



STATE BAR SECTION REPORT JUVENILE LAW

VOL. 33, NO. 3

August 2019

2019 Special Legislative Issue

OFFICERS

Chair:	Judge Mike Schneider (Ret.) Berg Plummer Johnson & Raval, LLP 3700 Buffalo Speedway, Suite 1150 Houston, Texas 77098
Chair-Elect:	Patrick Gendron Law Office of Patrick Gendron P.O. Box 6561 Bryan, Texas 77805
Secretary:	Judge Cyndi Porter Gore Allen Municipal Court 301 Century Pkwy. Allen, Texas 75013
Treasurer:	William "Bill" Cox El Paso County Public Defender's Office 500 E. San Antonio, Suite 501 El Paso, Texas 79901
Immediate Past Chair:	Kaci Singer Texas Juvenile Justice Department P.O. Box 12757 Austin, Texas 78711

COUNCIL

Terms Expire 2020

Frank Adler	Arlington
Kim Hayes	Lubbock
Jana Jones	Decatur

Terms Expire 2021

John Gaunnt, Jr.	Belton
Jenna Malsbary	Austin
Terrance Windham	Houston

Terms Expire 2022

Maggie Ellis	Austin
Elizabeth Henneke	Austin
Robin Houston	Waco

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

Page Intentionally Left Blank



The Texas Juvenile Justice Department and the Juvenile Law Section wish to thank the following individuals for their contributions to the *2019 Special Legislative Issue*.

Managing Editor

Nydia D. Thomas

Deputy General Counsel
Texas Juvenile Justice Department

Contributing Editor

Kaci Singer

Attorney, Office of General Counsel
Texas Juvenile Justice Department

Contributors

Linda Butler Arrigucci

Attorney, Office of General Counsel
Texas Juvenile Justice Department

Sean Grove

Policy Advisor
Texas Juvenile Justice Department

Karol Davidson

Attorney, Office of General Counsel
Texas Juvenile Justice Department

Jenna Malsbary

Attorney, Office of General Counsel
Texas Juvenile Justice Department



Publication Assistance

Caroline Conte

Legislative Coordinator
Texas Juvenile Justice Department

Reni Johnson

Paralegal, Office of the General Counsel
Texas Juvenile Justice Department

Ana Villarreal

Executive Assistant, Office of the General Counsel
Texas Juvenile Justice Department

TABLE OF CONTENTS

	Page
Legislative Foreword	
Nydia Thomas, Deputy General Counsel, Texas Juvenile Justice Department	3
General Counsel’s Message	
Christian von Wupperfeld, General Counsel, Texas Juvenile Justice Department	6
<i>86th Session Legislative Appropriations to the Texas Juvenile Justice Department</i>	
Emily Anderson, TJJD Chief Financial Officer	7
1. Title 3 and Related Provisions	17
Title 3 Family Code	17
Alcoholic Beverage Code	25
Code of Criminal Procedure	26
Non-Title 3 Family Code	32
Government Code	35
Health and Safety Code	37
Human Resources Code	40
Local Government Code	40
Occupations Code	42
Penal Code	44
Transportation Code.....	58
2. Legislation Affecting Child-Serving Agencies.....	59
3. Legislation Affecting Education	68
4. Legislation Affecting Government Transparency	100
5. Legislation Affecting Justice and Municipal Courts	109
6. Legislation Affecting Mental Health	116
7. Legislation Affecting Sex Offenses, Human Trafficking, and Victims.....	136
8. Legislation Affecting the Texas Juvenile Justice Department.....	179
9. Other Legislation of Interest	185
10. Juvenile Justice Reform Act of 2018 (H.R. 6494).....	187

LEGISLATIVE FOREWORD

by Nydia D. Thomas
Deputy General Counsel
Texas Juvenile Justice Department

The 86th Texas Legislature 2019 *Texas Juvenile Justice: Guardians of the Mission*

The Greeks recount the mythological story of the Corinthian King Sisyphus, who was bound for eternity to the sentence of rolling a huge boulder to the precipice of a mountain, only to see it repeatedly descend to the base of the mountain again. In many respects, the prospect of change in the juvenile justice system is influenced by a convergence of factors such as national trends, political dynamics, state resources, evolving research, and high-profile anecdotal narratives. We often forget that the most essential component to sustaining transformative change in the juvenile justice system is the human factor – the practitioners and policymakers whose collective vision and long-term commitment have resulted in important initiatives to improve youth outcomes.

From the vantage point of more than two decades, I have witnessed the unending procession of dedicated professionals who have taken up the noble mission of transforming the system. It brings to mind the wisdom once scribed by William Shakespeare, “*All the world’s a stage, and all the men and women are merely players; they have their exits and their entrances.*” In the context of juvenile justice, we are at once the beneficiaries and guardians of the legacy of those who have paved the way in this field. Most notably, the late Dr. Robert Dawson, who has long since taken his exit, left an abiding vision for the juvenile justice system that protects the constitutional rights and well-being of juveniles balanced with the safety of the citizens of Texas. Countless others have also endeavored to accomplish this Sisyphean task, which may never truly be completed. Although the allegory of Sisyphus is one of futility, our work is measured instead by the infinite possibilities that rehabilitation creates in the lives of those we directly or indirectly touch. The guardians of the mission, therefore, are the juvenile justice practitioners – judges, defense attorneys, prosecutors, juvenile probation officers, agency staffers, law enforcement, advocates, and others – now and in the future – who take up this calling and work tirelessly to propose comprehensive or simple legislative reforms to improve system practices and outcomes. As I move on to a new chapter in my life and career, I am proud to have been among the hands and hearts doing the intellectual work to develop juvenile justice law and policy in Texas.

During the 86th Legislative Session, public education, property taxes, and hemp farming legislation were in the

spotlight. From a substantive perspective, juvenile justice stood inconspicuously on the periphery in the midst of prominent proposals affecting school safety and education finance. Marking a likely trend, single-issue amendments have also replaced the comprehensive omnibus juvenile justice proposals of the past. In this issue, our review of the 2019 Legislative Session underscores the multi-disciplinary nature of the system. It is worthy to note that a legislative shift in education, criminal justice, or child welfare, for example, levies a corresponding impact on juvenile justice. The compilation of statutes and commentary highlighted in this issue demonstrates the unpredictability of the legislative process and accentuates how the disciplines are inextricably linked.

Early in the session, a number of bills appeared to move forward. While not all of these measures passed, others did but were later vetoed by the Governor. It is worth noting that **HB 344**, which was among the approximately five bills that revisited the concept of raising the age of criminal responsibility and **HB 758**, which would have modified the process to open or close public access to juvenile court proceedings, did not make it out of committee. The bills vetoed by Governor Abbott include **HB 1771**, which would have prohibited law enforcement from referring a child to juvenile court for the offense of prostitution; **HB 2481**, which would have established certain specialty courts, including a Juvenile Family Drug Court Program; and **HB 3195**, which would have modified language regarding the minimum length of stay for youth committed to TJJD with an indeterminate sentence.

A special note of acknowledgement goes out to the Juvenile Records Advisory Committee (JRAC). This dedicated workgroup had continuing statutory authority to convene from December 2015 to December 2018 to examine and advance proposals on juvenile records. In the 86th Session, their work culminated with the passage of **HB 1760**, which lowers the age for sealing with application to age 17 and makes other clarifying changes to the juvenile records statutes in Chapter 58 of the Family Code as revised in 2017. The JRAC Reports, published during the last two legislative cycles, are available on the TJJD website. There were other bills relating to confidentiality, information sharing, and sealing of juvenile records that were not enacted into law.

Our roll call of juvenile justice bills that passed this session begins with **SB 346**, which makes a number of comprehensive changes affecting court costs and fees in the juvenile and criminal proceedings. **SB 619** extends the sunset date of the Texas Juvenile Justice Department from 2021 to 2023. **HB 621** prohibits employers from retaliating against employees who, in good faith, report child abuse or neglect and allows the employee to sue for injunctive relief and damages. **HB 1342** changes the factors that may be considered to disqualify certain applicants for occupational licenses and applies to certifications issued by TJJD. **HB 1528** requires fine-only misdemeanor offenses involving family violence to be reported to the computerized criminal history system (CCH). **SB 11** makes significant changes to the laws affecting school safety and mental health in schools. **SB 1702** modifies language to ensure that the Office of the Independent Ombudsman has authority to oversee and inspect county-operated and contract post-adjudication secure facilities and any other facility in which a juvenile is placed as a term of probation in addition to TJJD facilities. **SB 1746** expands the definition of a “student at risk of dropping out of school” to include any student who has ever been incarcerated or has a parent or guardian who has been incarcerated. **SB 1887** allows a juvenile court in one county to transfer a juvenile case to a district court exercising jurisdiction in a child protection case in another county, even if that court is not a juvenile court; it further allows the district court exercising jurisdiction over the child protection and juvenile case to assign both matters to an associate judge in a child protection court. **SB 2135** requires law enforcement to provide sufficient information to a superintendent so that the school may conduct a threat assessment and adds the superintendents to the list of persons who may inspect or copy confidential juvenile records. **HB 2229** modifies the way TJJD reports data on youth committed to TJJD who have been in foster care. **HB 2737** requires the Texas Supreme Court to establish guidance and best practices on issues of relevance to juvenile cases and child protective services cases. **HB 3688** authorizes special investigators and all peace officers to apprehend, without a warrant, a child committed to TJJD who has escaped from a TJJD secure facility or who has violated a condition of TJJD parole. **HB 3689** enhances the law enforcement duties and responsibilities of the Office of the Inspector General. **HB 2184** outlines the process and options for transitioning an alternative education program (JJAEP/DAEP) student back to the classroom. There were also a few juvenile justice bills of local interest. **HB 452** authorizes Bell County to appoint truancy court masters for

greater docket efficiency. **SB 891** changes the enabling statutes of Goliad, and Victoria to allow these counties to operate a joint juvenile board and revises the composition of the Fayette County and Grimes County juvenile boards. Other bills, such as **HB 4170** and **HB 4173**, updated cross-references or made other non-substantive changes. Background and commentary on these and many other important bills affecting the juvenile justice system are featured in this issue.

Readers who browse through this issue should also take note of the excerpt of the **Appropriations Act and Riders** affecting the Texas Juvenile Justice Department along with the introductory overview by TJJD Chief Financial Officer **Emily Anderson** on budget implications and system capacity. We are also pleased to introduce and welcome TJJD General Counsel **Christian von Wupperfeld**. Overall, the 2019 Special Legislative Issue is a snapshot of the most recent trends and legislative history needed by practitioners to quickly implement statutory changes. We are most encouraged by the support of TJJD Executive Director **Camille Cain** and Chief of Staff **Seth Christensen** for the TJJD Biennial Post-Legislative Conference and the publication of the Special Legislative Issue as an essential service to practitioners in Texas. Finally, I would like thank my amazing, impressive, and talented colleagues **Kaci Singer, Karol Davidson, Jenna Malsbary, Linda Arigucci, Ana Villarreal, Reni Johnson, and Steve Roman** within the Office of the General Counsel and **Sean Grove** in Executive who manage multiple priorities but always produce such quality commentary for this issue. Thanks also to **Alba Peña** for the quick turnaround on the cover – you are so talented.

Again, I would be remiss without acknowledging the **Juvenile Law Section** of the State Bar of Texas and Section Chair, **Judge Mike Schneider** (Ret.). We are also especially proud to continue our partnership with newsletter editor Judge **Pat Garza**. We appreciate your continued involvement and support of the juvenile justice system.

We hope that you were able to attend the Post-Legislative Conference sponsored by the Texas Juvenile Justice Department and the Juvenile Law Section in Austin, July 29-30, 2019. The quality presentations and additional resource information on the highlights of the 86th Texas Legislative Session were outstanding this year and will enhance your understanding of the important changes this session.

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 of selected statutes and should be considered a secondary source. While every effort has been made to accurately include relevant 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:

<https://capitol.texas.gov/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 selected and 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 86th Texas Legislature. Any views and opinions expressed in this issue are those of contributing commentator and do not necessarily reflect those of the Texas Juvenile Justice Department or the Juvenile Law Section of the State Bar of Texas.

GENERAL COUNSEL'S MESSAGE

Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department

I would like to extend my sincere appreciation to the juvenile justice practitioners and professionals who are members of the Juvenile Law Section and to the Texas Juvenile Justice Department (TJJD) for your continued support of the 2019 Post-Legislative Conference which was held in Austin on July 29th and 30th. Since joining TJJD ten months ago, I am frequently moved by the passion you exhibit in your work. I am excited to join you in working to improve the lives of the young Texans you encounter daily.

Under the leadership of Executive Director **Camille Cain**, TJJD has begun implementation of the Texas Model. The key tenants of the Model are:

1. A greater focus on a single juvenile justice system as a partnership between county juvenile probation departments and TJJD.
2. A commitment to the shortest appropriate length of stay and youth staying closer to their communities in every possible case.
3. A foundation in trauma-informed care that allows a treatment-rich environment, new tools for de-escalation, and direct-care staff who reinforce treatment goals.
4. A strategy that provides for scalability and flexibility to meet changing or emerging needs.

Publishing the 2019 Special Legislative Issue is a result of the ongoing collaboration between the Juvenile Law Section and TJJD. Both entities are better because of this enduring partnership. Not only is this issue one of the many benefits of membership in the Juvenile Law Section of State Bar of Texas, it also contributes to TJJD meeting its required training, technical assistance, and standards compliance mandates.

I trust you will find that there is wealth of valuable information contained in the issue. Our goal for the Special Legislative Issue is for it to be a comprehensive resource that attorneys, prosecutors, judges, juvenile probation officers and other system practitioners can turn to for up-to-date legislative enactments from the 86th Session. Please take time to read this edition carefully in order to be aware of the new changes as these important laws impact the day-to-day operations of the juvenile justice system. This session, the newsletter will only be offered in electronic format and is available online on the Juvenile Law Section and TJJD websites at www.juvenilelaw.org and www.tjjd.texas.gov websites, respectively.

Finally, I would like to acknowledge and offer my deepest thanks to the professionals in the TJJD Office of the General Counsel. This team of outstanding individuals, despite busy schedules, kept their commitment to this project by submitting high quality analyses and information on time and without degradation of their other duties. I especially appreciate the experience and insight of Managing and Contributing Editors **Nydia Thomas** and **Kaci Singer**, who have worked diligently to move this project forward. Likewise, this project could not have come together without the commitment of an extended team of contributors, including TJJD Staff Attorneys **Linda Butler Arrigucci**, **Karol Davidson**, **Jenna Malsbary**, and **Susan Werner**, as well as **Sean Grove**, TJJD Policy Advisor, and **Seth Christensen**, TJJD Chief of Staff. The TJJD team did an amazing job preparing commentary on a variety of complex topics. Finally, I would like to extend a special thank you to **Caroline Conte**, who joined TJJD prior to session as Legislative Coordinator, as well as OGC Staffers **Ana Villarreal**, **Reni Johnson**, and **Steve Roman** for providing assistance on this important publication.



86th Session Legislative Appropriations to the Texas Juvenile Justice Department

Emily Anderson

Chief Financial Officer

Texas Juvenile Justice Department

The appropriations process of the 86th Regular Legislative Session was marked by our continuous efforts to inform the legislature about the needs and challenges facing the youth in the juvenile justice system. Within that context, the Texas Juvenile Justice Department (TJJD) provided a plan for the reformation of the system and outlined the commitment we must have from the legislature now and in the future for the true reformation and continued success of our mission. TJJD and Probation Chiefs worked closely with each other and the legislature on a number of initiatives that would shape the future of juvenile justice. As we look at the specific information regarding appropriations, it is important to note that TJJD enters into the coming biennium with certain long-term and urgent capital needs addressed, with adequate funding to maintain most core services, and with plans to respond to critical funding gaps.

TJJD's baseline appropriations request of \$647.8 million included \$605.2 million in General Revenue. The agency also presented a list of additional funding requests totaling \$72.9 million and 53.5 fulltime equivalent positions, including \$11 million to maintain basic services for the projected probation and state residential populations. TJJD provided the legislature with a "one system" approach to reforming the juvenile justice system in Texas. All of the funding requested through the exceptional item process worked together toward achieving full implementation of the Texas Model, the agency's comprehensive strategic plan.

The initial versions of the House and Senate budgets were identical and decreased TJJD's total baseline request by \$14.2 million based on population projection decreases and lowered cost-per-day funding for probation and state services. There were, however, some increases in funding of mental health services for probation departments, parole supervision activities and for the Office of Inspector General.

Through the committee process, the House and Senate considered how best to address juvenile justice needs. Each chamber made its own decisions on the budget riders that guide how TJJD expends appropriated funds, but those decisions differed only in a few areas. During the final stages of the process, the House and Senate resolved their differences, generally to the agency's favor. For the first time since the creation of the Juvenile Justice Department in 2011, funding appropriated for local probation departments

was increased. In addition, TJJD received funding to continue the use of body-worn cameras, life safety and deferred maintenance needs, and career ladder pay increases of direct care staff. An area that the legislature did not fund is the need for intense mental health services for youth in the local probation system or committed to TJJD.

The table on the following page below shows FY 2020-2021 appropriations to TJJD across all methods of finance by functional area.



Probation	FY 2020	FY 2021	Biennium
<i>Grants</i>	\$159,839,852	\$160,139,695	\$319,979,547
<i>Administration & JCMS</i>	\$2,887,617	\$2,887,617	\$5,775,234
Total, Probation	\$162,727,469	\$163,027,312	\$325,754,781

State Residential Programs & Parole	FY 2020	FY 2021	Biennium
<i>State Residential</i>	\$139,347,392	\$140,886,441	\$280,233,833
<i>Parole Supervision/Programs</i>	\$3,741,827	\$3,653,650	\$7,395,477
Total, State Residential Programs & Parole	\$143,089,219	\$144,540,091	\$287,629,310

System Administration/Oversight	FY 2020	FY 2021	Biennium
<i>Training/Monitoring</i>	\$3,874,338	\$3,874,338	\$7,748,676
<i>Indirect Administration</i>	\$14,902,949	\$13,027,781	\$27,930,730
Total, System Administration/Oversight	\$18,777,287	\$16,902,119	\$35,679,406

Special Capital Projects	FY 2020	FY 2021	Biennium
<i>Deferred Maintenance</i>	\$5,000,000	\$-	\$5,000,000
Total, Special Capital Projects	\$5,000,000	\$0	\$5,000,000

Grand Total, TJJD	FY 2020	FY 2021	Biennium
<i>Independent Ombudsman</i>	\$970,727	\$970,727	\$1,941,454

These appropriations address certain long-term and urgent capital needs and ensure maintenance of most core services at current levels. The appropriations also provide more resources for local probation departments to expand capacity and create new services in their communities. However, the appropriations do not provide adequate funding to fully implement the Texas Model. One of the critical points of the Texas Model is to provide intense mental health services to youth in the most appropriate setting. The legislature did not fund any of this ask, and therefore TJJD is left with a significant and critical funding gap for the coming two years in this area. These needs were presented by both agency and probation department (county) staff, and considered at length by the appropriating committees throughout the process. Considerable staff time within TJJD this summer is being devoted to developing plans to respond to these critical funding gaps. Examples of agency efforts include maximizing probation grant funding and flexibility under State Aid Formula Funding by limiting funds distributed through targeted programs, allocating fund balances from state operations to probation departments for addi-

tional regionalization and conducting a top-to-bottom review of all agency functions, divisions and positions to identify potential operational efficiencies.

With all of this in mind, as we look ahead to the 2020-2021 biennium, the guiding initiatives impacting the probation side of the juvenile justice system will continue to be exploring ways to provide funding flexibility within the state aid grant allocations and continued expansion of regional probation activities with ongoing goals of enhancing regional programs and services, increasing probation departments' abilities to serve youth locally, and diverting youth from commitment to TJJD. Other initiatives from the FY 2018-2019 biennium related to existing probation programs will also carry forward, such as setting aside funds to support probation programs with recidivism reduction goals based on documented, data-driven, and research-based practices and continued work toward the development of one system aimed at providing the best programs for youth in the least restrictive and most appropriate setting. On the state residential side of the system, the reform

of the juvenile justice system to encompass trauma informed care, which also began in the 2018-2019 biennium, will continue to inform ongoing agency efforts to redesign programs and services for youth as well as efforts to support and engage staff.

In summary, TJJD ended the session with adequate funding to meet most core operational needs and new funding to

address certain critical capital projects. However, there are significant challenges to be faced on both the “front” and “back” ends of the juvenile justice system. TJJD looks forward to working with its partners across the state on ongoing initiatives to realize our collective goal of an effective continuum of services that promotes positive youth outcomes.

Texas Juvenile Justice Department Appropriations and Riders for the 2020 – 2021 Biennium

Appropriation Strategy	FY 2020	FY 2021
A. Goal: Community Juvenile Justice		
A.1.1. Strategy: Prevention and Intervention	\$3,012,177	\$3,012,177
A.1.2. Strategy: Basic Probation Supervision	\$36,651,788	\$36,951,633
A.1.3. Strategy: Community Programs	\$44,679,895	\$44,679,896
A.1.4. Strategy: Pre- and Post-Adjudication Facilities	\$24,782,157	\$24,782,157
A.1.5. Strategy: Commitment Diversion Initiatives	\$19,492,500	\$19,492,500
A.1.6. Strategy: Juvenile Justice Alternative Ed Programs	\$6,250,000	\$6,250,000
A.1.7. Strategy: Mental Health Services Grants	\$14,178,353	\$14,178,351
A.1.8. Strategy: Regional Diversion Alternatives	\$10,792,982	\$10,792,981
A.1.9. Strategy: Probation System Support	\$2,887,617	\$2,887,617
Total, Goal A:	\$162,727,469	\$163,027,312
B. Goal: State Services and Facilities		
B.1.1. Strategy: Assessment, Orientation, Placement	\$1,846,375	\$1,846,375
B.1.2. Strategy: Institutional Operations and Overhead	\$16,871,472	\$16,728,616
B.1.3. Strategy: Institutional Supervision and Food Service	\$58,852,313	\$61,062,710
B.1.4. Strategy: Education	\$14,869,045	\$14,869,045
B.1.5. Strategy: Halfway House Operations	\$8,765,288	\$8,765,288
B.1.6. Strategy: Health Care	\$8,131,027	\$7,858,753
B.1.7. Strategy: Psychiatric Care	\$942,670	\$922,851
B.1.8. Strategy: Integrated Rehabilitation Treatment	\$11,745,539	\$11,740,740
B.1.9. Strategy: Contract Residential Placements	\$8,005,600	\$7,984,000
B.1.10. Strategy: Residential System Support	\$2,345,695	\$2,345,695
B.2.1. Strategy: Office of Inspector General	\$5,628,870	\$5,418,870
B.2.2. Strategy: Health Care Oversight	\$1,010,802	\$1,010,802
B.3.1. Strategy: Construct and Renovate Facilities	\$5,332,696	\$332,696
Total, Goal B:	\$144,347,392	\$140,886,441
C. Goal: Parole Services		

C. C.1.1. Strategy: Parole Direct Supervision	\$2,408,847	\$2,320,670
C. C.1.2. Strategy: Parole Programs and Services	\$1,332,980	\$1,332,980
Total, Goal C:	\$3,741,827	\$3,653,650
D. Goal: Office of Independent Ombudsman		
D.1.1. Strategy: Office of Independent Ombudsman	\$970,727	\$970,727
E. Goal: Juvenile Justice System		
E.1.1. Strategy: Training and Certification	\$1,864,755	\$1,864,755
E.1.2. Strategy: Monitoring and Inspections	\$1,788,725	\$1,788,725
E.1.3. Strategy: Interstate Agreement	\$220,858	\$220,858
Total, Goal E:	\$3,874,338	\$3,874,338
F. Goal: Indirect Administration		
F.1.1. Strategy: Central Administration	\$8,907,493	\$8,576,693
F.1.2. Strategy: Information Resources	\$5,995,456	\$4,451,088
Total, Goal F:	\$14,902,949	\$13,027,781
Total Appropriation	\$330,564,702	\$325,440,249

Appropriation Riders to TJJD Budget

1. **Performance Measure Targets.** The following is a listing of the key performance target levels for the 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 Juvenile Justice Department. In order to achieve the objectives and service standards established by this Act, the 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 in this provision as appropriations either for "Lease payments to the Master Lease Purchase Program" or for items with an "(MLPP)" notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance Authority pursuant to the provisions of Government Code §1232.103. [Modified due to length.]
3. **Appropriation of Other Agency Funds.** Included in amounts appropriated in Strategies B.1.3, Facility Supervision and Food Service, and B.1.4. Education are Appropriated Receipts from unexpended balances remaining in Independent School District Funds (not to exceed \$155,000), Student Benefit Fund (not to exceed \$140,000), and Canteen Revolving Funds (not to exceed \$7,500). Any gifts, grants, and donations as of August 31, 2019, and August 31, 2020 (estimated to be \$0), and any revenues, accruing to those funds are appropriated to those funds for the succeeding fiscal years. Funds collected by vocational training shops at Juvenile Justice Department facilities, including unexpended balances as of August 31, 2019, (not to exceed \$21,000) are 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 individual personnel whose annual salary rate exceeds 112 percent of the previous year.
5. **Revolving Funds.** The Juvenile Justice Department may establish out of any funds appropriated herein a

revolving fund not to exceed \$10,000 in the Central Office, and \$10,000 in each institution, field office, or facility under its direction. Payments from these revolving funds may be made as directed by the department. Reimbursement to such revolving funds shall be made out of appropriations provided for in this Article.

