TJJD) to provide information and instruction on 19 topical training modules relating to the duties of correctional officers employed by TJJD. As amended, Section 242.009 adds the requirement to include a trauma-informed care module and inserts the requirement to train on the signs and symptoms human trafficking to the list of topics to be included in the 300 hours of preservice training provided to TJJD juvenile correctional officers and juvenile parole officers.

Human Resources Code Sec. 242.010. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (b) The department [~~executive director~~] shall review the national criminal history record information, state criminal history record information maintained by the Department of Public Safety, and previous and current employment references of each person who:

(1) is an employee, [~~contractor,~~] volunteer, ombudsman, or advocate working for the department or working in a department facility or a facility under contract with the department;

(2) is a contractor or an employee or subcontractor of a contractor who has direct access to children in department facilities;

(3) provides direct delivery of services to children in the custody of the department; or

(4) [~~(3)~~] has access to records in department facilities or offices.

(b-1) The department may review criminal history record information of:

(1) a person requesting visitation access to a department facility; or

(2) any person, as necessary to conduct an evaluation of the home under Section 245.051(a).

(b-2) The department may not deny visitation access to an immediate family member of a child committed to the department based solely on a review of criminal history record information under Subsection (b-1)(1).

(b-3) If visitation access is denied or limited based in part on a review of criminal history record information under Subsection (b-1)(1), the department shall retain the criminal history record information of the person for whom access is denied or limited until the child the person requested visitation access to is released from the department.

(c) To enable the department [~~executive director~~] to conduct the review, the board shall adopt rules requiring a person described by Subsection (b) to electronically provide the Department of Public Safety with a complete set of the person's fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation.

(d) For each person described by Subsection (b), the department [~~executive director~~] shall review on an annual basis the person's national criminal history record information.

Commentary by Brett Bray

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to criminal history records checks conducted by TJJD on or after the effective date.

Summary of Changes: Section 242.010 changes the requirements for TJJD to conduct criminal history checks for contractors. Currently, a criminal history check must be conducted on a contractor regardless of whether the contractor has access to youth or youth records. TJJD is now only required to conduct a criminal history check on a contractor if the contractor has access to youth or youth records. This section also provides that TJJD may review criminal history information of a person seeking visitation with a youth committed to TJJD if the youth resides in a TJJD facility. TJJD may not deny visitation to an immediate family member solely on the basis of the criminal history check. If visitation is denied, TJJD must retain the criminal history information of the person until the youth the person requested to visit is released.

Human Resources Code Sec. 245. 0535. COMPREHENSIVE REENTRY AND REINTEGRATION PLAN FOR CHILDREN; STUDY AND REPORT. (i) Not later than December 31 [~~1~~] of each even-numbered year, the department 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 Brett Bray

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to the research results on the comprehensive re-entry and re-integration plan due on or after the effective date.
Summary of Changes: Section 245.0535 changes the requirements for when TJJD is required to submit research on whether the comprehensive re-entry and re-integration plan reduces recidivism rates. The research must be provided to the senate and the house of representative subcommittee on or before December 31st of each even-numbered year.

Human Resources Code Sec. 261. 051. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (b) A person appointed as independent ombudsman is eligible for reappointment [~~but may not serve more than three terms in that capacity~~].

Commentary by Brett Bray

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to the appointed term of the Independent Ombudsman that expires on or after the effective date.
Summary of Changes: Section 261.051 removes the three-term limit for the appointment of the Independent Ombudsman. The Ombudsman is responsible for investigating, evaluating, and securing the rights of children committed to TJJD. The section now allows for an unlimited number of two-year terms of appointment for the Ombudsman.

AN ACT relating to the Parrie Haynes Trust.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 17, Chapter 952 (H.B. 3391), Acts of the 81st Legislature, Regular Session, 2009, is repealed.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Commentary by Brett Bray

Source: SB 157
Effective Date: April 24, 2013
Applicability: Applies to the administration of the Parrie Haynes Trust on or after the effective date.
Summary of Changes: From 1993 to 2012, the Texas Youth Commission, the predecessor agency to the Texas Juvenile Justice Department (TJJD), in its role as trustee of the Parrie Haynes Trust, leased the Parrie Haynes Ranch to the Texas Parks and Wildlife Department (TPWD). During that time, TPWD used the ranch in a variety of different programs geared towards helping underprivileged children. Additionally, TPWD oversaw the care of the ranch. As part of the 2009 TPWD Sunset Bill (H.B. 3391), the two agencies were required to request representation from the Office of the Attorney General (OAG) in seeking court approval to broaden the purposes of the trust and transfer the trust from TJJD to TPWD. However, in 2011, TPWD ran into funding issues due, in part, to statewide wildfires and drought conditions. As a result, TPWD informed the OAG it was no longer able to take on the responsibility of the Parrie Haynes Trust. Additionally, TPWD informed TJJD it was no longer able to continue operation of the Parrie Haynes Ranch and terminated its lease with TJJD in 2012.

S.B. 157, passed by the 83rd Legislature, provides for this change in the relationship between TJJD and TPWD by repealing section 17 of H.B. 3391 from the 81st legislative session so that TJJD and TPWD are no longer required to jointly seek representation from the OAG regarding transfer and modification of the terms and conditions of the Parrie Haynes Trust.

AN ACT relating to the creation of an advisory committee to examine the fingerprinting practices of juvenile probation departments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. FINGERPRINTING ADVISORY COMMITTEE. Not later than December 1, 2013, the Texas Juvenile Justice Board shall appoint an advisory committee to develop a plan to end the practice of fingerprinting children referred to a juvenile probation department for delinquent conduct, other than felony conduct. The plan must ensure that public safety and due process rights are protected.

SECTION 2. APPOINTMENTS; PRESIDING OFFICER. (a) In making appointments to the advisory committee, the board shall include members who are interested parties, including:

(1) chief juvenile probation officers;

(2) juvenile prosecutors;

(3) juvenile defense attorneys;

(4) peace officers;

(5) representatives of the Department of Family and Protective Services;

(6) juvenile justice advocates; and

(7) members of the public.

(b) The board shall designate one of the members as presiding officer of the advisory committee.

SECTION 3. REPORT. Not later than December 1, 2014, the advisory committee shall submit to the board the plan developed under Section 1.

SECTION 4. COMPENSATION. Members of the advisory committee serve without compensation and are not entitled to reimbursement for expenses.

SECTION 5. APPLICATION OF LAWS GOVERNING ADVISORY COMMITTEES. The advisory committee is not subject to Chapter 2110, Government Code.

SECTION 6. EXPIRATION DATE. The advisory committee is abolished and this Act expires January 1, 2015.

SECTION 7. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Commentary by Nydia Thomas

Source: SB 1769
Effective Date: June 14, 2013
Applicability: Applies to the appointment and fulfillment of the responsibilities of the Fingerprint Advisory Committee on or after the immediate effective date.
Expiration: The requirements of this statute and the work of the advisory committee will expire on January 1, 2015.
Summary of Changes: In 1995, House Bill 327 [74th R.S.] expanded the authority to fingerprint juveniles referred for felony conduct and misdemeanors punishable by confinement in jail. A referral to juvenile court under Section 58.001, Family Code triggers the transmission of fingerprint records and other information collected by law enforcement and juvenile justice personnel to the Department of Public Safety (DPS) for inclusion in the statewide Juvenile Justice Information System (JJIS). In recent years, practitioners and advocates have proposed initiatives aimed at balancing the benefits of removing the taint of criminality for juveniles with public safety and the need to maintain comprehensive statewide data on juvenile activity. This legislation requires the Texas Juvenile Justice Department governing board to appoint an advisory committee and presiding officer no later than December 1, 2013. Although the legislation does not specifically prescribe the number of committee appointees, it, nevertheless, attempts to provide a cross-section of juvenile justice stakeholders, including, chief juvenile probation officers, prosecutors, defense attorneys, peace officers, Department of Family and Protective Services representatives, juvenile justice advocates and members of the public. Participants will not be paid or reimbursed for expenses associated with service on the committee. The committee is charged with the task of studying the issue and developing a plan by December 1, 2014 to end the practice of fingerprinting misdemeanants. The Fingerprint Advisory Committee and the responsibilities outlined in the Act will expire on January 1, 2015.

3. Legislation Affecting Education

Code of Criminal Procedure

Code of Criminal Procedure Art. 2.127. SCHOOL MARSHALS. (a) Except as provided by Subsection (b), a school marshal may make arrests and exercise all authority given peace officers under this code, subject to written regulations adopted by the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code, and only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.

(b) A school marshal may not issue a traffic citation for a violation of Chapter 521, Transportation Code, or Subtitle C, Title 7, Transportation Code.

(c) A school marshal is not entitled to state benefits normally provided by the state to a peace officer.

(d) A person may not serve as a school marshal unless the person is:

(1) licensed under Section 1701.260, Occupations Code; and

(2) appointed by the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code.

Commentary by Karol Davidson

Source: HB 1009
Effective Date: June 14, 2013
Applicability: Applies to school marshal designations on or after the effective date.
Summary of Changes: Article 2.127, Code of Criminal Procedure creates a new category of law enforcement officer designated as a school marshal. The provisions for school marshals arose out of public concerns for school safety after the Sandy Hook Elementary School shooting, reported to be the most deadly shooting at a public elementary school. Whereas some larger school districts in Texas employ a dedicated police force, there has been concern that there are limited school safety options for most school districts in Texas. The creation of the school marshal is an effort to provide additional options for protecting students, faculty, and other staff in Texas schools.

Article 2.127 authorizes a school marshal to make arrests, exercise all authority given to peace officers subject to the written regulations adopted by the board of trustees of a school district or the governing board of an open-enrollment charter school. The school marshal is only allowed to serve as a school marshal if the person is appointed by the board of trustees for a school district or governing board of an open-enrollment charter school and is licensed by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) as a school marshal. A school marshal has the authority to act as a peace officer, however, a marshal can only take action to address an offense that threaten serious bodily injury. An offense that threatens serious bodily injury is not defined in statute.

Education Code

Education Code Sec. 7.111. HIGH SCHOOL EQUIVALENCY EXAMINATIONS. (a) The board shall provide for the administration of high school equivalency examinations [~~, including administration by the adjutant general's department for students described by Subdivision (2)(C)~~].

(a-1) A person who does not have a high school diploma may take the examination in accordance with rules adopted by the board if the person is:

(1) over 17 years of age;

(2) 16 years of age or older and:

(A) is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.), and its subsequent amendments;

(B) a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination; or

(C) is enrolled in the adjutant general's department's Seaborne ChalleNGe Corps; or

(3) required to take the examination under a [~~justice or municipal~~] court order [~~issued under Article 45.054(a)(1)(C), Code of Criminal Procedure~~].

(c) The board by rule shall develop and deliver high school equivalency examinations and provide for the administration of the examinations online. The rules must [~~:~~

[~~(1)~~] provide a procedure for verifying the identity of the person taking the examination [~~; and~~

[~~(2) prohibit a person under 18 years of age from taking the examination online~~].

Commentary by Karol Davidson

Source: HB 2058
Effective Date: June 14, 2013
Applicability: Applies to online high school equivalency examinations beginning in the 2013-2014 school year.

Summary of Changes: Prior to this legislative session, a person under the age of 18 could not take the high school equivalency examination online. This meant that individuals between the ages of 16 and 17 who were eligible to take the exam, including those under supervision of a juvenile probation department or the Texas Juvenile Justice Department (TJJD) could not take the examination online. Additionally, it was unclear whether a person between the ages of 16 and 17 and under the supervision of a juvenile probation department could take the exam if required as a condition of probation.

This bill amends Section 7.111, Education Code to allow a person who is eligible to take the high school equivalency exam to do so online, regardless of age. This change means students under the age of 18 who are under the supervision of a juvenile probation department or TJJD can take the exam online. This bill also allows any court, including the juvenile court in addition to a justice of the peace or municipal court when the person is found truant to order a person to take the high school equivalency exam.

Education Code Sec. 11. 1512. COLLABORATION BETWEEN BOARD AND SUPERINTENDENT. (c) A member of the board of trustees of the district, when acting in the member's official capacity, has an inherent right of access to information, documents, and records maintained by the district, and the district shall provide the information, documents, and records to the member without requiring the member to submit a public information request under Chapter 552, Government Code. The district shall provide the information, documents, and records to the member without regard to whether the requested items are the subject of or relate to an item listed on an agenda for an upcoming meeting. The district may withhold or redact information, a document, or a record requested by a member of the board to the extent that the item is excepted from disclosure or is confidential under Chapter 552, Government Code, or other law. This subsection does not require the district to provide information, documents, and records that are not subject to disclosure under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(d) A school district shall post, in a place convenient to the public, the cost of responding to one or more requests submitted by a member of the board of trustees of the district under Subsection (c) if the requests are for 200 or more pages of material in a 90-day period.

(e) The district shall report annually to the Texas Education Agency not later than September 1 of each year:

(1) the number of requests submitted by a member of the board of trustees of the district under Subsection (c) during the preceding school year; and

(2) the total cost to the district for that school year of responding to requests under Subsection (c).

(f) In this section, "official capacity" means all duties of office and includes administrative decisions or actions.

Commentary by Karol Davidson

Source: HB 628
Effective Date: September 1, 2013
Applicability: Applies to access to school records by a member of the school district board of trustees on or after the effective date.
Summary of Changes: This bill permits members of a school district board of trustees acting in the member's official capacity to have access to information, documents, and records maintained by the school district without having to submit a public information request. Any such release of information must comply with the Family Educational Rights and Privacy Act of 1974. Pursuant to a 2011 U.S. Department of Education guidance memoranda, a trustee for a school district is a school official authorized to have access to personally identifiable information of a student if the trustee needs to review an educational record in order to fulfill a professional responsibility.

If information is provided to a trustee, the school district is required to post the cost of responding to the request if the request is for 200 pages or more of material in a 90-day period. The school district is also required to submit an annual report to the Texas Education Agency reflecting the number of requests submitted by a trustee and the total cost for responding to the request.

Education Code Sec. 25.087. EXCUSED ABSENCES. (b-4) A school district shall excuse a student whose parent, stepparent, or legal guardian is an active duty member of the uniformed services as defined by Section 162.002 and has been called to duty for, is on leave from, or immediately returned from continuous deployment of at least four months outside the locality where the parent, stepparent, or guardian regularly resides, to visit with the student's parent, stepparent, or guardian. A school district may not excuse a student under this subsection more than five days in a school year. An excused absence under this subsection must be taken:

(1) not earlier than the 60th day before the date of deployment; or

(2) not later than the 30th day after the date of return from deployment.

(d) A student whose absence is excused under Subsection (b), (b-2), (b-4), or (c) may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under Subsection (b), (b-2), (b-4), or (c) shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

Commentary by Karol Davidson

Source: SB 260
Effective Date: June 14, 2013
Applicability: Applies to certain students whose absence is excused on or after the effective date.
Summary of Changes: This bill allows a student to take an excused absence from school in order to spend time with a parent, step-parent or legal guardian before and/or after the parent or guardian is called to duty for deployment. The student is allowed up to five days per school year and the absence must be taken no earlier than 60 days before deployment or no later than 30 days after return from deployment. A student who receives a deployment excused absence is counted in the average daily attendance, is permitted to reasonable time to make up work, and cannot be penalized for the absence.

Education Code Sec. 26.0031. RIGHTS CONCERNING STATE VIRTUAL SCHOOL NETWORK. (b) Except as provided by Subsection (c), a [~~A~~] school district or open-enrollment charter school in which a student is enrolled as a full-time student may not [~~unreasonably~~] deny the request of a parent of a student to enroll the student in an electronic course offered through the state virtual school network under Chapter 30A.

(c) A [~~For purposes of Subsection (b), a~~] school district or open-enrollment charter school may deny [~~is not considered to have unreasonably denied~~] a request to enroll a student in an electronic course if:

(1) [~~the district or school can demonstrate that the course does not meet state standards or standards of the district or school that are of equivalent rigor as the district's or school's standards for the same course provided in a traditional classroom setting;~~

[~~(2)~~] a student attempts to enroll in a course load that[~~:~~

[~~(A)~~] is inconsistent with the student's high school graduation plan or requirements for college admission or earning an industry certification;

(2) [~~or~~

[~~(B) could reasonably be expected to negatively affect the student's performance on an assessment instrument administered under Section 39.023; or~~

[~~(3)~~] the student requests permission to enroll in an electronic course at a time that is not consistent with the enrollment period established by the school district or open-enrollment charter school providing the course; or

(3) the district or school offers a substantially similar course.

(c-1) A school district or open-enrollment charter school may decline to pay the cost for a student of more than three yearlong electronic courses, or the equivalent, during any school year. This subsection does not:

(1) limit the ability of the student to enroll in additional electronic courses at the student's cost; or

(2) apply to a student enrolled in a full-time online program that was operating on January 1, 2013.

(d) Notwithstanding Subsection (c)(2) [~~(c)(3)~~], a school district or open-enrollment charter school that provides an electronic course through the state virtual school network under Chapter 30A shall make all reasonable efforts to accommodate the enrollment of a student in the course under special circumstances.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to student enrollment in electronic courses offered through the Virtual School Network (TxVSN) on or after the effective date.
Summary of Changes: The Texas Virtual School Network (TxVSN) was established to provide Texas students with equal access to quality courses. Even though the statutory language of the TxVSN implies that it is a mandatory program, many school districts do not utilize the program due to funding limitations.

This bill prohibits a school district or open-enrollment charter school from denying, rather than unreasonably denying, a request to enroll a student in an electronic course offered through the TxVSN. A school may deny enrollment in an electronic course if the course is inconsistent with the student's high school graduation plan, and now added by this section, inconsistent with requirements for college admission or earning an industry certification.

A school district or open-enrollment charter school is no longer authorized to deny a request for enrollment if the school district can demonstrate that the course does not meet state standards or standards of the district or school that are equivalent rigor as the district's or school's standards for the same course provided in a traditional classroom setting. Instead, a school may also deny a request to enroll in an electronic course if the school offers a substantially similar course.

A school district or open-enrollment charter school can refuse to pay the costs for a student to enroll in more than three yearlong courses unless the student was enrolled in a full-time online program that was operating on or before January 1, 2013. A student may take and pay for any courses taken through the TxVSN not paid by the school district. The school can select the TxVSN provider for a course in which a student seeks enrollment.

Education Code Sec. 29.909. DISTANCE LEARNING COURSES. (a) A school district or open-enrollment charter school that provides a course through distance learning and seeks to inform other districts or schools of the availability of the course may submit information to the agency regarding the course, including the number of positions available for student enrollment in the

course. The district or school may submit updated information at the beginning of each semester.

(b) The agency shall make information submitted under this section available on the agency's Internet website.

(c) The commissioner may adopt rules necessary to implement this section, including rules governing student enrollment. The commissioner may not adopt rules governing course pricing, and the price for a course shall be determined by the school districts or open-enrollment charter schools involved.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to schools providing distance learning courses through the TxVSN on or after the effective date.
Summary of Changes: This bill allows a school district or open-enrollment charter school that provides a course through distance learning to submit the course information to the Texas Education Agency (TEA) for publication on the agency's website to provide other schools information regarding the offered distance learning course, including the number of positions available for student enrollment. TEA is required to publish the information on the TEA Internet website. The commissioner of education may adopt rules necessary to implement publication of information concerning distance learning courses. The commissioner of education is not permitted to adopt rules governing course pricing. The price for distance learning courses must be determined by the school district or open-enrollment charter school.

Education Code Sections 30A. 001 COORDINATION OF SERVICES TO CHILDREN WITH DISABILITIES. (7) "Course provider [~~Provider school district or school~~]" means:

(A) a school district or open-enrollment charter school that provides an electronic course through the state virtual school network to:

(i) students enrolled in that district or school; or

(ii) students enrolled in another school district or school; [~~or~~]

(B) a public or private institution of higher education, nonprofit entity, or private entity that provides a course through the state virtual school network; or

(C) an entity that provides an electronic professional development course through the state virtual school network.

(8) "Public or private institution of higher education" means[~~:~~]

[~~(A)~~] an institution of higher education, as defined by 20 U.S.C. Section 1001 [~~Section 61.003; or~~

[~~(B) a private or independent institution of higher education, as defined by Section 61.003~~].

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to course providers of electronic courses through the Virtual School Network (TxVSN) on or after the effective date.
Summary of Changes: The bill amends Section 30A.001, Education Code deleting references in the definitions section "provider school district or school" and changing the definition to reference "course provider." The bill also expands the definition of a course provider to include a nonprofit entity or private entity that provides a course through the TxVSN and an entity that can provide an electronic professional development course through the TxVSN.

Education Code Sec. 30A.003. PROVISION OF COMPUTER EQUIPMENT OR INTERNET SERVICE.

(1) require a school district, an open-enrollment charter school, a course provider [~~school district or school~~], or the state to provide a student with home computer equipment or Internet access for a course provided through the state virtual school network; or

(2) prohibit a school district or open-enrollment charter school from providing a student with home computer equipment or Internet access for a course provided through the state virtual school network.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to the provision of computer equipment or Internet service on or after the effective date.
Summary of Changes: A school district, open-enrollment charter school, or course provider, may provide a student with home computer equipment or Internet access for a course provided through the TxVSN.

Education Code Sec. 30A.007. LOCAL POLICY ON ELECTRONIC COURSES. (a) A school district or open-enrollment charter school shall adopt a written policy that provides district or school students with the opportunity to enroll in electronic courses provided through the state virtual school network. The policy must be consistent with the requirements imposed by Section 26.0031.

(a-1) A school district or open-enrollment charter school shall, at least once per school year, send to a parent of each district or school student enrolled at the middle or high school level a copy of the policy adopted under Subsection (a). A district or school may send the policy with any other information that the district or school sends to a parent.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to local policies on electronic courses adopted on or after the effective date.
Summary of Changes: This bill requires a school district or open-enrollment charter school to adopt a written policy that provides students with the opportunity to enroll part-time or full-time in electronic courses provided through the Virtual School Network (TxVSN). This bill now also requires a school to send parents of each student enrolled in middle school or high school a copy of the TxVSN policy at least once per school year.

Education Code Sec. 30A.056. CONTRACTS WITH VIRTUAL SCHOOL SERVICE PROVIDERS. (a) Each contract between a course provider [~~school district, an open-enrollment charter school, or a public or private institution of higher education~~] and the administering authority must:

(1) provide that the administering authority may cancel the contract without penalty if legislative authorization for the course provider [~~district, school, or institution~~] to offer an electronic course through the state virtual school network is revoked; and

(2) be submitted to the commissioner.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to contracts with virtual school service providers entered into on or after the effective date.
Summary of Changes: This bill provides conforming language change to reference "course provider" as the entity authorized to enter contracts with an administering authority instead of a school district, open-enrollment charter school, or public or private institution of higher education. The administering authority is still authorized to cancel the contract without penalty if legislative authorization for the course provider to offer an electronic course through the Virtual School Network (TxVSN) is revoked.

Education Code Sec. 30A.101. ELIGIBILITY TO ACT AS PROVIDER SCHOOL DISTRICT OR SCHOOL(a) A school district or open-enrollment charter school is eligible to act as a course provider [~~school district~~] under this chapter only if the district or school is rated acceptable [~~or higher~~] under Section 39.054. An open-enrollment charter school may serve as a course provider only:

(1) to a student within its service area; or

(2) to another student in the state:

(A) through an agreement with the school district in which the student resides; or

(B) if the student receives educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice, through an agreement with the applicable agency.

(c) A nonprofit entity, private entity, or corporation is eligible to act as a course provider under this chapter only if the nonprofit entity, private entity, or corporation:

(1) complies with all applicable federal and state laws prohibiting discrimination;

(2) demonstrates financial solvency; and

(3) provides evidence of prior successful experience offering online courses to middle or high school students, with demonstrated student success in course completion and performance, as determined by the commissioner.

(d) An entity other than a school district or open-enrollment charter school is not authorized to award course credit or a diploma for courses taken through the state virtual school network.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to school district or open-enrollment charter schools designated as course providers on or after the effective date.
Summary of Changes: This bill designates a school district or open-enrollment charter school as eligible to act as a course provider if the district or school is rated as acceptable according to assessment standards. An open-enrollment charter school may serve as a course provider to (1) students within its service area, (2) to another student in the state through an agreement with the school district in which the student resides, (3) students under the supervision of a juvenile probation department, (4) students committed to the Texas Juvenile Justice Department, or (5) students serving time with the Texas Department of Criminal Justice.

A non-profit entity, private entity, or corporation can act as a course provider if the entity or corporation complies with all applicable federal and state laws prohibiting discrimination, demonstrates financial solvency, and provides evidence of prior successful experience offering courses to elementary, middle, or high school students as determined by the commissioner of education. An entity other than a school district or open-enrollment charter school is not authorized to award course credit or a diploma for courses taken through the Virtual School Network.

Section 30A.101(b), Education Code, as amended by Chapters 895 (H.B. 3) and 1328 (H.B. 3646), Acts of the 81st Legislature, Regular Session, 2009, is repealed.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: This provision repeals language allowing an open-enrollment charter school to act as a provider school.
Summary of Changes: This section of the bill is a non-substantive change that moves language that was contained in Section 30A.101(b), Education Code and added it to Section 30A.101(a).

Sec. 30A.102. LISTING OF ELECTRONIC COURSES. (a) The administering authority shall:

(1) publish the criteria required by Section 30A.103 for electronic courses that may be offered through the state virtual school network;

(2) using the criteria required by Section 30A.103, evaluate electronic courses submitted by a course provider [~~school district or school~~] to be offered through the network;

(3) create a list of electronic courses approved by the administering authority; and

(4) publish in a prominent location on the network's Internet website [~~provide public access to~~] the list of approved electronic courses offered through the network and a detailed description of the courses that complies with Section 30A.108.

(b) To ensure that a full range of electronic courses, including advanced placement courses, are offered to students in this state, the administering authority:

(1) shall create a list of those subjects and courses designated by the board under Subchapter A, Chapter 28, for which the board has identified essential knowledge and skills or for which the board has designated content requirements under Subchapter A, Chapter 28;

(2) shall enter into agreements with school districts, open-enrollment charter schools, [~~and~~] public or private institutions of higher education, and other eligible entities for the purpose of offering the courses through the state virtual school network; and

(3) may develop or authorize the development of additional electronic courses that:

(A) are needed to complete high school graduation requirements; and

(B) are not otherwise available through the state virtual school network.

(c) The administering authority shall develop a comprehensive course numbering system for all courses offered through the state virtual school network to ensure, to the greatest extent possible, consistent numbering of similar courses offered across all course providers.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to the requirements for listing electronic courses on or after the effective date.
Summary of Changes: The bill amended Section 30A.102, Education Code to require the administering authority, designated by the commissioner of education, to publish a list of approved electronic courses offered through the Virtual School Network (TxVSN) on the TxVSN website. The administering authority is required to develop a comprehensive course numbering system for all courses offered through the TxVSN to ensure, to the greatest extent possible, consistent numbering of similar courses offered across course providers.

The administering authority can now enter agreements with "other eligible entities" in addition to school districts, open-enrollment charter schools, public or private institutions of higher education, for the purpose of offering courses through the TxVSN.

Education Code Sec. 30A.1021. PUBLIC ACCESS TO USER COMMENTS REGARDING ELECTRONIC COURSES. (c) The administering authority shall provide public access to the comments submitted by students and parents under this section. The comments must be in a format that permits a person to sort the comments by teacher, electronic course, and course provider [~~school district or school~~].

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to public access to user comments regarding electronic courses on or after the effective date.
Summary of Changes: This bill requires the administering authority to provide public access to comments submitted by students and parents regarding "course providers" instead of "provider school district or school" in a format that permits a person to sort the comments by teacher, electronic course, and course provider.

Education Code Sec. 30A.103. CRITERIA FOR ELECTRONIC COURSES. (a) The board by rule shall establish an objective standard criteria for an electronic course to ensure alignment with the essential knowledge and skills requirements identified or content requirements established under Subchapter A, Chapter 28. The criteria may not permit the administering authority to prohibit a course provider [~~school districts or schools~~] from applying for approval for an electronic course for a course for which essential knowledge and skills have been identified.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to the criteria for electronic courses on or after the effective date.
Summary of Changes: This section changes references from provider school districts or schools to course provid-

ers for the requirements concerning criteria for electronic courses.

Education Code Sec. 30A.1042. RECIPROCITY AGREEMENTS WITH OTHER STATES. (a) The administering authority may enter into a reciprocity agreement with one or more other states to facilitate expedited course approval.

(b) An agreement under this section must ensure that any course approved in accordance with the agreement:

(1) is evaluated to ensure compliance with Sections 30A.104(a)(1) and (2) before the course may be offered through the state virtual school network; and

(2) meets the requirements of Section 30A.104(a)(3).

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to reciprocity agreements for expedited course approvals beginning with the 2013-2014 school year.
Summary of Changes: Section 30A.1042 is added to the Education Code to allow the administering authority to enter reciprocity agreements with one or more states to facilitate expedited course approvals. Before being offered by the TxVSN, the course must be evaluated and meet the state course eligibility requirements.

Education Code Sec. 30A.105. APPROVAL OF ELECTRONIC COURSES. (a) The administering authority shall:

(1) establish a [~~schedule for an annual~~] submission and approval process for electronic courses that occurs on a rolling basis; and

(2) evaluate electronic courses to be offered through the state virtual school network[~~; and~~

[~~(3) not later than August 1 of each year, approve electronic courses that:~~

[~~(A) meet the criteria established under Section 30A.103; and~~

[~~(B) provide the minimum instructional rigor and scope required under Section 30A.104~~].

(a-1) The administering authority shall publish the submission and approval process for electronic courses [~~schedule~~] established under Subsection (a)(1), including any deadlines [~~specified in that schedule,~~] and [~~any~~] guidelines applicable to the [~~submission and approval~~] process [~~for electronic courses~~].

(d) If the agency determines that the costs of evaluating and approving a submitted electronic course will not be paid by the agency due to a shortage of funds available for that purpose, the school district, open-enrollment charter school, [~~or~~] public or private institution of higher education, or other eligible entity that submitted the course for evaluation and approval may pay a fee equal to the amount of the costs in order to ensure that evaluation of the course occurs. The agency shall establish and publish a fee schedule for purposes of this subsection.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to the process for electronic course approvals on or after the effective date..
Summary of Changes: Section 30A.105, Education Code is amended to require the administering authority to establish a submission and approval process for electronic courses that occurs on a rolling basis and require an eligible entity to pay evaluation fees, if the Texas Education Agency faces funding shortages. There is no longer a requirement for the administering authority to approve electronic courses by August 1 of each year. Not later than the 10th anniversary of the previous approval, the administering authority must require the course provider to apply for renewed approval of a previously approved course on a schedule designed to coincide with revision to the required curriculum.

Education Code Sec. 30A. 1052. INDUCEMENTS FOR ENROLLMENT PROHIBITED. (a) A course provider may not promise or provide equipment or any other thing of value to a student or a student's parent as an inducement for the student to enroll in an electronic course offered through the state virtual school network.

(b) The commissioner shall revoke approval under this chapter of electronic courses offered by a course provider that violates this section.

(c) The commissioner's action under this section is final and may not be appealed.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to promises or inducements for enrollment in an electronic course that occur on or after the effective date.
Summary of Changes: This bill prohibits a course provider from promising or providing equipment or any other thing of value to a student or student's parent as an inducement for a student to enroll in an electronic course. The commissioner of education must revoke the approval of a course provider that engages in such conduct. The decision of the commissioner is final and may not be appealed.

Education Code Sec. 30A.108. INFORMED CHOICE REPORTS. (a) Not later than a date determined by the commissioner, the administering authority shall create and maintain on the state virtual school network's Inter-

net website an "informed choice" report as provided by commissioner rule. (b) Each report under this section must describe each electronic course offered through the state virtual school network and include the following information:

(1) [~~such as~~] course requirements;

(2) [~~and~~] the school year calendar for the course, including any options for continued participation outside of the standard school year calendar;

(3) the entity that developed the course;

(4) the entity that provided the course;

(5) the course completion rate;

(6) aggregate student performance on an assessment instrument administered under Section 39.023 to students enrolled in the course;

(7) aggregate student performance on all assessment instruments administered under Section 39.023 to students who completed the course provider's courses; and

(8) other information determined by the commissioner.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to informed choice reports on or after the effective date.
Summary of Changes: This bill requires that informed choice reports, which are already maintained on the Texas Virtual School Network website, now include: (1) the entity that developed and provided the course, (2) the course completion rate, (3) aggregate student performance on an assessment instrument to students enrolled in the course, (4) aggregate student performance on all assessment instruments to students who completed the course provider's courses, and (5) other information determined by the commissioner of education.

Education Code Sec. 30A.153. FOUNDATION SCHOOL PROGRAM FUNDING. (a) Subject to the limitation imposed under Subsection (a-1), a [~~A~~] school district or open-enrollment charter school in which a student is enrolled is entitled to funding under Chapter 42 or in accordance with the terms of a charter granted under Section 12.101 for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course.

(a-1) For purposes of Subsection (a), a school district or open-enrollment charter school is limited to the funding described by that subsection for a student's enrollment in not more than three electronic courses during any school year, unless the student is enrolled in a full-time online program that was operating on January 1, 2013.

(b) The commissioner, after considering comments from school district and open-enrollment charter school representatives, shall adopt a standard agreement that governs the costs, payment of funds, and other matters relating to a student's enrollment in an electronic course offered through the state virtual school network. The agreement may not require a school district or open-enrollment charter school to pay the provider the full amount until the student has successfully completed the electronic course, and the full amount may not exceed the limits specified by Section 30A.105(b).

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to Foundation School Program funding on or after the effective date.
Summary of Changes: As amended, Education Code Section 30A.153 provides that a school district or open-enrollment charter school is entitled to Foundation School Program funding for the student's enrollment in an electronic course offered through the Virtual School Network (TxVSN) in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting. The student must, however, successfully complete the electronic course. A school district or open-enrollment charter school is limited to the funding to not more than four electronic courses during any school year, unless the student is enrolled in a full-time online program.

The commissioner of education's standard agreement must now address costs and may not exceed the current statutory limit of $400 per student per course or $4800 per full-time student.

Education Code Sec. 30A.155. FEES. (a) A school district or open-enrollment charter school may charge a fee for enrollment in an electronic course provided through the state virtual school network to a student who resides in this state and:

(1) is enrolled in a school district or open-enrollment charter school as a full-time student with[~~; and~~

[~~(2) is enrolled in~~] a course load greater than that normally taken by students in the equivalent grade level in other school districts or open-enrollment charter schools; or

(2) elects to enroll in an electronic course provided through the network for which the school district or open-enrollment charter school in which the student is enrolled as a full-time student declines to pay the cost, as authorized by Section 26.0031(c-1).

(c-1) A school district or open-enrollment charter school that is not the course provider [~~school district or school~~] may charge a student enrolled in the district or school a nominal fee, not to exceed the amount specified

by the commissioner, if the student enrolls in an electronic course provided through the state virtual school network that exceeds the course load normally taken by students in the equivalent grade level. A juvenile probation department or state agency may charge a comparable fee to a student under the supervision of the department or agency.

(e) This chapter does not entitle a student who is not enrolled on a full-time basis in a school district or open-enrollment charter school to the benefits of the Foundation School Program.

Commentary by Karol Davidson

Source: HB 1926
Effective Date: June 14, 2013
Applicability: Applies to fees for enrollment in an electronic course on or after the effective date.
Summary of Changes: This bill authorizes a school district or open-enrollment charter school to charge an enrollment fee for a Texas Virtual School Network (TxVSN) student who was denied enrollment, based on the three-course tuition limitation but elects to enroll in a TxVSN course. A juvenile probation department or state agency may charge a comparable fee to a student under supervision of the department or agency. A student who is not entitled full-time in a school district or open-enrollment charter school is not entitled to Foundation School Program funding for TxVSN courses.

Education Code Sec. 32.005. STUDY ON SCHOOL DISTRICT NETWORK CAPABILITIES. (a) The commissioner shall conduct a study to assess the network capabilities of each school district. The study must gather sufficient information to determine whether the network connections of a district and school campuses in the district meet the following targets:

(1) an external Internet connection to a campus's Internet service provider featuring a bandwidth capable of a broadband speed of at least 100 megabits per second for every 1,000 students and staff members; and

(2) an internal wide area network connection between the district and each of the school campuses in the district featuring a bandwidth capable of a broadband speed of at least one gigabit per second for every 1,000 students and staff members.

(b) The commissioner may solicit and accept gifts and grants from any public or private source to conduct the study. The commissioner may also cooperate or collaborate with national organizations conducting similar studies.

(c) The commissioner shall complete the study not later than December 1, 2015. This section expires December 1, 2016.

Commentary by Karol Davidson

Source: HB 1009
Effective Date: June 14, 2013
Applicability: Applies to the study of school district network connections and technological targets beginning with the 2013-2014 school year.
Summary of Changes: This bill requires the commissioner of education to conduct a study on network access capabilities of each school district. The study must gather information to determine whether the network connections of a district and school campuses meet certain technological targets. The commissioner may solicit public and private funds and may collaborate with national organizations to conduct the study. The study must be completed by December 1, 2015.

Education Code Sec. 37.0181. PROFESSIONAL DEVELOPMENT REGARDING DISCIPLINARY PROCEDURES. (a) Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding this subchapter, including training relating to the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b).

(b) Professional development training under this section may be provided in coordination with regional education service centers through the use of distance learning methods, such as telecommunications networks, and using available agency resources.

Commentary by Karol Davidson

Source: HB 1952
Effective Date: June 14, 2013
Applicability: Applies to professional development training for school principals beginning with the 2013-2014 school year.
Summary of Changes: Teachers have the authority to remove disruptive students from their classrooms and restrict the authority of administrators to return such students to class without the teacher’s consent. This bill requires every principal or other school administrators responsible for overseeing student discipline to attend professional development training regarding the distinction between the principal’s use of discipline management techniques when a student is sent to the principal’s office in order to maintain effective discipline in a classroom and a teacher’s discretion to remove an unruly student from class and not have the student return without the consent of the teacher.

The appropriate administrator is required to attend the professional development training at least once every three years. The training may be provided in coordination with regional education service centers and through use of distance learning courses.

Education Code Sec. 37.0811. SCHOOL MARSHALS. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school

may appoint not more than one school marshal per 400 students in average daily attendance per campus.

(b) The board of trustees of a school district or the governing body of an open-enrollment charter school may select for appointment as a school marshal under this section an applicant who is an employee of the school district or open-enrollment charter school and certified as eligible for appointment under Section 1701.260, Occupations Code. The board of trustees or governing body may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under that section.

(c) A school marshal appointed by the board of trustees of a school district or the governing body of an open-enrollment charter school may carry or possess a handgun on the physical premises of a school, but only:

(1) in the manner provided by written regulations adopted by the board of trustees or the governing body; and

(2) at a specific school as specified by the board of trustees or governing body, as applicable.

(d) Any written regulations adopted for purposes of Subsection (c) must provide that a school marshal may carry a concealed handgun as described by Subsection (c), except that if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty. The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible ammunition designed to disintegrate on impact for maximum safety and minimal danger to others.

(e) A school marshal may access a handgun under this section only under circumstances that would justify the use of deadly force under Section 9.32 or 9.33, Penal Code.

(f) A school district or charter school employee's status as a school marshal becomes inactive on:

(1) expiration of the employee's school marshal license under Section 1701.260, Occupations Code;

(2) suspension or revocation of the employee's license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code;

(3) termination of the employee's employment with the district or charter school; or

(4) notice from the board of trustees of the district or the governing body of the charter school that the employee's services as school marshal are no longer required.

(g) The identity of a school marshal appointed under this section is confidential, except as provided by Section 1701.260(j), Occupations Code, and is not subject to a request under Chapter 552, Government Code.

Commentary by Karol Davidson

Source: HB 1009
Effective Date: September 1, 2013
Applicability: Applies to conditions under which a school marshal may be appointed or designated as inactive, and requirements for a school marshal to carry or possess a handgun on school premises on or after the effective date.
Summary of Changes: This bill authorizes the board of trustees of school district or the governing board of an open-enrollment charter school to appoint a maximum of one school marshal per 400 students in average daily attendance per campus and select for appointment as a school marshal an applicant who is an employee of the school district or charter school and certified by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) as eligible for appointment. If this bill was intended to give smaller school districts, that may not have campus peace officers, the ability to have trained individuals to protect against threats of serious bodily injury, the limit of one school marshal per 400 students in average daily attendance may preclude the school district's authorization to appoint a school marshal due to the smaller school population in the district or charter school.

The board or governing body is authorized to reimburse the amount paid by the applicant to participate in the school marshal training program established by TCLEOSE. The identity of employees appointed as school marshals is confidential, except to certain persons and entities, and is not subject to a request under public information laws.

The board must require that a designated school marshal may carry a concealed handgun on his or her person, unless the primary duty of the school marshal involves regular, direct contact with students, in which case, the school marshal e maintain the handgun in a locked and secured safe within the immediate reach of the marshal. A school marshal may only access a handgun if circumstances would justify the use of deadly force as provided for in Texas Penal Code Sections 9.32 and 9.33. The bill requires the ammunition of a handgun used by a school marshal to contain frangible ammunition designed to disintegrate on impact for maximum safety and minimal danger to others.

An employee's status as a school marshal becomes inactive if the employee's school marshal license becomes inactive, expires or is suspended or revoked, if the employee's employment is terminated, or if the board or governing body no longer authorizes a school marshal.

Education Code Sec. 37.1081. SCHOOL SAFETY CERTIFICATION PROGRAM. (a) The Texas School Safety Center, in consultation with the School Safety Task Force established under Section 37.1082, shall develop a school safety certification program.

(b) The Texas School Safety Center shall award a school safety certificate to a school district that:

(1) has adopted and implemented a multihazard emergency operations plan as required under Section 37.108 and that includes in that plan:

(A) measures for security of facilities and grounds;

(B) measures for communication with parents and the media in the event of an emergency; and

(C) an outline of safety training for school employees;

(2) demonstrates to the center with current written self-audit processes that the district conducts at least one drill per year for each of the following types of drills:

(A) a school lockdown drill;

(B) an evacuation drill;

(C) a weather-related emergency drill;

(D) a reverse evacuation drill; and

(E) a shelter-in-place drill;

(3) is in compliance with Sections 37.108(b) and (c); and

(4) meets any other eligibility criteria as recommended by the School Safety Task Force.

(c) The certification program is abolished and this section expires September 1, 2017.

Commentary by Karol Davidson

Source: SB 1556
Effective Date: June 14, 2013
Applicability: Applies to school safety certification programs on or after the effective date.
Summary of Changes: This bill creates a school safety certification program through the Texas School Safety Center.in consultation with the School Safety Task Force. As part of the program school safety certificates will be awarded to school districts that adopt and implement emergency plans for the security of school facilities. The certification program will be a method to substantiate that a school has complied with Texas Education Code Section 37.108 requirements to develop a multi-hazard emergency safety plan and conduct safety and security audits.

The purpose of the certification program is to award a school safety certificate to a school district that: (1) has adopted and implemented a multi-hazard emergency operations plan that includes measures for security of facilities and grounds, measures for communication with parents and the media in the event of an emergency, and safety training for school employees; (2) demonstrate to the center that the district conducts at least one drill per year of designated drills, such as evacuation drills, school lockdown drills, weather-related emergency drills, and others; (3) is in compliance with safety and security audits of the district facilities; and (4) meets any other criteria recommended by the School Safety Task Force.

The certification programs and the Texas School Safety Task Force are abolished September 1, 2017.

Sec. 37.1082. SCHOOL SAFETY TASK FORCE. (a) The School Safety Task Force is established to:

(1) study, on an ongoing basis, best practices for school multihazard emergency operations planning; and

(2) based on those studies, make recommendations to the legislature, the Texas School Safety Center, and the governor's office of homeland security.

(b) The task force is composed of:

(1) the chief of the Texas Division of Emergency Management, or the chief's designee;

(2) the training director of the Advanced Law Enforcement Rapid Response Training Center at Texas State University--San Marcos, or the training director's designee;

(3) the chairperson of the Texas School Safety Center, or the chairperson's designee; and

(4) the agency director of the Texas A&M Engineering Extension Service, or the agency director's designee.

(c) The chief of the Texas Division of Emergency Management, or the chief's designee, shall serve as the presiding officer of the task force.

(d) A member of the task force is not entitled to compensation for service on the task force but is entitled to reimbursement for actual and necessary expenses incurred in performing task force duties.

(e) In performing the task force's duties under this section for schools, the task force shall consult with and consider recommendations from school district and school personnel, including school safety personnel and educators, and from first responders, emergency managers, local officials, representatives of appropriate nonprofit organizations, and other interested parties with knowledge and experience concerning school emergency operations planning.

(f) Not later than September 1 of each even-numbered year, the task force shall prepare and submit to the legislature a report concerning the results of the task force's most recent study, including any recommendations for statutory changes the task force considers necessary or appropriate to improve school multihazard emergency operations.

(g) The task force is abolished and this section expires September 1, 2017.

Commentary by Karol Davidson

Source: SB 1556
Effective Date: June 14, 2013
Applicability: Applies to the School Safety Task Force on or after the effective date.

Summary of Changes: This bill creates the School Safety Task Force which is a statewide group composed of the chief or designee of the Texas Division of Emergency Management, training director or designee of the Advanced Law Enforcement Rapid Response Training Center at Texas State University – San Marcos, chairperson or designee of the Texas School Safety Center, and the agency director or designee of the Texas A&M Engineering Extension Service. The Texas School Safety Task Force is responsible for studying best practices for school multi-hazard emergency operations planning and for making recommendations for a school multi-hazard emergency operations plan. The task force is required to submit a report to the legislature not later than September 1 of each even-numbered year that explains the results of the study conducted by the task force and include any task force recommendations that are based on the study.

Section 37.2051, Education Code, is repealed.

Commentary by Karol Davidson

Source: SB 1556
Effective Date: June 14, 2013
Applicability: Repeal of section on the effective date.
Summary of Changes: This provision repeals Texas Education Code Section 37.2051 Security Criteria for Instructional Facilities and the issue is now addressed in Texas Education Code Section 46.0081.

Education Code Sec. 39.055. STUDENT ORDERED BY A JUVENILE COURT OR STUDENT IN RESIDENTIAL FACILITY NOT CONSIDERED FOR ACCOUNTABILITY PURPOSES. Notwithstanding any other provision of this code except to the extent otherwise provided under Section 39.054(f), for purposes of determining the performance of a school district, [~~or~~] campus, or open-enrollment charter school under this chapter, a student ordered by a juvenile court into a residential program or facility operated by or under contract with the Texas Juvenile Justice Department [~~Youth Commission, the Texas Juvenile Probation Commission~~], a juvenile board, or any other governmental entity or any student who is receiving treatment in a residential facility is not considered to be a student of the school district in which the program or facility is physically located or of an open-enrollment charter school, as applicable. 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 or an open-enrollment charter school, as applicable.

Commentary by Karol Davidson

Source: SB 306
Effective Date: June 14, 2013
Applicability: Applies to the school district of a student in a residential program or facility beginning with the 2013-2014 school year.
Summary of Change: Section 39.055 of the Education Code states that a student who is ordered by a juvenile court to reside into a residential program or facility operated by the Texas Juvenile Justice Department, a juvenile board, or any other governmental district is not considered a student of the school district where the facility is located for purposes of determining the performance of a school district. Effective June 14, 2013, any student receiving treatment in a residential facility will also not be considered a student of the school district for determining performance of a school. The scores are considered separately. This applies regardless of whether the student would have regularly attended the school where the facility is located. The student would be considered in reports concerning dropout rates if the student fails to enroll or re-enroll after leaving a residential facility, however, the student would count in the dropout report for the student's regularly assigned school.

Education Code Sec. 46.0081. SECURITY CRITERIA IN DESIGN OF INSTRUCTIONAL FACILITIES. A school district that constructs a new instructional facility or conducts a major renovation of an existing instructional facility using funds allotted to the district under this subchapter shall consider, in the design of the instructional facility, appropriate security criteria [~~developed by the Texas School Safety Center under Section 37.2051~~].

Commentary by Karol Davidson

Source: SB 1556
Effective Date: June 14, 2013
Applicability: Applies to construction or major renovation of new instructional facilities on or after the effective date.
Summary of Changes: As amended, Section 46.0081, Education Code requires a school district that uses funds from the instructional facility allotment fund to consider appropriate security criteria for the design and renovation of the facility.

This bill repeals the statutory provision requiring the Texas School Safety Center to develop security criteria that school districts could consider in the design of instructional facilities. As a result of repealing this requirement, school districts must now consider appropriate security criteria in the design of new instructional facilities or major renovations of existing facilities.

Government Code

Government Code Sec. 411.1871. NOTICE OF SUSPENSION OR REVOCATION OF CERTAIN LICENSES. The department shall notify the Texas Commission on Law Enforcement Officer Standards and Education if the department takes any action against the license of a person identified by the commission as a person certified under Section 1701.260, Occupations Code, including suspension or revocation.

Commentary by Karol Davidson

Source: HB 1009
Effective Date: June 14, 2013
Applicability: Applies to the notification of suspension or revocation of a school marshal license on or after the effective date.
Summary of Changes: This amendment requires the Department of Public Safety (DPS) to notify TCLEOSE if DPS suspends or revokes the concealed handgun license of a person certified as a school marshal.

Occupations Code

Occupations Code Sec. 1701.260. TRAINING FOR HOLDERS OF LICENSE TO CARRY CONCEALED HANDGUN; CERTIFICATION OF ELIGIBILITY FOR APPOINTMENT AS SCHOOL MARSHAL. (a) The commission shall establish and maintain a training program open to any employee of a school district or open-enrollment charter school who holds a license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

(b) The commission shall collect from each person who participates in the training program identifying information that includes the person's name, the person's date of birth, the license number of the license issued to the person under Subchapter H, Chapter 411, Government Code, and the address of the person's place of employment.

(c) The training program shall include 80 hours of instruction designed to:

(1) emphasize strategies for preventing school shootings and for securing the safety of potential victims of school shootings;

(2) educate a trainee about legal issues relating to the duties of peace officers and the use of force or deadly force in the protection of others;

(3) introduce the trainee to effective law enforcement strategies and techniques;

(4) improve the trainee's proficiency with a handgun; and

(5) enable the trainee to respond to an emergency situation requiring deadly force, such as a situation involving an active shooter.

(d) The commission, in consultation with psychologists, shall devise and administer to each trainee a psychological examination to determine whether the trainee is psychologically fit to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter. The commission may license a person under this section only if the results of the examination indicate that the trainee is psychologically fit to carry out those duties.

(e) The commission shall charge each trainee a reasonable fee to cover the cost to the commission of conducting the program. The commission shall charge each person seeking renewal of a school marshal license a reasonable fee to cover the cost to the commission of renewing the person's license.

(f) The commission shall license a person who is eligible for appointment as a school marshal who:

(1) completes training under this section to the satisfaction of the commission staff; and

(2) is psychologically fit to carry out the duties of a school marshal as indicated by the results of the psychological examination administered under this section.

(g) A person's license under this section expires on the first birthday of the person occurring after the second anniversary of the date the commission licenses the person. A renewed school marshal license expires on the person's birth date, two years after the expiration of the previous license.

(h) A person may renew the school marshal license under this section by:

(1) successfully completing a renewal course designed and administered by the commission, which such license renewal training will not exceed 16 hours combined of classroom and simulation training;

(2) demonstrating appropriate knowledge on an examination designed and administered by the commission;

(3) demonstrating handgun proficiency to the satisfaction of the commission staff; and

(4) demonstrating psychological fitness on the examination described in Subsection (d).

(i) The commission shall revoke a person's school marshal license if the commission is notified by the Department of Public Safety that the person's license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code, has been suspended or revoked. A person whose school marshal license is revoked may obtain recertification by:

(1) furnishing proof to the commission that the person's concealed handgun license has been reinstated; and

(2) completing the initial training under Subsection (c) to the satisfaction of the commission staff, paying the fee for the training, and demonstrating psycho-

logical fitness on the psychological examination described in Subsection (d).

(j) The commission shall submit the identifying information collected under Subsection (b) for each person licensed by the commission under this section to:

(1) the director of the Department of Public Safety;

(2) the person's employer, if the person is employed by a school district or open-enrollment charter school;

(3) the chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a school district or open-enrollment charter school located within a municipality;

(4) the sheriff of the county if the person is employed at a campus of a school district or open-enrollment charter school that is not located within a municipality; and

(5) the chief administrator of any peace officer commissioned under Section 37.081, Education Code, if the person is employed at a school district that has commissioned a peace officer under that section.

(k) The commission shall immediately report the expiration or revocation of a school marshal license to the persons listed in Subsection (j).

(l) Identifying information about a person collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Occupation Code Sec. 1701.301. LICENSE REQUIRED. Except as provided by Sections 1701.310 and 1701.311, a person may not appoint a person to serve as an officer, county jailer, school marshal, or public security officer unless the person appointed holds an appropriate license issued by the commission.

Commentary by Karol Davidson

Source: HB 1009
Effective Date: June 14, 2013
Applicability: Applies to training and certification requirements for school marshals on or after the effective date.
Summary of Changes: New amendments to the Occupations Code designate Texas Commission on Law Enforcement Standards and Education (TCLEOSE) as the licensing agent for a school marshal. To be eligible for licensure as a school marshal, a person must be licensed to carry a concealed handgun, must complete an 80-hour training course provided by TCLEOSE or a provider designated by TCLEOSE, and demonstrate psychological fitness to serve as a school marshal.

Not later than January 1, 2014, the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is required to establish and maintain a school marshal training program open to any employee of a school district or open-enrollment charter school who holds a concealed handgun license. TCLEOSE, in consultation with psychologists, is also required to devise and administer to each trainee a psychological examination to determine whether the trainee is psychologically fit to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter. TCLEOSE can license a trainee as a school marshal only if the results of the psychological examination indicate that the trainee is psychologically fit to carry out those duties. TCLEOSE is required to charge a fee to cover the cost of conducting the program, to renew a license, and for the issuance of a license to an eligible person who completes the training program and is psychologically fit to carry out the duties of a school marshal.

As part of the licensure process, TCLEOSE is required to collect identifying information from each person who participates in the training program and to submit that information to (1) the public safety director of the Texas Department of Public Safety (DPS), (2) the person's employer if the person is employed by a school district or open-enrollment charter school, (3) the chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a school district or open-enrollment charter school located within a municipality, (4) the sheriff of the county if the person is employed at a campus of a school district or open-enrollment charter school that is not located within the municipality, and (5) the chief administrator of any school district peace officer if the person is employed at a school district that has commissioned such a peace officer. TCLEOSE is required to immediately report the expiration or revocation of a school marshal license to those persons. Identifying information that is disclosed is confidential, except to those persons, and not subject to disclosure under public information laws.