6. **Student Employment.** Subject to the approval of the Juvenile Justice Department, students residing in any Juvenile Justice Department facility may be assigned necessary duties in the operations of the facility and be paid on a limited basis out of any funds available to the respective institutions or facility not to exceed \$50,000 a year for each institution and \$10,000 a year for any other facility.
7. **Appropriation and Tracking of Title IV-E Receipts.** The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The Juvenile Justice Department (JJD) shall certify to the Texas Department of Family and Protective Services that federal financial participation can be claimed for Title IV-E services provided by counties. JJD shall direct necessary general revenue funding to ensure that the federal match for the Title IV-E Social Security Act is maximized for use by participating counties. Such federal receipts are appropriated to JJD for the purpose of reimbursing counties for services provided to eligible children. In accordance with Article IX, Section 8.02(a) of this Act, when reporting Federal Funds to the Legislative Budget Board, JJD must report funds expended in the fiscal year that funds are disbursed to counties, regardless of the year in which the claim was made by the county, received by JJD, or certified by JJD.
8. **Federal Foster Care Claims.** Out of appropriations made above, the Texas Department of Family and Protective Services and the Juvenile Justice Department shall document possible foster care claims for children in juvenile justice programs and maintain an inter-agency 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 to the Legislative Budget Board the number of active accounts, including the amounts owed to the state pursuant to the Texas Family Code, §54.06 (a) court orders, and the total amount of funds collected.
10. **Employee Medical Care.** Appropriations made in this Act for the Juvenile Justice Department not otherwise

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

11. **Safety.** In instances in which regular employees of facilities operated by the Juvenile Justice Department are assigned extra duties on special tactics and response teams, supplementary payments, not to exceed \$200 per month for team leaders and \$150 per month for team members, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classifications and assigned salary ranges.
12. **Charges to Employees and Visitors.**
 - a. Collections for services rendered to Juvenile Justice Department employees and visitors 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 visitors are hereby appropriated to the facility. Refunds of excess collections shall be made from the appropriation 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 Alternative Education Program (JJAEP).** Funds transferred to the Juvenile Justice Department (JJD) pursuant to Texas Education Agency (TEA) Rider 27 and appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, shall be allocated as follows: \$1,500,000 at the beginning of each fiscal year to be distributed on the

basis of juvenile age population among the mandated counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

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

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

Unspent balances in fiscal year 2020 shall be appropriated to fiscal year 2021 for the same purposes in Strategy A.1.6.

The amount of \$96 per student per 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 27. The amount of \$96 per student per day may vary depending on the total number of students actually attending the JJAEPs. Any unexpended or unobligated appropriations shall lapse at the end of fiscal year 2019 to the Foundation School Fund No. 193.

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

14. **Funding for Additional Eligible Students in JJAEPs.** Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, a maximum of \$500,000 in each fiscal year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Juvenile Justice Department at the rate of \$96 per day per student for students who

are required to be expelled under § 37.007, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

15. **JJAEP Accountability.** Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Justice Department (JJD) shall ensure that JJAEPs are held accountable for student academic and behavioral success. JJD shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2020. The report shall include, but is not limited to, the following:
- a. an assessment of the degree to which each JJAEP enhanced the academic performance and behavioral improvement of attending students;
 - b. a detailed discussion on the use of standard measures used to compare program formats and to identify those JJAEPs most successful with attending students;
 - c. student passage rates on the State of Texas Assessments of Academic Readiness (STAAR) in the areas of reading and math for students enrolled in the JJAEP for a period of 75 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. inclusion of a comprehensive five-year strategic plan for the continuing evaluation of JJAEPs which shall include oversight guidelines to improve: school district compliance with minimum program and accountability standards, attendance reporting, consistent collection of costs and program data, training, and technical assistance needs.

16. **Appropriation Transfers between Fiscal Years.** In addition to the transfer authority provided elsewhere in this Act, the Juvenile Justice Department may transfer appropriations in an amount not to exceed \$10,000,000 made for fiscal year 2021 to fiscal year 2020 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 and the assistant superintendent are authorized to live in state-owned housing at a rate determined by the department. Other Juvenile Justice Department employees may live in state-owned housing as set forth in Article IX, §11.02, Reporting Related to State Owned Housing, of this Act. Fees for employee housing are hereby appropriated to be used for maintaining employee housing and shall at least cover the agency cost of maintenance and utilities for the housing provided.
18. **Unexpended Balances - Hold Harmless Provision.** Any unexpended balances as of August 31, 2020, in Strategy A.1.2, Basic Probation Supervision (estimated to be \$400,000), above are hereby appropriated to the Juvenile Justice Department in fiscal year 2021 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise be affected as a result of reallocations related to population shifts.
19. **Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments.** The juvenile Justice Department (JJD) shall ensure that the agency is refunded all unexpended and unencumbered balances of state funds held as of the close of each fiscal year by local probation departments. Any unexpended balances of probation department refunds as of August 31, 2019, are appropriated to JJD for the purpose of providing grants to local probation departments in the fiscal year beginning September 1, 2019. All fiscal year 2020 and fiscal year 2021 refunds received from local juvenile probation departments by JJD (Appropriated Receipts) are appropriated above in Strategy A.1.5. Commitment Diversion Initiatives. Any unexpended balances of probation department refunds as of August 31, 2020, are appropriated to JJD for the purpose of providing grants to local juvenile probation departments in the fiscal year beginning September 1, 2020.
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 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, 2018, funds necessary to meet the requirements of this section in fiscal year 2019 in the event adjustments are made in the salary rates specified in the Texas Education Code or in salary rates paid by the public schools where JJD facilities are located.
21. **Training for GED and Reading Skills.** Out of funds appropriated above in Strategy B.1.4, Education, the Juvenile Justice Department shall prioritize reading at

grade level and preparation for the GED in its educational program. A report containing statistical information regarding student performance on the Test of Adult Basic Education (TABE) shall be submitted to the Legislative Budget Board and the Governor on or before December 1, 2020.

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 in 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. **Managed Health Care and Mental Health Services Contract(s).** Out of 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.
25. **JJAEP Disaster Compensation.** Out of 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.
26. **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 an 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, Community Juvenile Justice. The report shall include information on the impact of any new initiatives and all programs tracked by the Juvenile Justice Department. Required elements include, but are not limited to, prevention and intervention programs, residential placements, enhanced community-based services for serious and chronic felons such as sex offender treatment, intensive supervision, and specialized supervision, community-based services for misdemeanants no longer eligible for commitment to the Juvenile Justice Department, Commitment Diversion Initiatives, and Regional Diversion Alternatives.
- b. The report shall include information on all training, inspection, monitoring, investigation, and technical assistance activities conducted using funds appropriated in Goals A and E. 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 2022-23 biennium.

Upon the request of the Legislative Budget Board, the Juvenile Justice Department shall report expenditure data by strategy, program, or in any other format requested, including substrategy expenditure detail. The Comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to the Juvenile Justice Department in Goal F, 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.

27. **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 2020 and \$19,492,500 in General Revenue Funds in fiscal year 2022, may be expended only for the purposes of providing programs for the diversion of youth from the Juvenile Justice Department. The programs may include, but are not limited to, residential, community-based, family, and aftercare programs.

The allocation of State funding for the program is not to exceed a daily rate based on the level of care the juvenile receives. The Juvenile Justice Department shall maintain procedures to ensure that the State is refunded all unexpended and unencumbered balances of State funds at the end of each fiscal year.

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

JJD shall require juvenile probation departments participating in the diversion program to report to JJD regarding the use of funds within thirty days after the end of each quarter. JJD shall report to the Legislative Budget Board regarding the use of the funds within thirty days after receipts of each county's quarterly report. Items to be included in the report include but are

not limited to, the amount of funds expended, the number of youth served by the program, the percent of youth successfully completing the program, the types of programming for which the funds were used, the types of services provided to youth served by the program, the average actual cost per youth participating in the program, the rates of recidivism of the program participants, the number of youth committed to JJD, any consecutive length of time over six months a juvenile serviced by the diversion program resides in a secure corrections facility, and the number of juveniles transferred to criminal court under Family Code, §54.02.

JJD 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 JJD Rider 26 to be submitted to the Legislative Budget Board by December 1st of each year. In the report, JJD shall report the cost per day and average daily population of all programs funded by Strategy A.1.5, Commitment Diversion Initiatives for the previous fiscal year.

The Comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to the Juvenile Justice Department in Goal F, 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.

28. **Mental Health Services Grants.** Included in the amounts appropriated above in Strategy A.1.7, mental Health Services Grants, is \$14,178,353 in fiscal year 2020 and \$14,178,351 in fiscal year 2021 to fund mental health services provided by local juvenile probation departments. Funds subject to this provision shall be used by local juvenile probation departments only for providing mental health services to juvenile offenders. Funds subject to this provision may not be utilized for administrative expenses of local juvenile probation departments nor may they be used to supplant local funding.

29. **Regional Diversion Alternatives.** Out of funds appropriated above the Texas Juvenile Justice Department (TJJD) is appropriated \$10,792,982 in fiscal year 2020 and \$10,792,981 in fiscal year 2021 in General Revenue in Strategy A.1.8, Regional Diversion Alternatives, for the implementation of a regionalization program to keep juveniles closer to home in lieu of commitment to the juvenile secure facilities operated by the TJJD.

30. **Contingency for Behavioral Health Funds.** Notwithstanding appropriation authority granted above, the Comptroller of Public Accounts shall not allow the expenditure of General Revenue- Related behavioral health funds for the Texas Juvenile Justice Department in Strategies A.1.1, Prevention and Intervention; A.1.3, Community Programs; A.1.4, Pre and Post Adjudication Facilities; A.1.5, Commitment Diversion Initiatives; A.1.7, Mental Health Services Grants; B.1.1, Assessment, Orientation, and Placement; B.1.6, Health Care; B.1.7, Mental Health (Psychiatric) Care; B.1.8, Integrated Rehabilitation Treatment; and C.1.2, Parole Programs and Services, in fiscal year 2020 or fiscal year 2021, as identified in Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures, if the Legislative Budget Board provides notification to the Comptroller of Public Accounts that the agency's planned expenditure of those funds in fiscal year 2020 or fiscal year 2021 does not satisfy the requirements of Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.
31. **Youth Transport.** In instances in which Juvenile Correctional Officers of facilities operated by the Juvenile Justice Department are assigned duties to transport youth between locations, supplementary payments, not to exceed \$30 per day during which the employee performs such duties, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classification and assigned salary ranges.
32. **Harris County Leadership Academy.** Out of funds appropriated above in Strategy A.1.4, Pre and Post-Adjudication Facilities, the amount of \$1,000,000 in General Revenue Funds in each fiscal year shall be expended for the Harris County Leadership Academy.
33. **Juvenile Referrals.** Included in the amounts appropriated in above strategy A.1.3. Community Programs, is funding granted to juvenile' probation department for intake and processing of juvenile referrals not subsequently placed on one of the three types of supervision pursuant to family code, Section 54.0401.
34. **Office of the Independent Ombudsman and Office of the Inspector General.** From fund appropriated above, the Juvenile Justice Department (JJD) shall not transfer appropriations from Strategy D.1.1. Office of the Independent Ombudsman (OIO), and Strategy B.2.1. Office of the Inspector General (OIG), without prior written approval from the Governor and the Legislative Budget Board. JJD shall not reduce the number of full-time equivalent positions (FTEs) allocated to the OIO (14 FTEs) and OIG (122 FTEs) without prior written approval from the Governor and the Legislative Budget Board.
- JJD shall provide indirect support and administrative resources as necessary to enable OIO and OIG to fulfill statutory responsibility, and the manner in which they are provided shall not infringe on the independent of those offices.
- Budget requests or other requests related to the General Appropriations Act provisions shall be submitted by JJD in a manner that maintains the independence of the OIO and OIG.
35. **Single Grant Application for Local Probation Departments.** The Juvenile Justice Department (JJD) shall create a single grant application for local probation departments wishing to apply for discretionary grant funding. The application will require the local probation departments to specify the amount of funding it seeks from each strategy. As a condition of funding, local probation departments shall agree to meet research-based performance measures developed by JJD pursuant to Health and Human Services Code 223.001(c).
36. **Non-Profit Pilot Programs.** From funds appropriated above in Strategy A.1.3. Community Programs, is \$250,000 in General Revenue in each fiscal year of the 2020-21 biennium to establish pilot programs in Harris, Hidalgo, and Cameron counties administered by non-profits that provide trauma-informed counseling and life-skills and hands-on vocational training for youth who were previously committed to state correctional custody in the Juvenile Justice Department. The non-profit must be supported by the counties.
37. **Study on the Confinement of Children with Mental Illness or Intellectual Disabilities.** Out of the funds appropriated above, the Juvenile Justice Department shall conduct a study to develop strategies to reduce the confinement of children with mental illness or intellectual disabilities. Not later than September 1, 2020, the department shall report the results of the study to the Governor, Lieutenant Governor, Speaker of the House, and each member of the Legislature.
38. **Salary Increase.** Included in the amounts appropriated above, in Goal B, State Services and Facilities, is \$4,051,502 in fiscal year 2020 and \$4,051,503 in fiscal year 2021 in General Revenue to provide salary increases to juvenile correctional officers and case managers.

1. Title 3 and Related Provisions

Title 3 Family Code

Family Code Sec. 51.04. JURISDICTION. (a)

This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct, and, except as provided by Subsection (h) or Section 51.0414, the juvenile court has exclusive original jurisdiction over proceedings under this title.

(h) A judge exercising jurisdiction over a child in a suit instituted under Subtitle E, Title 5, may refer any aspect of a suit involving the child that is instituted under this title to the appropriate associate judge appointed under Subchapter C, Chapter 201, serving in the county and exercising jurisdiction over the child under Subtitle E, Title 5, if the associate judge consents to the referral. The scope of an associate judge's authority over a suit referred under this subsection is subject to any limitations placed by the court judge in the order of referral.

Commentary by Kaci Singer

Source: SB 1887

Effective Date: September 1, 2019

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

Summary of Changes: In 2017, the Texas Judicial Council issued two charges to the Juvenile Justice Committee, one of which was to consider best practices and necessary reforms to the juvenile justice system to improve the adjudication of delinquent conduct cases. One of those recommendations was that the Legislature revise the Family Code to allow for transfer of venue of a juvenile case to a court with venue over a child's welfare case. Another was to expand the jurisdiction of Children's Courts to oversee cases involving dually involved youth. The changes in Section 51.04 and newly created Section 51.0414 are meant to enact those recommendations.

The change in Section 51.04(a) creates exceptions to the juvenile court's exclusive jurisdiction over proceedings under Title 3, Family Code. Those exceptions are found in new Section 51.04(h) and in 51.0414, discussed below. Although the language "except as provided by Subsection (h)" in subsection (a) is not new, and thus not underlined, it had previously referred to a subsection giving juvenile courts in certain populous counties concurrent jurisdiction with justice and municipal courts over the offense of failure to attend school. That provision was repealed in 2015 when the offense of failure to attend school was repealed and replaced with the civil violation of truant conduct, but the language referring to the subsection was not stricken from

subsection (a). A new subsection (h) was added, which is meant to work in concert with Section 51.0414 so that after a juvenile case is transferred from a juvenile court in one county to a court with jurisdiction over a child protection case in another county, that new court may transfer the juvenile aspects of the case to an associate judge, provided the associate judge consents and subject to any limitations in the order. However, on its face, this section could likely also be read to allow a judge who has jurisdiction over a both a juvenile case and a child protection case within a county to transfer both aspects of the case to an associate judge for child protection cases even if the case was not transferred from another county.

Family Code Sec. 51.0414. DISCRETIONARY TRANSFER TO COMBINE PROCEEDINGS. (a)

The juvenile court may transfer a child's case, including transcripts of records and documents for the case, to a district or statutory county court located in another county that is exercising jurisdiction over the child in a suit instituted under Subtitle E, Title 5. A case may only be transferred under this section with the consent of the judge of the court to which the case is being transferred.

(b) Notwithstanding Section 51.04, a district or statutory county court to which a case is transferred under this section has jurisdiction over the transferred case regardless of whether the court is a designated juvenile court or alternative juvenile court in the county.

(c) If the court exercising jurisdiction over the child under Subtitle E, Title 5, consents to a transfer under this section, the juvenile court shall file the transfer order with the clerk of the transferring court. On receipt and without a hearing or further order from the juvenile court, the clerk of the transferring court shall transfer the files, including transcripts of records and documents for the case as soon as practicable but not later than the 10th day after the date an order of transfer is filed.

(d) On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the receiving court shall notify the judge of the receiving court, all parties, and the clerk of the transferring court.

Commentary by Kaci Singer

Source: SB 1887

Effective Date: September 1, 2019

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

Summary of Changes: New Section 51.0414 allows a juvenile court in one county to transfer the juvenile case to a court in another county that has jurisdiction over the child in a child protection matter, but only with the consent of the receiving court. The receiving court does not have to be a designated juvenile court or alternative juvenile court.

The transferring juvenile court is required to file the transferring order with the clerk of the transferring court who must then transfer the files, including any transcripts and documents, as soon as practicable and no later than the 10th day after the order is filed.

Family Code Sec. 201.204. GENERAL POWERS OF ASSOCIATE JUDGE. (e) An associate judge may hear and render an order in a suite referred to the associate judge by a juvenile court under Section 51.04, subject to the limitations placed on the associate judge's authority in the order of referral.

Commentary by Kaci Singer

Source: SB 1887

Effective Date: September 1, 2019.

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This is a conforming change related to the change in Section 51.04 that allows a judge in a child protection case who also has jurisdiction over the juvenile case to refer the case to an associate judge in a child protection court. The associate judge's authority is subject to any limitations in the order of transfer

Family Code Sec. 54.032. DEFERRAL OF ADJUDICATION AND DISMISSAL OF CERTAIN CASES ON COMPLETION OF TEEN COURT PROGRAM. (e) The court may require a child who requests a teen court program to pay a reimbursement fee not to exceed \$10 that is set by the court to cover the costs of administering this section. The court shall deposit the fee in the county treasury of the county in which the court is located. A child who requests a teen court program and does not complete the program is not entitled to a refund of the fee.

(g) In addition to the reimbursement fee authorized by Subsection (e), the court may require a child who requests a teen court program to pay a \$10 reimbursement fee to cover the cost to the teen court for performing its duties under this section. The court shall pay the fee to the teen court program, and the teen court program must account to the court for the receipt and disbursal of the fee. A child who pays a fee under this subsection is not entitled to a refund of the fee, regardless of whether the child successfully completes the teen court program.

(h) Notwithstanding Subsection (e) or (g), a juvenile court that is located in the Texas-Louisiana border region, as defined by Section 2056.002, Government Code, may charge a reimbursement fee of \$20 under those subsections.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a cost, fee, or fine on conviction for an offense committed on or after January 1, 2020.

Summary of Changes: SB 346 is a lengthy bill that consolidates many criminal court costs in current law and makes amendments to the way they are consolidated and allocated. The Office of Court Administration identified 143 distinct criminal court costs in 17 different categories, the sheer volume of which makes it difficult for clerks to administer and for the state to audit. Significant resources are devoted at both the state and local level to ensuring compliance with state law. Additionally, the Texas Court of Criminal Appeals ruled in *Salinas v. State*, 524 S.W.3d 103 (2017), that revenue generated by court costs could not be used to fund counseling programs for abused children or rehabilitative services for persons with traumatic brain or spinal cord injuries, holding that using criminal court costs as an alternative means of collecting taxes to finance programs that are not related to a legitimate criminal justice purpose are unconstitutional. Several other court cases have since ruled that several other court costs do not serve a legitimate criminal justice purpose. In this instance, the fee for a Teen Court operated by a juvenile court is designated as a reimbursement fee since it is designed to cover the costs of the program.

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 56B [~~56~~], Code of Criminal Procedure, including information related to the costs that may be compensated under that chapter [~~subchapter~~] and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter [~~subchapter~~], the payment of medical expenses under Subchapter F, Chapter 56A [~~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 for inclusion in the person's file information to be considered by the department 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 Subchapter B, Chapter 56A [~~Article 56.02 or 56.021~~], Code of Criminal Procedure.

(b) In notifying a victim of the release or escape of a person, the Texas Juvenile Justice Department shall use the same procedure established for the notification of the release or escape of an adult offender under Subchapter K, Chapter 56A [~~Article 56.14~~], Code of Criminal Procedure.

Family Code Sec. 57.003. DUTIES OF JUVENILE BOARD AND VICTIM ASSISTANCE COORDINATOR. (d) The victim assistance coordinator shall ensure that at a minimum, a victim, guardian of a victim, or close relative of a deceased victim receives:

(1) a written notice of the rights outlined in Section 57.002;

(2) an application for compensation under the Crime Victims' Compensation Act ([~~Subchapter B,~~] Chapter 56B [~~56~~], Code of Criminal Procedure); and

(3) a victim impact statement with information explaining the possible use and consideration of the victim impact statement at detention, adjudication, and release proceedings involving the juvenile.

Family Code Sec. 57.0031. NOTIFICATION OF RIGHTS OF VICTIMS OF JUVENILES. At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the juvenile probation office having the responsibility for the disposition of the juvenile, the office shall provide the victim a written notice:

(1) containing information about the availability of emergency and medical services, if applicable;

(2) stating that the victim has the right to receive information regarding compensation to victims of crime as provided by the Crime Victims' Compensation Act ([~~Subchapter B,~~] Chapter 56B [~~56~~], Code of Criminal Procedure), including information about:

(A) the costs that may be compensated and the amount of compensation, eligibility for compensation, and procedures for application for compensation;

(B) the payment for a medical examination for a victim of a sexual assault; and

(C) referral to available social service agencies that may offer additional assistance;

(3) stating the name, address, and phone number of the victim assistance coordinator for victims of juveniles;

(4) containing the following statement: "You may call the crime victim assistance coordinator for the status of the case and information about victims' rights.";

(5) stating the rights of victims of crime under Section 57.002;

(6) summarizing each procedural stage in the processing of a juvenile case, including preliminary investigation, detention, informal adjustment of a case, disposition hearings, release proceedings, restitution, and appeals;

(7) suggesting steps the victim may take if the victim is subjected to threats or intimidation;

(8) stating the case number and assigned court for the case; and

(9) stating that the victim has the right to file a victim impact statement and to have it considered in juvenile proceedings.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: The law requires the Texas Legislative Council to carry out a non-substantive revision of statutes in order to make them more accessible, understandable, and usable without altering the sense, meaning, or effect of the law. This particular bill focused on the Code of Criminal Procedure. Article 56, Rights of Crime Victims, was repealed. In its place are Article 56A, Rights of Crime Victims, and Article 56B, Crime Victims' Compensation. Sections 57.002, 57.003, and 57.0031, Family Code, have been modified to appropriately reference either Article 56A or Article 56B, in conformance with the revisions. This consolidated commentary summarizes the changes to the three statutory sections above.

Family Code Sec. 58.003. SEALING OF RECORDS. Subsection 58.003(c-3) is *REPEALED*.

Commentary by Kaci Singer

Source: HB 1760/HB 4170

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: SB 1304 from the 85th Legislative Session (2017) (the bill filed based on recommendations from the Juvenile Records Advisory Committee) repealed all of Section 58.003, the prior law on sealing. However, both HB 29 and SB 1488 made non-substantive changes to subsection (c-3), thereby leaving it in statute. This change repeals that subsection so that all of 58.003 is now repealed.