A school marshal's license expires on the first birthday of the license holder occurring after the second anniversary of the date TCLEOSE licenses the license holder. A renewed school marshal license expires on the license holder's birthdate, two years after the expiration of the previous license. TCLEOSE is required to revoke a person's school marshal license if TCLEOSE is notified by DPS that a person's concealed handgun license has been suspended or revoked and set out the manner in which a person whose school marshal license is revoked may obtain recertification.

Senate Bill 1

Senate Bill 1, Rider 13

13. Juvenile Justice Alternative Education Program (JJAEP). Funds transferred to the Juvenile Justice Department (JJD) pursuant to Texas Education Agency (TEA)

Rider 29 and appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, shall be allocated as follows: $1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the mandated counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

The remaining funds shall be allocated for distribution to the counties mandated by § 37.011(a) Texas Education Code, at the rate of $86 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under §37.007, Texas Education Code. Counties are not eligible to receive these funds until the funds initially allocated at the beginning of each fiscal year have been expended at the rate of $86 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 $86 per student per day. JJD may expend any remaining funds for summer school programs. Funds may be used for any student assigned to a JJAEP. Summer school expenditures may not exceed $3.0 million in any fiscal year.

Unspent balances in fiscal year 2014 shall be appropriated to fiscal year 2015 for the same purposes in Strategy A.1.6.

The amount of $86 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 29. The amount of $86 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 2015 to the Foundation School
Fund No. 193.

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

Commentary by Karol Davidson

Source: SB 1, Rider 13
Effective Date: September 1, 2013
Applicability: Applies to funding for juvenile justice alternative education programs on or after the effective date.
Summary of Changes: The Texas Juvenile Justice Department (TJJD) is authorized to provide funding to county juvenile boards with populations over 125, 000 who are required to operate a JJAEP and to county juvenile boards with populations of 125, 000 or less who may operate a juvenile justice alternative education program (JJAEP) at a rate of $86 per student per day in average daily attendance for students who are placed in the JJAEP on a mandatory expulsion made pursuant to Texas Education Code Section 37.007. The amount of $86 per day is an estimated amount and is not an entitlement. The funds disbursed will vary depending on funds transferred from the Foundation School Program and based on the total number of students actually attending the JJAEP.

Senate Bill 1, Rider 14

14. Funding for Additional Eligible Students in JJAEPs. Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, a maximum of $500,000 in each fiscal year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Juvenile Justice Department at the rate of $86 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.

Commentary by Karol Davidson

Source: SB 1, Rider 14
Effective Date: September 1, 2013
Applicability: Applies to funding for juvenile justice alternative education programs on or after the effective date.
Summary of Changes: The Texas Juvenile Justice Department is authorized to reimburse a county at a rate of $86 per day per student for a placement of a student in a juvenile justice alternative education program (JJAEP) in a county with a population greater than 72,000 when the student is required to be expelled and the student is expelled from a school district in a county that does not have a JJAEP. The payment is for a maximum of 90 attendance days per student.

4. Legislation Affecting Sex Offenders, Human Trafficking and Victims

Civil Practice and Remedies Code

Civil Practice and Remedies Code

Sec. 98A.001. DEFINITIONS. In this chapter:

(1) "Advertisement" means any communication that promotes a commercial product or service, including a communication on an Internet website operated for a commercial purpose.

(2) "Aggravated promotion of prostitution" means conduct that constitutes an offense under Section 43.04, Penal Code.

(3) "Compelled prostitution" means prostitution resulting from compelling prostitution.

(4) "Compelling prostitution" means conduct that constitutes an offense under Section 43.05, Penal Code.

(5) "Promotion of prostitution" means conduct that constitutes an offense under Section 43.03, Penal Code.

(6) "Prostitution" means conduct that constitutes an offense under Section 43.02, Penal Code.

(7) "Victim of compelled prostitution" and "victim" mean a person who commits prostitution as a result of another person's compelling prostitution.

Sec. 98A.002. LIABILITY. (a) A defendant is liable to a victim of compelled prostitution, as provided by this chapter, for damages arising from the compelled prostitution if the defendant:

(1) engages in compelling prostitution with respect to the victim;

(2) knowingly or intentionally engages in promotion of prostitution or aggravated promotion of prostitution that results in compelling prostitution with respect to the victim; or

(3) purchases an advertisement that the defendant knows or reasonably should know constitutes promotion of prostitution or aggravated promotion of prostitution, and the publication of the advertisement results in compelling prostitution with respect to the victim.

(b) It is not a defense to liability under this chapter that:

(1) the defendant:

(A) is related to the victim by affinity or consanguinity, has been in a consensual sexual relationship with the victim, or has resided with the victim in a household; or

(B) has paid or otherwise compensated the victim for prostitution; or

(2) the victim:

(A) voluntarily engaged in prostitution before or after the compelled prostitution occurred; or

(B) did not attempt to escape, flee, or otherwise terminate contact with the defendant at the time the compelled prostitution allegedly occurred.

Sec. 98A.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. 98A.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, except that a person may not recover damages in a suit under this chapter in which the cause of action is based on a transaction or occurrence that is the basis for a suit under Chapter 98.

Sec. 98A.005. JOINT AND SEVERAL LIABILITY. A person who engages in conduct described by Section 98A.002 and is found liable under this chapter or other law for any amount of damages arising from that conduct is jointly and severally liable with any other defendant for the entire amount of damages arising from that conduct.

Sec. 98A.006. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons from compelled prostitution and provide adequate remedies to victims of compelled prostitution.

Commentary by Jill Mata

Source: SB 94
Effective Date: September 1, 2013
Applicability: Applies to a cause of action that accrues on or after the effective date.
Summary of Changes: This bill relates to civil liability for compelled prostitution and certain promotion of prostitution. The Internet has facilitated the criminal enterprise of sex trafficking through, for instance, online postings on websites where adult advertisements are published and these websites and other publications are profiting from the posting of individuals soliciting sexual acts and are facilitating the occurrence of compelled prostitution. Specifically, the bill creates a legal mechanism for a victim of sex

trafficking to seek a civil remedy from the person who compelled the person into prostitution or from a purchaser of an advertisement that the purchaser knows or reasonably should have known was a promotion of prostitution.

Senate Bill 94 establishes that it is not a defense to liability that the defendant is related to the victim by affinity or consanguinity, has been in a consensual sexual relationship with the victim, has resided with the victim in a household, or has paid or otherwise compensated the victim for prostitution. The bill establishes that it is not a defense to liability that the victim voluntarily engaged in prostitution before or after the compelled prostitution occurred or did not attempt to escape, flee, or otherwise terminate contact with the defendant at the time the compelled prostitution allegedly occurred.

The bill requires a claimant who prevails in a liability suit to be awarded court costs, reasonable attorney's fees, and actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and authorizes the prevailing claimant to also recover exemplary damages. The bill establishes that the cause of action is cumulative of any other remedy provided by common law or statute, except that the bill prohibits a person from recovering damages in a suit under the bill's provisions in which the cause of action is based on a transaction or occurrence that is the basis for a suit for damages arising from the trafficking of persons. The bill makes a person who engages in conduct described by the bill's provisions and who is found liable under those provisions or other law for any amount of damages arising from that conduct jointly and severally liable with any other defendant for the entire amount of damages arising from that conduct.

Code of Criminal Procedure

Code of Criminal Procedure CHAPTER 7A. PROTECTIVE ORDER FOR [~~CERTAIN~~] VICTIMS OF [~~TRAFFICKING OR~~] SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, in this section, the bill created a title change and reflects expanded protective order protections to include victims of sexual abuse and human trafficking.

Code of Criminal Procedure CHAPTER 7A. PROTECTIVE ORDER FOR [~~CERTAIN~~] VICTIMS OF [~~TRAFFICKING OR~~] SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING

Commentary by Jill Mata

Source: SB 357
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the issuance of protective orders for certain sexual, stalking, and trafficking offenses. Specifically, the bill created a title change and reflects expanded protective order protections to include victims of sexual abuse and human trafficking.

Code of Criminal Procedure Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. (a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;

(2) a person who is the victim of an offense under Section 20A.02 [~~20A.02(a)(3), (4), (7), or (8)~~] or [~~Section~~] 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than 17 [~~18~~] years of age who is the victim of an offense listed in Subdivision (1);

(4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision [~~or~~] (2); or

(5) [~~(4)~~] a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, the bill expands protective order protection to include victims of human trafficking and gives authority to parents to act on the behalf of certain victims of sex offenses under the age of 17 and victims of human trafficking under the age of 18.

Code of Criminal Procedure Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. (b) An application for a protective order under this chapter may be filed in:

(1) a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in:

(A) [~~(1)~~] the county in which the applicant resides;

(B) [~~or (2)~~] the county in which the alleged offender resides; or

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

(2) any court with jurisdiction over a protective order under Title 4, Family Code, involving the same parties named in the application.

Commentary by Jill Mata

Source: SB 357
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the issuance of protective orders for certain sexual, stalking, and trafficking offenses. Specifically, Article 7A.01, Code of Criminal Procedure expands jurisdiction where protective orders may be filed to include any county where an element of the offense occurred and, with any court with Texas Family Code jurisdiction over protective orders involving the same parties. This change will allow law enforcement to more effectively seek protection on behalf of trafficked victims regardless of their location.

Code of Criminal Procedure Art. 7A. 02. TEMPORARY EX PARTE ORDER. If the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault or abuse, stalking, trafficking, or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, Article 7A.02, Code of Criminal Procedure expands temporary ex parte protective order protection to include victims of sexual abuse (rather than only sexual assault) and human trafficking.

Code of Criminal Procedure Art. 7A. 03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse,[~~;~~ ~~or~~] stalking, or trafficking.

(b) If the court makes a finding described by Subsection (a) [~~(a)(1) or (2)~~], the court shall issue a protective order that includes a statement of the required findings.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, the bill brings this article in alliance with other changes in Article 7A and expands protective order protection to include victims of sexual abuse and human trafficking.

Code of Criminal Procedure Art. 7A. 03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse,[~~;~~ ~~or~~] stalking, or trafficking.

(b) If the court makes a finding described by Subsection (a) [~~(a)(1) or (2)~~], the court shall issue a protective order that includes a statement of the required findings.

Commentary by Jill Mata

Source: SB 357
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the issuance of protective orders for certain sexual, stalking, and trafficking offenses. Specifically, the bill brings Article 7A.03 in alliance with other changes in Article 7A, Code of Criminal Procedure and expands protective order protection to include victims of sexual abuse and human trafficking.

Code of Criminal Procedure Art. 7A.05. CONDITIONS SPECIFIED BY ORDER. (a) In a protective order issued under this chapter, the court may:

(1) order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household; or

(2) prohibit the alleged offender from:

(A) communicating:

(i) directly or indirectly with the applicant or any member of the applicant's

family or household in a threatening or harassing manner; or

(ii) in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition;

(B) going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household;

(C) engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

(D) possessing a firearm, unless the alleged offender is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

Commentary by Jill Mata

Source: SB 357
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the issuance of protective orders for certain sexual, stalking, and trafficking offenses. Specifically, the bill expands possible conditions imposed by protective orders. The court may now prohibit any manner of communication if the court finds good cause for limiting such conduct. This will allow courts to address the myriad of methods used by perpetrators to threaten or harass victims of these types of crimes and to create very specific orders to protect victims.

Code of Criminal Procedure Art. 7A.05. CONDITIONS SPECIFIED BY ORDER. (a) In a protective order issued under this chapter, the court may:

(1) order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household; or

(2) prohibit the alleged offender from:

(A) communicating:

(i) directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner; or

(ii) in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition;

(B) going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household;

(C) engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

(D) possessing a firearm, unless the alleged offender is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

Commentary by Jill Mata

Source: SB 893
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to certain conditions of, penalties for violating, and collection of information about protective orders issued in certain family violence, sexual assault or abuse, stalking, or trafficking cases. Specifically, the bill makes the same changes to Art. 7A.05, Code of Criminal Procedure as SB 357 above and expands possible conditions imposed by protective orders. The court may now prohibit any manner of communication if the court finds good cause for limiting such conduct. This will allow courts to address the myriad of methods used by perpetrators to threaten or harass victims of these types of crimes and to create very specific orders to protect victims.

Code of Criminal Procedure Art. 7A.07. DURATION OF PROTECTIVE ORDER. (b) The following persons may file at any time an application with the court to rescind the protective order:

(1) a victim of an offense listed in Article 7A.01(a)(1) [~~A victim~~] who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age; or

(2) a victim of an offense listed in Article 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who is younger than 18 years of age [~~may file at any time an application with the court to rescind the protective order~~].

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to protective orders issued on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of per-

sons. Specifically, the bill modified who can seek to rescind a protective order. For the offenses of Continuous Abuse of a Young Child or Children, Indecency with a Child, Sexual Assault, Aggravated Sexual Assault or Stalking, the victim who is 17 years old or older may ask the court to rescind the protective order; however if the victim is under 17 years of age the parent of guardian may request on the child's behalf. For the offenses of Trafficking of Persons or Compelling Prostitution, a victim who is 18 or older may ask the court to rescind the order of protection; however for victims less than 18 years of age the parents or guardian may ask on the child's behalf.

Chapter 7B, Code of Criminal Procedure, is repealed.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Protective orders issue on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, Article 7B, Code of Criminal Procedure was replaced by the amendments to Article 7A. Protective orders issued before the effective date are governed by the law in effect on the date the order is issued.

Code of Criminal Procedure Art. 42. 015. FINDING OF AGE OF VICTIM. (a) In the trial of an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 17 years of age at the time of the offense.

(b) In the trial of a sexually violent offense, as defined by Article 62.001, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 14 years of age at the time of the offense.

Commentary by Jill Mata

Source: HB 1302
Effective Date: September 1, 2013
Applicability: Applies to a trial commenced on or after the effective date or an order of deferred adjudication entered on or after the effective date.
Summary of Changes: This bill relates to the imposition of a sentence of life without parole on certain repeat sex offenders and to certain restrictions on employment for certain sex offenders. The law requiring a defendant convicted of continuous sexual abuse of a young child or children, aggravated sexual assault, or continuous trafficking of persons to be punished by imprisonment in the Texas Department of Criminal Justice for life without parole, if the defendant has previously been convicted of such an offense, has been expanded to include additional sexually violent offenses committed against a child. Specifically, the bill requires the judge to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case following trial, if the judge determines that the victim or intended victim was younger than 14 years of age at the time of the offense.

Code of Criminal Procedure Art. 42.12. COMMUNITY SUPERVISION. (e)(1) If a judge places on community supervision under this section a defendant charged with an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the victim or intended victim was younger than 17 years of age at the time of the offense.

(2) If a judge places on community supervision under this section a defendant charged with a sexually violent offense, as defined by Article 62.001, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the victim or intended victim was younger than 14 years of age at the time of the offense.

Commentary by Jill Mata

Source: HB 1302
Effective Date: September 1, 2013
Applicability: Applies to affirmative findings to be made when a judge places a defendant on community supervision on or after the effective date.
Summary of Changes: This bill relates to the imposition of a sentence of life without parole on certain repeat sex offenders and to certain restrictions on employment for certain sex offenders. The law requiring a defendant convicted of continuous sexual abuse of a young child or children, aggravated sexual assault, or continuous trafficking of persons to be punished by imprisonment in the Texas Department of Criminal Justice for life without parole, if the defendant has previously been convicted of such an offense, has been expanded to include additional sexually violent offenses committed against a child. Specifically, the bill requires the judge to make an affirmative finding of fact and enter the affirmative finding in the case when placing a defendant on community supervision, if the judge determines that the victim or intended victim was younger than 14 years of age at the time of the offense.

Code of Criminal Procedure Art. 46C. 003. VICTIM NOTIFICATION OF RELEASE. If the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care,

the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under Article 56.03 or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding Article 56.03(f), the clerk of the court may inspect a victim impact statement for the purpose of notification under this article. On request, a victim assistance coordinator may provide the clerk of the court with information or other assistance necessary for the clerk to comply with this article.

Commentary by Jill Mata

Source: HB 1435
Effective Date: September 1, 2013
Applicability: Applies to a notice, report, description, petition, motion, or other pleading provided or filed on or after the effective date.
Summary of Changes: This bill relates to certain notices, reports, and descriptions to victim or the victim's guardian or close relative, provided by or filed with court and county clerks. Current law imposes various notice and report requirements on court and county clerks. In some cases clerks were unable to comply with such requirements because they did not have access to the necessary information. This bill addresses this situation by revising the duties of court and county clerks with respect to certain notices, reports, and descriptions. This provision was amended to authorize a victim assistance coordinator, on request, to provide a clerk of the court with information or other assistance necessary for the clerk to comply with this article.

Code of Criminal Procedure Art. 56. 01. DEFINITIONS. (2-a) "Sexual assault" means [~~includes~~] an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code.

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: This bill relates to the rights of certain victims of sexual assault. Specifically, the bill expands the definition of sexual assault for proposes of crime victims' rights, to include the offenses of indecency with a child by engaging in sexual contact or causing the child to engage in such contact, sexual assault, and aggravated sexual assault.

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;

(12) [~~(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;

[~~(14) to the extent provided by Articles 56.06 and 56.065, for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the assault is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility;~~] and

(13) [~~(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.

(c) The office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by [~~Subsection (a) of~~] this article and Article 56.021 and, on request, an explanation of those rights.

(d) A judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this article or Article 56.021. The failure or inability of any person to provide a right or service enumerated in this article or Article 56.021 may not be used by a defendant in a criminal case as a ground for appeal, a ground to set aside the conviction or sentence, or a ground in a habeas corpus petition. A victim, guardian of a victim, or close relative of a deceased victim does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

Commentary by Jill Mata

Source: HB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: This bill relates to the rights of certain victims of sexual assault. Specifically, HB 1192 removed language from Article 56.02, Code of Criminal Procedure regarding crime victims' rights, and added a new section Article 56.021, Code of Criminal Procedure to address rights afforded victims of sexual assault. The definition of sexual assault has been expanded as well to include more offenses for purposes of the Crime Victims' Compensation Act.

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;

(14) to the extent provided by Articles 56.06 and 56.065, for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the assault is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility; [~~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; and

(16) if the offense is a capital felony, the right to:

(A) receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;

(B) not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and

(C) designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

(c) The office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by [~~Subsection (a) of~~] this article and, on request, an explanation of those rights.

Commentary by Jill Mata

Source: HB 899
Effective Date: June 14, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: This bill relates to certain rights of victims, guardians of victims, and close relatives of deceased victims in the criminal justice system. The law entitles a victim, guardian of a victim, or close relative of a deceased victim to a number of rights within the criminal justice system relating to prosecution proceedings and the events leading up to the prosecution. These statutory provisions help protect the victim's, guardian's, or relative's privacy and safety and keep the victim and other such persons informed of the prosecution proceedings. Specifically, this bill expanded the list of rights to which a victim of a capital felony or the victim's guardian or relative, as applicable, is entitled by granting such persons certain rights with respect to contact by a victim outreach specialist and the designation of a victim service provider to act as a liaison between the victim and the defense.

Code of Criminal Procedure Art. 56. 021. RIGHTS OF VICTIM OF SEXUAL ASSAULT. (a) In addition to the rights enumerated in Article 56.02, if the offense is a sexual assault, the victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) if requested, the right to a disclosure of information regarding any evidence that was collected

during the investigation of the offense, unless disclosing the information would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed;

(2) if requested, the right to a disclosure of information regarding the status of any analysis being performed of any evidence that was collected during the investigation of the offense;

(3) if requested, the right to be notified:

(A) at the time a request is submitted to a crime laboratory to process and analyze any evidence that was collected during the investigation of the offense;

(B) at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in a state or federal DNA database; and

(C) of the results of the comparison described by Paragraph (B), unless disclosing the results would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which those results are expected to be disclosed;

(4) if requested, the right to counseling regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection;

(5) for the victim of the offense, 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; and

(6) to the extent provided by Articles 56.06 and 56.065, for the victim of the offense, the right to a forensic medical examination if, within 96 hours of the offense, the offense is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility.

(b) A victim, guardian, or relative who requests to be notified under Subsection (a)(3) must provide a current address and phone number to the attorney representing the state and the law enforcement agency that is investigating the offense. The victim, guardian, or relative must inform the attorney representing the state and the law enforcement agency of any change in the address or phone number.

(c) A victim, guardian, or relative may designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested under Subsection (a)(3).

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: This bill relates to the rights of certain victims of sexual assault and expands the list of offenses that are considered sexual assault for purposes of victims' rights. Previously, the law entitled only certain victims of sexual assault to general crime victims' rights within the criminal justice system and additional rights to counseling and testing for certain sexually transmitted diseases. Specifically, the bill entitles a victim of sexual assault, guardian of such a victim, or close relative of such a victim who is deceased, in addition to the general crime victims' rights, to the right, if requested, to a disclosure of information regarding any evidence that was collected during the investigation of the offense, unless disclosing the information would interfere with the investigation, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed. Also provided is the right, if requested, to a disclosure of information regarding the status of any analysis being performed of any evidence that was collected during the investigation of the offense; and the right, if requested, to be notified at the time a request is submitted to a crime laboratory to process and analyze any evidence collected during the investigation of the offense, notified at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in a state or federal DNA database, and notified of the results of the comparison, unless disclosing the results would interfere with the investigation of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which those results are expected to be disclosed.

The bill also requires a victim, guardian, or relative who requests such notice to provide a current address and phone number to the attorney representing the state and the law enforcement agency that is investigating the offense and to inform the attorney and agency of any change in that address or phone number. The bill authorizes a victim of a sexual assault, or a guardian or relative, to designate a person, including an entity that provides services to victims of sexual assault, to receive any such notice requested by the victim.

Code of Criminal Procedure Art. 56.03. VICTIM IMPACT STATEMENT. (b) The victim impact statement must be in a form designed to inform a victim, guardian of a victim, or a close relative of a deceased victim with a clear statement of rights provided by Articles [~~Article~~] 56.02 and 56.021 and to collect the following information:

(1) the name of the victim of the offense or, if the victim has a legal guardian or is deceased, the name of a guardian or close relative of the victim;

(2) the address and telephone number of the victim, guardian, or relative through which the victim, guardian of a victim, or a close relative of a deceased victim, may be contacted;

(3) a statement of economic loss suffered by the victim, guardian, or relative as a result of the offense;

(4) a statement of any physical or psychological injury suffered by the victim, guardian, or relative as a result of the offense, as described by the victim, guardian, relative, or by a physician or counselor;

(5) a statement of any psychological services requested as a result of the offense;

(6) a statement of any change in the victim's, guardian's, or relative's personal welfare or familial relationship as a result of the offense;

(7) a statement as to whether or not the victim, guardian, or relative wishes to be notified in the future of any parole hearing for the defendant and an explanation as to the procedures by which the victim, guardian, or relative may obtain information concerning the release of the defendant from the Texas Department of Criminal Justice; and

(8) any other information, other than facts related to the commission of the offense, related to the impact of the offense on the victim, guardian, or relative.

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date; however, bill makes conforming changes in statutory provisions relating to crime victims' rights and establishes that a law enforcement agency, prosecutor, or other participant in the criminal justice system is not required to use a victim impact statement form that complies with the bill's provisions until January 1, 2014.
Summary of Changes: This bill relates to the rights of certain victims of sexual assault and expands the list of offenses that are considered sexual assault for purposes of victims' rights. Specifically, the bill modified the statute so that new Article 56.021, Code of Criminal Procedure is included to reflect the updated definition of sexual assault victim.

Code of Criminal Procedure Art. 56.04. VICTIM ASSISTANCE COORDINATOR; CRIME VICTIM LIAISON. (b) The duty of the victim assistance coordinator is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, and relatives by Articles [~~Article~~] 56.02 and 56.021 [~~of this code~~]. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the Board of Pardons and Paroles, and the judiciary in carrying out that duty.

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: Again as above, this bill modified the statute so that new Article 56.021, Code of Criminal Procedure is included to reflect the updated definition of sexual assault victim.

Code of Criminal Procedure Art. 56.045. PRESENCE OF ADVOCATE OR REPRESENTATIVE DURING FORENSIC MEDICAL EXAMINATION. (f) If a person alleging to have sustained injuries as the victim of a sexual assault was confined in a penal institution, as defined by Section 1.07, Penal Code, at the time of the alleged assault, the penal institution shall provide, at the person's request, a representative to be present with the person at any forensic medical examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the alleged assault. The representative may only provide the injured person with counseling and other support services and with information regarding the rights of crime victims under Articles [~~Article~~] 56.02 and 56.021 and may not delay or otherwise impede the screening or stabilization of an emergency medical condition. The representative must be approved by the penal institution and must be a:

(1) psychologist;
(2) sociologist;
(3) chaplain;
(4) social worker;
(5) case manager; or
(6) volunteer who has completed a sexual assault training program described by Section 420.011(b), Government Code.

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: Again as the above two summaries, this bill modified the statute so that new Article 56.021, Code of Criminal Procedure is included to reflect the updated definition of sexual assault victim.

Code of Criminal Procedure Art. 56.07. NOTIFICATION. (a) At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall provide the victim a written notice containing:

(1) information about the availability of emergency and medical services, if applicable;

(2) notice that the victim has the right to receive information regarding compensation to victims of crime as provided by Subchapter B, Chapter 56, including information about:

(A) the costs that may be compensated under that Act and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that Act;

(B) the payment for a medical examination for a victim of a sexual assault under Article 56.06 of this code; and

(C) referral to available social service agencies that may offer additional assistance;

(3) the name, address, and phone number of the law enforcement agency's victim assistance liaison;

(4) the address, phone number, and name of the crime victim assistance coordinator of the office of the attorney representing the state;

(5) the following statement:

"You may call the law enforcement agency's telephone number for the status of the case and information about victims' rights"; and

(6) the rights of crime victims under Articles [~~Article~~] 56.02 and 56.021 [~~of this code~~].

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: Again as the preceding three summaries, this bill modified the statute so that new Article 56.021, Code of Criminal Procedure is included to reflect the updated definition of sexual assault victim.

Code of Criminal Procedure Art. 56.32. DEFINITIONS. (14) "Trafficking of persons" means any offense that results in a person engaging in forced labor or services and that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, Penal Code.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. In this Article, the definition of human trafficking was added to the list of definitions in the Crime Victims' Compensation Act.

Code of Criminal Procedure Art. 56.42. LIMITS ON COMPENSATION. (d) A victim who is a victim of family violence, a victim of trafficking of persons, or a victim of sexual assault who is assaulted in the victim's place of residence may receive a onetime-only assistance payment in an amount not to exceed:

(1) $2,000 to be used for relocation expenses, including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and for out-of-state moves, transportation, lodging, and meals; and

(2) $1,800 to be used for housing rental expenses.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, this amendment added victims of human trafficking to the list of persons who can receive crime victims' compensation.

Code of Criminal Procedure Art. 56. 81. DEFINITIONS. (7) "Trafficking of persons" means any offense that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, Penal Code, and that results in a person:

(A) engaging in forced labor or services; or

(B) otherwise becoming a victim of the offense.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, the bill added the definition of human trafficking, specifying labor and sex trafficking, was added to the Confidentiality Program for Victims of Family Violence, Sexual Assault or Stalking in the Crime Victims' Compensation Act.

Code of Criminal Procedure Art. 56. 82. ADDRESS CONFIDENTIALITY PROGRAM. (a) The attorney general shall establish an address confidentiality program, as provided by this subchapter, to assist a victim of family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, in maintaining a confidential address.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, the bill added victims of human trafficking to the list of persons assisted by the Confidentiality Program established by the Attorney General to assist victims of Family Violence, Sexual Assault and Stalking Crimes.

Code of Criminal Procedure Art. 56. 83. ELIGIBILITY TO PARTICIPATE IN PROGRAM. (a) To be eligible to participate in the program, an applicant must:

(1) meet with a victim's assistance counselor from a state or local agency or other entity, whether for-profit or nonprofit that is identified by the attorney general as an entity that provides counseling and shelter services to victims of family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code;

(2) file an application for participation with the attorney general or a state or local agency or other entity identified by the attorney general under Subdivision (1);

(3) designate the attorney general as agent to receive service of process and mail on behalf of the applicant; and

(4) live at a residential address, or relocate to a residential address, that is unknown to the person who committed or is alleged to have committed the family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code.

(b) An application under Subsection (a)(2) must contain:

(1) a signed, sworn statement by the applicant stating that the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of a threat of immediate or future harm caused by the person who committed or is alleged to have committed the family violence, the trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code;

(2) the applicant's true residential address and, if applicable, the applicant's business and school addresses; and

(3) a statement by the applicant of whether there is an existing court order or a pending court case for child support or child custody or visitation that involves the applicant and, if so, the name and address of:

(A) the legal counsel of record; and

(B) each parent involved in the court order or pending case.

(e) The attorney general by rule may establish additional eligibility requirements for participation in the program that are consistent with the purpose of the program as stated in Article 56.82(a). The attorney general may establish procedures for requiring an applicant, in appropriate circumstances, to submit with the application under Subsection (a)(2) independent documentary evidence of family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, in the form of:

(1) an active or recently issued protective order;

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement of a physician or other health care provider regarding the applicant's medical condition as a result of the family violence, trafficking of persons, or offense; or

(4) a statement of a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, trafficking of persons, or offense.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons. Specifically, the bill adds victims of human trafficking to the list of persons who are eligible for services under the Confidentiality Program established by the Attorney General to assist victims of Family Violence, Sexual Assault and Stalking Crimes.

Code of Criminal Procedure Art. 62. 0045. CENTRALIZED REGISTRATION AUTHORITY. (a) The commissioners court of [~~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 is required to perform the registration and verification requirements of Articles [~~shall register under Article~~] 62.051 and [~~or verify registration under Article~~] 62.058 and the change of address requirements of Article 62.055 only with respect to 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 or changes address with that authority, shall provide to the local law enforcement authority in that

municipality notice of the person's registration, [~~or~~] verification of registration, or change of address, as applicable, with the centralized registration authority.

(c) This section does not affect a person's duty to register with secondary sex offender registries under this chapter, such as those described by Articles 62.059 and 62.153.

Commentary by Jill Mata

Source: HB 2825
Effective Date: June 14, 2013
Applicability: Applies to required registrations and verifications on or after the effective date.
Summary of Changes: This bill relates to the authority of a county to establish a centralized sex offender registration authority. Previous to HB 2825, the commissioners' court in counties with a population of 100,000 or more could designate the office of the sheriff of the county or the chief of police as a mandatory countywide registration location for sex offenders. As such, counties with a population less than 100,000 were prohibited from establishing a centralized registration authority. Specifically, HB 2825 amended current law by expanding authority to smaller counties to establish a centralized sex offender registration authority.

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 by Article 62.051(c)(7) or required by the department under Article 62.051(c)(8), including any information regarding an employer's name, address, or telephone number; or

(3) that would identify the victim of the offense for which the person is subject to registration.

Commentary by Jill Mata

Source: SB 369
Effective Date: September 1, 2013
Applicability: Applies to required registrations on or after the effective date.
Summary of Changes: This bill relates to certain information available to the public on a central database containing information about sex offenders. Previous to SB 369, Texas law required the sex offender registry to include in the public database the name and address of the employer of an individual who is mandated to register under Article 62.005(b) of the Code of Criminal Procedure. SB 369 amended the statute to remove this requirement and to move the name and address of the employer to the nonpublic database utilized by law enforcement. Legislators determined that employment and housing are key elements to successful reentry for former offenders and employers are less likely to hire individuals who are required to register if they know that their business will be publicized on the registry.

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 Juvenile Justice Department [~~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 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);

(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; and

(G) certain types of employment are prohibited under Article 62.063 for a person with a reportable conviction or adjudication for a sexually violent offense involving a victim younger than 14 years of age occurring on or after September 1, 2013;

(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 Jill Mata

Source: HB 1302
Effective Date: September 1, 2013
Applicability: Applies to required registrations based on a conviction or adjudication that occurs before the effective date.
Summary of Changes: This bill relates to the imposition of a sentence of life without parole on certain repeat sex offenders and to certain restrictions on employment for certain sex offenders. Specifically, the bill addresses reported incidents of sex offenders luring child victims into vehicles by prohibiting persons convicted or adjudicated of committing sexually violent offenses involving a victim under 14 years of age from receiving compensation for operating or offering to operate a bus, taxicab or limousine service, amusement ride service or in-home care services. The employment prohibitions do not apply to juvenile sex offenders, which may cause some confusion because as initially filed, the prohibitions applied to juveniles, but they were exempted in the final version of the bill.

Code of Criminal Procedure Art. 62.058. LAW ENFORCEMENT VERIFICATION OF REGISTRATION INFORMATION. (f) A local law enforcement authority that provides to a person subject to the prohibitions described by Article 62.063 a registration form for verification as required by this chapter shall include with the form a statement summarizing the types of employment that are prohibited for that person.

Commentary by Jill Mata

Source: HB 1302
Effective Date: September 1, 2013
Applicability: Applies to required registrations based on a conviction or adjudication that occurs before the effective date.
Summary of Changes: This bill relates to the imposition of a sentence of life without parole on certain repeat sex offenders and to certain restrictions on employment for certain sex offenders. Specifically, the bill requires local law enforcement, in accordance with Article 62.053, Code of Criminal Procedure to provide a registration form to defendant for verification so that the defendant is aware of certain employment prohibitions. This verification would also provide the basis of proving violations.

Code of Criminal Procedure
Art. 62.063. PROHIBITED EMPLOYMENT. (a) In this article:

(1) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(2) "Bus" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person subject to registration under this chapter because of a reportable conviction or adjudication for which an affirmative finding is entered under Article 42.015(b) or Section 5(e)(2), Article 42.12, as appropriate, may not, for compensation:

(1) operate or offer to operate a bus;

(2) provide or offer to provide a passenger taxicab or limousine transportation service;

(3) provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised; or

(4) operate or offer to operate any amusement ride.

Commentary by Jill Mata

Source: HB 1302
Effective Date: September 1, 2013
Applicability: Applies to required registrations under Chapter 62, Code of Criminal Procedure, on the basis of a conviction or adjudication for an offense described by that article and for which an affirmative finding under Article 42.015(b) or Section 5(e)(2), Article 42.12, Code of Criminal Procedure is made on or after the effective date.
Summary of Changes: This bill relates to the imposition of a sentence of life without parole on certain repeat sex offenders and to certain restrictions on employment for certain sex offenders. Specifically, the bill created a new statute that lists the certain types of employment that are prohibited for a person with a reportable conviction or adjudication for a sexually violent offense involving a victim younger than 14 years of age, occurring on or after September 1, 2013. The employment prohibitions do not apply to juvenile sex offenders, which may cause some confusion because as initially filed, the prohibitions applied to juveniles, but they were exempted in the final version of the bill.

Code of Criminal Procedure Art. 62.102. FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS. (d) If it is shown at the trial of a person for an offense under this article or an attempt to commit an offense under this article that the person fraudulently used identifying information in violation of Section 32.51, Penal Code, during the commission or attempted commission of the offense, the punishment for the offense or the attempt to commit the offense is increased to the punishment for the next highest degree of felony.

Commentary by Jill Mata

Source: HB 2637
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the fraudulent use of identifying information by certain sex offenders and provides criminal penalties. Specifically, the bill addresses a recently observed scam that is being used by certain individuals required to register as a sex offender in the Texas Sex Offender Registry to avoid doing so. Through the fraudulent use of identifying information, by assuming the identity of another individual, they can hide in plain sight.

Currently, punishment for failure to comply with sex offender registration requirements ranges from a state jail felony to a second degree felony and if the offender has a prior conviction, the punishment is enhanced to the next highest felony degree. Also under current law, punishment for fraudulent use or possession of identifying ranges from a state jail felony to a first degree felony and if the victim is an elderly individual the punishment is enhanced to the next highest level. HB 2637 provides in a case where an individual fraudulently used identifying information to avoid registering as a sex offender to be punished at the next highest degree felony.

Code of Criminal Procedure Art. 63.001. DEFINITIONS. (1) "Abduct" has the meaning assigned by Section 20.01, Penal Code.

(1-a) "Child" means a person under 18 years of age.

(5) "Missing child or missing person report" [~~or "report"~~] means information that is:

(A) given to a law enforcement agency on a form used for sending information to the national crime information center; and

(B) about a child or missing person whose whereabouts are unknown to the reporter and who is alleged in the form by the reporter to be missing.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to statutory references to child abductions on or after the effective date.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. It is reported that over 45,000 children were reported missing in Texas last year, many cases of which were the result of abductions or runaways. Specifically, the bill added “abduction” to the definitions in Article 63, Code of Criminal Procedure. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Code of Criminal Procedure Art. 63. 0016. ATTEMPTED CHILD ABDUCTION BY RELATIVE. For purposes of this chapter, "attempted child abduction" does not include an attempted abduction in which the actor was a relative, as defined by Section 20.01, Penal Code, of the person intended to be abducted.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to attempted child abductions on or after the effective date.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. The bill modified the Code of Criminal Procedure to require a local law enforcement agency, on receiving a report, on or after January 1, 2014, of attempted child abduction to immediately, but not later than eight hours after receiving the report, provide any relevant information regarding the attempted child abduction to the clearinghouse. The bill specifies that, for purposes of provisions relating to the clearinghouse, attempted child abduction does not include an attempted abduction in which the actor was a relative of the person intended to be abducted. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Code of Criminal Procedure Art. 63. 003. FUNCTION OF CLEARINGHOUSE. (a) The clearinghouse is a central repository of information on missing children, [~~and~~] missing persons, and attempted child abductions.

(b) The clearinghouse shall:

(1) establish a system of intrastate communication of information relating to missing children and missing persons;

(2) provide a centralized file for the exchange of information on missing children, missing persons, and unidentified dead bodies within the state;

(3) communicate with the national crime information center for the exchange of information on

missing children and missing persons suspected of interstate travel;

(4) collect, process, maintain, and disseminate accurate and complete information on missing children and missing persons;

(5) provide a statewide toll-free telephone line for the reporting of missing children and missing persons and for receiving information on missing children and missing persons; [~~and~~]

(6) provide and disseminate to legal custodians, law enforcement agencies, and the Texas Education Agency information that explains how to prevent child abduction and what to do if a child becomes missing; and

(7) receive and maintain information on attempted child abductions in this state.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to clearinghouse reports of missing children, missing persons and attempted child abductions on or after the effective date.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. The bill amended the Code of Criminal Procedure to include information on attempted child abductions in the missing children and missing persons information clearinghouse established within the Department of Public Safety (DPS). The bill requires the clearinghouse to receive and maintain information on attempted child abductions in Texas. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Code of Criminal Procedure Art. 63.0041. REPORTING OF ATTEMPTED CHILD ABDUCTION. A law enforcement officer or local law enforcement agency reporting an attempted child abduction to the clearinghouse shall make the report by use of the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the Department of Public Safety.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to law enforcement reporting of missing children, missing persons and attempted child abductions on or after the effective date.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. The bill requires the missing children and missing person report forms distributed by the Department of Public Safety (DPS) to be in a format that will allow a seamless transfer of that information to the national crime information center. The bill requires a law enforcement officer or local law enforcement agency reporting an attempted child abduction to the clearinghouse, to make the report by use of the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by DPS. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Code of Criminal Procedure Art. 63.009. (a-1) A local law enforcement agency, on receiving a report of an attempted child abduction, shall immediately, but not later than eight hours after receiving the report, provide any relevant information regarding the attempted child abduction to the clearinghouse.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to attempted child abduction that is reported to a law enforcement agency on or after January 1, 2014.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. Specifically, the bill requires a local law enforcement agency, on receiving a report, on or after January 1, 2014, of an attempted child abduction to immediately, but not later than eight hours after receiving the report, to provide any relevant information regarding the attempted child abduction to the clearinghouse. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Code of Criminal Procedure Art. 63.0091. LAW ENFORCEMENT REQUIREMENTS REGARDING REPORTS OF CERTAIN MISSING CHILDREN. (a) The public safety director of the Department of Public Safety shall adopt rules regarding the procedures for a local law enforcement agency on receiving a report of a missing child who:

(1) had been reported missing on four or more occasions in the 24-month period preceding the date of the current report; or

(2) is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report.

(b) The rules adopted under this article must require that in entering information regarding the report into the national crime information center missing person file as required by Article 63.009(a)(3) for a missing child described by Subsection (a), the local law enforcement

agency shall indicate, in the manner specified in the rules, that the child is endangered and include relevant information regarding the prior occasions on which the child was reported missing.

(c) If, at the time the initial entry into the national crime information center missing person file is made, the local law enforcement agency has not determined that the requirements of this article apply to the report of the missing child, the information required by Subsection (b) must be added to the entry promptly after the agency investigating the report determines that the missing child is described by Subsection (a).

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to missing child reports received by a law enforcement agency on or after January 1, 2014.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. Specifically, the bill requires the public safety director of DPS to adopt rules regarding the procedures for a local law enforcement agency on receiving a report of a missing child who had been reported missing on four or more occasions in the 24-month period preceding the date of the current report or who is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report.

Such rules require a local law enforcement agency, in entering information regarding the report into the national crime information center missing person file for such a missing child, to indicate, in the manner specified in the rules, that the child is endangered and to include relevant information regarding the prior occasions on which the child was reported missing. The bill also requires such information to be added to the entry promptly after the agency investigating the report determines that the missing child has such a history, if the agency did not determine at the time the initial entry was made that the entry requirements applied to the missing child report. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Code of Criminal Procedure Art. 63. 013. INFORMATION TO CLEARINGHOUSE. Each law enforcement agency shall provide to the missing children and missing persons information clearinghouse:

(1) any information that would assist in the location or identification of any missing child who has been reported to the agency as missing; and

(2) any information regarding an attempted child abduction that has been reported to the agency or that the agency has received from any person or another agency

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013; however the new reporting requirements apply to a missing child report that is received by a law enforcement agency on or after January 1, 2014.
Applicability: Applies to attempted child abduction that is reported to a law enforcement agency on or after January 1, 2014.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. Specifically, the bill requires each law enforcement agency to provide to the clearinghouse any information regarding an attempted child abduction that has been reported to the agency or that the agency has received from any person or another agency. These law enforcement requirements apply to a missing child report that is received by a law enforcement agency on or after January 1, 2014. These changes are part of the larger effort to reduce crimes related to human trafficking and child exploitation.

Family Code

Family Code Sec. 51.04. JURISDICTION. (b) In each county, the county's juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsections (c), [~~and~~] (d), and (i) [~~of this section~~].

(e) A designation made under Subsection (b), [~~or~~] (c), or (i) [~~of this section~~] may be changed from time to time by the authorized boards or judges for the convenience of the people and the welfare of children. However, there must be at all times a juvenile court designated for each county. It is the intent of the legislature that in selecting a court to be the juvenile court of each county, the selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of juvenile courts be made only when the best interest of the public requires it.

(i) If the court designated as the juvenile court under Subsection (b) does not have jurisdiction over proceedings under Subtitle E, Title 5, the county's juvenile board may designate at least one other court that does have jurisdiction over proceedings under Subtitle E, Title 5, as a juvenile court or alternative juvenile court.

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to juvenile board designations of juvenile court(s) on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. Senate Bill 92 provides for such a program by amending certain statutes relating to juvenile courts. Specifically, in this section, the bill amended the Family Code jurisdiction statute authorizing a county juvenile board, if the court designated by the board as the juvenile court for the county does not have jurisdiction over proceedings relating to the protection of a child (i.e., Child Protective Services cases), to designate at least one other court that does have jurisdiction over such proceedings as a juvenile court or alternative juvenile court.

Family Code Sec. 51.0413. JURISDICTION OVER AND TRANSFER OF COMBINATION OF PROCEEDINGS. (a) A juvenile court designated under Section 51.04(b) or, if that court does not have jurisdiction over proceedings under Subtitle E, Title 5, the juvenile court designated under Section 51.04(i) may simultaneously exercise jurisdiction over proceedings under this title and proceedings under Subtitle E, Title 5, if there is probable cause to believe that the child who is the subject of those proceedings engaged in delinquent conduct or conduct indicating a need for supervision and cause to believe that the child may be the victim of conduct that constitutes an offense under Section 20A.02, Penal Code.

(b) If a proceeding is instituted under this title in a juvenile court designated under Section 51.04(b) that does not have jurisdiction over proceedings under Subtitle E, Title 5, the court shall assess the case and may transfer the proceedings to a court designated as a juvenile court or alternative juvenile court under Section 51.04(i) if the receiving court agrees and if, in the course of the proceedings, evidence is presented that constitutes cause to believe that the child who is the subject of those proceedings is a child described by Subsection (a).

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to jurisdictional authority exercised by the juvenile court on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. SB 92 provides for such a program and by amending certain statutes relating to juvenile courts. The bill authorizes a juvenile court with jurisdiction over proceedings relating to the protection of a child to simultaneously exercise jurisdiction over such proceedings and juvenile justice proceedings if there is probable cause to believe that the child who is the subject of those proceedings engaged in delinquent conduct or conduct indicating a need for supervision and cause to believe that the child may be the victim of conduct that constitutes the offense of trafficking of a person. The bill requires a juvenile court that does not have jurisdiction over proceedings relating to the protection of a child to assess the case of a juvenile justice proceeding instituted in the court and authorizes the court to transfer the proceedings to a juvenile court or alternative juvenile court with such jurisdiction if the receiving court agrees and if, in the course of the proceedings, evidence is presented that constitutes cause to believe that the child who is the subject of those proceedings engaged in delinquent conduct or conduct indicating a need for supervision and that the child may be the victim of conduct that constitutes the offense of trafficking of a person.

Family Code Sec. 52.032. INFORMAL DISPOSITION GUIDELINES. (a) The juvenile board of each county, in cooperation with each law enforcement agency in the county, shall adopt guidelines for the disposition of a child under Section 52.03 or 52.031. The guidelines adopted under this section shall not be considered mandatory.

(b) The guidelines adopted under Subsection (a) may not allow for the case of a child to be disposed of under Section 52.03 or 52.031 if there is probable cause to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision and cause to believe that the child may be the victim of conduct that constitutes an offense under Section 20A.02, Penal Code.

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to guidelines adopted by the juvenile board on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. Senate Bill 92 provides for such a program and by amending certain statutes relating to juvenile courts. This specific addition to the statute prohibits the informal disposition guidelines adopted by each county's juvenile

board from allowing the case of a child taken into custody to be disposed of without referral to a juvenile court or to a first offender program if there is probable cause to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision and cause to believe that the child may be the victim of conduct that constitutes the offense of trafficking of a person.

Family Code Sec. 54.0326. DEFERRAL OF ADJUDICATION AND DISMISSAL OF CERTAIN CASES ON COMPLETION OF TRAFFICKED PERSONS PROGRAM. (a) This section applies to a juvenile court or to an alternative juvenile court exercising simultaneous jurisdiction over proceedings under this title and Subtitle E, Title 5, in the manner authorized by Section 51.0413.

(b) A juvenile court may defer adjudication proceedings under Section 54.03 until the child's 18th birthday and require a child to participate in a program established under Section 152.0016, Human Resources Code, if the child:

(1) is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code; and

(2) presents to the court an oral or written request to participate in the program.

(c) Following a child's completion of the program, the court shall dismiss the case with prejudice at the time the child presents satisfactory evidence that the child successfully completed the program.

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to conduct that occurs on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. This new section of the Family Code authorizes a juvenile court or an alternative juvenile court exercising simultaneous jurisdiction over juvenile justice proceedings and proceedings relating to the protection of a child, to defer adjudication proceedings until the child's 18th birthday and require the child to participate in a trafficked persons program established under the bill's provisions if the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes the offense of trafficking of a person ,and the child presents to the court an oral or written request to participate in the program. The bill requires the court following a child's completion of the program, to dismiss the child's case with prejudice at the time the child presents satisfactory evidence that the child successfully completed the program.

Family Code Sec. 54.04011. TRAFFICKED PERSONS PROGRAM. (a) This section applies to a juvenile court or to an alternative juvenile court exercising simultaneous jurisdiction over proceedings under this title and Subtitle E, Title 5, in the manner authorized by Section 51.0413.

(b) A juvenile court may require a child adjudicated to have engaged in delinquent conduct or conduct indicating a need for supervision and who is believed to be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code, to participate in a program established under Section 152.0016, Human Resources Code.

(c) The court may require a child participating in the program to periodically appear in court for monitoring and compliance purposes.

(d) Following a child's successful completion of the program, the court may order the sealing of the records of the case in the manner provided by Sections 58.003(c-7) and (c-8).

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to conduct that occurs on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. This new section authorizes such a juvenile court or alternative juvenile court to require such a child to participate in this new program without the child requesting to participate in the program and to require a child participating in the program to periodically appear in court for monitoring and compliance purposes. The bill authorizes the court, following a child's successful completion of the program, to order the sealing of the records of the case. The bill authorizes a juvenile court to order the sealing of records concerning a child found to have engaged in delinquent conduct or conduct indicating a need for supervision or taken into custody to determine whether the child engaged in such conduct if the child successfully completed a trafficked persons program. The bill authorizes the court to order the sealing of the records immediately and without a hearing or to hold a hearing to determine whether to seal the records. The bill authorizes a prosecuting attorney or juvenile probation department, if the court so orders the sealing of the child's records, to maintain until the child's 18th birthday a separate record of the child's name and date of birth and the date the child successfully completed the trafficked persons program. The bill requires

the prosecuting attorney or juvenile probation department, as applicable, to send the record to the court as soon as practicable after the child's 18th birthday to be added to the child's other sealed records.

Family Code Sec. 57.002. VICTIM'S RIGHTS. (a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the juvenile 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 court or person appointed by the court take the safety of the victim or the victim's family into consideration as an element in determining whether the child should be detained before the child's conduct is adjudicated;

(3) the right, if requested, to be informed of relevant court proceedings, including appellate proceedings, and to be informed in a timely manner if those court proceedings have been canceled or rescheduled;

(4) the right to be informed, when requested, by the court or a person appointed by the court concerning the procedures in the juvenile justice system, including general procedures relating to:

(A) the preliminary investigation and deferred prosecution of a case; and

(B) the appeal of the case;

(5) the right to provide pertinent information to a juvenile court conducting a disposition hearing concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before the court renders its disposition;

(6) the right to receive information regarding compensation to victims as provided by Subchapter B, Chapter 56, Code of Criminal Procedure, 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 of medical expenses under Section 56.06, Code of Criminal Procedure, 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 procedures for release under supervision or transfer of the person to the custody of the Texas Department of Criminal Justice for parole, to participate in the release or transfer for parole process, to be notified, if requested, of the person's release, escape, or transfer for parole proceedings concerning the person, to provide to the Texas Juvenile Justice Department [~~Texas Youth Commission~~] for inclusion in the person's file information to be considered by the commission before the release under supervision or transfer for parole of the person, and to be notified, if requested, of the person's release or transfer for parole;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the child alleged to have committed the conduct and relatives of the child, before testifying in any proceeding concerning the child, or, if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the child and the child'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 be present at all public court proceedings related to the conduct of the child as provided by Section 54.08, subject to that section; and

(12) any other right appropriate to the victim that a victim of criminal conduct has under Article 56.02 or 56.021, Code of Criminal Procedure.

Commentary by Jill Mata

Source: SB 1192
Effective Date: September 1, 2013
Applicability: Applies to crime victims' rights on or after the effective date.
Summary of Changes: Section 57.002, Family Code has been amended to make conforming and nonsubstantive changes so that there is agreement between the Family Code and the Code of Criminal Procedure Crime Victims' Rights Act.

Family Code Sec. 58.003. SEALING OF RECORDS. (c-7) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child found to have engaged in delinquent conduct or conduct indicating a need for supervision or taken into custody to determine whether the child engaged in delinquent conduct or conduct indicating a need for supervision if the child successfully completed a trafficked persons program under Section 152.0016, Human Resources 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-8) If the court orders the sealing of a child's records under Subsection (c-7), a prosecuting attorney or juvenile probation department may maintain until the child's 18th birthday a separate record of the child's name and date of birth and the date the child successfully completed the trafficked persons 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 18th birthday to be added to the child's other sealed records.

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to conduct that occurs on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. This section the bill authorizes the court, following a child's successful completion of the program, to order the sealing of the records of the case. The bill authorizes a juvenile court to order the sealing of records concerning a child found to have engaged in delinquent conduct or conduct indicating a need for supervision or taken into custody to determine whether the child engaged in such conduct if the child successfully completed a trafficked persons program. The bill authorizes the court to order the sealing of the records immediately and without a hearing or to hold a hearing to determine whether to seal the records. The bill authorizes a prosecuting attorney or juvenile probation department, if the court so orders the sealing of the child's records, to maintain until the child's 18th birthday a separate record of the child's name and date of birth and the date the child successfully completed the trafficked persons program. The bill requires the prosecuting attorney or juvenile probation department, as applicable, to send the record to the court as soon as practicable after the child's 18th birthday to be added to the child's other sealed records.

Government Code

Government Code Sec. 103.0292. ADDITIONAL MISCELLANEOUS FEES AND COSTS: HEALTH AND SAFETY CODE. A nonrefundable program fee for a prostitution prevention program established under Section 169A.002, Health and Safety Code, shall be collected under Section 169A.005, Health and Safety Code, in a reasonable amount based on the defendant's ability to pay and not to exceed $1,000, which includes:

(1) a counseling and services fee in an amount necessary to cover the costs of counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the total fee; and

(3) a law enforcement training fee in an amount equal to five percent of the total fee.

SECTION 3. Subdivision (2), Subsection (a), Section 772.0061, Government Code, is amended to read as follows:

(2) "Specialty court" means:

(A) a prostitution prevention program established under Chapter 169A, Health and Safety Code;

(B) a drug court program established under Chapter 469, Health and Safety Code;

(C) [~~(B)~~] a mental health court program established under Chapter 616, Health and Safety Code; and

(D) [~~(C)~~] a veterans court program established under Chapter 617, Health and Safety Code.

Commentary by Jill Mata

Source: SB 484
Effective Date: September 1, 2013
Applicability: Applies to the collection of fees for prostitution prevention programs on or after the effective date.
Summary of Changes: This bill authorizes the creation of a prostitution prevention program and collection of a fee to support the program. There are concerns about the significant number of offenders charged with prostitution under control of the Texas Department of Criminal Justice and the high annual costs associated with housing such offenders in state jails and prisons. The high recidivism rate among inmates in this population, who often have long histories of abuse, neglect, and addiction, indicates that incarceration has not provided convicted prostitutes with the rehabilitation needed to break the cycle. Rehabilitation programs designed for prostitutes have been identified as a viable, cost-effective alternative to incarceration, at a much lower cost to taxpayers. To more directly address the needs of this specific population, this bill authorizes the establishment of prostitution prevention programs to provide certain prostitution offenders access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse.