Family Code Sec. 58.005. CONFIDENTIALITY OF FACILITY RECORDS. (a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;
- (5) an individual [a person] or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility [if the agency or institution disclosing the information has

~~entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information];~~

(6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; ~~[or]~~

(7) a prosecuting attorney;

(8) a parent, guardian, or custodian with whom a child will reside after the child's release or discharge from a juvenile facility;

(9) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed; or

(10) with permission from the juvenile court, any other individual [person], agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: This is a recommendation from the Juvenile Records Advisory Committee. It aligns the ability to release facility records more closely with the ability to release prosecutor, court, and juvenile probation department records. It modifies the ability to release records to an individual or entity to whom the child is referred for treatment or services by eliminating the requirement to have a written confidentiality agreement to do so. The records remain protected through newly added subsection (c), which prohibits any individual or entity who receives confidential information under this section from disclosing that information unless allowed to do so by law. Included in the entities or individuals providing treatment or services are now those providing assistance in transitioning the child after release or discharge from the facility. Additionally, a parent, guardian, or other custodian with whom the child will reside upon release or discharge from the facility may be provided with records.

The prosecuting attorney is now explicitly allowed to have facility records. Prosecuting attorney for the purposes of Title 3 is defined in Section 51.02(11) to mean the prosecutor in juvenile court. Prior to this change, prosecuting attorneys typically obtained records using a subpoena under the provision that allows for disclosure to a governmental agency if the disclosure is required or authorized by law.

Finally, records may be disclosed to a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed. An example of this includes disciplinary hearings before the State Office of Administrative Hearings in which records from a facility must be admitted.

Family Code Sec. 58.0052 INTERAGENCY SHARING OF CERTAIN NON-EDUCATIONAL RECORDS. Subsection (b-1), as added by Chapter 1021 (H.B. 1521), Acts of the 85th Legislature, Regular Session, 2017, is redesignated as Subsection (b-3), Section 58.0052, Family Code, to read as follows:

(b-3) [~~(b-1)~~] At the request of a state or local juvenile justice agency, the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services shall, not later than the 14th business day after the date of the request, share with the juvenile justice agency information in the possession of the department or contractor that is necessary to improve and maintain community safety or that assists the agency in the continuation of services for or providing services to a multi-system youth who:

- (1) is or has been in the temporary or permanent managing conservatorship of the department;
- (2) is or was the subject of a family-based safety services case with the department;
- (3) has been reported as an alleged victim of abuse or neglect to the department;
- (4) is the perpetrator in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred; or
- (5) is a victim in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: This is a recommendation from the Juvenile Records Advisory Committee. Two bills passed in the 85th legislative session (2017) adding a new subsection (b-1) to Section 58.0052. This change renumbers one of those subsections to (b-3).

Family Code Sec. 58.0053. INTERAGENCY SHARING OF PROBATION RECORDS. Section 58.0053 is *REPEALED*.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: This is a recommendation from the Juvenile Records Advisory Committee. Section 58.0053, added by the 84th Legislature (2015), requires a juvenile probation officer, upon request by DFPS, to disclose the terms of probation of a child in DFPS conservatorship. Section 58.0052 (b-2), added by the 85th Legislature (2017), requires a state or local juvenile justice agency, upon request by DFPS, to disclose any information necessary to improve and maintain community safety or that assists DFPS in continuing or providing services for a multi-system youth. Because the broad language in Section 58.0052(b-2) necessarily incorporates the specific reference to probation conditions in Section 58.0053, Section 58.0053 is redundant and has been repealed.

Family Code Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR, AND COURT RECORDS. (b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, 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 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 representing the child's parent [~~a party~~] in a proceeding under this title;
- (4) an attorney representing the child;
- (5) a prosecuting attorney;
- (6) an individual [~~a person~~] or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility [~~if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information~~];
- (7) [~~(5)~~] 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

(8) [~~(6)~~] with permission from the juvenile court, any other individual [~~person~~], agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: This is a recommendation from the Juvenile Records Advisory Committee. In 2017, language in Section 58.007 was amended to clarify that only an attorney representing a party to a Title 3 proceeding is entitled to access to the records. The purpose of this change was to make clear that an attorney representing a parent, who is a party to a Title 3 proceeding, in another matter, such as a divorce proceeding, is not authorized to have access to juvenile records except with permission of the juvenile court. It was reported, however, that some entities were refusing to allow attorneys representing the juvenile in other matters, such as appeals in which the juvenile record was material, to have access to the records. The language has been amended to clarify that an attorney representing the parent is authorized to have records only if representing the parent in Title 3 proceedings but an attorney representing the child may have the records regardless of what type of proceeding the attorney is representing the child in. The prosecuting attorney was previously allowed to have the records as a party to the proceeding (the State is a party) but has now been listed separately. As in Section 58.005, the controlling definition for prosecuting attorney in this instance is in Section 51.02 and is the prosecuting attorney in juvenile court.

Subsection (b)(6) contains the same changes as in Section 58.005, allowing for sharing of information with an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning to the community after release or discharge from a facility without the need for a written confidentiality agreement. The confidentiality of the records is instead protected by law, which now provides that an individual or entity receiving any confidential information under Section 58.007 may not disclose that information unless authorized by law to do so.

Family Code Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR AND COURT RECORDS. Subsection 58.007(j) is *REPEALED*.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: In the 85th Legislative Session (2017), law enforcement records provisions were moved from Section 58.007 to new Section 58.008. The language from Section 58.007(j) was included in Section 58.008(d); however Section 58.007(j) was inadvertently left. It has now been repealed.

Family Code Sec. 58.008. CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS. (b) Except as provided by Subsection (c) [~~(d)~~], law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: In the 85th Legislative Session (2017), law enforcement records provisions were moved from Section 58.007 to new Section 58.008. There was a typographical error in subsection (b) which resulted in a reference to the incorrect subsection in the exception to the requirements regarding where information about a child may be stored. This change corrects that to make it clear that the exception is located in subsection (c). The exception allows for the law enforcement records of a person with a determinate sentence who is transferred to TDCJ may be transferred to a central state or federal depository for adult records and may be shared in accordance with the laws governing adult records. These changes were recommended by the Juvenile Records Advisory Committee.

Family Code Sec. 58.009. DISSEMINATION OF JUVENILE JUSTICE INFORMATION BY THE TEXAS JUVENILE JUSTICE DEPARTMENT. (d)

The Texas Juvenile Justice Department may grant the following individuals or entities access to juvenile justice information only for a purpose beneficial to and approved by the department to:

(1) an individual or entity [~~a person~~] working on a research or statistical project that:

(A) is funded in whole or in part by state or federal funds; and

(B) meets the requirements of and is approved by the department; or

(2) an individual or entity [~~a person working on a research or statistical project~~] that:

(A) is working on a research or statistical project that meets the requirements of and is approved by the department; and

(B) has a specific agreement with the department that:

(i) specifically authorizes access to information;

(ii) limits the use of information to the purposes for which the information is given;

(iii) ensures the security and confidentiality of the information; and

(iv) provides for sanctions if a requirement imposed under Subparagraph (i), (ii), or (iii) is violated.

(f) The Texas Juvenile Justice Department may not release juvenile justice information in identifiable form, except for information released under Subsection (c)(1), (2), [~~or~~] (3), or (4) or under the terms of an agreement entered into under Subsection (d)(2). For purposes of this subsection, identifiable information means information that contains a juvenile offender's name or other personal identifiers or that can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular juvenile offender.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: Section 58.009 allows TJJD to share juvenile justice information, as defined in Section 58.104, that it maintains for statistical and research purposes, which is essentially the information about juveniles that juvenile probation departments submit to TJJD through the Juvenile Case Management System or the Electronic Data Interchange. The changes in subsection (b) were non-substantive and designed to correct a grammar issue. The change in subsection (f) adds DFPS to the list of

entities to whom TJJD may provide identifiable information for research and statistical purposes or for any other purpose approved by TJJD. This change was necessary due to the separation of DFPS from HHSC in the 85th legislative session (2017). When DFPS was part of HHSC, it was authorized to receive identifiable information under this subsection. When the two agencies were separated, DFPS was added to the list of entities that may receive research and statistical information in Section 58.009(c) but was not added to the list of entities that may receive identifiable information. The change in subsection (f) allows TJJD to share identifiable information with DFPS once again.

Family Code Sec. 58.255. SEALING RECORDS WITHOUT APPLICATION: CONDUCT INDICATING A NEED FOR SUPERVISION. (a)

A person who was referred to a juvenile court [~~probation department~~] for conduct indicating a need for supervision is entitled to have all records related to all conduct indicating a need for supervision matters sealed without applying to the juvenile court if the person:

(1) has records relating to the conduct filed with the court clerk;

(2) is at least 18 years of age;

(3) [~~is~~] has not been referred to the juvenile probation department for delinquent conduct;

(4) [~~is~~] has not as an adult been convicted of a felony; and

(5) [~~is~~] does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: In the 85th Legislative Session (2017), sealing processes were revised. If a juvenile was only ever referred to a juvenile probation department for conduct indicating a need for supervision (CINS), the juvenile was entitled to have all records related to that conduct sealed without applying to the court if certain criteria were met. It was reported that the vast majority of referrals for CINS result in a supervisory caution or assess, counsel, and release disposition, which means that no court record exists. In order to seal the records, a court record must be created, thereby creating more records. Because CINS records are not reported to DPS for inclusion in JJIS (Juvenile Justice Information System) but instead are maintained locally, it was determined that sealing without application is only necessary for those cases in which a court record actually exists so that the court records can be sealed and any adjudication removed. The records maintained by law enforcement, the prosecutor, and the probation department

involving a juvenile only ever referred for CINS are authorized, though not required, to be destroyed when the juvenile reaches the age of 18.

Family Code Sec. 58.2551. SEALING RECORDS WITHOUT APPLICATION: FINDING OF NOT TRUE. A juvenile court, on the court's own motion and without a hearing, shall immediately order the sealing of all records related to the alleged conduct if the court enters a finding that the allegations are not true.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: This change restores the provision in prior law that requires a juvenile court to immediately order records sealed when there is a finding of not true on all allegations.

Family Code Sec. 58.252. EXEMPTED RECORDS. The following records are exempt from this subchapter:

(1) records relating to a criminal combination or criminal street gang maintained by the Department of Public Safety or a local law enforcement agency under Chapter 67 [64], Code of Criminal Procedure;

(2) sex offender registration records maintained by the Department of Public Safety or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and

(3) records collected or maintained by the Texas Juvenile Justice Department for statistical and research purposes, including data submitted under Section 221.007, Human Resources Code, and personally identifiable information.

Commentary by Kaci Singer

Source: HB 4170

Effective Date: September 1, 2019

Summary of Changes: The law requires the Texas Legislative Council to carry out a non-substantive revision of statutes in order to make them more accessible, understandable, and usable without altering the sense, meaning, or effect of the law. In the 85th Legislature (2017), as part of that task, Chapter 61, Code of Criminal Procedure, was renumbered to Chapter 67. This change in Section 58.252 conforms to that numbering.

Family Code Sec. 58.256. APPLICATION FOR SEALING RECORDS. (c) Except as provided by Subsection (d), the juvenile court may order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

(1) is at least 17 [48] years of age, or is younger than 17 [48] years of age and at least one year has [two years have] elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department;

(2) does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;

(3) was not transferred by a juvenile court to a criminal court for prosecution under Section 54.02;

(4) has not as an adult been convicted of a felony; and

(5) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: As a result of recommendations from the Juvenile Records Advisory Committee, the 85th Legislature (2017) made changes to sealing laws that included removing the option for courts to seal records immediately after a child finished deferred prosecution, probation, or a specialty court program. The reasoning was to ensure records were accessible to probation departments and service providers in the event the child was referred again to any probation department so that a child's previously identified risks and needs, mental health issues, or status as a trafficking victim were known to the probation department and court so that appropriate services could be provided quickly. Over 40 percent of juveniles are referred at least twice. In order to make this change to allow for access to records to better serve and protect juveniles, the law was also changed to limit access to juvenile justice records in the Department of Public Safety's Juvenile Justice Information System (JJIS) system to only the following: a criminal justice or juvenile justice agency; TJJD and the Office of Independent Ombudsman of TJJD; district, county, justice, or municipal courts exercising jurisdiction over a juvenile; the military with permission of the juvenile; DFPS (Department of Family and Protective Services) for certain background check purposes; and a non-criminal justice agency only if authorized by federal law or executive order. This change essentially put all juvenile records on a restricted access status without needing a court order. As such, sealing now only removes the access to the records from these limited entities as no other entities are permitted to access the records in DPS and only the entities listed in Sections 58.005, 58.007, and 58.008 may access records from courts, probation departments, prosecutors, juvenile facilities, and law enforcement agencies. Based on this additional protection and to ensure continued access in the

event of a new referral, the law was changed to allow a juvenile to apply to have his or her records sealed at the earlier of turning 18 years of age or of having been discharged from probation services for at least two years, as long as all the other criteria was met. In response to feedback from some practitioners wishing for an option to seal records earlier, the law was changed to allow an application for sealing to be filed at the earlier of age 17 or one year after discharge from probation services.

Family Code Sec. 58.258. ORDER SEALING RECORDS. (c) On entry of the order, all adjudications relating to the person are vacated and the proceedings are dismissed and treated for all purposes as though the proceedings had never occurred. The clerk of court shall:

(1) seal all court records relating to the proceedings, including any records created in the clerk's case management system; and

(2) send copies of the order to all entities listed in the order by any reasonable method, including certified mail, regular mail, or e-mail.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: This is a recommendation of the Juvenile Records Advisory Committee. Prior to 2017, there was no law to allow for filing fees to be charged for an application to seal records but some courts did so anyway. The 85th Legislature clarified in law that no fees could be charged for an application to seal records. Some expressed concern regarding covering the cost of mailing copies of the orders. As such, the law was clarified to provide that copies of the order may be sent by any reasonable method, including certified mail, regular mail, or e-mail.

Family Code Sec. 58.263. DESTRUCTION OF RECORDS: NO PROBABLE CAUSE. The court shall order the destruction of the records relating to the conduct for which a child is taken into custody or referred to juvenile court without being taken into custody, including records contained in the juvenile justice information system, if:

(1) a determination is made under Section 53.01 that no probable cause exists to believe the child engaged in the conduct and the case is not referred to a prosecutor for review under Section 53.012; or

(2) a determination that no probable cause exists to believe the child engaged in the conduct is made by a prosecutor under Section 53.012.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: While most juveniles are referred to the court through a custodial event in which law enforcement delivers them to the detention center, some are referred without being taken into custody through what is commonly referred to as a "paper referral." There was some question about the court's mandate to order the destruction of records in a case involving a paper referral when either intake or the prosecutor determined there was no probable cause. This change is designed to clarify that whether there is a custodial or paper referral, the court is mandated to order the records destroyed in the event that intake or the prosecutor determines there is no probable cause.

Alcoholic Beverage Code

Alcoholic Beverage Code Sec. 106.09. EMPLOYMENT OF MINORS. (d) A ~~[The fact that a]~~ person who is 18, 19, or 20 years of age is not prohibited from acting as an agent ~~[a ground for refusal of an original or renewal permit or license issued]~~ under Chapter 35, 36, or 73, provided the ~~[that such a]~~ person ~~[to whom a permit or license is issued]~~ may carry out the activities authorized by those chapters only while in the actual course and scope of the person's employment.

Commentary by Jenna Malsbary

Source: HB 1545

Effective Date: September 1, 2019

Applicability: Applies to minors employed at businesses required to have alcohol sales permits on or after the effective date.

Summary of Changes: House Bill 1545 reflects a major overhaul of the Alcoholic Beverage Code and regulation of businesses that sell alcohol in the State of Texas. Section 106.09 of the Alcoholic Beverage Code is amended to make conforming and clarifying changes that minors aged 18-20 may work as agents at certain businesses that are required to have permits or licenses. Each of the listed chapters has a section that defines exactly which activities an agent is authorized to engage in.

Alcoholic Beverage Code Sec. 106.12. EXPUNCTION OF CONVICTION OR ARREST RECORDS OF A MINOR. (e) The court shall charge an applicant a reimbursement fee in the amount of \$30 for each application for expunction filed under this section to defray the cost of notifying state agencies of orders of expunction under this section.

Commentary by Jenna Malsbary

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to fees for the expunction of conviction or arrest records of a minor on or after the effective date.

Summary of Changes: Throughout SB 346, amendments are made to reclassify fees as reimbursement fees. This includes an amendment to Alcoholic Beverage Code Section 106.12 reclassifying a fee for the application for expunction as a reimbursement fee.

Alcoholic Beverage Code Sec. 106.16. EXEMPTION FOR CERTAIN COURSE WORK. (b) Notwithstanding any other law, a minor may taste an alcoholic beverage if:

- (1) the minor:
 - (A) is at least 18 years old; and
 - (B) is enrolled:

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

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

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

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

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

Commentary by Jenna Malsbary

Source: HB 1545

Effective Date: September 1, 2021

Applicability: Applies to statutory references to beer on or after the effective date.

Summary of Changes: The change to Section 106.16 of the Alcoholic Beverage Code relates to an exception to allow a minor over 18 years old to taste an alcoholic beverage for certain course work. Specifically, it changes the ref-

erence from beer to malt beverages throughout the Alcoholic Beverage Code due to the expanding types of brewed beer in Texas.

Code of Criminal Procedure

Code of Criminal Procedure Art. 13.072. CONTINUOUS VIOLENCE AGAINST THE FAMILY COMMITTED IN MORE THAN ONE COUNTY.

An offense under Section 25.11, Penal Code, may be prosecuted in any county in which the defendant engaged in the conduct constituting an offense under Section 22.01(a)(1), Penal Code, against a person described by Section 25.11(a), Penal Code.

Commentary by Jenna Malsbary

Source: HB 1661

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Under Section 25.11 of the Penal Code, a person can be charged with continuous violence against the family if the assault happens two or more times within 12 months. HB 1661, also known as Rachel's Law, stems from the victim's past experience with continuous family violence in more than one county. Rachel assisted in drafting the legislation to help other survivors get out of abusive relationships. As amended, Code of Criminal Procedure Article 13.072 allows continuous violence against the family to be prosecuted in any county in which the defendant committed assault against a family member, household member, or a dating partner. It also changes Section 25.11(b) of the Penal Code to specify that the jury does not have to unanimously agree on the county where the offenses occurred in the prosecution of Continuous Violence against the Family.

Code of Criminal Procedure Art.13.291. CREDIT CARD OR DEBIT CARD ABUSE. An offense under Section 32.31, Penal Code, may be prosecuted in any county in which the offense was committed or in the county of residence for any person whose credit card or debit card was unlawfully possessed or used by the defendant.

Commentary by Jenna Malsbary

Source: HB 2624

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Under current law, it is difficult to prosecute the Penal Code offense of credit card or debit card abuse because sometimes offenders work in groups and commit their crimes throughout the state. It is also difficult to prosecute because the card holder may live in a

different state or county than where the offense was committed. Article 13.291 of the Code of Criminal Procedure has been amended to allow for the prosecution of credit card or debit card abuse offenses in any county where the offense was committed or in the county where the victim resides.

Code of Criminal Procedure Art. 14.035. AUTHORITY TO RELEASE IN LIEU OF ARREST CERTAIN PERSONS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITY. (a) This article applies only to a person with an intellectual or developmental disability who resides at one of the following types of facilities operated under the home and community-based services waiver program in accordance with Section 1915(c) of the Social Security Act (42 U.S.C. Section 1396n):

(1) a group home; or

(2) an intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) as defined by 40 T.A.C. Section 9.153.

(b) In lieu of arresting a person described by Subsection (a), a peace officer may release the person at the person's residence if the officer:

(1) believes confinement of the person in a correctional facility as defined by Section 1.07, Penal Code, is unnecessary to protect the person and the other persons who reside at the residence; and

(2) made reasonable efforts to consult with the staff at the person's residence and with the person regarding that decision.

(c) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of a person released under Subsection (b).

Commentary by Jenna Malsbary

Source: HB 3540

Effective Date: September 1, 2019

Applicability: Applies to the authority of a peace officer to release a person with an intellectual or developmental disability on or after the effective date.

Summary of Changes: This change seeks to address some of the disparities in arrests for persons with intellectual or developmental disabilities by authorizing a peace officer to release certain persons with an intellectual or developmental disability in lieu of arrest. New Article 14.035 of the Code of Criminal Procedure allows officers to consider whether it is in the best interest of a person with an intellectual or developmental disability at a group home or intermediate care facility to be released if the officer believes confinement is unnecessary to protect the person or other persons at the residence and the officer made reasonable efforts to consult with the staff and the person regarding the decision. It also adds an exception that the officer and

the agency, or political subdivision, that employs the officer cannot be held liable for damage to persons or property that may result from the actions of a person released.

Code of Criminal Procedure Art 15.27. NOTIFICATION TO SCHOOLS REQUIRED. (a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the head of the agency or a person designated by the head of the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or before the next school day, whichever is earlier. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the head of the agency or a person designated by the head of the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or before the next school day, whichever is earlier. If the individual is a student, the superintendent or the superintendent's designee shall immediately notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the head of the law enforcement agency or the person designated by the head of the agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. The written notification must include the facts contained in the oral notification, the name of the person who was orally notified, and the date and time of the oral notification. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code or whether it is necessary to conduct a threat assessment or prepare a safety plan related to the student. The information contained in the notice shall be considered by the superintendent or the superintendent's designee in making such a determination.

(k-1) In addition to the information provided under Subsection (k), the law enforcement agency shall provide to the superintendent or superintendent's designee information relating to the student that is requested for the

purpose of conducting a threat assessment or preparing a safety plan relating to that student. A school board may enter into a memorandum of understanding with a law enforcement agency regarding the exchange of information relevant to conducting a threat assessment or preparing a safety plan. Absent a memorandum of understanding, the information requested by the superintendent or the superintendent's designee shall be considered relevant.

Commentary by Jenna Malsbary

Source: SB 2135

Effective Date: September 1, 2019

Applicability: Applies to information related to an arrest or referral made on or after the effective date.

Summary of Changes: Under the current law, law enforcement is required to notify the superintendent if they arrest a person who is a student enrolled in their school. The notice has to contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. As amended, the notice requirements under Article 15.27 are expanded to require law enforcement to provide more information to the superintendent to determine whether it is necessary to conduct a threat assessment or preparing a safety plan for the student. In addition to the information provided in the notice, law enforcement must provide any other information requested by the superintendent or designee to conduct a threat assessment or prepare a safety plan. Article 15.27 subsection (k-1) adds that the school board may enter into a memorandum of understanding with a law enforcement agency regarding the parameters for the information exchanged relevant to conducting a threat assessment or preparing a safety plan. If there is no memorandum of understanding, then any information requested by the superintendent or designee is deemed relevant to the assessment.

Code of Criminal Procedure Art 17.441. CONDITIONS REQUIRING MOTOR VEHICLE IGNITION INTERLOCK. (a) Except as provided by Subsection (b), a magistrate shall require on release that a defendant charged with a subsequent offense under Section 49.04, 49.05, or 49.06 [~~Sections 49.04-49.06~~], Penal Code, or an offense under Section 49.045, 49.07, or 49.08 of that code:

(1) have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and

(2) not operate any motor vehicle unless the vehicle is equipped with that device.

Commentary by Jenna Malsbary

Source: HB 3582

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Under the current law, a person is not eligible for deferred adjudication community supervision for the first time offense of driving while intoxicated (DWI) or boating while intoxicated (BWI). There were similar bills to allow deferred adjudication for certain intoxication offenses in prior legislative sessions, but none of them made it far in committees. HB 3582 amends the Code of Criminal Procedure, Government Code, and Penal Code to allow certain first time offenders of DWI and BWI to receive the treatment they need to reduce the risk of them reoffending. As amended, Article 17.441 of the Code of Criminal Procedure removes the offense of driving while intoxicated with a child passenger from the subsequent list of offenses and adds it to now require a person to have ignition interlock on the first offense of driving while intoxicated with a child passenger. This bill did not amend Family Code 53.03 to allow deferred prosecution for a child's first offense of DWI or BWI.

Code of Criminal Procedure Art. 18.182. DISPOSITION OF ITEM BEARING COUNTERFEIT MARK. (a) In this article, "counterfeit mark" and "protected mark" have the meanings assigned by Section 32.23, Penal Code.

(b) Following the conviction or placement on deferred adjudication community supervision of a person for an offense under Section 32.23, Penal Code, the court entering the judgment of conviction or order of deferred adjudication community supervision shall order that any item bearing or identified by a counterfeit mark seized in connection with the offense be:

(1) forfeited to the owner of the protected mark, if prior to an order disposing of property under this article the owner of the protected mark requests the return of the item; or

(2) destroyed.