Government Code Sec. 402.035. HUMAN TRAFFICKING PREVENTION TASK FORCE. (d) The task force shall:

(1) collaborate, as needed to fulfill the duties of the task force, with:

(A) United States attorneys for the districts of Texas; and

(B) special agents or customs and border protection officers and border patrol agents of:

(i) the Federal Bureau of Investigation;

(ii) the United States Drug Enforcement Administration;

(iii) the Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iv) [~~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, including data described by Subdivisions (4)(A), (B), (C), (D), and (E);

(3) solicit cooperation and assistance from state and local governmental agencies, political subdivisions of the state, nongovernmental organizations, and other persons, as appropriate, for the purpose of collecting and organizing statistical data under Subdivision (2);

(4) ensure that each state or local governmental agency and political subdivision of the state and each state or local law enforcement agency, district attorney, or county attorney that assists in the prevention of human trafficking collects statistical data related to human trafficking, including, as appropriate:

(A) the number of investigations concerning, arrests and prosecutions for, and convictions of:

(i) the offense of trafficking of persons; and

(ii) the offense of forgery or an offense under Chapter 43, Penal Code, if committed as part of a criminal episode involving the trafficking of persons;

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

(C) geographic routes by which human trafficking victims are trafficked, including routes by which victims are trafficked across this state's international border, and geographic patterns in human trafficking, including the country or state of origin and the country or state of destination;

(D) means of transportation and methods used by persons who engage in trafficking to transport their victims; and

(E) social and economic factors that create a demand for the labor or services that victims of human trafficking are forced to provide;

(5) work with the Commission on Law Enforcement Officer Standards and Education to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking;

(6) work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:

(A) develop a list of key indicators that a person is a victim of human trafficking;

(B) develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(C) train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(D) develop and conduct training for personnel from the Department of Family and Protective Services and the Health and Human Services Commission on methods for identifying children in foster care who may be at risk of becoming victims of human trafficking; and

(E) develop a process for referring identified human trafficking victims and individuals at risk of becoming victims to appropriate entities for services;

(7) on the request of a judge of a county court, county court at law, or district court or a county attorney, district attorney, or criminal district attorney, assist and train the judge or the judge's staff or the attorney or the attorney's staff in the recognition and prevention of human trafficking;

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

(9) [~~(8)~~] collaborate with state and local governmental agencies, political subdivisions of the state, and nongovernmental organizations to implement a media awareness campaign in communities affected by human trafficking;

(10) [~~(9)~~] develop recommendations on how to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, and prosecute human trafficking offenders; and

(11) [~~(10)~~] examine the extent to which human trafficking is associated with the operation of sexually oriented businesses, as defined by Section 243.002, Local Government Code, and the workplace or public health concerns that are created by the association of human trafficking and the operation of sexually oriented businesses.

(g-1) In this section, "emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(h) This section expires September 1, 2015 [~~2013~~].

Commentary by Jill Mata

Source: HB 1272
Effective Date: June 14, 2013
Applicability: Applies to operations of the Human Trafficking Prevention Task Force on or after the effective date.

Summary of Changes: This bill relates to the continuation and duties of the Human Trafficking Prevention Task Force. The 81st Legislature (2009) created the human trafficking prevention task force in an effort to foster a statewide partnership between law enforcement agencies, social service providers, nongovernmental organizations, legal representatives, and stage agencies that fight against human trafficking. The task force works to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes and to propose legislative recommendations that better protect both adult and child victims. This bill seeks to allow the task force to further its efforts by continuing the task force for another two years and expanding the task force's duties.

House Bill 1272 amends the Government Code to require the task force to fulfill certain duties, including collaborating, as needed to fulfill the duties of the task force, with certain entities, including United States Immigration and Customs Enforcement, rather than the United States Immigration and Customs Enforcement Agency; and work with the Texas Education Agency, the Department of Family and Protective Services (DFPS), and the Health and Human Services Commission (HHSC) to develop a list of key indicators that a person is a victim of human trafficking, develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from DFPS to identify and assist victims of human trafficking, develop and conduct training for personnel from DFPS and HHSC on methods for identifying children in foster care who may be at risk of becoming victims of human trafficking, and develop a process for referring identified human trafficking victims and individuals at risk of becoming victims to appropriate entities for services.

Government Code Sec. 411.0133. MISSING OR EXPLOITED CHILDREN PREVENTION GRANTS. (a) In this section, "nonprofit organization" has the meaning assigned by Section 403.351.

(b) This section applies to a nonprofit organization that is formed to offer programs and provide information to parents or other legal custodians, children, schools, public officials, organizations serving youths, nonprofit organizations, and the general public concerning child safety and Internet safety and the prevention of child abductions and child sexual exploitation.

(c) The department may award a grant to a nonprofit organization described by Subsection (b) that is operating in this state to provide programs and information described by that subsection to assist the department in the performance of the department's duties related to missing or exploited children, including any duty related to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure.

(d) The department may adopt rules to implement this section.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to awards of grants on or after the effective date.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. Over 45,000 children were reported missing in Texas last year, many cases of which were the result of abductions or runaways. Children who have been reported missing multiple times or who have run away multiple times exemplify the type of high-risk behavior that human traffickers target. Texas law enforcement currently uses the established national crime information center database for reporting missing children but that there is no single unified process to allow law enforcement in different jurisdictions to submit reports of attempted child abductions or to report or document the activity of habitual runaways. To better protect child abductees and habitual runaways who are at an enhanced risk for human trafficking and to provide law enforcement with the necessary tools to track attempted child abductions and better identify these high-risk populations, this bill establishes requirements for reporting certain missing children or attempted child abductions and for education and training of certain peace officers regarding missing or exploited children and authorizes the awarding of missing or exploited children prevention grants to certain nonprofit organizations. This bill amends the Government Code to authorize the Department of Public Safety (DPS) to award a grant to certain nonprofit organizations operating in Texas that offer programs and provide information on child and Internet safety and the prevention of child abductions and child sexual exploitation to provide such programs and information to assist DPS in the performance of DPS's duties related to missing or exploited children, including any duty related to the missing children and missing persons information clearinghouse.

Government Code Sec. 531.383. GRANT PROGRAM. (f) For purposes of Subchapter I, Chapter 659:

(1) the commission, for the sole purpose of administering the grant program under this section, is considered an eligible charitable organization entitled to participate in the state employee charitable campaign; and

(2) a state employee is entitled to authorize a deduction for contributions to the commission for the purposes of administering the grant program under this section as a charitable contribution under Section 659.132, and the commission may use the contributions as provided by Subsection (a).

Commentary by Jill Mata

Source: HB 432
Effective Date: June 14, 2013
Applicability: Applies to awards of grants on or after the effective date.
Summary of Changes: This bill relates to charitable contributions by state employees to assist domestic victims of human trafficking. The Health and Human Services Commission administers a program that awards grants to public and nonprofit organizations that provide assistance to domestic victims of human trafficking. Under prior law, this program was not considered an eligible charitable organization for purposes of the state employee charitable campaign. House Bill 432 amended the Government Code to include this grant program for domestic victims of human trafficking among the charitable organizations eligible to participate in the state employee charitable campaign.

Government Code Sec. 552.138. EXCEPTION: CONFIDENTIALITY OF FAMILY VIOLENCE SHELTER CENTER, VICTIMS OF TRAFFICKING SHELTER CENTER, AND SEXUAL ASSAULT PROGRAM INFORMATION.

Section 552.138(a), Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Victims of trafficking shelter center" means:

(A) a program that:

(i) is operated by a public or private nonprofit organization; and

(ii) provides comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code; or

(B) a child-placing agency, as defined by Section 42.002, Human Resources Code, that provides services to persons who are victims of trafficking under Section 20A.02, Penal Code.

SECTION 3. Sections 552.138(b) and (c), Government Code, are amended to read as follows:

(b) Information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to:

(1) the home address, home telephone number, or social security number of an employee or a volunteer worker of a family violence shelter center, victims of trafficking shelter center, or [~~a~~] sexual assault program, regardless of whether the employee or worker complies with Section 552.024;

(2) the location or physical layout of a family violence shelter center or victims of trafficking shelter center;

(3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(5) the name, home address, or home telephone number of a private donor to a family violence shelter center, victims of trafficking shelter center, or sexual assault program; or

(6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center, victims of trafficking shelter center, or sexual assault program, regardless of whether the board member complies with Section 552.024.

(c) A governmental body may redact information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program that may be withheld under Subsection (b)(1) or (6) 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.

Commentary by Jill Mata

Source: HB 2725
Effective Date: June 14, 2013
Applicability: Applies to confidentiality of identified information on or after the effective date.
Summary of Changes: This bill relates to the confidentiality of certain records maintained by a “victims of trafficking shelter center” and the creation of minimum standards for certain facilities that provide services to victims of trafficking. One of the most pressing needs for victims of human trafficking is proper housing where such victims can receive needed immediate care and treatment. Public and private nonprofit organizations that seek to establish treatment centers for victims face many problems, including inadequate funding, zoning restrictions, licensing requirements, and the lack of standardized procedures for serving victims, especially minors. Also, there are no confidentiality safeguards for shelters that help victims of human trafficking. This bill amended current law relating to the confidentiality of certain records maintained by a “victims of trafficking shelter center” and the creation of minimum standards for certain facilities that provide services to victims of trafficking.

Government Code Sec. 772.0061. SPECIALTY COURTS ADVISORY COUNCIL. (2) "Specialty court" means:

(A) a prostitution prevention program established under Chapter 169A, Health and Safety Code;

(B) a drug court program established under Chapter 469, Health and Safety Code;

(C) [~~(B)~~] a mental health court program established under Chapter 616, Health and Safety Code; and

(D) [~~(C)~~] a veterans court program established

Commentary by Jill Mata

Source: SB 484
Effective Date: September 1, 2013
Applicability: Applies to specialty courts on or after the effective date.
Summary of Changes: This amendment authorizes the creation of a prostitution prevention program and collection of a fee to support the program. There are concerns about the significant number of offenders charged with prostitution under control of the Texas Department of Criminal Justice and the high annual costs associated with housing such offenders in state jails and prisons. The high recidivism rate among inmates in this population, who often have long histories of abuse, neglect, and addiction, indicates that incarceration has not provided convicted prostitutes with the rehabilitation needed to break the cycle. Rehabilitation programs designed for prostitutes have been identified as a viable, cost-effective alternative to incarceration, at a much lower cost to taxpayers. To more directly address the needs of this specific population, this bill authorizes the establishment of prostitution prevention programs to provide certain prostitution offenders access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse. The bill amends the Government Code to expand the definition of "specialty court," for purposes of grant funding for specialty courts, to include a prostitution prevention program established under the bill's provisions.

Health and Safety Code

Health and Safety Code Sec. 169A. 001. PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

(b) If a defendant successfully completes a prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program.

Sec. 169A.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) The commissioners court of a county or governing body of a municipality may establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a)(1), Penal Code, in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee.

(b) A defendant is eligible to participate in a prostitution prevention program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program.

(c) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to participate in the prostitution prevention program or otherwise proceed through the criminal justice system.

Sec. 169A.0025. ESTABLISHMENT OF REGIONAL PROGRAM. The commissioners courts of two or more counties, or the governing bodies of two or more municipalities, may elect to establish a regional prostitution prevention program under this chapter for the participating counties or municipalities.

Sec. 169A.003. PROGRAM POWERS AND DUTIES. (a) A prostitution prevention program established under this chapter must:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with instruction related to the prevention of prostitution.

(b) To provide each program participant with information, counseling, and services described by Subsection (a)(3), a program established under this chapter may employ a person or solicit a volunteer who is:

(1) a health care professional;

(2) a psychologist;

(3) a licensed social worker or counselor;

(4) a former prostitute;

(5) a family member of a person arrested for soliciting prostitution;

(6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or

(7) an employee of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses.

(c) A program established under this chapter shall establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.

Sec. 169A.004. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of prostitution prevention programs established under this chapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a prostitution prevention program established under this chapter.

(c) A legislative committee may require a county that does not establish a prostitution prevention program under this chapter due to a lack of sufficient funding, as provided by Section 169A.0055(c), to provide the committee with any documentation in the county's possession that concerns federal or state funding received by the county.

(d) A prostitution prevention program established under this chapter shall:

(1) notify the criminal justice division of the governor's office before or on implementation of the program; and

(2) provide information regarding the performance of the program to the division on request.

Sec. 169A.005. FEES. (a) A prostitution prevention program established under this chapter may collect from a participant in the program a nonrefundable program fee in a reasonable amount not to exceed $1,000, from which the following must be paid:

(1) a counseling and services fee in an amount necessary to cover the costs of the counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the amount paid under Subdivision (1), to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program described by Section 531.383, Government Code; and

(3) a law enforcement training fee, in an amount equal to five percent of the total amount paid under Subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the prostitution prevention program. The fees must be based on the participant's ability to pay.

Sec. 169A.0055. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a) The commissioners court of a county shall establish a prostitution prevention program if:

(1) the county has a population of more than 200,000; and

(2) a municipality in the county has not established a prostitution prevention program.

(b) A county required under this section to establish a prostitution prevention program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a prostitution prevention program under this section only if the county receives sufficient federal or state funding specifically for that purpose.

(d) A county that does not establish a prostitution prevention program as required by this section and maintain the program is ineligible to receive from the state funds for a community supervision and corrections department.

Sec. 169A.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. (a) To encourage participation in a prostitution prevention program established under this chapter, the judge or magistrate administering the program may suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community service project.

(b) On a participant's successful completion of a prostitution prevention program, a judge or magistrate may excuse the participant from any condition of community supervision previously suspended under Subsection (a).

Commentary by Jill Mata

Source: SB 484

Effective Date: September 1, 2013

Applicability: Applies to programs established on or after the effective date.

Summary of Changes: This bill authorizes the creation of a prostitution prevention program and collection of a fee to support the program. There are concerns about the signifi-

cant number of offenders charged with prostitution under control of the Texas Department of Criminal Justice and the high annual costs associated with housing such offenders in state jails and prisons. The high recidivism rate among inmates in this population, who often have long histories of abuse, neglect, and addiction, indicates that incarceration has not provided convicted prostitutes with the rehabilitation needed to break the cycle. Rehabilitation programs specifically designed for prostitutes have been identified as a viable, cost-effective alternative to incarceration, at a much lower cost to taxpayers. To more directly address the needs of this specific population, this bill authorizes the establishment of prostitution prevention programs to provide certain prostitution offenders access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse.

The bill amended the Health and Safety Code requiring a court, if a defendant successfully completes a prostitution prevention program as defined by the bill, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, and after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, to enter an order of nondisclosure with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program as if the defendant had received a discharge and dismissal on expiration of a deferred adjudication community supervision period or a discharge and dismissal based on the best interest of the state and the defendant.

Human Resources Code

Human Resources Code Sec. 42.042. RULES AND STANDARDS. (g-2) The executive commissioner by rule shall adopt minimum standards that apply to general residential operations that provide comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code. In adopting the minimum standards under this subsection, the executive commissioner shall consider:

(1) the special circumstances and needs of victims of trafficking of persons; and

(2) the role of the general residential operations in assisting and supporting victims of trafficking of persons.

Commentary by Jill Mata

Source: HB 2725
Effective Date: June 14, 2013
Applicability: Applies to rules enacted on or after the effective date.
Summary of Changes: This bill relates to the confidentiality of certain records maintained by a "victims of trafficking shelter center" and the creation of minimum standards for certain facilities that provide services to victims of trafficking. One of the most pressing needs for victims of human trafficking is proper housing where such victims can receive needed immediate care and treatment. Public and private nonprofit organizations that seek to establish treatment centers for victims face many problems, including inadequate funding, zoning restrictions, licensing requirements, and the lack of standardized procedures for serving victims, especially minors. Also, there were no confidentiality safeguards for shelters that help victims of human trafficking. This bill amended current law relating to the confidentiality of certain records maintained by a "victims of trafficking shelter center" and the creation of minimum standards for certain facilities that provide services to victims of trafficking.

Human Resources Code Sec. 152. 0016. TRAFFICKED PERSONS PROGRAM. (a) A juvenile board may establish a trafficked persons program under this section for the assistance, treatment, and rehabilitation of children who:

(1) are alleged to have engaged in or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; and

(2) may be victims of conduct that constitutes an offense under Section 20A.02, Penal Code.

(b) A program established under this section must:

(1) if applicable, allow for the integration of services available to a child pursuant to proceedings under Title 3, Family Code, and Subtitle E, Title 5, Family Code;

(2) if applicable, allow for the referral to a facility that can address issues associated with human trafficking; and

(3) require a child participating in the program to periodically appear in court for monitoring and compliance purposes.

Commentary by Jill Mata

Source: SB 92
Effective Date: September 1, 2013
Applicability: Applies to programs established on or after the effective date.
Summary of Changes: This bill relates to the designation of a juvenile court and a program for certain juveniles who may be the victims of human trafficking. The majority of minors involved in prostitution offenses are considered to be trafficking victims and these minors would benefit from the creation of a diversion program that would provide treatment and services to the minors, instead of strictly punishing them. This bill amended the Human Resources

Code to authorize a juvenile board to establish a trafficked persons program for the assistance, treatment, and rehabilitation of children who are alleged to have engaged in or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision and who may be victims of conduct that constitutes the offense of trafficking of a person. The bill requires such a program, if applicable, to allow for the integration of services available to a child pursuant to juvenile justice proceedings and proceedings relating to the protection of a child; if applicable, to allow for the referral to a facility that can address issues associated with human trafficking; and to require a child participating in the program to periodically appear in court for monitoring and compliance purposes.

Occupations Code

Occupations Code Sec. 1701. 402. PROFICIENCY CERTIFICATES. (k) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

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

(2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;

(3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and

(4) include a review of the substance of Chapters 20 and 43, Penal Code.

Commentary by Jill Mata

Source: SB 742
Effective Date: September 1, 2013
Applicability: Applies to education and training required for proficiency certificates issued on or after January 1, 2015.
Summary of Changes: This bill relates to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children. Over 45,000 children were reported missing in Texas last year, many cases of which were the result of abductions or runaways. Children who have been reported missing multiple times or who have run away multiple times exemplify the type of high-risk behavior that human traffickers target. Texas law enforcement currently uses the established national crime information center database for reporting missing children but that there is no single unified process to allow law enforcement in different jurisdictions to submit reports of attempted child abductions or to report or document the activity of habitual runaways.

To better protect child abductees and habitual runaways who are at an enhanced risk for human trafficking and to provide law enforcement with the necessary tools to track attempted child abductions and better identify these high-risk populations, this bill establishes requirements for reporting certain missing children or attempted child abductions and for education and training of certain peace officers regarding missing or exploited children and authorizes the awarding of missing or exploited children prevention grants to certain nonprofit organizations. The bill amends the Occupations Code to require a peace officer or reserve law enforcement officer, as a requirement for an intermediate or advanced proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) on or after January 1, 2015, to complete an education and training program on missing and exploited children. The bill requires TCLEOSE by rule to establish the program, which must consist of at least four hours of training, include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse, include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children, and include a review of the substance of statutory provisions relating to kidnapping, unlawful restraint, smuggling of persons, and public indecency.

Penal Code

Penal Code Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR FIRST, SECOND, OR THIRD DEGREE FELONY. (b) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the first degree.

(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under

Section 12.35(a) may not be used for enhancement purposes under this subsection.

Section 12.42(c)(4), Penal Code, as amended by Chapters 122 (H.B. 3000) and 1119 (H.B. 3), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(4) Notwithstanding Subdivision (1) or (2), and except as provided by Subdivision (3) for the trial of an offense under Section 22.021 as described by that subdivision, a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on the trial of an offense under Section 20A.03 or of a sexually violent offense, committed by the defendant on or after the defendant's 18th birthday, [~~21.02 or 22.021~~] that the defendant has previously been finally convicted of:

(A) an offense under Section 20A.03 or of a sexually violent offense [~~21.02 or 22.021~~]; or

(B) an offense that was committed under the laws of another state and that contains elements that are substantially similar to the elements of an offense under Section 20A.03 or of a sexually violent offense [~~21.02 or 22.021~~].

Commentary by Jill Mata

Source: HB 1302
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the imposition of a sentence of life without parole on certain repeat sex offenders and to certain restrictions on employment for certain sex offenders. Registered sex offenders who commit additional sex crimes and other violent offenses after release from prison should be subject to more severe punishment than the punishment previously prescribed by Texas statutes. The law requires a defendant convicted of continuous sexual abuse of a young child or children, aggravated sexual assault, or continuous trafficking of persons to be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if the defendant has previously been convicted of such an offense. This amendment expands the requirement to include additional sexually violent offenses committed against a child.

Penal Code Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, OR STALKING CASE.

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, or stalking case and related to the safety of a [~~the~~] victim or the safety of the community, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 22.011, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

(4) possesses a firearm; or

(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order.

(b)

(4) "Sexual abuse" means any act as described by Section 21.02 or 21.11.

(5) "Sexual assault" means any act as described by Section 22.011 or 22.021.

(6) "Stalking" means any conduct that constitutes an offense under Section 42.072.

Commentary by Jill Mata

Source: SB 893
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to certain conditions of, penalties for violating, and collection of information about protective orders issued in certain family violence, sexual assault or abuse, stalking, or trafficking cases. Specifically, the bill seeks to give the same level of protections to victims of sexual assault that have been afforded victims of family violence. The bill creates a violation of bond condition for victims of sexual assault, sexual abuse and stalking.

Penal Code Sec. 32.51. FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (c-1) An offense described for purposes of punishment by Subsections (c)(1)-(3) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the offense was committed against an elderly individual as defined by Section 22.04; or

(2) the actor fraudulently used identifying information with the intent to facilitate an offense under Article 62.102, Code of Criminal Procedure.

Commentary by Jill Mata

Source: HB 2637
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to the fraudulent use of identifying information by certain sex offenders; providing criminal penalties. Through the fraudulent use of identifying information, by assuming the identity of another individual, certain individuals required to register as a sex offender in the Texas Sex Offender Registry avoid doing so. Under current law, punishment for failure to comply with sex offender registration requirements ranges from a state jail felony to a second degree felony and if the offender has a prior conviction, the punishment is enhanced to the next highest felony degree. Also under current law, punishment for fraudulent use or possession of identifying ranges from a sate jail felony to a first degree felony and if the victim is an elderly individual the punishment is enhanced to the next highest level. This bill provides in a case where an individual fraudulently used identifying information to avoid registering as a sex offender to be punished at the next highest degree felony.

Penal Code Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING.

(a) A person commits an offense if, in violation of an order issued under Chapter 7A, Code of Criminal Procedure, the person knowingly:

(1) communicates:

(A) directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner; or

(B) in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court;

(2) goes to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household; or

(3) possesses a firearm.

Commentary by Jill Mata

Source: SB 893
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to certain conditions of, penalties for violating, and collection of information about protective orders issued in certain family violence, sexual assault or abuse, stalking, or trafficking cases. Texas law has created protections for victims of sexual assault, and now has been strengthened to provide these victims with the same level of protections afforded to victims of family violence. For example, prior to this bill courts had the explicit authority to prevent communication of any kind between victims of family violence and an assailant, while sexual assault protective orders only prohibited certain communications of a threatening or harassing nature. Certain violations of bond conditions in family violence cases are Class A misdemeanor while no such penalty existed for violating bond conditions in sexual assault cases. Finally, information relating to certain active protective orders is required to be entered into the Texas Crime Information Center while information relating to certain bond conditions was not required to be entered into the system. The bill amended the Code of Criminal Procedure authorizing a court, in issuing a protective order relating to a victim of sexual assault or abuse, stalking, or trafficking, to prohibit the alleged offender from communicating in any manner with the protective order applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition. The bill also amended the Penal Code making it a Class A misdemeanor to violate such an order by knowingly communicating in such a manner.

Penal Code Sec. 43.02. PROSTITUTION. (a) A person commits an offense if the person [~~he~~] knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

(2) solicits another in a public place to engage with the person [~~him~~] in sexual conduct for hire.

(b) An offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) whether the actor solicits a person to hire the actor [~~him~~] or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under this section;

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under this section; or

(3) [~~a felony of the third degree if the person solicited is 14 years of age or older and younger than 18 years of age; or~~

[~~(4)~~] a felony of the second degree if the person solicited is younger than 18 [~~14~~] years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense.

(e) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D, Chapter 12. For purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is previously convicted of an offense under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill updates the prostitution statute by making it apply to both genders rather than just males in Section (a) and (b). The bill enhances the punishment to a second degree felony if the victim is younger than 18 years old and applies strict liability to age. The bill also allows this statute to be used for enhancement for both probation and deferred adjudication dispositions.

Penal Code Sec. 43.03. PROMOTION OF PROSTITUTION. (b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the actor has been previously convicted of an offense under this section; or

(2) a felony of the second degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill further defines the punishment for committing the offense of Promotion of Prostitution and increases punishment for a previous conviction. Punishment is also enhanced when the actor engages in prostitution with someone younger than 18 years of age, regardless of whether the actor knows the age of the minor involved.

Penal Code Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION. (b) An offense under this section is a felony of the third degree, except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill addresses the problem of sex trafficking of minors by increasing punishment for actors who engage in this conduct. The bill also applies strict liability regarding age of the minor.

Penal Code Sec. 43.251. EMPLOYMENT HARMFUL TO CHILDREN. (c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed.

[~~(1) a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted one time of an offense under this section; and~~

[~~(2) a felony of the third degree if it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section.~~]

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill enhances penalties for those who engage in conduct harmful to children by addressing those who target victims under the age of 14. This bill is also a clean-up of two irreconcilable statues from 2011 (HB 2014 and HB 290).

Penal Code Sec. 43.23. OBSCENITY. (h) The punishment for an offense under Subsection (a) or [~~is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection~~] (c) is increased to the punishment for a [~~state jail~~] felony of the second degree if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

(3) an image created, adapted, or modified to be the image of an identifiable child.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill increases punishment for obscenity offenses involving children from state jail felony to second degree.

Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY. (a) A person commits an offense if:

(1) the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8); and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed or accessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to possess or access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill updates the statute by allowing for the use of computer technology as a means of possessing or promoting child pornography and addresses the depiction of children who are victims of human trafficking.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that [~~if the most serious offense is a felony of the first degree,~~] the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; or

(2) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1).

Commentary by Jill Mata

Source: SB 549
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill relates to penalties for engaging in organized criminal activity. Additional legislative action was deemed necessary to address criminal gang leadership that directs felony gang activity but often avoids strict penalties by blaming the actions on other gang members. Bill strengthened organized crime statutes by imposing more stringent parole eligibility requirements and longer minimum prison sentences on inmates convicted of certain offenses involving young victims, relating to organized crime and revising the conduct that constitutes directing activities of criminal street gangs.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor,

burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14; [~~or~~]

(17) any offense under Section 20.05; or

(18) [~~(17)~~] any offense classified as a felony under the Tax Code.

Commentary by Jill Mata

Source: HB 8
Effective Date: September 1, 2013
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This bill adds offenses of continuous sexual abuse of young child or children and solicitation of a minor to the list of offenses that may constitute the basis of engaging in organized criminal activity. Basically, this amendment allows gangs to be prosecuted for human trafficking of minors under this statute.

Property Code

Property Code Sec. 92.0161. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN SEX OFFENSES. (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) or (c-1).

(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, indecency with a child under Section 21.11, Penal Code, sexual performance by a child under Section 43.25, Penal Code, [~~or~~] continuous sexual abuse of a child under Section 21.02, Penal Code, or an attempt to commit any of the foregoing offenses under Section 15.01, 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, or attempted assault or abuse, of the victim from a licensed health care services provider who examined the victim;

(2) documentation of the assault or abuse, or attempted 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, or attempted 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, except for a temporary ex parte order.