Commentary by Jenna Malsbary

Source: SB 1164

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Under the current law, there is no guidance for the disposition of an item bearing a counterfeit mark seized in connection with a criminal case. Newly added Article 18.182, Code of Criminal Procedure, provides guidance as to what to do with an item bearing or identified by a counterfeit mark upon the entry of a conviction or deferred adjudication in the related offense. The item must be returned to the owner of the protected mark if

the owner asked for the return of the item or it must be destroyed.

Code of Criminal Procedure Art 37.071. PROCEDURE IN CAPITAL CASE. (a) If a defendant is found guilty in a capital felony case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment or to life imprisonment without parole as required by Section 12.31, Penal Code.

(b) A defendant who is found guilty of an offense under Section 19.03(a)(9), Penal Code, may not be sentenced to death, and the state may not seek the death penalty in any case based solely on an offense under that subdivision.

Commentary by Jenna Malsbary

Source: SB 719

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: SB 719 is known as Lauren's Law in memory of a thirteen year old who was murdered in 2016. This is a refile from the 85th Regular Legislative Session, where it was referred to the Criminal Jurisprudence committee and never got a hearing. SB 719 amends the Penal Code by adding an enhancement if the victim of a murder is at least ten but not yet fifteen at the time of the offense. Code of Criminal Procedure Article 37.071 is amended to state that a person found guilty under Lauren's law for capital murder may not be sentenced to death and the State may not seek the death penalty based solely on this enhancement for the age of the child victim.

Code of Criminal Procedure Art. 38.19. INTENT TO DEFRAUD: CERTAIN OFFENSES ~~[IN FORGERY]~~. (a) This article applies to the trial of an offense under any of the following sections of the Penal Code:

(1) Section 32.21 (Forgery);

(2) Section 32.31 (Credit Card or Debit Card Abuse); or

(3) Section 32.51 (Fraudulent Use or Possession of Identifying Information).

(b) In the trial [trials] of an offense to which this article applies [forgery], the attorney representing the state is not required to prove [it need not be proved] that the defendant committed the act with intent to defraud any particular person. It is [shall be] sufficient to prove that the offense [forgery] was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of the offense [forgery] in the Penal Code.

Commentary by Jenna Malsbary

Source: HB 2624

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Code of Criminal Procedure Article 38.19 relating to the evidence to show intent to defraud is amended by including the offenses of credit card or debit card abuse and fraudulent use or possession of identifying information in addition to forgery. It also makes conforming amendments to reflect in the language of Article 38.19(b) that the attorney for the state does not have to show, for any of the aforementioned offenses, that the defendant intended to defraud a particular person; the attorney only has to prove that the offense was meant to injure or defraud the victim.

Code of Criminal Procedure Art. 38.371. EVIDENCE IN PROSECUTION ~~[PROSECUTIONS]~~ OF OFFENSE COMMITTED AGAINST MEMBER OF DEFENDANT'S FAMILY OR HOUSEHOLD OR PERSON IN DATING RELATIONSHIP WITH DEFENDANT ~~[CERTAIN OFFENSES INVOLVING FAMILY VIOLENCE]~~. (a) This article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, for which the alleged victim is [that is committed under:

~~[(1) Section 22.01, 22.02, or 22.04, Penal Code, against]~~ a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code~~[-or]~~

~~[(2) Section 25.07 or 25.072, Penal Code, if the offense is based on a violation of an order or a condition of bond in a case involving family violence].~~

Commentary by Jenna Malsbary

Source: SB 2136

Effective Date: September 1, 2019

Applicability: Applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date.

Summary of Changes: Code of Criminal Procedure Article 38.371 is amended to allow the introduction of testimony and related evidence of all relevant facts and circumstances that would assist in establishing the nature of the relationship between the victim and the defendant in the prosecution of an offense committed against a member of the defendant's family household or person in a dating relationship with the defendant. Current law only allows the admission of evidence from previous offenses of assault, aggravated assault, or injury to a child, disabled, or elderly person to establish a relationship. Article 38.371 now allows a jury to consider evidence from all prior acts of family violence if it assists in determining whether an actor committed the crime.

Code of Criminal Procedure Art. 38.471. EVIDENCE IN PROSECUTION FOR EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In the prosecution of an offense under Section 32.53, Penal Code, evidence that the defendant has engaged in other conduct that is similar to the alleged criminal conduct may be admitted for the purpose of showing the defendant's knowledge or intent regarding an element of the offense.

(b) 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 the Texas Rules of Evidence or other applicable law.

Commentary by Jenna Malsbary

Source: SB 2136

Effective Date: September 1, 2019

Applicability: Applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date.

Summary of Changes: Article 38.471, relating to evidence in the prosecution of the offense involving exploitation of a child, the elderly or a disabled individual, is added to the Code of Criminal Procedure. It allows the admission of evidence that the defendant had engaged in similar conduct to the alleged offense to show the defendant's knowledge or intent toward an element of the offense. It clarifies that Texas Rules of Evidence Rule 403 applies and that character evidence not otherwise permitted under the Rules of Evidence is not allowed.

Code of Criminal Procedure Art 62.001. DEFINITIONS. (5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.04 (Aggravated promotion of prostitution), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(3) of that section;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), (K), or (L);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), (K), or (L), but not if the violation results in a deferred adjudication;

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code;

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code; or

(L) a violation of Section 20A.03 (Continuous trafficking of persons), Penal Code, if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

Commentary by Jenna Malsbary

Source: SB 1802

Effective Date: September 1, 2019

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Article 62.001(5) is amended to add Penal Code Section 43.04, Aggravated Promotion of

Prostitution, to the definition of what is considered a “reportable conviction or adjudication” for purposes of the sex offender registration program. This change is intended to provide additional tools for the prosecution of trafficking-related crimes.

Code of Criminal Procedure Art. 62.001. DEFINITIONS. (5) “Reportable conviction or adjudication” means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(2) [~~(c-1)(3)~~] of that section;
...In relevant part only

Commentary by Jenna Malsbary

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: SB 20 codifies all fourteen of the recommendations from the Texas Human Trafficking Prevention Task Force Report of 2018. The task force includes the representatives or designees from 27 state or local agencies affected by or combatting human trafficking. In the last decade, this task force has made 70 recommendations with 65 of the recommendations becoming law. This section amends Code of Criminal Procedure Article 62.001(5) making conforming changes to the definition of a “reportable conviction or adjudication” relating to the offense enhancements for the offense of Prostitution.

Code of Criminal Procedure Art. 62.005. CENTRAL DATABASE; PUBLIC INFORMATION. (e) The department shall provide a licensing authority with notice of any person required to register under this chapter who holds or seeks a license that is issued by the authority. The department shall provide the notice required by this subsection as the applicable licensing information becomes available through notification by a court clerk under Article 42.0175, a parole panel under Section 508.1864, Government Code, or the person’s registration or verification of registration.

Commentary by Jenna Malsbary

Source: HB 1899

Effective Date: September 1, 2019

Applicability: Applies to applications for health care professional licenses pending on or submitted on or after the effective date.

Summary of Changes: This change to the Code of Criminal Procedure outlines the affirmative findings that are required to be made by a judge against a person with a health care professional license if, while they are licensed, they commit an offense that requires the registration as a sex offender, a felony use of force offense, or certain assault offenses. As amended, Article 62.005(e) of the Code of Criminal Procedure adds the aforementioned affirmative findings to the list of findings of which the Department of Public Safety is required to provide notice to a licensing agency as soon as the information is available.

Code of Criminal Procedure Art. 102.0171. FINES [COURT COSTS]: JUVENILE DELINQUENCY PREVENTION FUNDS. (a) A defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court shall pay a fine of \$50 for juvenile delinquency prevention and graffiti eradication [~~fee as a cost of court~~].

(c) The clerks of the respective courts shall collect the finer [~~costs~~] and pay the fines [~~them~~] to the county treasurer or to any other official who discharges the duties commonly delegated to the county treasurer for deposit in a fund to be known as the county juvenile delinquency prevention fund. A fund designated by this subsection may be used only to:

(1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;

(2) provide educational and intervention programs and materials, including printed educational materials for distribution to primary and secondary school students, designed to prevent individuals from committing offenses under Section 28.08, Penal Code;

(3) provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders who commit offenses under Section 28.08, Penal Code;

(4) provide funding for teen recognition and teen recreation programs;

(5) provide funding for local teen court programs;

(6) provide funding for the local juvenile probation department; and

(7) provide educational and intervention programs designed to prevent juveniles from engaging in delinquent conduct.

Commentary by Jenna Malsbary

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to an offense that was committed before, on, or after the effective date.

Summary of Changes: SB 346 makes changes to the way courts collect payments by changing reference from a cost to a fine. This section makes conforming changes to Article 102.0171 of the Code of Criminal Procedure by replacing the word “cost” with the word “fine.”

Non-Title 3 Family Code

Family Code Sec. 31.008. WAIVER OF CITATION. (d) ~~The [Notwithstanding Section 132.001, Civil Practice and Remedies Code, the]~~ waiver must be sworn before a notary public who is not an attorney in the suit or conform to the requirements for an unsworn declaration under Section 132.001, Civil Practice and Remedies Code. This subsection does not apply if the party executing the waiver is incarcerated.

Commentary by Linda Butler Arrigucci

Source: SB 891

Effective Date: September 1, 2019

Applicability: Applies to waivers of citation sworn to on or after the effective date.

Summary of Changes: The waiver of citation must be sworn before a notary public, who is not an attorney in the suit or the waiver of citation must conform to the requirements for an unsworn declaration as set forth in Civil Practice and Remedies Code Section 132.001. Under that section, an unsworn declaration must be in writing and subscribed by the person making the declaration as true under penalty of perjury. Under Section 132.008(e) of the Civil Practice and Remedies Code, an unsworn declaration made by an inmate must include a jurat with the following identifiers: full name, date of birth, inmate identifying number, and place where incarcerated (city, county, state, zip).

Family Code Sec. 153.371. RIGHTS AND DUTIES OF NONPARENT APPOINTED AS SOLE MANAGING CONSERVATOR. Unless limited by court order or other provisions of this chapter, a nonparent, a licensed child-placing agency, or the Department of Family and Protective Services appointed as a managing conservator of the child has the following rights and duties:

- (1) the right to have physical possession and to direct the moral and religious training of the child;
- (2) the duty of care, control, protection, and reasonable discipline of the child;
- (3) the duty to provide the child with clothing, food, shelter, education, and medical, psychological, and dental care;

(4) the right to consent for the child to medical, psychiatric, psychological, dental, and surgical treatment and to have access to the child’s medical records;

(5) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(6) the right to the services and earnings of the child;

(7) the right to consent to marriage and to enlistment in the armed forces of the United States;

(8) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(9) except when a guardian of the child’s estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child’s estate if the child’s action is required by a state, the United States, or a foreign government;

(10) the right to designate the primary residence of the child and to make decisions regarding the child’s education; ~~and~~

(11) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the right to consent to the adoption of the child and to make any other decision concerning the child that a parent could make; and

(12) the right to:

- (A) apply for a passport for the child;
- (B) renew the child’s passport;
- (C) maintain possession of the child’s passport.

Commentary by Linda Butler Arrigucci

Source: HB 555

Effective Date: September 1, 2019

Applicability: Applies only to a suit affecting the parent-child relationship (SAPCR) that is pending or filed in a trial court on or after the effective date.

Summary of Changes: This amends current law relating to certain rights of the sole managing conservator of a child in relation to the child’s passport. It gives the sole managing conservator the right to: 1) apply for a passport for the child; 2) renew the child’s passport; and 3) maintain possession of the child’s passport. Under current law, the statute is silent as to which parent has the right to control the child’s passport, which creates ambiguities and unnecessary conflict between the parents regarding the sole managing conservator’s ability to travel with the child, or to authorize the child to travel, internationally. Control of the child’s travel is consistent with the status of being a sole managing conservator. Absent a contrary court order, the sole managing conservator’s role includes applying for, maintaining, and possessing the child’s passport. Sole managing conservators include a nonparent, a licensed

child-placing agency, or the Department of Family and Protective Services appointed as a managing conservator of the child.

Family Code Sec. 261.105(d). REFERRAL OF REPORT BY DEPARTMENT OR LAW ENFORCEMENT. (d) If the department initiates an investigation and determines that the abuse or neglect does not involve a person responsible for the child's care, custody, or welfare, the department shall refer the report to a law enforcement agency for further investigation. If the department determines that the abuse or neglect involves an employee of a public or private elementary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the school district, the director of the open-enrollment charter school, or the chief executive officer of the private school in which the employee is employed about the investigation.

Commentary by Linda Butler Arrigucci

Source: SB 1231

Effective Date: September 1, 2019

Applicability: Applies to investigations by the Department of Family and Protective Services (DFPS) at private elementary or secondary schools and to whom the allegations of abuse or neglect should be reported on or after the effective date.

Summary of Changes: If DFPS determines that the abuse or neglect involves an employee of a private elementary or secondary school, and that the child is a student at the school, Section 261.105(d) of the Family Code requires DFPS to orally notify the director of the open-enrollment charter school, or the chief executive officer (CEO) of the private school in which the employee is employed, rather than the superintendent of the school district. When DFPS receives a report and begins an investigation of alleged child abuse or neglect involving an employee of a private school, current law does not require the investigative reports to be provided to administrators of the private school. Public and private schools should be given equal notification so as to protect the students.

Family Code Sec. 261.307. INFORMATION RELATING TO INVESTIGATION PROCEDURE AND CHILD PLACEMENT RESOURCES.

(a) As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person:

(1) a summary that:

(A) is brief and easily understood;

(B) is written in a language that the person understands, or if the person is illiterate, is read to the person in a language that the person understands; and

(C) contains the following information:

(i) the department's procedures for conducting an investigation of alleged child abuse or neglect, including:

(a) a description of the circumstances under which the department would request to remove the child from the home through the judicial system; and

(b) an explanation that the law requires the department to refer all reports of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

(ii) the person's right to file a complaint with the department or to request a review of the findings made by the department in the investigation;

(iii) the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation or the child's safety;

(iv) the person's right to seek legal counsel;

(v) references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and

(vi) the process the person may use to acquire access to the child if the child is removed from the home;

(2) if the department determines that removal of the child may be warranted, a proposed child placement resources form that:

(A) instructs the parent or other person having legal custody of the child to:

(i) complete and return the form to the department or agency; ~~and~~

(ii) identify in the form at least three individuals who could be relative caregivers or designated caregivers, as those terms are defined by Section 264.751; ~~and~~

(iii) ask the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

(iv) list on the form the name of each individual identified by the child as a potential relative caregiver or designated caregiver; and

(B) informs the parent or other person of a location that is available to the parent or other person to submit the information in the form 24 hours a day either in person or by facsimile machine or e-mail; and

(3) an informational manual required by Section 261.3071.

Commentary by Linda Butler Arrigucci

Source: HB 3390

Effective Date: June 14, 2019

Summary of Changes: This amends Section 261.307 of the Texas Family Code, Information Relating to Investigation Procedure and Child Placement Resources. If the Department of Family and Protective Services (DFPS) determines that removal of the child may be warranted, a proposed child placement resources form may be completed by the parent or other person having legal custody to identify at least three individuals who could be relative caregivers or designated caregivers; to ask the child, in a developmentally appropriate way, to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and to list on the form the name of each individual identified by the child.

The purpose of change is to provide opportunities for the child in an abuse/neglect case to have meaningful input into identifying individuals who could possibly provide care for him or her. The goal is to find individuals who can provide care to the child as a fictive kin or a foster parent. The term fictive kin refers to individuals that are unrelated by either birth or marriage but have emotionally significant relationships with one another such that they take on the characteristics of a family relationship. Ideally, this could potentially lower the number of children in congregate care, such as group homes or residential treatment facilities.

Family Code Sec. 261.308. SUBMISSION OF INVESTIGATION REPORT. (d) The department shall release information regarding a person alleged to have committed abuse or neglect to persons who have control over the person's access to children, including, as appropriate, the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, ~~or~~ the public school principal or director, the director of the open-enrollment charter school, or the chief executive officer of the private school if the department determines that:

- (1) the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and
- (2) the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect.

Commentary by Linda Butler Arrigucci

Source: SB 1231

Effective Date: September 1, 2019

Summary of Changes: Section 261.308(d) of the Texas Family Code adds the public school principal or director, the director of the open-enrollment charter school, or the chief executive officer of the private school to a list of persons to whom DFPS is required to release information regarding a person alleged to have committed abuse or neglect. The purpose of this language is meant to protect the children at the school by informing persons who have control over the alleged abuser's access to children. The other changes are nonsubstantive.

Family Code Sec. 261.406. INVESTIGATIONS IN SCHOOLS. (a) On receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school ~~[under the jurisdiction of the Texas Education Agency]~~, the department shall perform an investigation as provided by this chapter.

(b) The department shall send a copy of the completed report of the department's investigation to the Texas Education Agency or, in the case of a private school, the school's chief executive officer. On request, the department shall provide a copy of the completed report of the department's investigation to the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, ~~and~~ the public school principal or director, or the chief executive officer of the private school, unless the principal, ~~or~~ director, or chief executive officer is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Except as otherwise provided by this subsection ~~[Other than the persons authorized by the section to receive a copy of the report]~~, Section 261.201(b) applies to the release of the report relating to the investigation of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

Commentary by Linda Butler Arrigucci

Source: SB 1231

Effective Date: September 1, 2019

Summary of Changes: This amends Section 261.406(a) and (b) of the Texas Family Code. Under subsection (a), the reference to the jurisdiction of the Texas Education Agency (TEA) is deleted because TEA does not have oversight of private schools in Texas. Limited resources caused TEA to end this service for private schools, and in 1986, a

private commission was created called the Texas Private School Accreditation Commission (TEPSAC).

Under subsection (b), the Department of Family and Protective Services (DFPS) is required to send a copy of its completed, investigative report to TEA or, in the case of a private school, to the school's chief executive officer, unless the principal, director, or chief executive officer is alleged to have committed the abuse or neglect. Section 261.201(b) of the Texas Family Code (relating to the disclosure of confidential information per court order) applies to the release of the investigative report of abuse or neglect and to the identity of the person who made the report of abuse or neglect. The other changes are conforming and nonsubstantive. The goal of this legislation is to require DFPS to release the information to private school administrators the same as it does to public schools administrators. Children enrolled in private and public schools should be afforded the same level of protection to avoid an unintended result of giving private schoolchildren less protection than is afforded public schoolchildren.

Government Code

Government Code Sec. 22.0135. JUDICIAL GUIDANCE RELATED TO CHILD PROTECTIVE SERVICES CASES AND JUVENILE CASES. (a) The supreme court, in conjunction with the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, annually shall provide guidance to judges who preside over child protective services cases or juvenile cases to establish greater uniformity across the state for:

(1) in child protective services cases, issues related to:

(A) placement of children with severe mental health issues;

(B) changes in placement; and

(C) final termination of parental rights; and

(2) in juvenile cases, issues related to:

(A) placement of children with severe mental health issues;

(B) the release of children detained in juvenile detention facilities;

(C) certification of juveniles to stand trial as adults;

(D) a child's appearance before a court in a judicial proceeding, including the use of a restraint on the child and the clothing worn by the child during the proceeding; and

(E) commitment of children to the Texas Juvenile Justice Department.

(b) The supreme court shall adopt the rules necessary to accomplish the purposes of this section.

Commentary by Nydia Thomas

Source: HB 2737

Effective Date: September 1, 2019

Applicability: Applies to guidance and training provided by the Supreme Court on or after the effective date.

Summary of Changes: Section 22.0135 of the Government Code requires the Texas Supreme Court to collaborate with the Texas Permanent Judicial Commission for Children, Youth, and Families to provide, on an annual basis, guidance to judges who preside over child protective services cases or juvenile cases. The aim is to encourage statewide uniformity in training and overall awareness of issues relating to child abuse and trauma. In the context of juvenile cases, the working group will offer judicial guidance on: 1) the placement of children with severe mental health issues; 2) the release of juveniles from detention facilities; 3) certification of juveniles as adults; 4) the child's court appearances – including the use of restraints and clothing worn during proceedings; and 5) commitment to TJJD. In child protective services cases, the working group will examine issues related to the placement of children with severe mental health issues; changes in placement; and the final termination of parental rights.

Government Code Sec. 54.101. APPOINTMENT [BELL COUNTY TRUANCY MASTERS]. (a) The Commissioners Court of Bell County may select masters to serve the justice courts of Bell County having jurisdiction in truancy matters.

(b) The commissioners court shall establish the salary, benefits, and other compensation of each master position and shall determine whether the position is full-time or part-time.

(c) A master appointed under this section serves at the pleasure of the commissioners court.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to the appointment of truancy court masters in Bell County on or after the effective date.

Summary of Changes: These amendments to Chapter 54 of the Government Code relate to the creation of truancy masters in Bell County. Specifically, newly added Section 54.101 authorizes the appointment justice court master to preside in truancy matters to ease docket management for these cases in the county. The commissioners court may appoint the master and establish the salary, benefits and other compensation for each master position and determine whether the position is full-time or part-time. The position serves at the pleasure of the commissioners court.

Government Code, 54.102. JURISDICTION.

A master appointed under this subchapter has concurrent jurisdiction with the judges of the justice of the peace courts of Bell County over cases involving truant conduct in accordance with Section 65.004, Family Code.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to the appointment of truancy court masters in Bell County on or after the effective date.

Summary of Changes: Under Section 54.102, the Bell County truancy masters have concurrent jurisdiction with the judges of the justice of the peace courts of Bell County that derive their jurisdiction over truant conduct cases under Section 65.006, found in Title 3A of the Family Code.

Government Code Sec. 54.103. POWERS AND DUTIES. (a) The Commissioners Court of Bell County shall establish the powers and duties of a master appointed under this subchapter.

(b) An order of referral may limit the use or power of a master.

(c) Unless limited by published local rule, by written order, or by an order of referral, a master may perform all acts and take all measures necessary and proper to perform the tasks assigned in a referral.

(d) A master may administer oaths.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to the powers and duties of truancy court masters in Bell County on or after the effective date.

Summary of Changes: This provision governs the powers and duties of the truancy master in Bell County as established by the commissioners court. The master may administer oaths and perform all authorized duties. These powers may be limited as set out in this provision or by local rule, written order or an order of referral.

Government Code Sec. 54.104. JUDICIAL IMMUNITY. A master has the same judicial immunity as a district judge.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to the actions or omissions of Bell County truancy court masters on or after the effective date.

Summary of Changes: The Bell County truancy masters are granted the same judicial immunity as a district judge.

Government Code Sec. 54.105. TRAINING. A master appointed under this subchapter must successfully complete all training a justice of the peace is required to complete under state law.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to judicial training for truancy court masters in Bell County on or after the effective date.

Summary of Changes: A master appointed under this provision must successfully complete the same mandated judicial education training required of justices of the peace.

Government Code Sec. 54.106. FAILURE TO COMPLY WITH SUMMONS OR ORDER. If an attorney, party, witness, or any other person fails to comply with a summons or order, the master may certify that failure in writing to the referring court for appropriate action.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to the summons or orders of a truancy master in Bell County or after the effective date.

Summary of Changes: Section 54.106 authorizes the master to certify in writing to a referring court that an attorney, party, witness or other party has failed to comply with a summons or order.

Government Code Sec. 54.107. WITNESSES.

(a) A witness appearing before a master is subject to the penalties of perjury as provided by Chapter 37, Penal Code.

(b) A witness referred to the court under Section 54.106 is subject to the same penalties and orders that may be imposed on a witness appearing in a hearing before the court.

Commentary by Nydia Thomas

Source: HB 452

Effective Date: September 1, 2019

Applicability: Applies to witness testimony before a truancy court master on or after the effective date,

Summary of Changes: This provision specifies that a witness appearing before a master is subject the penalty of perjury and related orders as a witness that appears in a hearing before the court.

Government Code Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Family Code if ordered by the court or otherwise required:

In relevant part...

(2) in juvenile court:

(A) fee schedule for deferred prosecution services (Sec. 54.03, Family Code) . . . maximum fee of \$15 a month;

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

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

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

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

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

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

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

~~(G)~~ ~~[(I)]~~ a program fee for a teen dating violence court program (Sec. 54.0325, Family Code) . . . \$10; and

~~(H)~~ ~~[(J)]~~ a fee to cover the cost to the court of administering a teen dating violence court program (Sec. 54.0325, Family Code) . . . not to exceed \$10.

Commentary by Nydia Thomas

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to court costs and fees relating to conduct occurring on or after the effective date.

Summary of Changes: This amendment removes the references to fees for the teen court program authorized under Section 54.032 of the Family Code.