(c-1) If the tenant is a victim or a parent or guardian of a victim of stalking under Section 42.072, 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 a protective order issued under Chapter 7A or Article 6.09, Code of Criminal Procedure, except for a temporary ex parte order; or

(2) documentation of the stalking from a provider of services described by Subsection (c)(1), (2), or (3) and:

(A) a law enforcement incident report; or

(B) if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency.

(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) or (c-1) 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.

(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 certain sexual offenses or stalking [~~assault or sexual abuse~~]."

(i) For purposes of Subsections (c) and (c-1), a tenant who is a parent or guardian of a victim described by those subsections must reside with the victim to exercise the rights established by this section.

(j) A person who receives information under Subsection (c), (c-1), or (d) may not disclose the information to any other person except for a legitimate or customary business purpose or as otherwise required by law.

Commentary by Jill Mata

Source: SB 946
Effective Date: January 1, 2014
Applicability: Applies to the exercise of the right to terminate lease on or after the effective date.
Summary of Changes: This bill relates to the right to terminate a lease and avoid liability by a victim of certain sexual offenses or stalking. The law provides a tenant who is a victim of sexual assault or a parent or guardian of a victim of sexual assault, aggravated sexual assault, or continuous sexual abuse of a child has the right to terminate a lease early and avoid liability for future rent and other amounts due under the lease under certain circumstances. This bill extends that right to the victims or parents or guardians of victims of certain other offenses or attempts to commit those offenses.

House Concurrent Resolution

WHEREAS, Human trafficking is a serious and escalating problem in the United States, particularly in Texas; and

WHEREAS, A multibillion-dollar business, human trafficking is second only to drug dealing in criminal profitability and is the fastest-growing illegal enterprise, according to the Polaris Project, a Washington, D.C.-based organization that maintains the National Human Trafficking Resource Center; it is estimated that as many as 17,500 foreign nationals are trafficked into the United States each year and that the number of U.S. citizens trafficked within our own borders is even higher, with more than 200,000 American children at high risk for trafficking into the sex industry; and

WHEREAS, Texas is a major point of illegal entry into the United States; its large geographic size along with its demographics make the Lone Star State appealing to traffickers, who endeavor to blend into the population while exploiting their victims in forced labor and prostitution; and

WHEREAS, Although Texas has been recognized as a leader in the effort to end the scourge of human trafficking, eradication of this modern-day form of slavery is a difficult challenge, and every means of combating it should be explored; now, therefore, be it

RESOLVED, That the 83rd Legislature of the State of Texas hereby request the lieutenant governor and the speaker of the house of representatives to create a joint interim committee to study the problem of human trafficking in Texas; and, be it further

RESOLVED, That the committee submit a full report, including findings and recommendations, to the 84th Texas Legislature when it convenes in January 2015.

Commentary by Jill Mata

Source: HCR 57
Effective Date: June 14, 2013
Applicability: Applies to the creation and obligations of joint interim committee on or after the effective date.
Summary of Changes: This House Concurrent Resolution requires the lieutenant governor and the speaker of the House of Representatives to create a joint interim committee to study human trafficking in Texas. The resolution highlights several points: that human trafficking is a serious and escalating problem with foreign and domestic victims, and that more than 200,000 American children are at high risk for trafficking into the sex industry. It is also noted that Texas is a major point of illegal entry into the United States, and its large geographic size along with its demographics make the Lone Star State appealing to traffickers, who endeavor to blend into the population while exploiting their victims in forced labor and prostitution. The legislators point out that Texas has been recognized as a leader in the efforts to end human trafficking, and require the committee submit a full report, including findings and recommendations, to the 84th Texas Legislature when it convenes in January 2015.

5. Legislation Affecting Open Government

Government Code

Government Code Sec. 402.042. QUESTIONS OF PUBLIC INTEREST AND OFFICIAL DUTIES. (c) A request for an opinion must be in writing and sent by certified or registered mail, with return receipt requested, addressed to the office of the attorney general in Austin, or electronically to an electronic mail address designated by the attorney general for the purpose of receiving requests for opinions under this section. The attorney general shall:

(1) acknowledge receipt of the request not later than the 15th day after the date that it is received; and

(2) issue the opinion not later than the 180th day after the date that it is received, unless before that deadline the attorney general notifies the requesting person in writing that the opinion will be delayed or not rendered and states the reasons for the delay or refusal.

Commentary by Chris Cowan

Source: SB 246
Effective Date: September 1, 2013
Applicability: Applies to requests for opinions submitted on or after the effective date.
Summary of Changes: Section 402.042 requires requests for a legal opinion from the Attorney General be made in writing and sent through certified or registered mail. As a matter of course, the Office of the Attorney General accepts electronic requests for an opinion but sends the requestor a waiver form to fill out before processing these requests. SB 246 eliminates this administrative step by amending Section 402.042 to specifically authorize a request for a written opinion of the Attorney General on a question affecting the public interest or concerning the official duties of the requesting person to be sent electronically to an electronic mail address designated by the Attorney General for the purpose of receiving such a request.

Government Code Section 551.001. DEFINITIONS. (7) "Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed.

Government Code Sec. 551.021. MINUTES OR [~~TAPE~~] RECORDING OF OPEN MEETING REQUIRED. (a) A governmental body shall prepare and keep minutes or make a [~~tape~~] recording of each open meeting of the body.

Government Code Sec. 551.022. MINUTES AND [~~TAPE~~] RECORDINGS OF OPEN MEETING: PUBLIC RECORD. The minutes and [~~tape~~] recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.

Government Code Sec. 551.023. RECORDING OF MEETING BY PERSON IN ATTENDANCE. (a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a [~~tape~~] recorder, video camera, or other means of aural or visual reproduction.

Government Code Sec. 551.0725. COMMISSIONERS COURTS: DELIBERATION REGARDING CONTRACT BEING NEGOTIATED; CLOSED MEETING. (a) Notwithstanding Section 551.103(a), Government Code, the commissioners court must make a [~~tape~~] recording of the proceedings of a closed meeting to deliberate the information.

Government Code Sec. 551.0726. TEXAS FACILITIES COMMISSION: DELIBERATION REGARDING CONTRACT BEING NEGOTIATED; CLOSED MEETING. (b) Notwithstanding Section 551.103(a), the commission must make a [~~tape~~] recording of the proceedings of a closed meeting held under this section.

Government Code Sec. 551.103. CERTIFIED AGENDA OR [~~TAPE~~] RECORDING REQUIRED. (a) A governmental body shall either keep a certified agenda or make a [~~tape~~] recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

(d) A [~~tape~~] recording made under Subsection (a) must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time.

Government Code Sec. 551.104. CERTIFIED AGENDA OR RECORDING [~~TAPE~~]; PRESERVATION; DISCLOSURE. (a) A governmental body shall preserve the certified agenda or [~~tape~~] recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or recording [~~tape~~] while the action is pending.

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

(1) is entitled to make an in camera inspection of the certified agenda or recording [~~tape~~];

(2) may admit all or part of the certified agenda or recording [~~tape~~] as evidence, on entry of a final judgment; and

(3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or recording [~~tape~~] of any part of a meeting that was required to be open under this chapter.

(c) The certified agenda or recording [~~tape~~] of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).

Government Code Sec. 551.121. GOVERNING BOARD OF INSTITUTION OF HIGHER EDUCATION; BOARD FOR LEASE OF UNIVERSITY LANDS; TEXAS HIGHER EDUCATION COORDINATING BOARD: SPECIAL MEETING FOR IMMEDIATE ACTION. Subsection (f), is amended to read as follows: (f) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be [~~tape~~] recorded. The [~~tape~~] recording shall be made available to the public.

Government Code Sec. 551.122. GOVERNING BOARD OF JUNIOR COLLEGE DISTRICT: QUORUM PRESENT AT ONE LOCATION. (d) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location where the quorum is present and shall be recorded [~~tape-recorded~~]. The [~~tape~~] recording shall be made available to the public.

Government Code Sec. 551.125. OTHER GOVERNMENTAL BODY. (e) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be recorded [~~tape-recorded~~]. The [~~tape~~] recording shall be made available to the public.

Government Code Sec. 551.130. BOARD OF TRUSTEES OF TEACHER RETIREMENT SYSTEM OF TEXAS: QUORUM PRESENT AT ONE LOCATION. (e) The location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be recorded [~~tape-recorded~~] at that location. The [~~tape~~] recording shall be made available to the public.

Government Code Sec. 551.145. CLOSED MEETING WITHOUT CERTIFIED AGENDA OR [~~TAPE~~] RECORDING; OFFENSE; PENALTY. (a) A member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a [~~tape~~] recording of the closed meeting is not being made.

Government Code Sec. 551.146. DISCLOSURE OF CERTIFIED AGENDA OR [~~TAPE~~] RECORDING OF CLOSED MEETING; OFFENSE; PENALTY; CIVIL LIABILITY. (a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or [~~tape~~] recording of a meeting that was lawfully closed to the public under this chapter:

(1) commits an offense; and

(2) is liable to a person injured or damaged by the disclosure for:

(A) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(B) reasonable attorney fees and court costs; and

(C) at the discretion of the trier of fact, exemplary damages.

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a)(2) that:

(1) the defendant had good reason to believe the disclosure was lawful; or

(2) the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or [~~tape~~] recording.

Commentary by Chris Cowan

Source: SB 471
Effective Date: May 18, 2013
Applicability: Applies to recordings of open meetings on or after the effective date.
Summary of Changes: Currently, Chapter 551 of the Government Code (the Open Meetings Act) requires "tape recordings" of public meetings. The requirement to use tape recordings has become burdensome for governmental bodies as tape recordings rely on outdated analog technology and are no longer practical or cost-effective to utilize. SB 471 amends Chapter 551 to define "recording" as a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed. This definition will allow governmental bodies to record open meetings utilizing digital technology; however tape recordings may still be utilized if the governmental body so chooses. The bill also amends various other sections in Chapter 551 to conform to the new definition of "recordings."

Government Code Sec. 551.006. WRITTEN ELECTRONIC COMMUNICATIONS ACCESSIBLE TO PUBLIC. (a) A communication or exchange of information between members of a governmental body about public business or public policy over which the governmental body has supervision or control does not constitute a meeting or deliberation for purposes of this chapter if:

(1) the communication is in writing;

(2) the writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and

(3) the communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.

(b) A governmental body may have no more than one online message board or similar Internet application to be used for the purposes described in Subsection (a). The online message board or similar Internet application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary Internet web page, and no more than one click away from the governmental body's primary Internet web page.

(c) The online message board or similar Internet application described in Subsection (a) may only be used by members of the governmental body or staff members of the governmental body who have received specific authorization from a member of the governmental body. In the event that a staff member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.

(d) If a governmental body removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the governmental body shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Chapter 552.

(e) The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

Commentary by Chris Cowan

Source: SB 1297
Effective Date: September 1, 2013
Applicability: Applies to open meetings on or after the effective date.
Summary of Changes: The Texas Open Meetings Act prohibits a member of a state or local governmental body's board or commission from communicating with fellow board members unless the communication occurs in an open meeting. Consequently, board members cannot communicate electronically or otherwise about official business or policy matters outside of publicly posted meetings. SB 1297 expands the Open Meetings Act by adding Section 551.006, which authorizes governmental bodies to use a publicly viewable electronic communications board to communicate with each other. The intention of the bill is to facilitate electronic communications between board members while protecting the public's interest in open and transparent government. To that end, Section 551.006 contains specific restrictions on the use of such message boards, including a provision that no official action may be taken via this method of communication.

Government Code Sec. 551. 127. VIDEOCONFERENCE CALL. (c) A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member [~~a majority of the quorum~~] of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

(e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) must specify as a location of the meeting the [~~each~~] location where the member [~~a majority of the quorum~~] of the governmental body presiding over the meeting will be physically present and specify the intent to have the member [~~a majority of the quorum~~] of the governmental body presiding over the meeting present at that location. The location where the member of the governmental body presiding over the meeting is physically present [~~In addition, the notice of the meeting must specify as a location of the meeting each other location where a member of the governmental body who will participate in the meeting will be physically present during the meeting. Each of the locations~~] shall be open to the public during the open portions of the meeting.

(f) Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the [~~each~~] location specified under Subsection (e). If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(h) The [~~Each~~] location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way communication with each other location during the entire meeting. The face of each [~~Each~~] participant in the

videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at a location of the meeting.

Commentary by Chris Cowan

Source: SB 984
Effective Date: September 1, 2013
Applicability: Applies to open meetings on or after the effective date.
Summary of Changes: Currently, the use of videoconference calls in the open meeting context is strictly limited by the Open Meetings Act. Most notably these limitations include requirements that a majority of the quorum be physically present at one location and that each call-in location be listed in the open meetings notice and open to the public. SB 984 amends Government Code Section 551.127 to allow the meeting of a state governmental body or governmental body that extends into three or more counties to be held by videoconference call if the member presiding over the meeting is physically present at one location of the meeting that is open to the public. The notice of the meeting to be held by videoconference call must specify the meeting location where the presiding officer will be physically present and two-way communication is required from each remote location from which a member of the governmental body participates. Additionally, SB 984 deletes the requirement that remote locations of other members be open to the public and posted in the notice of the meeting.

Government Code Sec. 552. 117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175; [~~or~~]

(7) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(8) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department, regardless of whether the current or former employee complies with Section 552.1175;

(9) a juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code; or

(10) employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code.

Government Code Sec. 552.1175. CONFIDENTIALITY OF CERTAIN PERSONAL [~~ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY~~] INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF CERTAIN [~~THE TEXAS DEPARTMENT OF~~] CRIMINAL OR JUVENILE JUSTICE AGENCIES OR OFFICES [~~A PROSECUTOR'S OFFICE~~].

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code;

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;

(4) commissioned security officers as defined by Section 1702.002, Occupations Code;

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);

(7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(8) police officers and inspectors of the United States Federal Protective Service; [~~and~~]

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement;

(10) juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(11) employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code; and

(12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department.

Commentary by Chris Cowan

Source: HB 2733
Effective Date: September 1, 2013
Applicability: Applies to public information requests made on or after the effective date.
Summary of Changes: Government Code Sections 552.117 and 552.1175 carve out confidentiality exceptions under the Public Information Act regarding the personal information of certain persons, including peace officers, officers and employees of community supervision departments, current or former employees of the Texas Department of Criminal Justice, and current or former employees of the Office of the Attorney General who are or were assigned to a division whose duties involve law enforcement. These provisions protect from public disclosure certain personal information, including information relating to the home address, telephone number, social security number, and information that reveals whether the person has family members. The amended language in HB 2733 specifically adds the following to the list of persons protected under the Public Information Act: current or former employees of the Texas Juvenile Justice Department (TJJD) and its predecessor agencies; juvenile probation and supervision officers certified by TJJD or predecessor agencies; and employees of a juvenile justice program or facility as defined by Family Code Section 261.405.

6. Legislation Affecting Justice and Municipal Courts

Prepared by Ryan Kellus Turner, General Counsel & Director of Education,
Texas Municipal Courts Education Center

IMPORTANT NOTE

The information contained below does not include the text of each bill, but rather only references a bill by number and author. This document was produced by Mr. Turner on behalf of Texas Municipal Courts Education Center and is presented in its original format. If you are interested in seeing the full text of the bills outlined in this section, visit the Texas Legislature Online website at:

http://www.capitol.state.tx.us

Online Alcohol Awareness/Community Service in Lieu of Alcohol Awareness Program for Certain Minors

Source: HB 232
Effective Date: June 14, 2013

Minors placed on deferred disposition or convicted of an alcohol related offense are required to attend an alcohol awareness course. Defendants in rural areas may not have access to such a course due to a lack of approved providers in their community. Consequently, these individuals have to travel long distances in order to meet the mandatory requirement. H.B. 232 amends current law to allow certain minors convicted of certain alcohol offenses to perform community service instead of attending an alcohol awareness program. H.B. 232 amends Section 106.115, Alcoholic Beverage Code, by adding Subsections (b-1), (b-2), and (b-3).

Subsection (b-1) authorizes a court, if a defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county, to allow the defendant to either (1) take an online alcohol awareness program [if the Department of State Health Services (DSHS) approves online courses], or (2) require the defendant to perform not less than eight hours of community service related to alcohol abuse prevention or treatment and approved by DSHS under Subsection (b-3) instead of attending the alcohol awareness program. Notably, that community service ordered under this subsection *is in addition* to community service ordered under Section 106.071(d) (relating to requiring a court to order certain minors to perform community service as a punishment for an alcohol-related offense).

Subsection (b-2) authorizes a court, for purposes of Subsection (b-1), if the defendant is enrolled in an institution of higher education located in a county in which access to an alcohol awareness program is readily available, to consider the defendant to be a resident of that county. If the defendant is not enrolled in such an institution of higher education or if the court does not consider the defendant to be a resident of the county in which the institution is located, the defendant's residence is the residence listed on the defendant's driver's license or personal identification certificate issued by the Department of Safety (DPS). If the defendant does not have a driver's license or personal identification certificated issued by DPS, the defendant's residence is the residence on the defendant's voter registration certificate. If the defendant is not registered to vote, the defendant's residence is the residence on file with the public school district on which the defendant's enrollment is based. If the defendant is not enrolled in public school, the defendant's residence is determined per Alcoholic Beverage Commission rule.

Subsection (b-3) Requires DSHS to create a list of community services related to alcohol abuse prevention or treatment in each county in the state to which a judge is authorized to sentence a defendant under Subsection (b-1).

TMCEC: While courts will appreciate that the Legislature recognizes the alcohol awareness programs are not as readily available as driving safety courses and tobacco awareness courses, the final version of this bill substantially differs from what was introduced. The requirements in the final bill are cumbersome. Online alcohol awareness or alcohol awareness is only available to defendants who reside in a county with a population of less than 75,000. It requires courts to determine the population where the defendant resides via a complex means of determining residency. See also HB 1020 relating to the certification of alcohol awareness programs and drug and alcohol awareness programs required for minors convicted of or receiving deferred disposition for certain alcohol offenses.

Total Confidentiality for Records of Children Charged with Fine-Only Misdemeanors

Source: HB 528
Effective Date: January 1, 2014

TMCEC: Under current law, the records of a child convicted of a fine-only misdemeanor, other than a traffic offense, are confidential *contingent upon satisfaction of the judgment* (i.e., "conditional confidentiality"). Critics claim that conditional confidentiality is insufficient and that children accused of such crimes should have confidentiality identical to children civilly adjudicated in juvenile court under Title 3 of the Family Code. Supporters of conditional confidentiality believe that total confidentiality from the inception of a criminal case runs afoul of society's expectation of being able to access information about criminal cases. While the Senate Research Center states that the intent of H.B. 528 is to close "an unintended loophole" in current law which allows public inspection of records of children who have been charged with or who are appealing their cases, H.B. 528 actually is a repeal of key provisions from H.B. 961 (82nd Regular Legislature), a bill passed in 2011 that was supported by the Texas Judicial Council and the Texas Municipal Courts Association.

This bill could have broad and profound implications. While the media will still be able to access criminal records pertaining to a child certified to stand trial for murder in criminal courts, they will no longer be able to access criminal case records of children accused of non-traffic fine only misdemeanors. Local governments ostensibly will no longer be able to share information pertaining to non-traffic offenses with 3rd party vendors, including private non-profit teen court providers and collection services. This approach is very different from that taken in S.B. 393 and S.B. 394 which expands the use of conditional confidentiality to include deferred disposition.

IMPORTANT: It will be argued by opponents of H.B. 528 that under the Code Construction Act (Section 311.025, Government Code) H.B. 528 and S.B. 393 contain irreconcilable provisions that cannot be harmonized. If this argument prevails, because the last legislative vote taken on S.B. 393 was one day after H.B. 528, then S.B. 393 prevails over H.B. 528 (specifically, Sections 1-3 detailed below). Because S.B. 393 did not amend Section 58.0711 of the Family Code and because it can be reconciled and harmonized, ostensibly Section 4 of H.B. 528 prevails (see, below). Of course, if supporters of H.B. 528 successfully argue that the bills can be harmonized, then it does not matter which bill passed last in time.

Ultimately, local governments will have to wait for an Attorney General opinion before we will know whether H.B. 528 and S.B 393/394 can be harmonized or if S.B. 393 prevails. An opinion will be requested by the Office of Court Administration. The only consolation to local governments is that S.B. 393 is effective September 1, 2013 and H.B. 528 is not effective until January 1, 2014.

Section by Section Analysis:

Section 1 amends Article 44.2811, Code of Criminal Procedure so that no criminal record may be inspected by the public once a non-traffic fine-only misdemeanor case involving a child is appealed from either a municipal or justice court to county court. If a case is appealed trial de novo from either a municipal or justice court and the child is again convicted in county court, the child will no longer have to satisfy the judgment before all records become confidential.

Sections 2 and 3 amend Article 45.0217 of the Code of Criminal Procedure by repealing all provisions pertaining to conditional confidentiality. Non-traffic related criminal records of children will now be confidential when the child is (1) charged, (2) convicted, (3) acquitted, or (4) granted deferred disposition. Information subject to inspection is exclusively limited to the public officials, agencies, and individuals listed in Article 45.0217(b).

Section 4 amends Section 58.0711 of the Family Code to conform with the amendments to Article 45.0217, Code of Criminal Procedure. Justice and municipal courts are required to notify the juvenile court in their county of any pending complaints against children for fine-only misdemeanors other than traffic offenses and must send a copy of the final disposition to the juvenile court. This means that juvenile courts will have records and files that may relate to a conviction of a child for a fine-only misdemeanor offense. This amendment makes all such records in the possession of juvenile courts confidential.

Section 5 provides that Articles 44.2811 and 45.0217, Code of Criminal Procedure, and Section 58.00711, Family Code, as amended by this Act, apply to an offense committed before, on, or after the effective date of the act.

Certification of Alcohol Awareness Programs Required for Minor Convicted or Receiving Deferred Disposition for Certain Alcohol Offenses

Source: HB 1020
Effective Date: June 14, 2013

H.B. 1020 relates to the certification of alcohol awareness programs required for minors convicted of or receiving deferred disposition for certain alcohol offenses. While the Texas Department of State Health Services (DSHS) certifies Drug and Alcohol Driving Awareness Programs (DADAP), the law has been unclear as to whether the Texas Education Agency (TEA) regulated DADAP courses are considered state-approved. As its name implies, DADAP is

a course that teaches about the dangers of driving after using drugs and/or alcohol. The course also teaches about Texas driving while intoxicated laws and defensive driving strategies, as well as how alcohol affects a person's body and mind generally. H.B. 1020 seeks to clarify this issue by authorizing TEA-regulated DADAP courses to be deemed as state approved by amending Section 106.115(a) of the Alcohol Beverage Code. This will end any confusion for citizens, courts, and judges, and will create a much larger network of quality courses to ensure that defendants get the education they need to effectively reduce recidivism.

TMCEC: While this bill will create a much larger network of quality courses, it remains to be seen if it "will end any confusion for citizens, courts, and judges." More than nine years ago TMCEC first reported on DADAP courses and why they could not be used to meet the alcohol awareness requirement of Section 106.115. "DADAP versus AAPM," *The Recorder (*December 2004) at 2. More recently Cathy Riedel revisited the issue in her article "Online Alcohol Awareness Classes" *The Recorder* (May 2009) at 15. The problem was not with the curriculum or content of DADAP courses. Simply, DADAP courses (which are approved by TEA) were not approved by Texas Commission on Alcohol and Drug Abuse (TCADA), now DSHS. The problem is solved.

H.B. 1020 makes it clear that minors placed on deferred disposition for certain alcohol offenses may attend either an alcohol awareness course approved by DSHS or a DADAP course approved by TEA. What is less clear is how H.B. 1020 will impact H.B. 232. The bills amend different sections of Section 106.115 and are not in conflict. Nevertheless, it will be interesting to see if, by expanding the pool of eligible courses to include DADAP courses, it will alleviate the need in rural parts for online course or community services under the more cumbersome provisions added by H.B. 232.

Establishing Committees in Certain Counties to Recommend a Uniform Truancy Policy

Source: HB 1479
Effective Date: June 14, 2013

Truancy in Texas limits students' educational opportunities, increases the likelihood of students engaging in harmful behavior, and reduces the amount of funding that local school districts receive through the state school finance system. According to interested parties, efforts to address truancy in places such as Bexar County are complicated by the large number of local jurisdictions, disparate filing methods, and a high level of student mobility between school districts. In Bexar County alone, for example, more than 15 independent school districts file truancy cases using different approaches. Districts may choose to file a case with any one of six justices of the peace or with the municipal court.

TMCEC: While H.B. 1479 refers to truancy, ostensibly it also includes Parent Contributing to Nonattendance (Section 25.093, Education Code) and Failure to Attend School (Section 25.094, Education Code). H.B. 1479 adds Section 25.0916 to the Education Code to require a county to form a committee to recommend a uniform truancy policy for each school district in the county. This section only applies to a county with a population of 1.5 million or more; that has at least 15 school districts within the majority of district territory; and has at least one school district containing a student enrollment of 50,000 or more and an annual dropout rate spanning grades 9-12 of at least five percent. No later than September 1, 2014, the committee must recommend: a uniform process for filing truancy cases; uniform administrative procedures; uniform deadlines for processing truancy cases; effective prevention, intervention, and diversion methods to reduce truancy and referrals to a county, justice, or municipal court; a system for tracking truancy information and sharing truancy information among school districts and open-enrollment charter schools in the county; and any changes to statutes or state agency rules the committee determines are necessary to address truancy. Compliance with these committee recommendations is voluntary.

Procedural and Substantive Law Relating to Children Accused of Committing Certain Class C Misdemeanors

Source: SB 393
Effective Date: September 1, 2013

TMCEC: In recent years, the adjudication of children for fine-only misdemeanors has piqued the attention of critics and, in turn, the media. Laws passed recently suggest that the Texas Legislature and Governor Perry realize that the criminalization of misbehavior by children should be subject to restraints and that the unbridled outsourcing of school discipline from the schoolhouse to the courthouse is bad public policy. Yet, at the same time, efforts to decriminalize truancy in 2011 and substantially curtail ticketing at schools in 2009 and 2011 failed to gain traction at the Capitol. While critics assert that such cases should be returned to the civil juvenile justice system, neither juvenile courts nor juvenile probation services are prepared to shoulder the caseload of conduct indicating a need for supervision (CINS) petitions which have been shifted to municipal and justice courts in the form of Class C misdemeanors.

In January 2012, Chief Justice Wallace Jefferson of the Texas Supreme Court formed the Juvenile Justice Committee of the Texas Judicial Council. The judicial members of the committee, chaired by Travis County District Judge Orlinda Naranjo, and 14 advisory committee members were charged to: "[a]ssess the impact of school discipline and school-based policing on referrals to the municipal,

justice, and juvenile courts and identify judicial policies or initiatives that: work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources for students who are in need of this type of intervention."

After multiple meetings in which members were able to hear presentations and opinions from various stakeholders and diverse views on issues, the Juvenile Justice Committee made four recommendations:

1. The Legislature should expressly authorize local governments to implement "deferred prosecution" measures in Class C misdemeanors to decrease the number of local filings from schools.