Health and Safety Code

Health and Safety Code Sec. 161.081 DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS: DEFINITIONS.

(1-b) "Minor" means a person under 21 years of age.

Commentary by Jenna Malsbary

Source: SB 21

Effective Date: September 1, 2019

Applicability: Applies to the distribution of cigarettes, e-cigarettes or tobacco products on or after the effective date except the changes to not apply to a person born on or before August 31, 2001.

Summary of Changes: The amendments to Chapter 161 of the Health and Safety Code raise the age from 18 to 21 for a person to use, possess, or distribute cigarettes, e-cigarettes, and tobacco products. The changes made by SB 21 are designed to reduce early addiction to tobacco and nicotine products since data shows that many people become addicted at a young age. Part of the objective is to remove access to these products by young adults in high school who reach the age of 18 and are currently able to purchase products that contain nicotine and tobacco. It is believed that increasing the age will reduce the exposure of high school students to tobacco products by prohibiting those who turn 18 while in school from legally accessing them as well as from being pressured to purchase for others. The definitions language in Health and Safety Code Section 161.081 did not define the term "minor" previously. In this section, the definition of a minor is added to mean a person under 21 years of age, making it clear throughout this subchapter that 21 is now the age a person must be to purchase or possess tobacco products.

Health and Safety Code Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 21 ~~[18]~~ YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 21 ~~[18]~~ years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 21 ~~[18]~~ years of age.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 ~~[18]~~ years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) It is an exception to the application of Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

Commentary by Jenna Malsbary

Source: SB 21

Effective Date: September 1, 2019

Applicability: Applies to the sale, purchase, and use of cigarettes, e-cigarettes, or tobacco products and creates an exemption on or after the effective date except the changes to not apply to a person born on or before August 31, 2001.

Summary of Changes: This amendment to Health and Safety Code Section 161.082 makes conforming changes related to the change of the age at which one may purchase or possess cigarettes, e-cigarettes, and tobacco from 18 to 21. This provision provides it is an offense for a person, with criminal negligence, to sell or give to a person under the age of 21 cigarettes, e-cigarettes, or tobacco products. Section 161.082(f) is also added to create an exception for the prohibition of the sale of these products to a person under the age of twenty-one if at the time of the sale the person was at least eighteen years of age and they presented a U.S. or State military I.D.

Health and Safety Code Sec. 161.084. WARNING NOTICE. (b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON [~~MINOR~~] UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON [~~MINOR~~] UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES.

(b-1) Immediately following the statement described by Subsection (b), the sign described by that subsection must include the statement:

THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO WAS BORN ON OR BEFORE AUGUST 31, 2001.

(b-2) This subsection and Subsection (b-1) expire September 1, 2022.

Commentary by Jenna Malsbary

Source: SB 21

Effective Date: September 1, 2019

Applicability: Applies to warning notices posted by businesses selling tobacco products on or after the effective date.

Summary of Changes: These conforming amendments to Health and Safety Code Section 161.084 change the age to 21 on the warning notices that have to be posted where tobacco products are sold. The changes in the language also include the exception for a person in the US or State military. It also adds a section (b-1) which specifies the language on the sign must state that these prohibitions do not apply to persons born on or before August 31, 2001. This section is set to expire September 1, 2022 because this class of persons will be 21 years of age by then.

Health and Safety Code Sec. 161.251. E-CIGARETTE AND TOBACCO USE BY MINORS: DEFINITIONS. (1-b) "Minor" means a person under 21 years of age.

Commentary by Jenna Malsbary

Source: SB 21

Effective Date: September 1, 2019

Applicability: Applies to the use of cigarettes, e-cigarettes or tobacco products by a minor on or after the effective date except the changes to not apply to a person born on or before August 31, 2001.

Summary of Changes: The definitions section of Health and Safety Code Section 161.251 did not include a definition of a minor previously. In this section, the definition of a minor is added to mean a person under 21 years of age, making it clear throughout this subchapter that 21 is now the age a person must be to use tobacco products.

Health and Safety Code Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 21 [~~18~~] years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product; or

(2) falsely represents himself or herself to be 21 [~~18~~] years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette, e-cigarette, or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 21 [~~18~~] years of age possessed the cigarette, e-cigarette, or tobacco product in the presence of[-

~~(1) an adult parent, a guardian, or a spouse of the individual; or~~

~~(2)~~ an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 21 [48] years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(c-1) It is an exception to the application of this section that the individual younger than 21 years of age:

(1) is at least 18 years of age; and

(2) presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(d) An offense under this section is punishable by a fine not to exceed \$100 [\$250].

(e) On conviction of an individual under this section, the court shall give notice to the individual that the individual may apply to the court to have the individual's conviction expunged as provided by Section 161.255 on or after the individual's 21st birthday.

Commentary by Jenna Malsbary

Source: SB 21

Effective Date: September 1, 2019

Applicability: Applies to possession, purchase, consumption or use of tobacco products by a minor on or after the effective date except the changes to not apply to a person born on or before August 31, 2001.

Summary of Changes: In addition to the conforming age changes, the amendments to Health and Safety Code Section 161.252 create an offense for a person who is younger than 21 who possesses, purchases, consumes, or accepts a cigarette, e-cigarette or tobacco product. This change removes the exception that a person under age may possess the products in the presence of their parent or guardian. It is also an offense if a person falsely presents themselves to be at least 21 with a fake ID.

Section 161.252(c-1) is also added to create an exception for the prohibition of the sale of these products to a person under the age of twenty-one if at the time of the sale the person was at least eighteen years of age and they presented a U.S. or State military I.D. Section 161.252 (d) lowers the cost of the fine for this offense from \$250 to \$100. Section 161.252(e) adds a requirement that the court must explain to a person convicted for an offense under this section that they may apply to have their conviction expunged on or after their 21st birthday following the requirements under Health and Safety Code Section 161.255.

Health and Safety Code Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply

to the court to have the conviction expunged on or after the individual's 21st birthday. The [If the court finds that the individual satisfactorily completed the e-cigarette and tobacco awareness program or e-cigarette and tobacco related community service ordered by the court, the] court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

Commentary by Jenna Malsbary

Source: SB 21

Effective Date: September 1, 2019

Applicability: Applies to record expunctions relating to an offense committed on or after the effective date.

Summary of Changes: This section amends the requirements for an expunction application allowing a person who has been convicted of offense possessing, using or purchasing a tobacco product or using a fake ID to acquire a tobacco product. It removes the previous requirement that the person had to complete a tobacco awareness program to be eligible for expunction and only leaves that the court has to order the expunction.

Health and Safety Code Sec. 481.002. THE CONTROLLED SUBSTANCES ACT: DEFINITIONS.

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 2, 2-A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Section 121.001, Agriculture Code, or the tetrahydrocannabinols in hemp.

(26) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; [or]

(E) the sterilized seeds of the plant that are incapable of beginning germination; or

(F) hemp, as that term is defined by Section 121.001, Agriculture Code.

Commentary by Jenna Malsbary

Source: HB 1325

Effective Date: June 10, 2019

Applicability: Applies to the exclusion of hemp as a controlled substance effective immediately.

Summary of Changes: This change to Section 481.001 of the Health and Safety Code excludes hemp and the THC in hemp from the definition of a controlled substance and marijuana. It refers to hemp as defined in the Agriculture Code under Section 121.001. Hemp is defined as the plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis. This will allow the production of hemp products in Texas without the potential for punishment as long as the product falls under the Agriculture Code definition.

Additional Commentary by Kaci Singer

There has been much media coverage over the potential issues created by the change in law to the definition of marijuana. The issues, and opinions regarding them, are varied. It bears noting that this issue is not limited to Texas. The vast majority of states have passed the same hemp law and are grappling with the same concerns.

Concerns that have been noted begin with the question of probable cause. Before the change in the definition to provide that cannabis with no more than .3 percent THC is not marijuana, probable cause that a substance was marijuana was typically developed by a law enforcement officer's identification of the substance as marijuana based on smell and appearance. Because marijuana and hemp both come from the cannabis plant, identification of a substance as illegal marijuana as opposed to legal hemp based on smell and appearance is not possible. A review of publicly available information suggests that some jurisdictions throughout the country are advising officers that they need an "odor-plus" standard for developing probable cause; in other words additional evidence of illegality apart from smell and appearance. It is likely probable cause will soon be the issue in court cases.

Assuming probable cause can be established, the next issue lies with the identification of a substance as marijuana by identifying the amount of THC present. To this point, testing has been for the presence of any amount of THC, as that was the definition of marijuana. Under the new definition, a substance is not marijuana unless it has more than .3% THC in it. Thus, the amount of THC must now be quantified using a validated test at an accredited crime laboratory. Testing to do so is currently being developed. The cost of such testing has been raised by many jurisdictions as another issue posed by the new legislation.

It does bear noting that, as with all offenses, the prosecution bears the burden of proving the substance is illegal. There is no presumption that the substance is marijuana and there is no burden on the defendant to prove it is hemp. The definitional change applies to oils as well as plants.

While the issues surrounding this new law are identifiable, there is still uncertainty about its impact in the criminal and juvenile justice systems. Reviewing how other jurisdictions within Texas as well as other states are handling it may prove helpful to practitioners.

Human Resources Code

Human Resources Code Sec. 203.0065. PREVENTION AND INTERVENTION SERVICES. (g) The records related to a youth who was provided prevention and intervention services under this section are confidential and may only be inspected or copied by an individual or entity to whom the youth is referred for treatment or services.

(h) An individual or entity that receives information under this section may not disclose the information unless otherwise authorized by law.

Commentary by Kaci Singer

Source: HB 1760

Effective Date: September 1, 2019

Applicability: Applies to records created on, before, or after the effective date.

Summary of Changes: Juvenile probation departments and TJJD maintain records on children referred to prevention and intervention services. Because people eligible for these services are not always individuals who have been referred to juvenile court, records of these services are not juvenile records. In order to ensure these records are confidential, language expressly making them confidential was added.

Local Government Code

Local Government Code Sec. 133.125 [Art. 102.015]. ALLOCATION OF FEES TO [COURT COSTS:] TRUANCY PREVENTION AND DIVERSION ACCOUNT [FUND]. (a) The truancy prevention and diversion account [fund] is a dedicated account in the general revenue fund. The account consists of money allocated to the account under Section 133.102(e).

(b) ~~[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, shall pay as a court cost \$2 in addition to other court costs.]~~

~~[(c) For purposes of this article, a person is considered to have been convicted if:~~

~~[(1) a sentence is imposed; or~~

~~[(2) the defendant receives deferred disposition in the case.~~

~~[(d) Court costs under this article are collected in the same manner as other fines or costs. An officer collecting the costs shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county treasury or municipal treasury, as applicable.~~

~~[(e) The custodian of a county treasury or municipal treasury, as applicable, shall:~~

~~[(1) keep records of the amount of funds on deposit collected under this article; and~~

~~[(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter, except that the custodian may retain 50 percent of funds collected under this article for the purpose of operating or establishing a juvenile case manager program, if the county or municipality has established or is attempting to establish a juvenile case manager program.~~

~~[(f) If no funds due as costs under this article are deposited in a county treasury or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.~~

~~[(g) The comptroller shall deposit the funds received under this article to the credit of a dedicated account in the general revenue fund to be known as the truancy prevention and diversion fund.] The legislature may appropriate money from the truancy prevention and diversion account only to the criminal justice division of the governor's office for distribution to local governmental entities for truancy prevention and intervention services.~~

~~[(c)]~~(h)~~ A local governmental entity may request funds from the criminal justice division of the governor's office for providing truancy prevention and intervention services. The division may award the requested funds based on the availability of appropriated funds and subject to the application procedure and eligibility requirements specified by division rule.~~

~~[(i) Funds collected under this article are subject to audit by the comptroller.]~~

Commentary by Nydia Thomas

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to the allocation of truancy prevention and diversion account fees on or after the effective date.

Summary of Changes: SB 346 made a variety of changes to the statutes relating to court costs and fees. As amended, Section 133.125 of the Local Government Code modifies the allocation of fees to the truancy prevention and diversion fund, now "account." The substance of this provision

was transferred from the Code of Criminal Procedure. As amended, these funds may be appropriated by the legislature to the Criminal Justice Division (CJD) of the governor's office for distribution to local government entities for truancy prevention and intervention services. Local governmental entities (i.e., justice courts or municipalities with juvenile case managers) may request funds from CJD to provide truancy prevention and intervention services. CJD may establish the application process and eligibility criteria for awarding available funds.

Local Government Code Sec. 134.156. LOCAL TRUANCY PREVENTION AND DIVERSION FUND.

(a) Money allocated under Section 134.103 to the local truancy prevention and diversion fund maintained in the county or municipal treasury as required by Section 134.151 may be used by a county or municipality to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager employed under Article 45.056, Code of Criminal Procedure. If there is money in the fund after those costs are paid, subject to the direction of the governing body of the county or municipality and on approval by the employing court, a juvenile case manager may direct the remaining money to be used to implement programs directly related to the duties of the juvenile case manager, including juvenile alcohol and substance abuse programs, educational and leadership programs, and any other projects designed to prevent or reduce the number of juvenile referrals to the court.

(b) Money in the fund may not be used to supplement the income of an employee whose primary role is not that of a juvenile case manager.

Commentary by Nydia Thomas

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to the allocation of truancy prevention and diversion fund on or after the effective date.

Summary of Changes: This amendment outlines the allowable use of funds allocated to the local truancy prevention and diversion fund, which was formerly called the juvenile case manager fund. Specifically, it authorizes a county or municipality to use the funds to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager employed under Article 45.056, Code of Criminal Procedure. After those costs have been paid, the governing body may authorize the juvenile case manager to use the remaining funds to implement programs related to the duties of the juvenile case manager, such as to support juvenile alcohol, substance abuse, educational and leadership programs and any other programs designed to prevent or reduce juvenile referrals. The money may not be used as a salary supplement for the juvenile case manager.

Occupations Code

Occupations Code Sec. 169.001. AUTHORITY TO PRESCRIBE LOW-THC CANNABIS TO CERTAIN PATIENTS FOR COMPASSIONATE USE: DEFINITIONS. (1-a) “Incurable neurodegenerative disease” means a disease designated as an incurable neurodegenerative disease by rule of the executive commissioner of the Health and Human Services Commission, adopted in consultation with the National Institutes of Health.

(3) “Low-THC cannabis” means the plant *Cannabis sativa* L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains[
~~(A)] not more than 0.5 percent by weight of tetrahydrocannabinols[; and~~
~~(B) not less than 10 percent by weight of cannabidiol].~~

Commentary by Jenna Malsbary

Source: HB 3703

Effective Date: Effective Immediately

Applicability: Applies to prescriptions of low-THC cannabis for medical use on or after the effective date.

Summary of Changes: The state legislature enacted the Texas Compassionate-Use Act in 2015 which authorized low-THC cannabis to be prescribed to treat a patient with intractable epilepsy. This legislation was passed in response to calls for updates to the act and fore more conditions to be made eligible for treatment using low-THC cannabis. The amendments to Occupations Code Section 169.001 add the definitions of incurable neurodegenerative disease and terminal cancer. The addition of incurable neurodegenerative disease is not a definition or list of what includes a neurodegenerative disease, but establishes that the executive commissioner of the Health and Human Services Commission designates what is considered an incurable neurodegenerative disease. Section 4 of HB 3703 requires this designation to be completed by the Health and Human Services Commission by December 1, 2019. The amendments to the definition of low-THC cannabis are significant because it removes the weight requirement for cannabidiol, or CBD, leaving only the requirement that the prescribed low-THC cannabis have no more than .5 percent weight of tetrahydrocannabinols, or THC.

Occupations Code Sec. 169.0011. PRESCRIPTION FOR MEDICAL USE. A reference in this chapter, Chapter 487, Health and Safety Code, or other law to a prescription for medical use or a prescription for low-THC cannabis means an entry in the compassionate-use registry established under Section 487.054, Health and Safety Code.

Commentary by Jenna Malsbary

Source: HB 3703

Effective Date: June 14, 2019

Applicability: Applies to prescriptions of low-THC cannabis for certain medical condition or after the effective date.

Summary of Changes: As added, Section 169.0011 of the Occupations Code establishes that a prescription for medical use or low-THC cannabis in this chapter falls under the compassionate-use registry outlined in the Health and Safety Code. The purpose of the registry is to prevent a patient from getting a low-THC prescription from more than one physician and to allow law enforcement to efficiently verify if someone is in legal possession of low-THC cannabis with a prescription or not.

Occupations Code Sec. 169.002. PHYSICIAN QUALIFIED TO PRESCRIBE LOW-THC CANNABIS TO PATIENTS WITH CERTAIN MEDICAL CONDITIONS. (a) Only a physician qualified with respect to a patient’s particular medical condition as provided by this section may prescribe low-THC cannabis in accordance with this chapter to treat the applicable medical condition.

(b) A physician is qualified to prescribe low-THC cannabis with respect to a patient’s particular medical condition [~~to a patient with intractable epilepsy~~] if the physician:

(1) is licensed under this subtitle;

(2) is board certified in a medical specialty relevant to the treatment of the patient’s particular medical condition by a specialty board approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; and

(3) dedicates a significant portion of clinical practice to the evaluation and treatment of the patient’s particular medical condition [~~epilepsy; and~~]

~~(3) is certified:~~

~~[(A) by the American Board of Psychiatry and Neurology in:~~

~~[(i) epilepsy; or~~

~~[(ii) neurology or neurology with special qualification in child neurology and is otherwise qualified for the examination for certification in epilepsy; or~~

~~[(B) in neurophysiology by:~~

~~[(i) the American Board of Psychiatry and Neurology; or~~

~~[(ii) the American Board of Clinical Neurophysiology].~~

Commentary by Jenna Malsbary

Source: HB 3703

Effective Date: June 14, 2019

Applicability: Applies to the qualifications for a physician to prescribe low-THC cannabis on or after the effective date.

Summary of Changes: The amendments to Section 169.002 of the Occupations Code significantly reduce the previous qualification requirements for a physician to prescribe low-THC cannabis. It makes conforming changes in the statute that refer solely to intractable epilepsy and broadens the language to require that the physician is board certified in a medical specialty relevant to the treatment of the patient's particular medical condition.

Occupations Code Sec. 169.003. PRESCRIPTION OF LOW-THC CANNABIS. A physician described by Section 169.002 may prescribe low-THC cannabis to a patient ~~[alleviate a patient's seizures]~~ if:

(1) the patient is a permanent resident of the state;

(2) the physician complies with the registration requirements of Section 169.004; and

(3) the physician certifies to the department that:

(A) the patient is diagnosed with:

(i) ~~[intractable]~~ epilepsy;

(ii) a seizure disorder;

(iii) multiple sclerosis;

(iv) spasticity;

amyotrophic lateral sclerosis;

(vi) autism;

(vii) terminal cancer;

or
neurodegenerative disease; and

(B) the physician determines the risk of the medical use of low-THC cannabis by the patient is reasonable in light of the potential benefit for the patient~~;~~ and

~~[(C) a second physician qualified to prescribe low-THC cannabis under Section 169.002 has concurred with the determination under Paragraph (B), and the second physician's concurrence is recorded in the patient's medical record].~~

Commentary by Jenna Malsbary

Source: HB 3703

Effective Date: June 14, 2019

Applicability: Applies to prescriptions on or after the effective date.

Summary of Changes: As amended, Section 169.003 of the Occupations Code adds multiple diagnoses that qualify for a low-THC prescription. The amendment includes removing intractable epilepsy and leaving it just epilepsy, and adding a seizure disorder, multiple sclerosis, spasticity,

amyotrophic lateral sclerosis, autism, terminal cancer, and an incurable neurodegenerative disease. Other amendments in this section remove language that required a second physician to concur with the determination that the risk of the prescription of low-THC cannabis is reasonable in light of the potential benefit for the patient.

Occupations Code Sec. 169.004. LOW-THC CANNABIS PRESCRIBER REGISTRATION. (a) Before a physician qualified to prescribe low-THC cannabis under Section 169.002 may prescribe or renew a prescription for low-THC cannabis for a patient under this chapter, the physician must register as the prescriber for that patient in the compassionate-use registry maintained by the department under Section 487.054, Health and Safety Code. The physician's registration must indicate:

(1) the physician's name;

(2) the patient's name and date of birth;

(3) the dosage prescribed to the patient;

(4) the means of administration ordered for the patient; and

(5) the total amount of low-THC cannabis required to fill the patient's prescription.

(b) The department may not publish the name of a physician registered under this section unless permission is expressly granted by the physician.

Commentary by Jenna Malsbary

Source: HB 3703

Effective Date: June 14, 2019

Applicability: Applies to the disclosure of the name of a physician registered to prescribe low-THC cannabis published on or after the effective date.

Summary of Changes: Section 169.004, Occupations Code, is amended to add a section that prohibits DPS from publishing the name of a physician registered to prescribe low-THC cannabis without the physician's permission. This is to protect the identity and identifying information of a physician who may be able to prescribe low-THC cannabis.

Occupations Code Chapter 169. RULEMAKING REQUIREMENT. Not later than December 1, 2019, the executive commissioner of the Health and Human Services Commission, in consultation with the National Institutes of Health, shall adopt rules designating diseases as incurable neurodegenerative diseases for which patients may be prescribed low-THC cannabis for medical use under Chapter 169, Occupations Code, as amended by this Act.

Commentary by Jenna Malsbary

Source: HB 3703

Effective Date: June 14, 2019

Applicability: Applies to rules adopted by the Health and Human Services Commission (HHSC) relating to certain incurable neurodegenerative disease on or after the effective date.

Summary of Changes: The amendments to Occupations Code Section 169.001 include the addition of an incurable neurodegenerative disease and requires that the definition be determined by the executive commissioner of HHSC. HHSC must adopt rules on what is designated as an incurable neurodegenerative disease by December 1, 2019.

Penal Code

Penal Code Sec. 49.09. ENHANCED OFFENSES AND PENALTIES. (b) An offense under Section 49.04, ~~49.045~~, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:

(1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or

(2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(g) 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. For purposes of this section, a person is considered to have been convicted of an offense under Section 49.04 or 49.06 if the person was placed on deferred adjudication community supervision for the offense under Article 42A.102, Code of Criminal Procedure.

Commentary by Jenna Malsbary

Source: HB 3582

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: There were a number of changes this session to the Penal Code and Code of Criminal Procedure to allow a person (in criminal proceedings) to be eligible for deferred adjudication community supervision for the offenses of driving while intoxicated and boating while intoxicated if it is the person's first offense. Under prior law, the statute also required that at the time of the offense, the person did not have a commercial driver's license or commercial learner's permit and that the person's blood alcohol concentration was not over 0.15. The amendments to Section 49.09 of the Penal Code add the offense of driving with a child in the back seat to the list of offenses that are enhanced to a third degree felony if the person has had a prior conviction for intoxication manslaughter or

twice convicted of an intoxication offense. These changes also create an exception that if a person is granted deferred adjudication for a driving while intoxicated or boating while intoxicated offense under Article 42A.102, Code of Criminal Procedure, it is considered a conviction for enhancement purposes.

Penal Code Sec. 12.50. PENALTY IF OFFENSE COMMITTED IN DISASTER AREA OR EVACUATED AREA. (b) The increase in punishment authorized by this section applies only to an offense under:

(1) Section 22.01;

(2) Section 28.02;

(3) Section 29.02;

(4) [~~3~~] Section 30.02;

(5) Section 30.04;

(6) Section 30.05; and

(7) [~~4~~] Section 31.03.

(c) If an offense listed under Subsection (b)(1), (5), (6), or (7) [~~4~~] is punishable as a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. If an offense listed under Subsection (b)(2), [~~(b)(3) or~~ (4), or (7) is punishable as a felony of the first degree, the punishment for that offense may not be increased under this section.

Commentary by Jenna Malsbary

Source: SB 201

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The offenses listed in Section 12.50 of the Penal Code relate to certain crimes committed in a disaster or evacuated area. This legislation addressed concerns that this enhancement was not applicable to all relevant criminal offenses that may occur in declared disaster or evacuated areas. The punishment for an offense listed in this section of the Penal Code is increased to the next higher offense level if it is shown at the trial that the offense was committed in an area that, at the time of the offense, was subject to a declaration of a state of disaster made by the president of the United States, the governor, or the presiding officer of the governing body of a political subdivision or was subject to an emergency evacuation order. Arson, burglary of a vehicle, and criminal trespass are added to the list of offenses. It also amends Section 12.50(c) to include that a Class A misdemeanor offense of burglary of a vehicle and criminal trespass are increased to a minimum term of confinement of 180 days. If the person commits a first-degree offense of arson, as added, then the punishment may not be increased. It should be noted that HB 1028 was passed making changes to the same section but also adds burglary of a coin-operated machine to the list of offenses.

Penal Code Sec. 12.50. PENALTY IF OFFENSE COMMITTED IN DISASTER AREA OR EVACUATED AREA. (b) The increase in punishment authorized by this section applies only to an offense under:

- (1) Section 22.01;
- (2) Section 28.02;
- (3) Section 29.02;
- (4) [~~(3)~~] Section 30.02;
- (5) Section 30.03;
- (6) Section 30.04;
- (7) Section 30.05; and
- (8) [~~(4)~~] Section 31.03.

(c) If an offense listed under Subsection (b)(1), (5), (6), (7), or (8) [~~(4)~~] is punishable as a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. If an offense listed under Subsection (b)(2), [~~(3)~~ or] (4), or (8) is punishable as a felony of the first degree, the punishment for that offense may not be increased under this section.

Commentary by Jenna Malsbary

Source: HB 1028

Effective Date: September 1, 2019

Applicability: Applies to penalty enhancements for certain offenses committed in a disaster or evacuated area on or after the effective date.

Summary of Changes: This change was enacted out of concern that certain enhancements were not applicable to all relevant criminal offenses that may occur in declared disaster or evacuated areas. The punishment for an offense listed in this section of the Penal Code is increased to the next higher offense level if it is shown at the trial that the offense was committed in an area that, at the time of the offense, was subject to a declaration of a state of disaster made by the president of the United States, the governor, or the presiding officer of the governing body of a political subdivision or was subject to an emergency evacuation order. Arson, burglary of a vehicle, burglary of a coin operated machine, and criminal trespass are added to the list of offenses. It also amends Penal Code Section 12.50(c) to include that Class A misdemeanor offenses of burglary of a vehicle, burglary of a coin operated machine, and criminal trespass are increased to a minimum term of confinement of 180 days. If the person commits a first-degree offense of arson, as added, then the punishment may not be increased. It should be noted that SB 201 was passed making changes to the same section, but did not include burglary of a coin operated machine in the list of offenses.

Penal Code Sec. 19.03. CAPITAL MURDER.

(a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;

(8) the person murders an individual under 10 years of age; [~~or~~]

(9) the person murders an individual 10 years of age or older but younger than 15 years of age; or

(10) the person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

Commentary by Jenna Malsbary

Source: SB 719

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: SB 719 is also known as Lauren's Law, in memory of a thirteen-year-old girl who was murdered in 2016. This bill was filed in the 85th Legislative Session by Representative Frank as HB 3894 but did not move out of the Criminal Jurisprudence committee. Section 19.03, Penal Code, is amended to add that a person commits capital murder if the person murders an individual

who is at least 10 and not yet 15 years of age. It also amends Article 37.071, Code of Criminal Procedure, to specify that a person found guilty under Lauren’s Law for capital murder may not be sentenced to death and the state may not seek the death penalty based solely on the age of the child.

Penal Code Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (b) A person commits an offense if:

(1) without the effective consent of the depicted person and with the intent to harm that person, the person ~~intentionally~~ discloses visual material depicting another person with the person’s intimate parts exposed or engaged in sexual conduct;

(2) at the time of the disclosure, the person knows or has reason to believe that the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;

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

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

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

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

Commentary by Jenna Malsbary

Source: HB 98

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Section 21.16 of the Penal Code relates to the unlawful disclosure or promotion of intimate visual material. This offense was created in the 84th Legislative Session (2015) to criminalize revenge porn. The language in Section 21.16 faced some constitutional challenges because the elements did not include intent to commit it. This change adds the element of intent to cause harm to the person. It also requires that the defendant, at the time of the disclosure, knew or had reason to know the visual material was obtained knowing the person would likely have wanted the material to remain private. It also adds this language to the civil liability statute in the Civil Practice and Remedies Code.

Penal Code Sec. 21.19. UNLAWFUL ELECTRONIC TRANSMISSION OF SEXUALLY EXPLICIT VISUAL MATERIAL. (a) In this section, “intimate parts,” “sexual conduct,” and “visual material” have the meanings assigned by Section 21.16.

(b) A person commits an offense if the person knowingly transmits by electronic means visual material that:

(1) depicts:

(A) any person engaging in sexual conduct or with the person’s intimate parts exposed; or

(B) covered genitals of a male person that are in a discernibly turgid state; and

(2) is not sent at the request of or with the express consent of the recipient.

(c) An offense under this section is a Class C misdemeanor.

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

Commentary by Jenna Malsbary

Source: HB 2789

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Section 21.19 of the Penal Code creates a new offense to criminalize the digital forcing of lewd images onto non-consenting parties. It makes it an offense if a person, without consent or at the request of the recipient, electronically transmits sexually-explicit visual material, which is material that depicts any person engaging in sexual conduct, any person’s intimate parts exposed, or the covered genitals of a male that are in a discernibly turgid state. The offense is a Class C misdemeanor. Conduct that violates another law may be prosecuted under either this law or the other law.

Penal Code Sec. 22.01. ASSAULT. (b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by

applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer;

(5) a person the actor knows is emergency services personnel while the person is providing emergency services; [øø]

(6) a pregnant individual to force the individual to have an abortion; or

(7) a person the actor knows is pregnant at the time of the offense.

Commentary by Jenna Malsbary

Source: HB 902

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Under current law, an assault against a pregnant woman is a class A misdemeanor punishable by up to a year in jail. The only enhancement to a third degree felony for an assault against a pregnant woman is if it was to force an abortion. This leaves some victims of assault vulnerable if their abuser is able to get out on bail and return to the home. As amended, Section 22.01 of the Penal Code makes the assault of a person the actor knows is pregnant at the time of the offense a third degree felony.

Penal Code Sec. 30.05. CRIMINAL TRESPASS. (f-1) It is a defense to prosecution under this section that:

(1) the basis on which entry on the property was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B);

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the condominium apartment or unit owner's apartment or unit;

(B) carries a firearm or firearm ammunition directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for residents or guests of the condominium property; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-2) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter 92, Property Code, was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of the leased premises or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's rental unit;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's rental unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-3) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter 94, Property Code, was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of a manufactured home lot or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's manufactured home;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's manufactured home;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle

located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

Commentary by Jenna Malsbary

Source: HB 302

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change to Section 30.05 of the Penal Code expands the rights of owners and tenants of apartments, condos, and manufactured housing to lawfully possess and transport firearms and ammunition to and from residential units and vehicles. As amended, three provisions have been added that list the defenses for the offense of criminal trespass. Section 30.05 also specifies who may carry firearms and ammunition and the location on the property where they are authorized for protection.

Penal Code Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN. (e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

Commentary by Jenna Malsbary

Source: HB 302

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: In a related amendment, Section 30.06 of the Penal Code expands the rights of owners and tenants of apartments, condos, and manufactured housing to lawfully possess and transport a handgun to and from residential units and vehicles. This change creates a list of defenses to prosecution for the offense of trespass by a license holder with a concealed handgun that occur on the three property categories. This provision also specifies who may carry firearms and ammunition and the location on the property where they are authorized for protection.

Penal Code Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN. (g) It is a defense to prosecution under this section that the license holder was personally given notice by oral

communication described by Subsection (b) and promptly departed from the property.

Commentary by Jenna Malsbary

Source: HB 121

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This amendment to Section 30.06, Penal Code, creates a defense to prosecution for the Penal Code offense of trespass by a license holder with a concealed handgun if the person was there by mistake. The defense is that the license holder must promptly leave the property after receiving oral notice. Notice is given if the owner of the property or someone with apparent authority to act for the owner provides notice to the person.

Penal Code Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (h) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

Commentary by Jenna Malsbary

Source: HB 121

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change creates a defense to prosecution in Section 30.07 of the Penal Code for the offense of trespass by a license holder with an openly carried handgun when a person is on property by mistake. The defense is that the license holder must promptly leave the property after receiving oral notice. Notice is given if the owner of the property or someone with apparent authority to act for the owner provides notice to the person.

Penal Code Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

Commentary by Jenna Malsbary

Source: HB 302

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This session, the legislature expanded the rights of owners and tenants of apartments, condos, and manufactured housing to lawfully possess and transport a handgun to and from their residential units and their vehicles. Section 30.07 of the Penal Code, as amended, creates defenses to prosecution for the offense of trespass by a license holder with an openly carried handgun adding three sections of defenses for the offense of criminal trespass at each of these three properties, who may carry the firearm and ammunition and where they may carry it on the property for the protections.

Penal Code Sec. 31.04. THEFT OF SERVICE.

(b) For purposes of this section, intent to avoid payment is presumed if any of the following occurs:

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

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

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

(4) the actor failed to return the property held under a rental agreement:

(A) within five days after receiving notice demanding return, if the property is valued at less than \$2,500; ~~or~~

(B) within three days after receiving notice demanding return, if the property is valued at \$2,500 or more but less than \$10,000; or

(C) within two days after receiving notice demanding return, if the property is valued at \$10,000 or more; or

(5) the actor:

(A) failed to return the property held under an agreement described by Subsections (d-2)(1)-(3) within five business days after receiving notice demanding return; and

(B) has made fewer than three complete payments under the agreement.

(c) For purposes of Subsections (a)(4), (b)(2), ~~and~~ (b)(4), and (b)(5), notice must ~~shall~~ be:

(1) ~~notice~~ in writing;

(2) ~~;~~ sent by:

(A) registered or certified mail with return receipt requested; or

(B) commercial delivery service; ~~or by telegram with report of delivery requested;~~ and

(3) sent ~~addressed~~ to the actor using the actor's mailing ~~at his~~ address shown on the rental agreement or service agreement.

(d) Except as otherwise provided by this subsection, if ~~H~~ written notice is given in accordance with Subsection (c), it is presumed that the notice was received ~~not~~ ~~no~~ later than two ~~five~~ days after the notice ~~it~~ was sent. For purposes of Subsections (b)(4)(A) and (B) and (b)(5), if written notice is given in accordance with Subsection (c), it is presumed that the notice was received not later than five days after the notice was sent.

(d-1) For purposes of Subsection (a)(2), the diversion of services to the benefit of a person who is not entitled to those services includes the disposition of personal property by an actor having control of the property under an agreement described by Subsections (d-2)(1)-(3), if the actor disposes of the property in violation of the terms of the agreement and to the benefit of any person who is not entitled to the property.

(d-2) For purposes of Subsection (a)(3), the term "written rental agreement" does not include an agreement that:

(1) permits an individual to use personal property for personal, family, or household purposes for an initial rental period;

(2) is automatically renewable with each payment after the initial rental period; and

(3) permits the individual to become the owner of the property.

(d-3) For purposes of Subsection (a)(4):

(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; ~~and~~

(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service; and

(3) the term "service" does not include leasing personal property under an agreement described by Subsections (d-2) (1)-(3).

(d-4) A presumption established under Subsection (b) involving a defendant's failure to return property held under an agreement described by Subsections (d-2) (1)-(3) may be refuted if the defendant shows that the defendant:

(1) intended to return the property; and

(2) was unable to return the property.

(d-5) For purposes of Subsection (b)(5), "business day" means a day other than Sunday or a state or federal holiday.

Commentary by Jenna Malsbary

Source: HB 2524

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The number of days a person has to return property held under a rental agreement based on the value of the property was changed in the Penal Code provisions relating to Theft of Service. The intent to avoid payment under a rental agreement is amended to three days after receiving notice demanding return if the value of the property is between \$2,500 and \$10,000 and two days after receiving notice if the property is valued at \$10,000 or more. It also adds a section relating to the intent to avoid payment if a person fails to return property under a written rental agreement after receiving notice demanding return and the person has made fewer than three complete payments. It clarifies that the notice must be in writing, sent by registered or certified mail with return receipt requested or commercial delivery service, and sent to the actor using the actor's mailing address shown on the rental agreement. Penal Code Section 31.04(d) is amended to add that written notice is presumed received not later than five days after notice was sent. It adds sections 31.04(d-1) and 31.04(d-2) to clarify diversion of services and what written notice does not entail. Section 31.04(d-3) is amended to specify what the term service does not mean when the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment. Section 31.04(d-4) is added to provide an opportunity for the defendant to refute the offense if it is shown that the defendant failed to return property under a written agreement if the defendant intended to return the property and was unable to return the property. Section 31.04(d-5) was added to clarify that business day means any other day than Sunday or a state or federal holiday.

Penal Code Sec. 31.20. MAIL THEFT. (a) In this section:

(1) "Disabled individual" and "elderly individual" have the meanings assigned by Section 22.04.

(2) "Identifying information" has the meaning assigned by Section 32.51.

(3) "Mail" means a letter, postal card, package, bag, or other sealed article that:

(A) is delivered by a common carrier or delivery service and not yet received by the addressee; or

(B) has been left to be collected for delivery by a common carrier or delivery service.

(b) A person commits an offense if the person intentionally appropriates mail from another person's mailbox or premises without the effective consent of the addressee and with the intent to deprive that addressee of the mail.

(c) Except as provided by Subsections (d) and (e), an offense under this section is:

(1) a Class A misdemeanor if the mail is appropriated from fewer than 10 addressees;

(2) a state jail felony if the mail is appropriated from at least 10 but fewer than 30 addressees; or

(3) a felony of the third degree if the mail is appropriated from 30 or more addressees.

(d) If it is shown on the trial of an offense under this section that the appropriated mail contained an item of identifying information and the actor committed the offense with the intent to facilitate an offense under Section 32.51, an offense under this section is:

(1) a state jail felony if the mail is appropriated from fewer than 10 addressees;

(2) a felony of the third degree if the mail is appropriated from at least 10 but fewer than 20 addressees;

(3) a felony of the second degree if the mail is appropriated from at least 20 but fewer than 50 addressees; or

(4) a felony of the first degree if the mail is appropriated from 50 or more addressees.

(e) An offense described for purposes of punishment by Subsection (d)(1), (2), or (3) is increased to the next higher category of offense if it is shown on the trial of the offense that at the time of the offense the actor knew or had reason to believe that an addressee from whom the actor appropriated mail was a disabled individual or an elderly individual.

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

Commentary by Jenna Malsbary

Source: HB 37

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Mail Theft was added to Section 31.20 of the Penal Code as a new criminal offense. This is in response to concerns raised about potential limitations facing law enforcement agencies as they pursue criminals who have stolen mail. The offense is committed when a person intentionally appropriates mail from another person's mailbox or premises without the effective consent of the addressee and with the intent to deprive that addressee of the mail. Mail is defined as a letter, postal card, package, bag, or other sealed article that is delivered by a common carrier or delivery service and not yet received by the addressee or that has been left to be collected for delivery by a common carrier or delivery service. The new offense is punished based on a range of misdemeanor to felony levels depending on the number of addressees and whether the offense led to the person committing fraudulent use or possession of identifying information. The classification is enhanced to the next higher category of offense if the addressee was a disabled or elderly individual and the information stolen was used to commit fraud. An actor may also

be prosecuted for mail theft, another offense, or both if the conduct constitutes an offense under another law.

Penal Code Sec. 32.315. FRAUDULENT USE OR POSSESSION OF CREDIT CARD OR DEBIT CARD INFORMATION. (a) In this section:

(1) “Counterfeit credit card or debit card” means a:

(A) credit card or debit card that:

(i) purports on its face to have been issued by an issuer that did not issue the card;

(ii) has been altered to contain a digital imprint other than that which was placed on the card by the issuer;

(iii) contains a digital imprint with account information or account holder information differing from that which is printed or embossed on the card; or

(iv) has been altered to change the account information or account holder information on the face of the card from that which was printed or embossed on the card by the issuer; or

(B) card, other than one issued as a credit card or debit card, that has been altered to contain the digital imprint of a credit card or debit card.

(2) “Credit card” and “debit card” have the meanings assigned by Section 32.31.

(3) “Digital imprint” means the digital data placed on a credit card or debit card or on a counterfeit credit card or debit card.

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses:

(1) a counterfeit credit card or debit card;
(2) the number and expiration date of a credit card or debit card without the consent of the account holder; or

(3) the data stored on the digital imprint of a credit card or debit card without the consent of the account holder.

(c) If an actor possessed five or more of an item described by Subsection (b)(2) or (3), a rebuttable presumption exists that the actor possessed each item without the consent of the account holder.

(d) The presumption established under Subsection (c) does not apply to a business or other commercial entity or a government agency that is engaged in a business activity or governmental function that does not violate a penal law of this state.

(e) An offense under this section is:

(1) a state jail felony if the number of items obtained, possessed, transferred, or used is less than five;

(2) a felony of the third degree if the number of items obtained, possessed, transferred, or used is five or more but less than 10;

(3) a felony of the second degree if the number of items obtained, possessed, transferred, or used is 10 or more but less than 50; or

(4) a felony of the first degree if the number of items obtained, possessed, transferred, or used is 50 or more.

(f) If a court orders a defendant convicted of an offense under this section to make restitution to a victim of the offense, the court may order the defendant to reimburse the victim for lost income or other expenses, other than attorney’s fees, incurred as a result of the offense.

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

Commentary by Jenna Malsbary

Source: HB 2625

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The changes to Section 32.315 of the Penal Code were added due to concerns about the difficulty of prosecuting offenses involving mass credit card skimming. Many individuals arrested for these types of offenses have multiple counterfeit cards in their possession in addition to numerous victims’ account numbers. Prosecutors will now have a more severe punishment option for these offenses instead of having to prosecute the offense as fraudulent use or possession of identifying information, which can require contacting each account holder. As added, Section 32.315 seeks to address these issues by creating the offense of mass fraudulent use or possession of credit card or debit card information. A person commits an offense if, with the intent to harm or defraud another, obtains, possesses, transfers, or uses a counterfeit credit or debit card, the number and expiration date of a credit or debit card or the data stored on the digital imprint of a credit or debit card without the consent of the account holder. If the person has five or more of these items, it is presumed that they possessed each item without the consent of the account holder. The punishment level ranges from a state jail felony through a first-degree felony, with the degree of penalty based on the number of items obtained, possessed, transferred, or used. The conduct may be punished under this statute, another statute, or both.

Penal Code Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. (c) Except as provided by [##] Subsection (d), an offense under this section is a Class A misdemeanor, provided that:

(1) the writing is not attached to tangible property to indicate the price for the sale of that property; and

(2) the actor did not engage in the conduct described by Subsection (a) with respect to that writing for the purpose of obtaining the property for a lesser price indicated by a separate writing.

(e) If at the time of the offense the writing was attached to tangible property to indicate the price for the sale of that property and the actor engaged in the conduct described by Subsection (a) with respect to that writing for the purpose of obtaining the property for a lesser price indicated by a separate writing, an offense under this section is:

(1) a Class C misdemeanor if the difference between the impaired writing and the lesser price indicated by the other writing is less than \$100;

(2) a Class B misdemeanor if the difference between the impaired writing and the lesser price indicated by the other writing is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the difference between the impaired writing and the lesser price indicated by the other writing is \$750 or more but less than \$2,500;

(4) a state jail felony if the difference between the impaired writing and the lesser price indicated by the other writing is \$2,500 or more but less than \$30,000;

(5) a felony of the third degree if the difference between the impaired writing and the lesser price indicated by the other writing is \$30,000 or more but less than \$150,000;

(6) a felony of the second degree if the difference between the impaired writing and the lesser price indicated by the other writing is \$150,000 or more but less than \$300,000; or

(7) a felony of the first degree if the difference between the impaired writing and the lesser price indicated by the other writing is \$300,000 or more.

Commentary by Jenna Malsbary

Source: HB 427

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The changes to Section 32.47 of the Penal Code address the discrepancy between the penalty for fraudulent destruction, removal, or concealment of a writing that is attached to tangible property (i.e. a price tag) and the penalty for theft of that same tangible property. The new provision establishes a range of penalties for the offense of fraudulent destruction, removal, or concealment of a price tag, based on the difference between the price of the actual item and the impaired writing, ranging from a Class C misdemeanor to a first-degree felony.

Penal Code Sec. 33A.051. FALSE CALLER IDENTIFICATION INFORMATION DISPLAY. (a) A

person commits an offense if the person, with the intent to defraud or cause harm, makes a call or engages in any other conduct using any type of technology that results in the display on another person's telecommunications device of data that misrepresents the actor's identity or telephone number.

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

(c) Notwithstanding any other provision of this chapter, a conviction for an offense under this section may not be used for enhancement purposes under any other section of this chapter.

(d) It is a defense to prosecution that the actor:

(1) blocked caller identification information;

(2) was a peace officer or federal law enforcement officer lawfully discharging an official duty;

(3) was an officer, agent, or employee of a federal intelligence or security agency lawfully discharging an official duty;

(4) was an officer, agent, or employee of a telecommunications service provider who was:

(A) acting in the provider's capacity as an intermediary for the transmission of telephone service, a Voice over Internet Protocol transmission, or another type of telecommunications transmission between the caller and the recipient;

(B) providing or configuring a service or service feature as requested by a customer;

(C) acting in a manner that is authorized or required by other law; or

(D) engaging in other conduct that is a necessary incident to the provision of service; or

(5) was a private investigator licensed under Chapter 1702, Occupations Code, lawfully conducting an investigation.

(e) For the purposes of this section, "telecommunications service provider" means a:

(1) telecommunications provider, as defined by Section 51.002, Utilities Code; or

(2) provider of telecommunications service, advanced communications services, or information service, as those terms are defined by 47 U.S.C. Section 153.

Commentary by Jenna Malsbary

Source: HB 101

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change addresses concerns raised from the increase in the volume of caller ID spoofing calls that occur when a caller ID display shows a number different from the number under which the call was placed. Section 33A.051 creates the Class A misdemeanor offense of false caller identification information display when a

person makes these calls with the intent to defraud, harass, or cause harm. There is a defense to prosecution if the person blocked caller ID information, was a peace officer or federal law enforcement officer lawfully discharging an official duty, was an officer, agent, or employee of a federal intelligence or security agency lawfully discharging an official duty, was working as an employee or agent for a telecommunications service provider, or was a licensed private investigator. This change also prohibits a conviction for the offense from being used for enhancement purposes under any other statutory provision relating to telecommunications crimes.

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 certificate of stock in a form that allows title to pass on delivery, [œ] a stored value card as defined by Section 604.001, Business & Commerce Code, or a digital currency.

Commentary by Jenna Malsbary

Source: SB 207

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Section 34.01 of the Penal Code relates to the offense of money laundering. This change was enacted due to concern that criminals are more frequently using digital currencies in order to launder money. Digital currency has allowed criminals to conduct transactions and hide the source of the funds anonymously. Note that “digital currency” is added to the existing money laundering offense together with money orders, stock, and other negotiable instruments. Law enforcement will now be able to pursue digital currency in their efforts to combat money laundering and assist in the prosecution of these offenses.

Penal Code Sec. 37.08. FALSE REPORT TO PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, [OR] LAW ENFORCEMENT EMPLOYEE, CORRECTIONS OFFICER, OR JAILER. (*New Heading*)

Commentary by Jenna Malsbary

Source: SB 405

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change was enacted this session in part because of a recent incident where a person made to a jailer a false claim of sexual assault by the officer that arrested that person. As amended, Section 37.08 of the Penal Code includes corrections officers and jailers to the title of the offense and lists the individuals to whom a false claim may not knowingly be made.

Penal Code Sec 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if the person [he]:

(1) impersonates a public servant with intent to induce another to submit to the person’s [his] pretended official authority or to rely on the person’s [his] pretended official acts; or

(2) knowingly purports to exercise, without legal authority, any function of a public servant or of a public office, including that of a judge and court, ~~and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States].~~

Commentary by Jenna Malsbary

Source: SB 1820

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Section 37.11 of the Penal Code, as amended, makes changes to the offense of impersonating a public servant which is a third degree felony. Subsection (a)(1) changes masculine gender references “he and his” to “person.” Other changes clarify intent. Specifically, it requires that the person knowingly purports to exercise, without legal authority, any function of a public servant or of a public officer, including that of a judge and court.

Penal Code Sec. 38.14. TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, EMPLOYEE OR OFFICIAL OF CORRECTIONAL FACILITY, PAROLE OFFICER, COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT OFFICER, OR COMMISSIONED SECURITY OFFICER. (b) A person commits an offense if the person intentionally or knowingly and with force takes or attempts to take from a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department

officer, or commissioned security officer the officer's, investigator's, employee's, or official's firearm, nightstick, stun gun, or personal protection chemical dispensing device [~~with the intention of harming the officer, investigator, employee, or official or a third person~~].