2. The Legislature should amend applicable criminal laws to ensure that local courts are the last and not the first step in school discipline (*i.e.*, Amend Section 8.07 of the Penal Code to create a rebuttable presumption that a child younger than age 15 is presumed to not have criminal intent to commit Class C Misdemeanors - with exception for traffic offenses). This could be limited to Chapter 37, Education Code offenses but would make more sense to apply to all children.

3. The Legislature should amend offenses relating to Disruption of Class, Disruption of Transportation, and Disorderly Conduct so that age (not grade level) is a prima facie element of the offense.

4. The Legislature should amend existing criminal law and procedures to increase parity between "criminal juvenile justice in local trial courts" and "civil juvenile justice in juvenile court and juvenile probation."

The four recommendations were the basis for a 20-page legislative proposal that was adopted by the judicial members of the Juvenile Justice Committee in August 2012. In November 2012, the Texas Judicial Council unanimously adopted the recommendations of the Juvenile Justice Committee. Various parts of the proposal were sponsored by members of the Senate and House (most notably, S.B. 393, S.B. 394, and S.B. 395). S.B. 393, S.B. 394, and S.B. 395 were supported by the Texas Municipal Courts Association. All three bills enjoyed bipartisan support and were signed into law by the Governor. Notably, S.B. 393 was amended in the House to contain nearly all of the provisions of both S.B. 394 and S.B. 395.

IMPORTANT: The introduction of S.B. 393, S.B. 394, and S.B. 395 early in the session set the stage for other legislators to file similar juvenile justice bills. Some of these bills are in conflict with S.B. 393 (notably, H.B. 528 and, to a lesser degree, S.B. 1114). Certain sections, noted below, appear to have irreconcilable conflicts with these bills. If such conflicts are deemed irreconcilable, then S.B. 393 will prevail because it received the last record vote. The Office of Court Administration is requesting an attorney general opinion. Ultimately, local governments will have to wait for an attorney general opinion to be issued before it is known whether the conflicting bills can be harmonized or if S.B. 393 prevails.

Section by Section Analysis:

SECTIONS 1, 2, 5 and 6: Fines and Court Costs Imposed on Children

It is a fundamental tenet of criminal law: imposed fines and costs in a criminal case are solely the burden of the defendant. Thus, when a child defendant is ordered to pay fines and costs, the child (not their parents or legal guardians) is obligated to satisfy the judgment.

Fines are not imposed in juvenile courts, yet they are a staple in criminal courts with jurisdiction of fine-only offenses. While there is reason to believe that most municipal judges, justices of the peace, and county judges find children to be indigent or allow alternative means of discharging the judgment, there is no law expressly governing the imposition of fines on children. Under current law, a judge could impose a fine and costs on someone as young as age 10 and order it paid immediately. Current law allows criminal courts to waive fines and costs if performing community service would be an undue hardship on a defendant. However, statutory law does not necessarily afford such latitude for courts to waive fines and costs imposed on children although most, ostensibly, are indigent and the performance of community service may pose an undue hardship.

These sections make four amendments to the Code of Criminal Procedure. The amendments to Article 42.15 (applicable in county courts) and Article 45.041 (applicable in municipal and justice courts) reflect the belief that fines and costs should not be procedurally imposed on children in the same manner as adults. The best way to balance youth accountability with fairness to children is to require the child to have a say in how the judgment will be discharged (via election of either community service, payment, or as otherwise allowed by law) and to have parents and guardians involved in documenting the decision. Amendments to Article 43.091 (applicable in county courts) and Article 45.0491 (applicable in municipal and justice courts) provide more leeway to criminal judges in dealing with fines imposed on children. If the facts and circumstances warrant it, judges now have the discretion to waive fines and court costs accrued by defendants during childhood if the performance of community service under Article 45.049 or Article 45.0492 or the discharge of fine and costs through tutoring permitted under Article 45.0492 would be an undue hardship.

Section 21 provides that amendments made by this section relating to the authority to waive fines and costs imposed on children apply *before*, on, or after the effective date of this enactment. The other provisions apply prospectively.

SECTIONS 3, 4 and 22: Conditional Confidentiality Extended to Deferral of Disposition for Certain Offenses

In 2009, in an effort to provide some semblance of parity between the civil and criminal juvenile justice systems, the Legislature passed S.B. 1056. The bill added Subsection (f-1) to Section 411.081 of the Government Code, requiring criminal courts to automatically issue a non-disclosure order upon the conviction of a child for a fine-only misdemeanor offense. While the intentions of the new law were applauded, non-disclosure was plagued with deficiencies that rendered it ineffective. By 2011, it was clear that the system for processing non-disclosure orders (via the Texas Department of Public Safety) was ill-equipped to handle the large volume of convictions involving children that occur in municipal and justice courts.

In 2011, H.B. 961 repealed and replaced non-disclosure laws pertaining to children convicted of Class C misdemeanors with laws providing children with conditional confidentiality (except for traffic offense convictions). The 2011 shift from non-disclosure to confidentiality struck the correct balance between "the public's right to know" in criminal cases and privacy for children convicted of certain Class C misdemeanors.

This section builds on the 2011 amendments to provide confidentiality to a greater number of children adjudicated in municipal and justice courts without running afoul of the First Amendment or the public's expectation of transparency in all criminal cases. Currently, the law only allows confidentiality in instances where children are "convicted" of certain Class C misdemeanor offenses and satisfy the judgment. There are no similar provisions for children placed on deferred disposition, other types of deferred in Chapter 45, or deferred adjudication upon the dismissal of a complaint following completion of probation.

This section, amending Articles 44.2811 and 45.0217, Code of Criminal Procedure extends confidentiality to the greater number of children who have avoided being found guilty by *successfully completing* some form of probation.
Section 22 provides that amendments made to Articles 44.2811 and 45.0217, in this apply to a complaint dismissed by a court upon deferral or suspension of final disposition *before*, on, or after the effective date of this enactment.

Important: The sections in S.B. 393 pertaining to expanding conditional confidentiality are in conflict with H.B. 528 (see, Summary S.B. 394 and Summary H.B.528). Pending a resolution via an attorney general opinion, the only consolation to local governments is that S.B. 393 is effective September 1, 2013 and H.B. 528 is not effective until January 1, 2014.

SECTION 7: Juvenile Case Managers and Diversion from Court

Conceptualized and advocated by University of Texas Professor Robert O. Dawson until his death in 2005, juvenile case manager programs are still a relatively new and emerging addition to the municipal and justice court. In places like the City of Houston, where juvenile case managers have become integral to informal "deferred prosecution" measures of Class C misdemeanors, case filings have decreased and prosecutorial and judicial resources have been conserved. Efforts to decrease the number of cases adjudicated by municipal and justice courts through diversion efforts at the local government level should be encouraged. Accordingly, Article 45.056 of the Code of Criminal Procedure is amended to allow juvenile case managers to be involved in diversion measures without the entry of any formal court order and to expressly allow juvenile case managers to provide prevention services to juveniles considered at-risk and intervention services to juveniles engaged in misconduct prior to cases being filed.

SECTION 8: Truancy Prevention Measures

In 2011, Section 25.0915 of the Education Code was added to ensure that schools first attempt truancy prevention measures to address non-attendance before referring a child to juvenile court or pursuing criminal charges against the child in county, justice, or municipal court. Anecdotal evidence from some courts suggests that such measures help reduce the number of school attendance cases being filed and conserve limited local judicial resources. This amendment clarifies legislative intent from 2011. Specifically, if a complaint or referral is not made in compliance with Section 25.0915, a court shall dismiss the allegation. This is identical to the legal requirement governing what is to occur when a school does not timely file a school attendance complaint (Section 25.0951(d), Education Code). Since most children accused of not attending school do not have the assistance of counsel, such provisions are necessary to ensure the execution of the Legislature's intent.

SECTION 9: First Offender Programs and School Law Enforcement

Under current law, school law enforcement officers are authorized to arrest a child in the same manner as other peace officers, but unlike other peace officers, they are not expressly authorized to dispose of a case without referral to a court or by means of a First Offender Program. This limits school law enforcement's options.
As amended, Section 37.081 of the Education Code authorizes, but does not require, school law enforcement to dispose of such cases without referral to a court or by means

of a First Offender Program. This potentially increases school law enforcement's options and diverts more cases from municipal and justice courts.

SECTIONS 10, 11, and 19: Disruption of Class, Disruption of Transportation, and Disorderly Conduct

In 2011, the Education Code and Penal Code were amended to make it an exception to the offenses of Disruption of Class (Section 37.124, Education Code), Disruption of Transportation (Section 37.126), and Disorderly Conduct (Section 42.01) that the accused, at the time of the offense, was a student in the sixth grade or lower. Under Section 2.02 of the Penal Code, when an exception to a criminal offense is created, the prosecuting attorney must negate the existence of an exception in the accusation charging a commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception. The purpose of the amendment in 2011 was to prevent young children from being subjected to criminal prosecution for disruptive and disorderly behavior. However, under current law, some sixth graders as young as ten years of age may still be prosecuted. Furthermore, there appears to be consensus among law enforcement and prosecutors that it is easier to prove age than grade level. This amendment is a clarification of the changes to the respective laws made in 2011.

Note: S.B. 1114 fundamentally refocuses the offenses of Disruption of Class and Disruption of Transportation while expanding the scope of Disorderly Conduct (see, Summary S.B. 1114) These changes combined with other amendments in S.B. 393 will dramatically curtail the number of related case filings.

SECTION 12: New Education Code, Chapter 37, Subchapter E-1. Criminal Procedure

While Chapter 37 of the Education Code contains subchapters governing "Law and Order" (Subchapter C allows schools to have their own police departments), "Protection of Buildings and School Grounds" (Subchapter D which tasks justice and municipal courts with jurisdiction for certain school offenses), and "Penal Provisions" (Subchapter E contains certain offenses specific to school settings), no subchapter in the Education Code governs criminal procedure. This omission has contributed to existing disparities in the legal system and has resulted in greater consumption of limited local judicial resources.

The creation of a new subchapter in the Education Code (Subchapter E-1, Criminal Procedure), while limited in scope, will balance the interest of the other subchapters with due process and procedural protections for children accused of criminal violations. In conjunction with other proposed amendments, Subchapter E-1 will help reduce referrals to court without having a negative impact on school safety.

Subchapter E-1 consists of seven new statutes:

Section 37.141 (DEFINITIONS). Definitions of "child" and "school offense" are provided. A "child" under this Subchapter is a person who is between ages 10 and 16 and is a student. This section states that Subchapter E-1 provides criminal procedures to be utilized when a child is alleged to have committed an offense on property under the control and jurisdiction of a school district which is a Class C misdemeanor, excluding traffic offenses. It aims to preserve judicial resources for students who are most in need of formal adjudication.

Section 37.142 (CONFLICT OF LAWS). This section provides that to the extent of any conflict, Subchapter E-1 controls over any other law applied to a school offense alleged to have been committed by a child. This is important because until now such cases were exclusively controlled by the Code of Criminal Procedure.

Section 37.143 (CITATION PROHIBITED: CUSTODY OF CHILD). Under current law, peace officers routinely instigate criminal cases against children by using citations on school grounds Ensuring that justice is done in cases involving children should take precedence over the utility and convenience that accompanies issuing citations to children who are students at Texas public schools. There is precedent for limiting the use of citations. Texas law does not allow citations to be issued to corporations, associations, or people who are publicly intoxicated. Because public schools are authorized and expected by the public to handle misbehavior without immediately resorting to the criminal justice system, special rules governing the use of citations for fine-only offenses on school property are warranted.

Section 37.143 prohibits the issuance of citations at public schools for non-traffic offenses. (In lieu of using citations, a system of enhanced complaints is proscribed in Section 37.146). It is important to note that Section 37.143 does not preclude law enforcement from issuing a citation to a student who is not a child (i.e., a person legally an adult, 17 years of age or older). Section 37.143 neither affects a peace officer's authority to arrest a child nor precludes school officials or employees from filing charges in court.

Section 37.144 (GRADUATED SANCTIONS FOR CERTAIN SCHOOL OFFENSES). Under current law, nothing prohibits a school district from instigating criminal allegations against a child as a first response to any misconduct which is illegal. Criminal courts with jurisdiction over school grounds in school districts that employ police officers report that their juvenile dockets are ballooning with cases involving disruptive behaviors and that such cases consume significant amounts of judicial resources.

Under Section 37.144, Education Code, school districts that employ law enforcement officers may, but are not required to, adopt a system of progressive sanctions before filing a complaint for three specific offenses: (1) disruption of class; (2) disruption of transportation; and (3) disorderly conduct. Note that Section 37.144 is entirely discretionary for all school districts and does not apply to school districts that do not commission peace officers but rather have an assigned school resource officer assigned by a local law enforcement agency.

Section 37.145 (COMPLAINT). Authorizes a school, if a child fails to comply with or complete graduated sanctions under Section 37.144, to file a complaint against the child with a criminal court in accordance with Section 37.146.

Section 37.146 (REQUISITES OF COMPLAINT). Under current law, some school-based offenses are already instigated by complaint (e.g. Failure to Attend School). However, the information in the complaint rarely provides ample information to assess the merit of the allegation. Currently, there is no requirement that a school-based complaint be attested to by a person with personal knowledge giving rise to probable cause. There is also no way for a prosecutor, defense attorney, or judge to determine if probable cause exists or if the child is a student who is either eligible for or receiving special education services. Enhanced complaints under Section 37.146 provide greater information to prosecutors, defense lawyers, and judges for all non-traffic, school based offenses as the complaint must be accompanied by additional information that prosecutors and judges need to know in order to ensure fair and proper administration of justice for children.

Section 37.146 requires that a complaint alleging the commission of a school offense, in addition to the requirements imposed by Article 45.019 (Requisites of Complaint), Code of Criminal Procedure: (1) be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and (2) be accompanied by a statement from a school employee stating whether the child is eligible for or receives special services under Subchapter A (Special Education Program), Chapter 29 (Educational Programs) and the graduated sanctions, if required under Section 37.144, were imposed on the child before the complaint was filed.

Section 37.146 authorizes the issuance of a summons under Articles 23.04 (In Misdemeanor Case) and 45.057(e) (requiring a parent to personally appear at the hearing with the child), Code of Criminal Procedure, after a complaint has been filed under this subchapter. Judges and clerks are reminded that under Article 23.04 a summons may only be issued upon request of the attorney representing the state. In other words, unless a prosecutor requests a summons, none shall be issued by a court.

Section 37.147 (PROSECUTING ATTORNEYS). Akin to provisions governing prosecutions in juvenile court, Section 37.147 gives local prosecutors the discretion to implement filing guidelines and obtain information from schools. Some prosecutors have experienced opposition from schools when attempting to procure additional information before allowing a school-initiated complaint against a child to proceed. Expressly authorizing such guidelines and allowing prosecutors to obtain such information is necessary to ensure that only morally blameworthy children are required to appear in court and enter a plea to criminal charges. Federal law precludes punishing special education students when the student's misbehavior is a manifestation of a disability. Prosecutors should be able to ascertain if a child is eligible for or is receiving special education services, has a behavioral intervention plan (BIP), or has a disorder or disability relating to culpability prior to the filing of charges. Prosecutors should also be able to easily ascertain from schools what disciplinary measures, if any, have already been taken against a child to ensure proportional and fair punishment.

Section 37.147 authorizes an attorney representing the state in a court with jurisdiction to adopt rules pertaining to the filing of a complaint under this subchapter that the state considers necessary in order to determine whether there is probable cause to believe that the child committed the alleged offense, review the circumstances and allegations in the complaint for legal sufficiency, and see that justice is done.

SECTIONS 13 and 18: Child with Mental Illness, Disability, or Lack of Capacity; Mandatory Transfer to Juvenile Court

Current law does not provide direction to criminal court judges who encounter children accused of fine-only misdemeanors who are suspected of having mental illness or developmental disabilities, who lack the capacity to understand the proceedings in criminal court or assist in their own defense, or who are otherwise unfit to proceed.

Chapter 8 of the Penal Code is amended by adding Section 8.08. On motion by the state, the defendant, a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision shall determine if there is probable cause to believe that a child, including a child with mental illness or developmental disability, (1) lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed or (2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform their conduct to the requirements of the law. If the court determines that probable cause exists, after giving notice to the prosecution, the court may dismiss the complaint. The prosecution has the right to appeal such determinations per Article 44.01, Code of Criminal Proce-

dure. This scope of Section 8.08 is limited to Class C misdemeanors (other than traffic offenses).
Section 13 contains a related amendment. Once a court exercising jurisdiction of a fine-only misdemeanor has concluded that a child has a mental illness, disability, lack of capacity, or is otherwise unfit to unfit to proceed similar subsequent cases should not continue to be adjudicated in that criminal court. Section 51.08, Family Code is amended to mandate that after a criminal court has dismissed a complaint per Section 8.08 of the Penal Code, the court would be required to waive its jurisdiction and transfer subsequent eligible cases to the civil juvenile justice system where they can be addressed as conduct indicating a need for supervision (CINS).

The mandatory transfer to juvenile court created by Section 51.08(f), Family Code applies regardless if the criminal court employs a juvenile case manager.

SECTIONS 14-16: Disposition without Referral to Court; First Offender Program

The existing language in Sections 52.03 and 52.031, Family Code, gives juvenile boards the discretion to create informal disposition guidelines that do not entail referral to court and the authority to implement First Offender Programs (i.e. diversions). When identical misconduct is alleged as conduct indicating a need for supervision (CINS), rather than a Class C misdemeanor, such diversions may be utilized. However, under current law there is no authorization for children accused of Class C misdemeanors to have their cases disposed in the same manner as a CINS case. This is unfair to children accused of non-traffic Class C misdemeanors that could have instead been alleged to have engaged in CINS. It limits the options of law enforcement and has created criminal dockets in municipal and justice courts involving children that are five times the size of those in juvenile court.

In conjunction with the previously described conforming change made to Section 37.081, Education Code, Chapter 52 of the Family Code is amended to give juvenile boards the authority, if they so choose, to include Class C offenses in local law enforcement efforts to dispose of cases without referral to courts and by use of First Offender Programs. As amended, Sections 52.03 and 52.031, Family Code, are expanded to include non-traffic Class C misdemeanors. This would allow, but not require, juvenile boards to utilized existing laws governing disposition without referral to court and First Offender programs and divert cases that otherwise would require formal adjudication by a criminal court and consume limited local criminal court resources.

SECTION 17: Age Affecting Criminal Responsibility

Under current law, the Legislature's classification of an offense as a Class C misdemeanor singularly determines whether a child is to be held criminally responsible for the his or her conduct. The penalty classification for an offense may be altogether irrelevant to whether a defendant is morally blameworthy. Currently, Section 8.07 of the Penal Code, a statutory formulation of the common law defense of infancy, expressly prohibits the prosecution of the relatively small number of children in Texas who commit "more serious" jailable offenses, while providing no similar prohibition against prosecuting the large number of children who commit "less serious" fine-only criminal offenses. An unintended consequence of existing law is that more children in Texas are being adjudicated in criminal court for fine-only offenses than in juvenile courts. Adjudicating such a large number of children as criminals consumes limited judicial resources at the expense of local government and defies Texas' long-standing commitment to juvenile justice being distinct from criminal justice.

This amendment to Section 8.07 clarifies current law: children under age 10 are not to be prosecuted or convicted of fine-only offenses. It also creates a presumption that children between ages 10-14 are presumed not to be criminally responsible for *any* misdemeanors punishable by fine only or a violation of a penal ordinance of a political subdivision (with the exception of juvenile curfew ordinances). This presumption can be refuted by a preponderance of evidence showing that the child is morally blameworthy. Notably, the presumption would have no application to fine-only traffic offenses created by state law or ordinance, and the prosecution would neither be required to prove that the child knew that the act was illegal at the time it occurred or understood the legal consequences of the offense.

In light of the fact that few children in municipal or justice court are represented by counsel, Section 8.07 and Section 8.08 of the Penal Code (detailed in Section 13 and 18) provide municipal judges and justices of peace much needed tools to ensure the 6th Amendment rights of children are not violated.

Conditional Confidentiality for Records of Children Receiving Deferred Disposition for Certain Fine-Only Misdemeanors

Source: SB 394
Effective Date: September 1, 2013

TMCEC: S.B. 394 is part of the legislative package developed and submitted to the Legislature by the Texas Judicial Council. Like the other parts of the legislative package (S.B. 393 and S.B. 395), it was sponsored in the Senate by Senator Royce West of Dallas. As explained in the summary of H.B. 528, in the 83rd Regular Session there were two competing approaches regarding the confidentiality of records in criminal cases involving children accused of Class C misdemeanors: "conditional confidentiality" (S.B. 393 and S.B. 394) and "confidentiality from inception" (H.B. 528).

Utilizing the Code Construction Act (Section 311.025, Government Code) because the last legislative vote was taken on H.B. 528 six days after S.B. 394, and because the bills contain irreconcilable provisions that cannot be harmonized, H.B. 528 prevails over S.B. 394. With one exception, noted below, the language in S.B. 394 was added to S.B. 393 by Representative Tryon Lewis of Odessa.

The last legislative vote was taken on S.B. 393 one day after H.B. 528. Assuming, per Section 311.025 of the Government Code, that the bills contain irreconcilable provisions that cannot be harmonized, then S.B. 393 prevails over H.B. 528 (specifically, Sections 1-3). Consequently, except as noted, S.B. 393 resurrected most of the provisions in S.B. 394 that were superseded by H.B. 528 as follows:

Section 1: See, Summary S.B. 393 (Section 3).
Section 2: See, Summary S.B. 393 (Section 4).
Section 3: See, Summary H.B. 528 (Section 4).
Section 4: See, Summary S.B. 393 (Section 22).

IMPORTANT: Ultimately, local governments will have to wait for an attorney general opinion before we will know whether H.B. 528 and S.B 393/394 can be harmonized or if S.B. 393 prevails. An opinion will be requested by the Office of Court Administration.

Fines and Costs Imposed on a Child in a Criminal Case

Source: SB 395
Effective Date: September 1, 2013

S.B. 395 is part of the legislative package developed and submitted to the Legislature by the Texas Judicial Council. Like the other parts of the legislative package (S.B. 393 and S.B. 394), it was sponsored in the Senate by Senator Royce West of Dallas. Its provisions were duplicated in S.B. 393 as follows:

Section 1: See, Summary S.B. 393 (Section 1).
Section 2: See, Summary S.B. 393 (Section 2).
Section 3: See, Summary H.B. 528 (Section 5).
Section 4: See, Summary S.B. 393 (Section 6).
Section 5: See, Summary S.B. 393 (Section 21).

School Law Enforcement and the Prosecution of Certain Class C Misdemeanor Offenses Committed by Children

Source: SB 1114
Effective Date: September 1, 2013

TMCEC: S.B. 1114 in conjunction with S.B. 393 constitutes a major paradigm shift in the relationship between schools, school discipline, and the role of criminal courts.

The distinction between the bills is that S.B. 393 is the work product of the Texas Judicial Council and was championed by members of the judiciary, including Chief Justice Wallace Jefferson and supported by the Texas Municipal Courts Association. While S.B. 1114 contains provisions that are included in S.B. 393, it also contains provisions that were not vetted by the Texas Judicial Council. S.B. 1114 and its counterpart, S.B. 1234, were predominantly supported by child and civil rights advocacy groups. (Notably, S.B. 1234 was vetoed by Governor Perry. In his veto statement, the governor stated that S.B. 1234 conflicted with S.B. 393.)

Unlike H.B. 528, containing provisions that conflict with S.B. 393, most of S.B. 1114 either complements or mirrors provisions in S.B. 393. Important exceptions, however, are noted below. In certain ways, S.B. 1114 goes further to curtail the outsourcing of discipline to local courts than the balanced approach favored by S.B. 393. It is for this reason that it is also more likely to be criticized as going too far.

Section by Section Analysis:

SECTION 1: Curtailing Use of Citations and Complaints for Offenses Occurring on School Property or on a Vehicle Owned or Operated by an ISD or County

This section amends Article 45.058 of the Code of Criminal Procedure (Children taken into Custody), by adding Subsections (i) and (j). (Notably, as discussed below in Section 5, neither of these Subsections has any bearing on the authority to take a child into custody.) There is reason to doubt that these amendments prevail over those made by S.B. 393.

Subsection (i) requires a law enforcement officer who issues a citation or files a complaint in the manner provided by Article 45.018 (Complaint) for conduct by a child (age 12 through 16) alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district, to submit to the court the offense report, a statement by a witness to the alleged conduct, and a statement by a victim of the alleged conduct, if any. Notably, Subsection (i) also prohibits an attorney representing the state from proceeding in a trial of an offense unless the law enforcement officer complied with the requirements of this subsection.

Subsection (j) prohibits a law enforcement officer, notwithstanding Subsection (g) (relating to authorizing a law enforcement officer to issue a field release citation in place of taking a child into custody for a traffic offense) or (g-1) (relating to authorizing a law enforcement officer to issue a field release citation in place of taking a child into custody only if the officer releases the child to the child's parent or responsible adult), from issuing a citation or filing a complaint in the manner provided by Article 45.018 for conduct by a child younger than 12 years of age that is alleged to

have occurred on school property or on a vehicle owned or operated by a county or independent school district.

S.B. 1114 provisions limiting the use of citations and complaints in Article 45.058 have to be harmonized with S.B. 393 (Section 12). To the degree they conflict, S.B. 393 ostensibly prevails. S.B. 393 passed last in time and in Section 12 has an express conflict of law provision (i.e., Section 37.142, Education Code). The notion that citations may be issued to children at school to children between the ages of 12-16 in Subsections (i) and (j) clearly conflict with provisions in S.B. 393 (e.g., Sections 37.143, 37.146, and 37.147 Education Code) prohibiting the use of citations for non-traffic, school offenses.

SECTION 2: Consequences of a School District's Failure to Attest to Truancy Prevention Measure in a Criminal Complaint

This amendment, which also appears in S.B. 393 (Section 8) amends Section 25.0915 of the Education Code, by adding Subsection (c), to require a court to dismiss a complaint or referral made by a school district under this section that is not made in compliance with Subsection (b) (relating to required information for complaints filed to courts).

SECTION 3: Student Code of Conduct

This section amends Section 37.001(a), of the Education Code to require the student code of conduct, in addition to establishing standards for student conduct, to specify the circumstances, in accordance with this subchapter, under which a student is authorized to be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district and provide, as appropriate for students at each grade level, methods, including options, for managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district.

SECTION 4: School District Peace Officers and Security Personnel

This section amends Sections 37.081(b), (c), and (f) of the Education Code. Subsection (b) provides that, in a peace officer's jurisdiction, a peace officer commissioned under this section is authorized to, in accordance with Chapter 52 (Proceedings Before and Including Referral to Juvenile Court), Family Code, or Article 45.058 (Children Taken into Custody), Code of Criminal Procedure, take a child, rather than juvenile, into custody. Subsection (d) requires a school district peace officer to perform law enforcement duties, rather than administrative and law enforcement duties, for the school district as determined by the board of trustees of the school district. Subsection (f) requires the chief of police of the school district police department to be accountable to the superintendent and to report to the superintendent, rather than to the superintendent or the superintendent's designee.

SECTION 5: Prohibiting Arrest Warrants for Children who Commit Education Code Class C Misdemeanors

This section amends Subchapter C, Chapter 37, Education Code, by adding Section 37.085, which states "[n]othwithstanding any other provisions of law, a warrant may not be issued for the arrest of a person for a Class C misdemeanor under this code committed when the person was younger than 17 years of age."

The creation of Section 37.085 of the Education Code is likely to be the most discussed provision in S.B. 1114. Advocates for children and civil rights will claim it as a big win. Other will criticize as a hallmark in Texas criminal justice: the birth of "non-arrestable crimes." The reality is likely somewhere in between.