Commentary by Jenna Malsbary

Source: SB 1754

Effective Date: September 1, 2019

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Under current law, it is a state jail or third degree felony to take or attempt to take a weapon from certain officers, investigators, employees, or officials. However, in order to convict, a prosecutor must prove the person did so "with the intention of harming the officer, investigator, employee, or official or a third person." This specific intent makes it difficult to prosecute the offense. This change removes the specific intent language so that a person may be prosecuted for committing this offense regardless of the intent.

Penal Code Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun [~~or club~~]; and

(2) is not:

(A) on the person's own premises or premises under the person's control; or

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

Commentary by Jenna Malsbary

Source: HB 446

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change removes "club" as a weapon from offense of Unlawful Carrying of a Weapon in Section 46.02 of the Penal Code. Under the current definition, "club" means an instrument that is specifically designed, made, or adapted for the purposes of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following: blackjack, nightstick, mace, or a tomahawk.

Penal Code Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. (b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed

or carried in a shoulder or belt holster, on or about the license holder's person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing facility administration, as appropriate;

(5) in an amusement park; or

(6) [~~on the premises of a church, synagogue, or other established place of religious worship; or~~

~~[(7)]~~ on the premises of a civil commitment facility.

(i) Subsections (b)(4), (b)(5), [~~(b)(6)~~] and (c) do not apply if the actor was not given effective notice under Section 30.06 or 30.07.

Commentary by Jenna Malsbary

Source: SB 535

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This amendment was the result of an Attorney General Opinion that was issued in late 2017. AG Opinion KP-0176 answered the question of whether handgun license holders may carry handguns on the premises of a church that does not post signs excluding handguns. The opinion discusses the language in Section 46.035 of the Penal Code, which is the offense of Unlawful Carrying of a Handgun by a License Holder, and the restriction of a person with a license to carry on certain premises, including the premises of a church, synagogue, or other established place of worship. The opinion pointed out that Section 46.035(i) created an exception for the offense if the actor was not given effective notice under Penal Code Section 30.06 or 30.07, which are the trespass offenses for license holders, and discussed the notice required to be given. The opinion concluded that the Legislature provided churches the option to prohibit a license holder from carrying a handgun onto the premises of a church only when the actor received the effective notice.

As amended, the language referencing the premises of a church, synagogue, or other established place of worship was removed from Section 46.035, leaving it up to the churches to decide if they allow handguns or not by providing the notice outlined in Sections 30.06 and 30.07 of the Penal Code. The AG opined that this would only apply to the premises of church, synagogue, or other place of religious worship that owned property, citing as an example that some churches rent or lease spaces at schools. As such, if an entity rented a property at a school, the laws on the prohibition of weapons at a school would apply.

Penal Code Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. As added by Chapter 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007. (h-1) It is a defense to prosecution under Subsections (b)(1), (2), (4), and (5) [~~and (6)~~] and (c) that at the time of the commission of the offense, the actor was:

- (1) a judge or justice of a federal court;
- (2) an active judicial officer, as defined by Section 411.201, Government Code; or
- (3) the attorney general or a United States attorney, assistant United States attorney, assistant attorney general, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

Commentary by Jenna Malsbary

Source: SB 535

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change to Section 46.035 of the Penal Code, which removes the citation to places of worship from the language that provides a defense to prosecution for certain persons.

Penal Code Sec. 46.05. PROHIBITED WEAPONS. As amended by Chapters 155 (H.B. 1819) and 814 (H.B. 913), Acts of the 85th Legislature, Regular Session, 2017 (a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice:

- (A) an explosive weapon;
 - (B) a machine gun; or
 - (C) a short-barrel firearm;
- (2) ~~knuckles~~;
~~(3)~~ armor-piercing ammunition;

(3) ~~(4)~~ a chemical dispensing device;
 (4) ~~(5)~~ a zip gun;
 (5) ~~(6)~~ a tire deflation device; ~~or~~
 (6) ~~(7)~~ a firearm silencer, unless the firearm silencer is classified as a curio or relic by the United States Department of Justice or the actor otherwise possesses, manufactures, transports, repairs, or sells the firearm silencer in compliance with federal law; ~~or~~
 (7) an improvised explosive device.

(e) Except as otherwise provided by this subsection, an ~~An~~ offense under this section ~~Subsection (a)(1), (3), (4), (5), or (7)~~ is a felony of the third degree. An offense under Subsection ~~(a)(5)~~ ~~(a)(6)~~ is a state jail felony. ~~An offense under Subsection (a)(2) is a Class A misdemeanor.]~~

Commentary by Jenna Malsbary

Source: HB 446

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change was in response to the discussion that some devices that are sold and marketed for self-defense fall under the definition of knuckles. It was also discussed that knuckles appear to present no danger to the general public. This amendment removes knuckles from the prohibited weapons list and makes other conforming changes to remove the penalty from the remaining language in the statute.

Penal Code Sec. 46.15. NONAPPLICABILITY. (d) The provisions of Section 46.02 prohibiting the carrying of a firearm ~~or carrying of a club~~ do not apply to a public security officer employed by the adjutant general under Section 437.053, Government Code, in performance of official duties or while traveling to or from a place of duty.

(g) The provisions of Section ~~Sections 46.02 and~~ 46.03 prohibiting the possession or carrying of a club do not apply to an animal control officer who holds a certificate issued under Section 829.006, Health and Safety Code, and who possesses or carries an instrument used specifically for deterring the bite of an animal while the officer is in the performance of official duties under the Health and Safety Code or is traveling to or from a place of duty.

Commentary by Jenna Malsbary

Source: HB 446

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: As amended, Section 46.15 of the Penal Code contains conforming changes to remove references to the carrying of a club in Sections 46.15(d) and knuckles in Section 46.15(g).

Penal Code Sec. 46.15. NONAPPLICABILITY. (k) Section 46.02 does not apply to a person who carries a handgun if:

(1) the person carries the handgun while:

(A) evacuating from an area following the declaration of a state of disaster under Section 418.014, Government Code, or a local state of disaster under Section 418.108, Government Code, with respect to that area; or

(B) reentering that area following the person's evacuation;

(2) not more than 168 hours have elapsed since the state of disaster or local state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun under this subsection; and

(3) the person is not prohibited by state or federal law from possessing a firearm.

(l) Sections 46.02, 46.03(a)(1), (a)(2), (a)(3), and (a)(4), and 46.035(a), (a-1), (a-2), (a-3), (b)(1), (b)(5), and (b)(6) do not apply to a person who carries a handgun if:

(1) the person carries the handgun on the premises, as defined by the statute providing the applicable offense, of a location operating as an emergency shelter during a state of disaster declared under Section 418.014, Government Code, or a local state of disaster declared under Section 418.108, Government Code;

(2) the owner, controller, or operator of the premises or a person acting with the apparent authority of the owner, controller, or operator, authorized the carrying of the handgun;

(3) the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises; and

(4) the person is not prohibited by state or federal law from possessing a firearm.

Commentary by Jenna Malsbary

Source: HB 1177

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: When an area is under a mandatory evacuation, Texans who do not have a license to carry a firearm may be faced with the decision of whether to comply with the licensing laws on carrying firearms or risk not having a gun for protection if they so choose. Additionally, there may be a risk of having a firearm left at home stolen during a disaster. This change to Section 46.15 of the Penal Code allows Texans without a license to carry firearms when their property is under mandatory evacuation. The added sections specify that the law does not apply to a person who carries a handgun if they are evacuating following

a declaration of disaster in the area or when they are reentering the area after the evacuation; it has not been more than 168 hours since the declaration of disaster; and the person is not otherwise prohibited from possessing a weapon.

It also creates an exception for when a person may carry a handgun on the premises of an emergency shelter during a state of disaster as long as it is authorized by the owner or operator of the premises, the person complies with the rules and regulations of the owner or operator of the premises, and the person is not prohibited by state or federal law from possessing a firearm. The section lists the following exceptions in the Penal Code: Penal Code 46.02, unlawful carrying of a weapon; Penal Code 46.03, places weapons prohibited, including on the premises of a school, polling place, government or court offices, or race track; Penal Code 46.035, the unlawful carrying of a weapon by a license holder in plain view, on the premises of a higher education location, on the premises of a business with more than 51% sales of alcohol, in an amusement park, and at a church, synagogue, or other place of religious worship.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or

35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 or

20.06; [or]

(18) any offense under Section 16.02; or

(19) any offense classified as a felony

under the Tax Code.

Commentary by Jenna Malsbary

Source: HB 869

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Credit card skimming in Texas has increased in recent years and has been linked to organized crime. If law enforcement were able to charge skimmers for the offense of engaging in organized criminal activity, this offense would be easier to effectively prosecute. Section 71.02 of the Penal Code outlines what is considered organized criminal activity. This change adds Section 16.02 of the Penal Code, Interception, Use, or Disclosure of Certain Communications.

Transportation Code

Transportation Code Sec. 521.293. PERIOD OF SUSPENSION UNDER SECTION 521.292. If [(a) Except as provided by Subsection (b), if] the person does not request a hearing, the period of license suspension under Section 521.292 is 90 days.

[(b) If the department determines that the person engaged in conduct described by Section 521.292(a)(1), the period of license suspension is extended for an additional period of the lesser of:

[(1) the term of the original suspension; or

[(2) one year.]

Commentary by Nydia Thomas

Source: HB 162

Effective Date: September 1, 2019

Applicability: Applies to the period of a driver's license suspension based on conduct that occurred on or after the effective date.

Summary of Changes: The changes to Section 521.293 of the Transportation Code relate to the period of a driver's license suspension. Under prior law, DPS was authorized to make administrative determinations to automatically extend the suspension period when the license holder operated a motor vehicle and received a traffic citation. As amended, if the person does not request a hearing, the period of license suspension is 90 days rather than one year or the period of the original suspension. Section 54.042 of the Family Code governs the length of the mandatory or discretionary suspension of a driver's license upon adjudication in juvenile court for certain offenses.

Transportation Code Sec. 521.312. PERIOD OF SUSPENSION OR REVOCATION; REINSTATEMENT OF LICENSE. (b) Except as provided by Subsection (c) [Section 521.293(b)], or Subchapter O, the department may not suspend a license for a period that exceeds one year.

Commentary by Nydia Thomas

Source: HB 162

Effective Date: September 1, 2019

Applicability: Applies to the period of a driver's license revocation based on conduct that occurred on or after the effective date.

Summary of Changes: This conforming amendment removes the reference to Section 521.293 of the Transportation Code relating to administrative determinations made by DPS to extend driver's license suspensions.

2. Legislation Affecting Child-Serving Agencies

Family Code

Family Code Sec. 162.304. FINANCIAL AND MEDICAL ASSISTANCE. (b-1) Subject to the availability of funds, the department shall pay a \$150 subsidy each month for the premiums for health benefits coverage for a child with respect to whom a court has entered a final order of adoption if the child:

- (1) was in the conservatorship of the department at the time of the child's adoptive placement;
- (2) after the adoption, is not receiving [~~eligible for~~] medical assistance under Chapter 32, Human Resources Code; and
- (3) is younger than 18 years of age.

Commentary by Linda Butler Arrigucci

Source: HB 72

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of DFPS on after the effective date.

Summary of Changes: The Department of Family and Protective Services (DFPS), subject to the availability of funds, is required under Section 162.304 of the Family Code to provide health benefit subsidies to adopted children who were in the conservatorship of DFPS at the time of the adoptive placement and who are eligible for Medicaid but not receiving benefits. This bill addresses the continuity of health care services for certain children formerly in foster care by providing a means by which Medicaid benefits may continue for those children after adoption or entrance into a permanency care assistance agreement. Subject to the availability of funds, DFPS shall pay a \$150 subsidy each month for the premiums for health benefits coverage for a child to whom a court has entered a final order of adoption. An adopted child is eligible for the subsidy if the child 1) was in the conservatorship of the DFPS at the time of the child's adoptive placement, 2) after the adoption, is not receiving medical assistance under Medicaid, and 3) is younger than 18 years of age.

Family Code Sec. 162.304. FINANCIAL AND MEDICAL ASSISTANCE. Section 162.304(f), Family Code, is repealed.

Commentary by Linda Butler Arrigucci

Source: HB 72

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of DFPS on or after the effective date.

Summary of Changes: DFPS is currently required, subject to the availability of funds, to work with the Health and

Human Services Commission (HHSC) and the federal government to develop a program to provide medical assistance (namely Medicaid) to children who were in the conservatorship of DFPS at the time of the adoptive placement but who did not qualify for adoption assistance. This statutory provision has been repealed.

Family Code Sec. 261.110. EMPLOYER RETALIATION PROHIBITED. (a) In this section:

(1) "Adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Section 261.101.

(2) "Professional" [~~,"professional"~~] has the meaning assigned by Section 261.101(b).

(b) An employer may not suspend or terminate the employment of, [~~or otherwise~~] discriminate against, or take any other adverse employment action against [~~;~~] a person who is a professional and who in good faith:

- (1) reports child abuse or neglect to:
 - (A) the person's supervisor;
 - (B) an administrator of the facility where the person is employed;
 - (C) a state regulatory agency; or
 - (D) a law enforcement agency;

or

(2) initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

(c) A person may sue for injunctive relief, damages, or both if, in violation of this section, the person:

(1) [~~whose employment~~] is suspended or terminated from the person's employment;

(2) [~~or who~~] is [~~otherwise~~] discriminated against; or

(3) suffers any other adverse employment action [~~in violation of this section may sue for injunctive relief, damages, or both~~].

Commentary by Linda Butler Arrigucci

Source: HB 621

Effective Date: September 1, 2019

Applicability: Applies to an adverse employment action that occurs on or after the effective date.

Summary of Changes: By way of background, Section 261.101(a) of the Family Code requires a person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person to immediately make a report to the appropriate entity. Section 261.101(b) requires a professional having

cause to believe that a child: 1) has been abused or neglected; 2) may be abused or neglected; or 3) is a victim of an offense under Section 21.11 of the Penal Code, to make a report not later than the 48th hour after the professional first suspects that the child has been or may be a victim of abuse or neglect. A professional means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties for which a license or certification is required, has direct contact with children. In our context, the term includes teachers, nurses, doctors, clinic or health care facility employees, and all employees of TJJD, juvenile probation departments, and juvenile facilities.

An “adverse employment action” is defined as an action that affects an employee’s compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect as set forth above in Texas Family Code Section 261.101. This legislation authorizes a person to seek injunctive relief, damages, or both if the person is suspended or terminated from employment, is discriminated against, or suffers any other adverse employment action as a result of making a report in good faith of abuse or neglect.

Family Code Sec. 264.121. TRANSITIONAL LIVING SERVICES PROGRAM. (e-3) When obtaining a copy of a birth certificate to provide to a foster youth or assisting a foster youth in obtaining a copy of a birth certificate, the department shall obtain the birth certificate from the state registrar. If the department is unable to obtain the birth certificate from the state registrar, the department may obtain the birth certificate from a local registrar or county clerk.

Commentary by Linda Butler Arrigucci

Source: HB 123

Effective Date: September 1, 2019

Applicability: Applies to an application for a birth record submitted on or after the effective date.

Summary of Changes: For foster youth in the Transitional Living Services Program, DFPS must now obtain a copy of the birth certificate from either the state registrar or, if unable to do so, from a local registrar or the county clerk. Proper identification is vital to a foster youth. TJJD pays for identification cards of any youth who has not graduated from high school through Federal Title I Education funds. If a youth has already graduated, TJJD provides the cost of obtaining the ID for the youth. There are sufficient Title I funds to cover the costs of the IDs. TJJD youth in DFPS managing conservatorship would be eligible to obtain birth certificates as provided.

Family Code Sec. 264.130. PREGNANCY AND PARENTING INFORMATION. The department at developmentally appropriate stages shall ensure that children in the managing conservatorship of the department who are pregnant or who are minor parents receive information on and support in providing safe environments for children, including information and support regarding:

(1) safe sleeping arrangements;

(2) suggestions for childproofing potentially dangerous settings in a home;

(3) child development and methods to cope with challenging behaviors;

(4) selection of appropriate substitute caregivers;

(5) a child’s early brain development, including the importance of meeting an infant’s developmental needs by providing positive experiences and avoiding adverse experiences;

(6) the importance of paternal involvement in a child’s life and methods for coparenting;

(7) the benefits of reading, singing, and talking to young children;

(8) the importance of prenatal and postpartum care for both the mother and infant, including the impact of and signs for perinatal mood disorders;

(9) infant nutrition and the importance of breastfeeding; and

(10) healthy relationships, including the prevention of intimate partner violence.

Commentary by Linda Butler Arrigucci

Source: HB 475

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of DFPS on or after the effective date.

Summary of Changes: Children in DFPS managing conservatorship are a vulnerable population who face various challenges. This legislation seeks to address those concerns by requiring DFPS to educate these youth about their role in parenting and providing a safe environment for their children. Children in DFPS managing conservatorship must be provided with information on parenting skills and the care of children. Specifically, children in DFPS’ managing conservatorship who are pregnant or who are minor parents must receive information on: (1) safe sleeping arrangements; (2) suggestions for childproofing potentially dangerous settings in a home; (3) child development and methods to cope with challenging behaviors; (4) selection of appropriate substitute caregivers; (5) a child’s early brain development, including the importance of meeting an infant’s developmental needs by providing positive experiences and avoiding adverse experiences; (6) the importance of paternal involvement in a child’s life and methods for co-parenting; (7) the benefits of reading, singing, and talking to young children; (8) the importance of prena-

tal and postpartum care for both the mother and infant, including the impact of and signs for perinatal mood disorders; (9) infant nutrition and the importance of breastfeeding; and (10) healthy relationships, including the prevention of intimate partner violence. Youth in the juvenile justice system and in the managing conservatorship of the DFPS (dual-status youth) who are either pregnant or minor parents would also be eligible for these services.

Human Resources Code

Human Resources Code Sec. 40.043. CHILD SAFETY AND RUNAWAY PREVENTION PROCEDURES. The commissioner by rule shall establish the department's strategy to:

(1) develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of the department runs away from a residential treatment center; and

(2) balance measures aimed at protecting child safety with federal and state requirements related to normalcy and decision making under the reasonable and prudent parent standard prescribed by 42 U.S.C. Section 675 and Sections 264.001 and 264.125, Family Code.

Commentary by Linda Butler Arrigucci

Source: SB 781

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of DFPS on or after the effective date.

Summary of Changes: Section 40.043 of the Human Resources Code is a newly added provision that requires DFPS to create rules that establish the department's strategy to develop trauma-informed protocols to reduce the number of incidents in which youth in DFPS conservatorship run away from a residential treatment center (RTC). An additional aim is to balance measures to protect child safety with federal and state requirements related to normalcy and decision making under the reasonable and prudent parent standard under state and federal law. (42 USC 675 and Sections 264.001 and 264.125, Family Code)

Residential treatment centers provide around-the-clock supervision and treatment services to children with emotional disorders in a group setting. These centers are regulated by the Health and Human Services Commission (HHSC) and DFPS. The Family First Prevention Services Act is a federal law that will impact the foster care system and where at-risk youth may be placed effective 2021. This provision helps ensure that the State of Texas will be ready to meet the high standards required in the federal law and that our most vulnerable youth are safe.

Human Resources Code Sec. 40.080. STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN. (a) The department shall develop a strategic plan regarding the placement of children in settings eligible for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

(b) The strategic plan required under this section must:

(1) assess any available evidence regarding the impact of accreditation on qualitative performance of accredited providers;

(2) assess a potential structure and any funding requirements necessary to incentivize providers to become accredited;

(3) study any available evidence regarding the qualitative outcomes in qualified residential treatment providers, as defined in the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(4) assess the fiscal implications to this state of developing settings that meet the federal definition of qualified residential treatment providers and all associated requirements; and

(5) make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

Commentary by Linda Butler Arrigucci

Source: SB 781

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of DFPS on or after the effective date.

Summary of Changes: Section 40.080 of the Human Resources Code requires DFPS to develop a strategic plan for placing children in settings eligible for federal funding under the Family First Prevention Services Act. The strategic plan must do the following: 1) review the impact of accreditation on qualitative performance of accredited providers; 2) assess a potential structure and any funding requirements necessary to incentivize providers to become accredited; 3) study evidence regarding the qualitative outcomes in qualified residential treatment providers; 4) assess the fiscal implication to the state of Texas of developing settings that meet the federal definition/requirements of qualified residential treatment providers; and 5) make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

Human Resources Code Sec. 42.042. RULES AND STANDARDS. (d-1) The executive commissioner by rule shall adopt minimum standards for listed family homes. The minimum standards must:

(1) promote the health, safety, and welfare of children attending a listed family home;

(2) promote safe, comfortable, and healthy listed family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel; and

(4) ensure medication is administered in accordance with Section 42.065.

(g) In promulgating minimum standards the executive commissioner may recognize and treat differently the types of services provided by the following:

(1) listed family homes;

(2) registered family homes;

(3) ~~[(2)]~~ child-care facilities, including general residential operations, cottage home operations, specialized child-care homes, group day-care homes, and day-care centers;

(4) ~~[(3)]~~ child-placing agencies;

(5) ~~[(4)]~~ agency foster homes;

(6) ~~[(5)]~~ continuum-of-care residential operations;

(7) ~~[(6)]~~ before-school or after-school programs; and

(8) ~~[(7)]~~ school-age programs.

Commentary by Linda Butler Arrigucci

Source: SB 569

Effective Date: September 1, 2019

Applicability: HHSC is to adopt the rules required as soon as practicable after the effective date.

Summary of Changes: Approximately one million children attend day care facilities in the state of Texas annually and there are significant incidents of abuse, neglect, and exploitation at those facilities. This legislation seeks to provide greater oversight by Health and Human Services Commission (HHSC) for safety and transparency. As amended in Section 42.042 of the Human Resources Code, HHSC is required to adopt minimum standards for listed family homes. The minimum standard must: 1) promote the health, safety, and welfare of children attending a listed family home; 2) promote safe, comfortable, and healthy listed family homes for children; 3) ensure adequate supervision of children by capable, qualified, and healthy personnel; and (4) ensure medication is administered in accordance with Section 42.065.

By way of background, a listed family home provides care and supervision for up to three unrelated children. The care is provided: (1) at least four hours a day; (2) three or more hours a week; (3) three or more consecutive weeks; or (4) four hours a day for 40 or more days in a 12-month period. The care is in the home of the primary caregiver. Currently,

the homes are not routinely inspected. The executive commissioner of HHSC is authorized to recognize and treat differently the types of services provided by certain entities, including listed family homes.

Human Resources Code Sec. 42.04215. SAFETY TRAINING ACCOUNT. (a) The safety training account is a dedicated account in the general revenue fund. The account is composed of:

(1) money deposited into the account under Section 42.078;

(2) gifts, grants, and donations contributed to the account; and

(3) interest earned on the investment of money in the account.

(b) Section 403.0956, Government Code, does not apply to the account.

(c) Money in the account may be appropriated only to the commission to provide safety training materials at no cost to a facility licensed under this chapter or a family home registered or listed under this chapter. The commission may contract with a third party to create the training materials.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Commentary by Linda Butler Arrigucci

Source: SB 568

Effective Date: September 1, 2019

Applicability: Applies to the use of the funds in the safety training account established on or after the effective date.

Summary of Changes: The aim of this legislative change is to reduce the incidents of abuse, neglect, and exploitation of children at a licensed or regulated child-care facility. As amended, Section 42.04215 of the Human Resources Code establishes a safety training account, which is a dedicated account in the general revenue fund for the Health and Human Services Commission (HHSC). The funds are to be used to provide safety-training materials at no cost to child-care facilities licensed, registered, or listed with DFPS. The account is composed of money deposited into the account under Section 42.078, Human Resources Code (administrative penalties); 2) gifts, grants, and donations contributed to the account; and 3) interest earned on the investment of money in the account. Reallocation of interest accrued on certain dedicated revenue does not apply to the account. (Section 403.0956 Government Code.) HHSC may contract with a third party to create the safety training materials.

Human Resources Code Sec. 42.0429. SAFE SLEEPING STANDARDS. (a) The executive commissioner by rule shall establish safe sleeping standards for licensed facilities and registered family homes. Each licensed facility and registered family home shall comply with the safe sleeping standards.

(b) If the commission determines that a licensed facility or registered family home has violated a safe sleeping standard established as required by Subsection (a), the facility or home shall provide written notice in the form and manner required by the executive commissioner to the parent or legal guardian of each child attending the facility or home.

(c) The executive commissioner shall prescribe the form for the notice required by Subsection (b) and post the form on the commission's Internet website.