This bill will prohibit courts from issuing arrest warrants for any Class C misdemeanor proscribed in the Education Code (most notably, Section 25.094, Failure to Attend School). Ostensibly, the prohibition of issuing an arrest warrant for such offenses is tied to the age of the defendant at the time of the alleged criminal conduct. Even when the child reaches adulthood an arrest warrant cannot be issued for a Class C misdemeanor defined in the Education Code.

However, by its plan language Section 37.085 hardly precludes courts from ordering that children be taken into custody. Code of Criminal Procedure Article 45.014 (Warrant of Arrest) and Article 45.015 (Detention in Jail) generally govern procedures pertaining to arrest and detention in Class C misdemeanor cases. These provisions, however, are inapplicable to cases involving children. Both statutes are trumped by a specific statute proscribing the procedure for securing the presence of a child via an order of non-secured custody: Article 45.058 of the Code of Criminal Procedure (Children Taken into Custody). It deserves emphasis that authorization for a child to be taken into custody under Article 45.058 is not affected by this bill. (See, Section 1). Accordingly, municipal and justice courts may continue to procure the custody of children accused of Education Code offenses through an order of non-secured custody but they may not issue an arrest warrant for such offense regardless of whether the defendant is a child or has reached adulthood.

What does this mean in terms of JNA (Juveniles Now Adults) procedures? It means nothing. H.B. 1114 does not affect the JNA capias pro fine provisions in Article 45.045(b) of the Code of Criminal Procedure. The arrest warrant issued for young adults per Article 45.060 of the Code of Criminal Procedure is unaffected as it is not a Class C misdemeanor created by the Education Code. Similarly, this bill does not preclude a child from being

taken into custody for Failure to Appear (Section 38.10, Penal Code)

It is likely to be argued that Section 37.085, Education Code was intended to preclude the arrest of all children. However, these arguments are likely to come up short for two reasons. First, there is no general warrant requirement for taking a child into custody, rather when probable cause exists, a child may be taken into custody pursuant to the law of arrest. (See, Section 52.01, Family Code). Second, the Legislature distinguished the capias, capias pro fines, and arrest warrant during the 80th Legislature (H.B. 3060). Despite efforts to distinguish the different writs used to procure custody many continue to misuse them. Readers are once again advised not everything is an "arrest warrant." S.B. 1114 serves as a reminder that what an order to procure custody is called is not simply a matter of semantics.

As Section 10 makes this amendment retroactive, all affected Class C misdemeanor arrest warrants for Education Code offenses should be recalled by September 1, 2013.

SECTION 6-7: Redefining Disruption of Class and Disruption of Transportation

Section 37.124(a) of the Education Code (Disruption of Class) is amended to provide that a person other than a primary or secondary grade student enrolled in the school commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities.

Section 37.126(a) of the Education Code (Disruption of Transportation) is amended to provide that, except as provided by Section 37.125 (Exhibition of Firearms), a person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children.

Redefining the elements of these two commonly filed offenses is likely to substantially reduce the number of the Class C misdemeanor criminal offenses filed by public schools against school children. While S.B. 393 clarifies exceptions to both offenses, S.B. 1114 redefines them. These amendments shift the focus of each criminal offense from students who disrupt class and transportation to *people who are not enrolled* in that particular primary or secondary school.

These amendments substantially narrow the focus of each criminal offense. What may not be evident on first impression are children who remain within the scope of criminal law, and there is a subtle yet substantial difference between the changes to Disruption of Class and the changes to Disruption of Transportation. Under these amendments the only children who can commit Disruption of Class are children who are not enrolled at that particular school (e.g., expelled students and students from other schools). The only children who can commit Disruption of Transportation are children who are not primary or secondary grade students—there is specification that the children are students *enrolled in the school* as there is with the Disruption of Class changes. S.B. 393 (Sections 10 and 11) provide an exception that such children are younger than age 12 at the time of the offense. However, even those children are initially presumed to not be criminally responsible. (See, S.B. 393, Section 17).

Presumably in an effort to balance the amendments narrowing the focus of Disruption of Class and Disruption of Transportation, S.B. 1114 expands the scope of Section 42.01, Penal Code (Disorderly Conduct). See, Section 9, below.

SECTION 8: Title 3, Family Code Diversions Expanded to Accommodate Class C Misdemeanors

This section amends 52.031, Family Code, by adding Subsection (a-1) and amending Subsections (d), (f), (i), and (j). The intent of the amendment is to allow local governments to utilize existing diversion programs currently utilized exclusively by juvenile cases to include Class C misdemeanors.

While this section attempts to do the same thing as S.B. 393 (Section 16) differences in how the amendments are structured make them irreconcilable. Assuming this to be true, as S.B. 393 received the last record vote, its language would prevail.

SECTION 9: Disorderly Conduct at School

This section amends 42.01, Penal Code (Disorderly Conduct), by adding Subsection (a-1), to provide that, for purposes of Subsection (a) (relating to a person committing an offense), the term "public place" includes a public school campus or the school grounds on which a public school is located.

This amendment should be read in light of those detailed in Sections 6 and 7 of S.B. 1114. It is aimed at lingering and recurring arguments Disorderly Conduct cannot occur at a school because it is not truly a place open to the public even though most primary and secondary school are funded by the public.

Does this mean that all school children who, prior to S.B. 1114, were charged with Disruption of Class or Disruption of Transportation should, going forward, be charged with Disorderly Conduct? The answer is no. S.B. 393 provides a wide array of new procedural requirements aimed at making sure that courts are a rare and last resort for disruptive behavior cases and disorderly conduct. See, S.B. 393: Section 10 (making it an exception to Disorderly Conduct that

the defendant was younger than 12), Section 12 (creating Section 37.144, Education Code, Graduated Sanction for Certain School Offenses) and Section 17 (amending Section 8.07, Penal Code, Age Affecting Criminal Responsibility).

SECTION 10: Application

Except for the provisions in Section 5 (prohibiting arrest warrants for children who commit Education Code Class C misdemeanors) application of the changes in law made by S.B. 1114 are prospective.

Juvenile Case Managers and the Creation of the Truancy Prevention and Diversion Fund

Source: SB 1419
Effective Date: September 1, 2013

S.B. 1419 amends Article 45.056 of the Code of Criminal Procedure (Juvenile Case Managers) to expand the types of cases for which a juvenile case manager may be employed by a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity to include cases involving juvenile offenders referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, and conditions the employment of such a juvenile case manager on the consent of the juvenile and the juvenile's parents or guardians. The bill authorizes a juvenile case manager employed by a county court, justice court, municipality, or municipal court to provide prevention services to a child considered at risk of entering the juvenile justice system and intervention services to juveniles engaged in misconduct prior to cases being filed, excluding traffic offenses.

S.B. 1419 adds Article 102.015 of the Code of Criminal Procedure establishing the Truancy Prevention and Diversion Fund as a dedicated account in the general revenue fund. The bill requires a person convicted in municipal or justice court of an offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, to pay as a court cost $2 in addition to other court costs, and establishes that, for purposes of the bill's provisions, a person is considered to have been convicted if a sentence is imposed or the defendant receives deferred disposition in the case. The bill establishes that such court costs are collected in the same manner as other fines or costs and requires an officer collecting the costs to keep separate records of the funds collected as costs under the bill's provisions and to deposit the funds in the county treasury or municipal treasury, as applicable.

S.B. 1419 requires the custodian of a county treasury or municipal treasury, as applicable, to keep records of the amount of funds on deposit collected under the bill's provisions. The bill requires such a custodian to send to the comptroller of public accounts before the last day of the first month following each calendar quarter the funds collected during the preceding quarter, except that the custodian may retain 50 percent of the collected funds for the purpose of operating or establishing a juvenile case manager program, if the county or municipality has either (1) established or is (2) attempting to establish a juvenile case manager program. The bill requires the custodian of the treasury, if no funds due as costs under the bill's provisions are deposited in a county treasury or municipal treasury in a calendar quarter, to file the report required for the quarter in the regular manner and to state that no funds were collected.

S.B. 1419 requires the Comptroller to deposit the funds received under the bill's provisions to the credit of the Truancy Prevention and Diversion Fund and authorizes the legislature to appropriate money from the account only to the Criminal Justice Division of the Governor's Office for distribution to local governmental entities for truancy prevention and intervention services. The bill authorizes a local governmental entity to request funds from the Criminal Justice Division of the Governor's Office for providing truancy prevention and intervention services and authorizes the division to award the requested funds based on the availability of appropriated funds and subject to the application procedure and eligibility requirements specified by division rule. The bill establishes that funds collected under the bill's provisions are subject to audit by the comptroller.

TMCEC: The amendment to Article 45.056 in Section 1 of S.B. 1419 is derived from S.B. 393 with a notable exception. The language in Article 45.056(c) attempts to further clarify what was already widely understood: local governments that enter into interlocal agreements jointly employ case managers for purposes of Chapters 102 of the Code of Criminal Procedure and Government Code. Since the amendments to Article 45.056(a) and (c) in S.B. 1419 received a final record vote three days after the final passage of S.B. 393, the language contained in S.B. 1419 controls.

Notably, the monies that local governments may retain under S.B. 1419 are in addition to those collected under Article 102.0174 of the Code of Criminal Procedure (Juvenile Case Manager Fund). However, unlike the local juvenile case manager fee, which can only be collected if the local government employs a juvenile case manager (see, S.B. 1489. 82nd Legislature, amending Section Article 102.0174(b), Code of Criminal Procedure), a local government may retain $1.00 if it is attempting to establish a juvenile case manager program. Local governments that have no intention of establishing a juvenile case manager program must send 100 percent of the costs collected to the Comptroller on a quarterly basis. It is worth repeating that all funds retained locally under the newly created, Article 102.015, Code of Criminal Procedure are subject to audit by the Comptroller.

Since 2001, when Article 45.056 first became law, the Governor's Office has had the authority to seek reimbursement for juvenile case managers. However, until now, with the creation of Section 103.034 of the Government Code (Truancy Prevention and Diversion Fund) there has been no state-based funding mechanism for the Governor's Office to make authorized awards to local governments. S.B. 1419 provides no definition for what constitutes "truancy prevention and intervention services." Notably, nothing in the S.B. 1419 expressly states that money must be awarded to local governments that employ juvenile case managers. Nevertheless, through interlocal agreements between local government and possible assistance from the Governor's Office it is possible that more local governments will continue to establish local juvenile case manager programs.

7. Texans Care for Children Legislative Report

www.txchildren.org
Printed with permission from
Texans Care for Children

IMPORTANT NOTE

The information contained below is part of a comprehensive legislative report produced by Texans Care for Children. An excerpt of the original report related to Youth Success is printed below. The full report can be viewed at: http://txchildren.org/Images/Interior/reports/children_and_texas_legislature_2013.pdf. The information below does not include the text of each bill, but rather references bill numbers and authors If you are interested in seeing the full text of the bills outlined in this section, visit the Texas Legislature Online website at:

http://www.capitol.state.tx.us

The 83rd Legislature and Youth Success

What Texas Got Done for Juvenile Justice

With many reforms occurring within the state juvenile justice agencies during the last few legislative sessions, Texans Care for Children looked to keep stability within the system so these previous reforms could be fully implemented. With that lens, Texans Care actively supported legislation that ensures youth safety in facilities, provides appropriate rehabilitative treatment to system-involved youth, reduces the impact of juvenile justice involvement later in life, and keeps kids in the juvenile justice system rather than pushing them to the adult system.

Failed to provide adequate funding to ensure stability in the juvenile justice system.

Decreasing the number of youth held in juvenile justice facilities means a great savings in human potential and in hard costs to the state. That said, in the short term, perceived savings from having fewer kids in lock-ups should be reinvested in what has historically been an underfunded system. Additionally, given that our state is now focused on those youth with the highest degree of needs, the cost per youth is increasing. Given this reasoning, and in light of the fact that the Legislative Budget Board began using a new formulation of costs, Texans Care advocated for maintaining the Texas Juvenile Justice Department and its services in the budget. And while Texans Care supports having fewer children in secure facilities, we understand that closing facilities does not mean a reduction of youth in facilities, but rather will result in a redistribution of youth among existing facilities. Despite our push for maintenance of funding, the Legislature required, through a budget rider, the closing of one secure facility while cutting funding to the point where the agency may be forced to close two. With hopes of preventing the instability and safety concerns that came about after last session's budget cuts forced the closure of three facilities, the Legislature provided the agency additional time to plan for facility closure–requiring a comprehensive plan to close the facility by September and the plan's approval by the Legislative Budget Board before the final movement of youth and before the closure deadline of January 1, 2014.

However, the Legislature did fund the agency's exceptional item request, supported by Texans Care, to provide additional dollars to ensure mental health professionals can be available in all probation departments to provide services to youth, as well as the request to increase funding for the Office of the Independent Ombudsman, replacing grant funding the office was scheduled to no longer receive. At the same time, legislators cut $3.6 million from the agency's central office budget which includes indirect administration staff and computer needs. Agency officials argue that with the central office cuts, the agency will lose key personnel necessary for the agency to continue planning for and implementing reforms.

Last legislative session, the Texas Juvenile Justice Department was given the responsibility of delinquency prevention and intervention but was provided no funding to carry out this responsibility. During the interim, the agency used a small amount of money within its existing budget to support small intervention pilot projects coordinated by county probation departments throughout the state. Texans Care supported the agency's request for additional funding to continue providing grants to select counties to implement delinquency prevention programs. The legislature provided the requested $3 million per year for these grants for a total of $6 million for the biennium.

Passed laws aimed at improving treatments and handling of kids in the system.

Texans Care also supported initiatives that provide appropriate treatment for youth in the justice system. **SB 1356 by Van de Putte,** as originally filed, would have provided front-line staff with training on how to effectively interact with trauma-exposed youth. It is estimated that more than half of all youth in the system have experienced traumatic events, and currently most staff are already provided some information regarding trauma. While, as filed, this bill would have built on this foundation to truly equip staff to serve youth, Legislators opposed a level of training that they felt would incur costs and instead passed a weaker training requirement.

HB 144 by Raymond, supported by Texans Care, codifies in statute an important practice already occurring in the juvenile justice system; it allows a court to order a youth involved in the system to be evaluated for chemical dependency. If it is determined the youth suffers from chemical dependency and is not receiving treatment, the probation department will be required to refer the youth to the local mental health authority or another appropriate provider. Representative Raymond has filed this legislation for multiple sessions, and with the Governor's signature, it finally became law.

Representative Sylvester Turner successfully passed legislation that will provide appropriate, timely legal counsel for youth. **HB 1318**, supported by Texans Care, requires that youth who qualify for appointed legal counsel have counsel appointed before their first detention hearing, rather than waiting days or weeks before counsel is appointed. Before passing the House, the bill was amended to allow the court to not appoint counsel if it is determined not feasible due to exigent circumstances and to allow a public defender's office to not accept the case if it puts the office over their maximum caseload. An amendment in the Senate requires data collection regarding how often indigent counsel is provided.

One bill, while it would have allowed for youth to stay closer to home, which Texans Care supports, also could pose a risk of reduced youth safety and reduce access to appropriate treatment. **SB 511 by Whitmire**, as filed, would have allowed for all counties operating secure post-adjudication facilities to commit kids to the secure facility in their county instead of to the state-run secure facilities. Texans Care expressed concerns regarding the legislation, related to county probation departments not having the resources necessary to meet the needs of higher-needs youth who would be committed for longer periods of time; the lack of protections to ensure youth safety and protection of youth rights or oversight; the lack of appropriate planning structures for parole or release from facilities; no guarantees of appropriate rehabilitative programming and treatment being available for these committed youth; and the legislation providing no assurances that counties would not increase the number of youth sent into the adult system either by certifying them as adults or through early transfers of youth on determinate sentences. After much push-back, the legislation was changed into a time-limited pilot project confined to within Travis County. Unfortunately, the pilot project still does not include the oversight and protections Texans Care pushed for.

Mostly maintained the status quo in facilities without any major steps forward to improve safety.

In 2011, the Texas Legislature gave the Office of the Independent Ombudsman of the Texas Juvenile Justice Department the authority to collect and analyze abuse, neglect, and exploitation data from county-run juvenile probation departments, but the office did not receive the authority to investigate concerns or act on complaints received. Texans Care for Children actively supported **HB 1543 by Allen** as well as similar proposed amendments that would have allowed the Ombudsman to investigate safety and rights concerns in both county facilities and in Texas Department of Criminal Justice facilities housing youth. The important legislation passed out of the House Committee on Corrections; however, concerns from the Texas Department of Criminal Justice and county probation leaders kept the bill from getting to a full vote in the House.

After learning about a proposed amendment that would have eliminated juvenile probation departments' requirement to implement the provisions of the federal Prison Rape Elimination Act, Texans Care and many of our juvenile justice partners successfully stopped the amendment from coming up for a vote. The argument from county representatives was that they did not have the necessary funding to implement these measures that work to ensure youth safety.

Keeping youth in seclusion, sometimes called solitary confinement, for long periods of time has been proven to create health and safety concerns for youth–particularly youth with mental health concerns–while also hampering a youth's rehabilitation. Senator Leticia Van de Putte filed and Texans Care supported **SB 1517** that, as filed, would have prohibited using seclusion for 24 hours or more for nonviolent offenses like horseplay and disrespecting staff within juvenile probation facilities. Seclusion for violent offenses and for purposes of protecting the safety of the youth or others would still have been allowed. However, because of resistance from juvenile probation departments, the bill that would have had a great impact on increasing rehabilitative opportunities and kept youth from harmful isolation was changed into a requirement for collection of data. After the bill was changed, Texans Care unsuccessfully worked to improve the data requirements to increase accountability. The bill passed both as an amendment to **HB 2862** and as an amendment to **SB 1003**.

Missed opportunities regarding youth in the adult system.

Last legislative session, legislation was passed that required county juvenile probation boards to each develop a policy on whether to allow youth certified to stand trial as an adult to be held in juvenile facilities or in the adult county jail while awaiting trial. Two pieces of legislation were filed this session to modify that policy, though neither passed. **HB 529 by Turner**, a Texans Care priority, would have made holding juveniles certified as adults in juvenile facilities the norm. Counties wishing to hold these youth in adult jails while awaiting trial would have to develop a plan to opt out. With many concerns expressed to Rep. Turner by county officials regarding implementation of the bill as drafted, Rep. Turner decided to not move the bill forward this session and rework it during the interim. **SB 1839 by Whitmire** would have changed the law to allow county jails that house youth and adults in the same facility to use the same staff with both the youth and adults. It also would have removed some "sight and sound separation" requirements, allowing youth and adults to pass one another in the hall as long as staff are on hand to supervise the youth. SB 1839 was set on the House Calendar but the session ended before it had the chance to come up for a vote.

HB 2862 by McClendon was characterized by its author as a "clean up" bill, one intended to merely clarify existing law. The bill clarifies law regarding placement of youth and court procedures and was amended in the last days of session to include **SB 1440 by West**. SB 1440 includes a provision requiring youth certified to stand trial as an adult who are being held in a juvenile facility while awaiting trial to be transferred to an adult facility once they reach age 17. It also includes a provision that allows a juvenile's record be shared with military personnel, though this information cannot be used to prevent a youth's entry into service.

Texas is one of only 13 states that considers all youth over the age of 17 to be adults for justice purposes, while still using 18 for adulthood in nearly all other purposes of legal definition. If Texas were to include 17 year olds in the juvenile justice system, many more youth would have access to rehabilitative programming support services to help get them back on track to a productive life. That is why Texans Care for Children supported **HB 3634 by McClendon,** which would have created a task force to determine the feasibility of raising the age of jurisdiction in juvenile court while looking at all factors, including impact on community safety, capacity in and costs to the juvenile system–as well as reduced costs in the adult system—that would need to be considered before implementation of an age change. HB 3634 did not get a vote in the House Committee on Corrections, and while a similar provision was made in an amendment to **HB 990,** that bill did not pass the Senate.

A handful of bills were filed to address the recent Supreme Court Decision Miller v. Alabama that ruled mandatory life sentences without the possibility of parole for juveniles to be unconstitutional. SB 187 by Huffman received the most traction during the course of the session and would have changed the mandatory life sentence without parole for 17 year olds convicted of capital offenses to a mandatory life sentence with the possibility of parole after 40 years. Texans Care expressed concerns with the bill during the session because it did not fully address the Supreme Court's recommendations to provide a range of sentencing options and allow judges and juries to hear factors regarding the youth and the offense that could change the length of the sentence. The legislation did not pass. However, the governor added the issue to the call of the first two called legislative special sessions; time ran out in the first special session before the bill could pass.

Texans Care supported **SB 345** that abolished the state boot camp for adult offenders aged 17-26. Boot camps have been proven to be ineffective and can even increase recidivism. This good piece of legislation provides a cost savings to the state while also doing right by youth. It passed both chambers and was signed by the governor.

Improved measures to keep juvenile records from interfering with kids' future.

A juvenile's record, regardless of successful rehabilitation, can impact their opportunity to enroll in college, receive financial aid and scholarships, and secure a job or entry into the military. A number of bills were passed that would help to mitigate some of these concerns.

HB 528 by Turner and SB 394 by West, both supported by Texans Care for Children, close a loophole in statute that requires that records of youth who were convicted of fine-only misdemeanors other than traffic offenses remain only accessible to law enforcement. These misdemeanors are often due to misbehavior at school. A change in law last legislative session sought to make these records confidential, however, as the law was adopted it did not make confidential the records of youth who received deferred adjudication or had their cases dismissed. The legislation passed this session corrects that oversight and ensures all these fine-only misdemeanors remain confidential.

And finally, when youth touch the juvenile justice system they are fingerprinted and their fingerprints are put into databases that may follow that youth forever. It is possible for a youth to not have a record because of deferred adjudication for a low-level misdemeanor offense, but a future employer or college admissions officer might find their fingerprints on file in a criminal database. **SB 1769 by Rodriguez** creates a committee to study the feasibility of safely eliminating or reducing the practice of fingerprinting minors. Fingerprinting is historically done in the criminal

justice system so repeat offenders can be tracked, but most juvenile offenders are not repeat offenders.

What Texas Got Done Regarding School Discipline

School disciplinary practices can be a means to redirect children towards better choices, but when misguided and excessively punitive, they can lead to juvenile justice involvement for youth. Schools currently are one of the major points of entry into the Texas juvenile justice system, so Texans Care considers improving school discipline practices a critical component of our juvenile justice work.

Reduced some ticketing and increased accountability in school discipline.

Disciplinary actions vary widely among districts across the state, and the impact of these actions is not always clear to parents and community members. Texans Care for Children continues to promote transparency and accountability in school discipline. Texans Care helped to develop and support **SB 420 by West** that would require school districts that disproportionately discipline students of color or students in special education to develop and implement a remediation plan. While it was not brought up for a vote, the committee hearing opened up dialogue about the importance of addressing the disproportionate impact of school discipline on students in special education and students of color.

Texans Care also supported **SB 1115 by Whitmire** that would have allowed the Texas Education Agency (TEA), at its discretion, to require schools that disproportionately discipline students, or suspend or expel excessive numbers of students to hold public hearings to bring attention to these practice or alternately require the districts to implement remediation plans. This legislation passed out of the Senate, but, like its counterpart HB 3810 by Farney, it stalled in the House Committee due to concerns over TEA exerting too much control over school districts.

One bill that Texans Care for Children worked against and that will likely increase the number of students removed from the classroom did pass. **SB 1541 by Van de Putte** allows school bus drivers to send students to the principal's office for misbehavior that occurred on the school bus. The principal will then be required to discipline the student in the manner outlined in the student code of conduct for similar behavior in the classroom–oftentimes suspension, placement in a disciplinary alternative education program, or expulsion–rather than the school bus driver and principal redirecting the misbehavior. While many districts already allow for the school bus driver to send students to the principal, some districts do not.

Additional legislation sought to increase transparency regarding the practice of issuing Class C Misdemeanors for misbehavior in schools and on the school bus, but these bills shared similar fates. It is estimated that as many as 300,000 Class C Misdemeanor tickets were issued to students in school in the 2011-12 school year–for anything from talking in class to schoolyard fights. Bills filed by three legislators would have required schools to report data on citations issued in schools. **HB 946 by Giddings** would have required data collection and reporting of citations issued to students under the age of 12 for offenses determined to be nonviolent, but the bill did not pass. Texans Care for Children and coalition partners worked with Representative Armando Walle to develop **HB 918** that would have required schools and school police offers to collect and report data regarding all arrests of and citations issued to students, disaggregated by race and offense. Despite the bill's reliance on an existing reporting mechanism and a determination that there would be no cost to TEA, HB 918 did not get a vote in committee because of concerns about cost and a time burden in collecting this information. Another bill supported by Texans Care for Children, **HB 2221 by Wu**, would have required ticketing and arrest data that is reported to federal entities be made available publicly, but it did not receive a hearing.

While no legislation passed providing greater transparency in the use of school police to correct classroom misbehavior, multiple pieces of legislation furthering Texans Care's legislative priority to reduce the practice did pass. Building on reforms last session that prohibited ticketing students in 6th grade or below for minor offenses, a number of legislative leaders stepped up to reduce the number of Class C Misdemeanors issued to students for misbehavior in the classroom. The Supreme Court Judicial Council developed a large number of policy recommendations to reduce the use of Class C Misdemeanors for school discipline. Texans Care for Children, in coalition with our juvenile justice advocacy partners, actively supported these recommendations.

SB 393, SB 394 and SB 395, all by West, encompassed most of these recommendations. (Numerous other bills representing the priorities were also filed by other legislators.) While negotiations during the session changed some of the proposals, all three bills passed. SB 393 eliminates the option to write tickets to students in school, rather requiring that complaints for the same offense be filed with the court, creating additional paperwork and accountability for officers that will likely reduce the number of complaints that would be filed. The original legislation required that a school implement progressive sanctions before a complaint could be filed against a student; however, in the last weeks of session, the bill stalled because of concerns that progressive sanctions created an additional burden on schools, and the progressive sanctions became optional.

Senator Whitmire was also successful in passing multiple pieces of legislation to increase accountability and reduce the number of students receiving Class C Misdemeanors in the classroom. **SB 1114**, supported by Texans Care, changed the two Class C Misdemeanor offenses included in the Education Code, but not the Penal Code–disruption of class and disruption of transportation–to be citable offenses only for persons who are not students. The legislation also requires that tickets issued to or complaints filed against students while at school must include an offense report, witness statement, and victim statement (if there was a victim); if the report or statements are not filed, the citation or complaints are not valid. Currently, citations are often issued by officers who did not see the offense but write citations based on requests from teachers and administrators. These provisions provide increased accountability and transparency by requiring teachers and administrators to personally confirm the student should receive a criminal citation or complaint. The additional steps and accountability will likely further reduce the number of citations and complaints. **SB 1234,** also by Whitmire and supported by Texans Care, would have reduced the number of Class C Misdemeanor complaints filed against students for the Education Code offense of failure to attend school, as it requires school districts to adopt truancy prevention measures before a student has enough absences to commit failure to attend school. However, SB 1234 was vetoed by the governor due to his concerns that it would conflict with prevention measures already being implemented by schools.

Another bill impacting truancy, SB 1419 by West, creates a truancy prevention fund by increasing fees collected from persons convicted in municipal or justice court for offenses other than parking violations by $2. A local government entity could then apply to the Criminal Justice Division of the Governor's office for funds to prevent truancy in their community. Funds can be used for programming or new case managers and could be used for prevention after a youth is already court involved for truancy.