Commentary by Linda Butler Arrigucci

Source: SB 568

Effective Date: September 1, 2019

Applicability: Applies to the rulemaking responsibilities of HHSC on or after the effective date.

Summary of Changes: The changes require HHSC to develop rules regarding safe sleeping standards for licensed facilities and registered family homes that must be complied with fully as set forth in Section 42.0429, Human Resources Code. If HHSC determines that a licensed facility or registered family home has violated a safe sleeping standard, the facility or home must provide written notice in the form and manner prescribed by HHSC to the parent or legal guardian of each child attending the facility or home. HHSC is required to post the form on its Internet website.

Human Resources Code Sec. 42.04425. INSPECTION INFORMATION DATABASE. (d) The commission shall provide with the inspection data described by Subsection (c) a minimum of five years of investigative data for listed family homes regulated under this chapter to enhance consumer choice with respect to those homes.

Commentary by Linda Butler Arrigucci

Source: SB 569

Effective Date: September 1, 2019

Applicability: Applies to posting of investigative data or after the effective date.

Summary of Changes: HHSC is required to provide a minimum of five years of investigative data for listed family homes in order to enhance consumer choice with respect to those homes, as set forth in Section 42.04425, Human Resources Code. The aim of this legislation is to promote safety and transparency so that consumers may make an informed choice when selecting a child-care provider.

Human Resources Code Sec. 42.0446. REMOVAL OF CERTAIN INVESTIGATION INFORMATION FROM INTERNET WEBSITE. The executive commissioner shall adopt rules providing a procedure by which the commission [department] removes from the commission's [department's] Internet website information

on [with respect to] a child-care facility or registered or listed family home that relates to an anonymous complaint alleging [that] the facility or family home failed to comply with the commission's [department's] minimum standards if, at the conclusion of an investigation, the commission [department] determines [that] the complaint is false or lacks factual foundation.

Commentary by Linda Butler Arrigucci

Source: SB 569

Effective Date: September 1, 2019

Applicability: HHSC must adopt the required rules as soon as practicable after the effective date.

Summary of Changes: HHSC is required to adopt rules and procedures to ensure that information regarding a child-care facility or registered or listed family home will be removed from the agency's website. The information may be removed from the website when a complaint has been made that a facility has not complied with minimum standards and HHSC has determined that the allegation is false or lacks factual foundation. The removal of the information from HHSC's website will occur at the conclusion of an investigation by HHSC. Malicious and false allegations may be lodged against a child-care facility that have a pecuniary impact. This provision ensures that HHSC adopts procedures to remove the name of the falsely accused facility from its Internet website. Section 42.04425 makes other conforming and nonsubstantive changes to the Human Resources Code.

Human Resources Code Sec. 42.0495. LIABILITY INSURANCE REQUIRED FOR LISTED FAMILY HOMES. (a) A listed family home shall maintain liability insurance coverage in the amount of \$300,000 for each occurrence of negligence. An insurance policy or contract required under this section must cover injury to a child that occurs while the child is on the premises of or in the care of the listed family home.

(b) A listed family home shall annually file with the commission a certificate or other evidence of coverage from an insurance company demonstrating that the listed family home has an unexpired and uncanceled insurance policy or contract that meets the requirements of this section.

(c) If a listed family home is unable to secure a policy or contract required under this section for financial reasons or for lack of availability of an underwriter willing to issue a policy or contract or the home's policy or contract limits are exhausted, the home shall timely provide written notice to the parent or guardian of each child attending the home that the liability coverage is not provided.

(d) A listed family home described by Subsection (c) shall timely provide written notice to the commission that the home is unable to secure liability insurance and the reason the insurance could not be secured.

(e) If a listed family home complies with the notice requirements under this section, the commission may not assess an administrative penalty or suspend or revoke the family home's listing for violating Subsection (a). This subsection may not be construed to indemnify a family home for damages due to negligence.

Commentary by Linda Butler Arrigucci

Source: SB 569

Effective Date: September 1, 2019

Summary of Changes: These changes are aimed at reducing the incidents of abuse, neglect, and exploitation at child-care facilities. As amended, Section 42.0495 of the Human Resources Code requires a listed family home to maintain liability insurance coverage in the amount of \$300,000 for each occurrence of negligence. The insurance policy or contract must cover injury to a child that occurs while the child is on the premises of or in the care of the listed family home. It sets forth requirements that the listed family home shall annually file with HHSC a certificate or other evidence of insurance coverage to demonstrate that the listed family home has an unexpired and uncanceled insurance policy. In the event a listed family home is unable to secure liability coverage due to financial reasons, an underwriter refuses coverage, or the policy limits are exhausted, the home shall timely provide written notice to the parent or guardian of each child attending the home that liability coverage has not been secured. A listed family home must provide timely written notice to HHSC that the home is unable to obtain liability insurance and the reason the insurance could not be secured. If a listed family home complies with the notice requirements, HHSC may not assess an administrative penalty, suspend, or revoke the family home's listing for violating the liability insurance coverage provision. The language in this subsection does not indemnify a family home for damages due to negligence. Requiring listed family homes to maintain liability insurance coverage ensures that if abuse, neglect or exploitation occurs children and their families are placed in a better position to recover damages or receive compensation.

Government Code

Government Code Sec. 501.023. INFORMATION CONCERNING FOSTER CARE HISTORY. (b) Not later than December 31 of each year, the department shall submit a report to the governor, the lieutenant governor, ~~[the speaker of the house of representatives,]~~ and each member of the legislature and shall make the report available to the public on the department's Internet website ~~[standing committee having primary jurisdiction over the department]~~. The report must summarize statistical information concerning the total number of inmates who have at any time been in the conservatorship of a state agency responsible for providing child protective services,

including, disaggregated by age, the number of inmates who have not previously served a term of imprisonment.

Commentary by Linda Butler Arrigucci

Source: HB 1191

Effective Date: September 1, 2019

Applicability: Applies to TDCJ statistical reporting on or after the effective date.

Summary of Changes: Under Section 501.023b) of the Government Code, TDCJ is required to report statistical information on the total number of inmates who have been in the managing conservatorship of DFPS or a similar state agency, including, disaggregated by age, the number of those inmates who had not previously been imprisoned. TDCJ is required to submit this report to the governor, lieutenant governor, and to each member of the legislature not later than December 31st of each year. This report must be made available to the public on TDCJ's website.

Government Code Sec. 533.00531. MEDICAID BENEFITS FOR CERTAIN CHILDREN FORMERLY IN FOSTER CARE. (a) This section applies only with respect to a child who:

(1) resides in this state; and

(2) is eligible for assistance or services

under:

(A) Subchapter D, Chapter 162,

Family Code; or

(B) Subchapter K, Chapter 264,

Family Code.

(b) Except as provided by Subsection (c), the commission shall ensure that each child described by Subsection (a) remains or is enrolled in the STAR Health program unless or until the child is enrolled in another Medicaid managed care program.

(c) If a child described by Subsection (a) received Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) or was receiving Supplemental Security Income before becoming eligible for assistance or services under Subchapter D, Chapter 162, Family Code, or Subchapter K, Chapter 264, Family Code, as applicable, the child may receive Medicaid benefits in accordance with the program established under this subsection. To the extent permitted by federal law, the commission, in consultation with the Department of Family and Protective Services, shall develop and implement a program that allows the adoptive parent or permanent managing conservator of a child described by this subsection to elect on behalf of the child to receive or, if applicable, continue receiving Medicaid benefits under the:

(1) STAR Health program; or

(2) STAR Kids managed care program.

(d) The commission shall protect the continuity of care for each child described under this section and, if applicable, ensure coordination between the STAR Health program and any other Medicaid managed care program

for each child who is transitioning between Medicaid managed care programs.

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

Commentary by Linda Butler Arrigucci

Source: HB 72

Effective Date: September 1, 2019

Summary of Changes: Section 533.00531 of the Government Code applies only with respect to a child who 1) resides in this state and 2) is eligible for assistance of services under Chapter 162 of the Family Code (Adoption) or Chapter 264 of the Family Code (Child Welfare Services - DFPS). HHSC must ensure that each child remains enrolled in the STAR Health program unless or until the child is enrolled in another Medicaid managed care program. If a child received Supplemental Security Income (SSI) or was receiving SSI before becoming eligible for assistance, the child may receive Medicaid benefits. HHSC, in consultation with DFPS, shall develop and implement a program that allows the adoptive parent or permanent managing conservator of a child to elect on behalf of the child to receive or, continue receiving Medicaid benefits under STAR Health program or STAR Kids managed care program. HHSC is required to protect the continuity of care for each child to which these provisions apply, and if applicable, to ensure coordination between the STAR Health program and any other Medicaid managed care program for each child who is transitioning between Medicaid managed care programs. The executive commissioner of HHSC shall adopt rules necessary to implement this section.

STAR Health program serves children who receive Medicaid benefits through DFPS and young adults previously in foster care. It is administered by a single managed care organization (MCO). STAR Kids managed care program serves children and adults age 20 and younger with a disability.

Health and Safety Code

Health and Safety Code Sec. 191.0049. BIRTH RECORD ISSUED TO FOSTER CHILD OR YOUTH OR HOMELESS CHILD OR YOUTH. On request of a child or youth described by this section, the state registrar, a local registrar, or a county clerk shall issue, without fee or parental consent, a certified copy of the child's or youth's birth record to:

(1) a homeless child or youth as defined by 42 U.S.C. Section 11434a;

(2) a child in the managing conservatorship of the Department of Family and Protective Services; and

(3) a young adult who:

(A) is at least 18 years of age, but younger than 21 years of age; and

(B) resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services.

Commentary by Linda Butler Arrigucci

Source: HB 123

Effective Date: September 1, 2019

Applicability: Applies to an application for a birth record on or after the effective date.

Summary of Changes: This legislation enables a vulnerable population of youth to obtain a certified copy of their birth record, one of the single most important identification documents. A birth record is often used as a reference point for acquiring many other forms of identification. A certified birth record may be required for applying for a passport, applying for government benefits, enrolling in some schools, joining the military, claiming pension or insurance benefits, getting a driver's license, and replacing a Social Security card. New Section 191.0049 of the Health and Safety Code applies to: 1) a homeless child/youth; 2) a child in the managing conservatorship of DFPS; and 3) a young adult who is at least 18 years of age, but younger than 21 years and resides in foster care placement paid for by DFPS. These individuals may request a certified copy of their birth record at no cost and without parental consent from the state registrar, a local registrar, or a county clerk.

Transportation Code

Transportation Code Sec. 521.1015. PERSONAL IDENTIFICATION CERTIFICATE ISSUED TO FOSTER CHILD OR YOUTH OR HOMELESS CHILD OR YOUTH. (a) In this section:

(1) "Foster child or youth" means:

(A) a child in the managing conservatorship of the Department of Family and Protective Services; or

(B) a young adult who:
(i) is at least 18 years of age, but younger than 21 years of age; and

(ii) resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services.

(2) "Homeless child or youth" has the meaning assigned by 42 U.S.C. Section 11434a.

(b) This section applies to the application for a personal identification certificate only for a foster child or youth or a homeless child or youth.

(c) Notwithstanding Section 521.101, Section 521.1426, or any other provision of this chapter, a child or youth described by Subsection (b) may, in applying for a personal identification certificate:

(1) provide a copy of the child's or youth's birth certificate as proof of the child's or youth's identity and United States citizenship, as applicable; and

(2) if the child or youth does not have a residence or domicile:

(A) provide a letter certifying the child or youth is a homeless child or youth issued by:

(i) the school district in which the child or youth is enrolled;

(ii) the director of an emergency shelter or transitional housing program funded by the United States Department of Housing and Urban Development; or

(iii) the director of: (a) a basic center for runaway and homeless youth; or

(b) a transitional living program; or

(B) use the address of the regional office where the Department of Family and Protective Services caseworker for the child or youth is based.

(d) A child or youth described by Subsection (b) may apply for and the department may issue a personal identification certificate without the signature or presence of or permission from a parent or guardian of the child or youth.

(e) The department shall exempt a child or youth described by Subsection (b) from the payment of any fee for the issuance of a personal identification certificate under this chapter, subject to Section 521.4265.

Commentary by Linda Butler Arrigucci

Source: HB 123

Effective Date: September 1, 2019

Applicability: Applies to a request for a personal identification certificate on or after the effective date.

Summary of Changes: Lack of proper identification records, including a certified birth certificate and valid identification card, presents a significant barrier to youth in conducting their personal affairs. This session, the Legislature removed a barrier that foster and homeless youth face in obtaining personal identification certificates. Personal identification certificates are defined in Section 521.101, Transportation Code. A personal identification certificate must be similar in form to, but distinguishable in color from, a driver's license. It is commonly known as an ID card. A foster child or youth is allowed to obtain a personal identification certificate without the payment of fees. A foster youth is defined as being a child in the managing conservatorship of DFPS; or a young adult who is at least 18 years of age, but younger than 21 years of age and who resides in a foster care placement paid for by DFPS.

A homeless child or youth is also allowed to obtain a personal identification certificate without payment of fees. The term "homeless children and youths" as defined in 42

U.S.C. Section 11434(a) means individuals who lack a fixed, regular, and adequate nighttime residence and includes: (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals; (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii). If a child or youth does not have a residence or home the child's school, director of a homeless shelter, or center for runaway and homeless youth that provides services to a foster or homeless child or youth can provide a letter certifying the youth is homeless.

A child or youth may in applying for a personal identification certificate, provide a copy of his/her birth certificate as proof of his/her identity and citizenship in the United States. If the child does not have a residence or domicile, the child's school district in which the child is enrolled, the director of an emergency shelter or transitional housing program, or director of a basic center for runaway and homeless youth or a transitional living program may provide a letter certifying that the child or youth is homeless. A child or youth may apply for and the Department of Public Safety (DPS) may issue a personal identification certificate without the consent or presence of the parent or guardian. DPS shall exempt a child or youth from the payment of any fee for the issuance of a personal identification certificate.

Transportation Code Sec. 521.1811. WAIVER OF FEES FOR FOSTER CHILD OR YOUTH OR HOMELESS CHILD OR [CARE] YOUTH. A person is exempt from the payment of any fee for the issuance of a driver's license, as provided under this chapter, if that person is:

(1) younger than 18 years of age and in the managing conservatorship of the Department of Family and Protective Services; ~~(2)~~

(2) at least 18 years of age, but younger than 21 years of age, and resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services; or

(3) a homeless child or youth as defined by 42 U.S.C. Section 11434a.

Commentary by Linda Butler Arrigucci

Source: HB 123

Effective Date: September 1, 2019

Applicability: Applies to an application for a driver's license on or after the effective date.

Summary of Changes: Lack of a valid driver's license presents a significant barrier to youth in conducting their personal affairs, being independent, and being able to live on their own once they reach the age of majority. This legislation removes a barrier that foster and homeless youth face in obtaining a valid, state-issued Texas driver's license. Under Section 521.1811, Transportation Code, a foster child or youth is allowed to obtain a Texas driver's license if the child or youth is younger than 18 years of age and in the managing conservatorship of the DFPS or at least 18 years of age but younger than 21 years of age and residing in a foster care placement paid for by DFPS. A foster youth is exempt from payment of any fee for the issuance of a driver's license.

A homeless child or youth is also allowed to obtain a Texas driver's license and is exempt from payment of any fee for the issuance of a driver's license. The term "homeless children and youths" as defined in 42 U.S.C. Section 11434(a) means individuals who lack a fixed, regular, and adequate nighttime residence and includes— (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals; (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

3. Legislation Affecting Education

Education Code Sec. 5.001. DEFINITIONS.

(1-a) “Child who is homeless,” “person who is homeless,” and “student who is homeless” have the meaning assigned to the term “homeless children and youths” under 42 U.S.C. Section 11434a.

Commentary by Karol Davidson

Source: SB 668

Effective Date: June 10, 2019

Applicability: Applies to the definition of a “child who is homeless,” “person who is homeless,” and “student who is homeless” beginning with the 2019-2020 school year.

Summary of Changes: The amendment to Section 5.001 of the Education Code creates a uniform definition for a child, person, or student who is homeless that will be used for all references to the status of being homeless that are found in the Education Code. The definition has the meaning assigned to “homeless children and youth” found at 42 U.S.C. Section 11434a, which provides descriptions of circumstances in which an individual is considered homeless. These examples include individuals who do not have a fixed, regular, or adequate nighttime residence, including situations in which the individual shares housing with other persons due to loss of housing; nighttime residence is a public or private place not designed for regular sleeping; living in cars, parks, public spaces, or abandoned buildings. Due to this change, children who are migratory and unaccompanied can now be considered as a child or student who is homeless.

Education Code Sec. 7.061. FACILITIES STANDARDS. (a) In this section, “instructional facility” has the meaning assigned by Section 46.001.

(b) The commissioner shall adopt or amend rules as necessary to ensure that building standards for instructional facilities and other school district and open-enrollment charter school facilities provide a secure and safe environment. In adopting or amending rules under this section, the commissioner shall include the use of best practices for:

(1) the design and construction of new facilities; and

(2) the improvement, renovation, and retrofitting of existing facilities.

(c) Not later than September 1 of each even-numbered year, the commissioner shall review all rules adopted or amended under this section and amend the rules as necessary to ensure that building standards for school district and open-enrollment charter school facilities continue to provide a secure and safe environment.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to public school facilities, including school districts and charter schools beginning the 2019-2020 school year.

Summary of Changes: SB 11 is a comprehensive bill addressing changes in state policy designed to improve the safety and security of Texas public schools. The bill is primarily composed of recommendations from the Senate Select Committee on Violence in School and School Security, which was appointed following the school shooting at Santa Fe High School in 2018. The committee was tasked with making recommendations to improve the infrastructure and design of Texas schools to reduce security threats; study school security options and resources (school marshal program, school resource officers/police, role of Texas School Safety Center); examine the root cause of mass murder in schools, including mental health, substance use disorders, anger management, social isolation; and examine the removal of firearms when protective orders are issued.

Section 7.061, Education Code, is added to require the commissioner of education to establish rules for the design, construction, renovation, and retrofitting of instructional facilities for Texas public schools. This section also defines an instructional facility as real property, an improvement to real property, or necessary fixture of an improvement to real property that is used predominantly for teaching foundation curriculum. The commissioner rules must be adopted by January 1, 2020.

Education Code Sec. 11.252. DISTRICT-LEVEL PLANNING AND DECISION-MAKING.

(a) Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the achievement indicators adopted under Section 39.053(c). The district improvement plan must include provisions for:

(1) a comprehensive needs assessment addressing district student performance on the achievement indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the district, including categories of ethnicity, socioec-

onomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29;

(2) measurable district performance objectives for all appropriate achievement indicators for all student populations, including students in special education programs under Subchapter A, Chapter 29, and other measures of student performance that may be identified through the comprehensive needs assessment;

(3) strategies for improvement of student performance that include:

(A) instructional methods for addressing the needs of student groups not achieving their full potential;

(B) methods for addressing the needs of students for special programs, including:

(i) suicide prevention programs, in accordance with Subchapter O-1, Chapter 161, Health and Safety Code, which includes a parental or guardian notification procedure;

(ii) conflict resolution programs;

(iii) violence prevention programs; and

(iv) dyslexia treatment programs;

(C) dropout reduction;

(D) integration of technology in instructional and administrative programs;

(E) discipline management;

(F) staff development for professional staff of the district;

(G) career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities; and

(H) accelerated education;

(4) strategies for providing to middle school, junior high school, and high school students, those students' teachers and school counselors, and those students' parents information about:

(A) higher education admissions and financial aid opportunities;

(B) the TEXAS grant program and the Teach for Texas grant program established under Chapter 56;

(C) the need for students to make informed curriculum choices to be prepared for success beyond high school; and

(D) sources of information on higher education admissions and financial aid;

(5) resources needed to implement identified strategies;

(6) staff responsible for ensuring the accomplishment of each strategy;

(7) timelines for ongoing monitoring of the implementation of each improvement strategy;

(8) formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance; ~~and~~

(9) the policy under Section 38.0041 addressing sexual abuse and other maltreatment of children; and

(10) the trauma-informed care policy required under Section 38.036.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to District Improvement Plans beginning the 2019-2020 school year.

Summary of Changes: Section 11.252, Education Code, is amended to require school districts to adopt a trauma-informed care policy and to include the policy in the district improvement plan. Requirements for trauma-informed care policies are found in Section 38.036, Education Code which was also enacted during the 86th Legislative Session.

Education Code Sec. 12.104. APPLICABILITY OF TITLE. As reenacted and amended by Chapters 324 (S.B. 1488), 522 (S.B. 179), and 735 (S.B. 1153), Acts of the 85th Legislature, Regular Session, 2017. (b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) accelerated instruction under Section 28.0211;

(E) high school graduation requirements under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E or E-1, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A;

(M) the requirement under Section 21.006 to report an educator's misconduct;

(N) intensive programs of instruction under Section 28.0213;

(O) the right of a school employee to report a crime, as provided by Section 37.148; ~~and~~

(P) bullying prevention policies and procedures under Section 37.0832;

(Q) the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student; ~~and~~

(R) the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment;

(S) ~~(P)~~ a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d); ~~and~~

(T) school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115, 37.207, and 37.2071.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to open-enrollment charter schools beginning the 2019-2020 school year.

Summary of Changes: Section 12.104, Education Code, is amended to require open-enrollment charter schools to comply with statutes that address school safety. To allow for flexibility with creating innovative school programs, charter schools are not required to comply with many statutes in the Education Code. However, since charter schools are considered public schools funded by the state of Texas, the legislature determined there is an obligation to ensure the safety of students and educators while participating in school programs.

Charter schools are now required to develop and implement multi-hazard emergency operations plans to cover all school campuses run by the charter school. The multi-hazard emergency operations plans developed by charter schools are subject to review and audit requirements set by the Texas School Safety Center. Open-enrollment charter schools are subject to statutory provisions that require public hearings and the appointment of a conservator or board of managers if the school is in non-compliance with the charter's multi-hazard emergency operations plan; local school safety and security committees;

notifications to parents regarding bomb threat and terroristic threats; emergency evacuations and school drills; and the creation of threat assessment teams.

Education Code Sec. 21.054. CONTINUING EDUCATION. (d) Continuing education requirements for a classroom teacher must provide that not more than 25 percent of the training required every five years include instruction regarding:

(1) collecting and analyzing information that will improve effectiveness in the classroom;

(2) recognizing early warning indicators that a student may be at risk of dropping out of school;

(3) digital learning, digital teaching, and integrating technology into classroom instruction;

(4) educating diverse student populations, including:

(A) students with disabilities, including mental health disorders;

(B) students who are educationally disadvantaged;

(C) students of limited English proficiency; and

(D) students at risk of dropping out of school; ~~and~~

(5) understanding appropriate relationships, boundaries, and communications between educators and students; ~~and~~[-]

~~(6) [(d-2) Continuing education requirements for a classroom teacher may include instruction regarding] how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.~~

(d-2) The instruction required under Subsection (d)(6) must:

(1) comply with the training required by Section 38.036(c)(1); and

(2) be approved by the commissioner.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to continuing education for educators on or after the effective date.

Summary of Changes: The state board of education is required to adopt rules to require teachers to obtain training in trauma-informed care as part of an educator's continuing education. The training must meet the requirements of section 38.036(c) (a), Education Code.

Education Code Sec. 21.351. RECOMMENDED APPRAISAL PROCESS AND PERFORMANCE CRITERIA. (a-1) In adopting criteria described by Subsection (a)(1), the commissioner shall ensure that a teacher may not be assigned an area of deficiency in an appraisal solely on the basis of disciplinary referrals made by the teacher or documentation regarding student conduct submitted by the teacher under Section 37.002. This subsection does not prohibit a teacher from being assigned an area of deficiency based on documented evidence of a deficiency in classroom management obtained through observation or a substantiated report.

Commentary by Karol Davidson

Source: SB 1451

Effective Date: June 6, 2019

Applicability: Applies to educator appraisals on or after the effective date.

Summary of Changes: Section 37.002, Education Code, allows teachers to remove a student from class when a student repeatedly disrupts or interferes with the ability of other students to learn or is unruly or disruptive, or engages in abusive behavior. This amendment requires the commissioner of education to prohibit a teacher from being given a negative evaluation or deficiency due to a teacher removing a student from class as permitted by Section 37.002, Education Code. Even though a removal itself cannot be included as a deficiency in a teacher's job performance, a deficiency in classroom management can be found if there is documented evidence of the deficiency. This amendment helps to assure that a teacher can appropriately remove a student from class without fearing a negative performance evaluation.

Education Code Sec. 21.352. LOCAL ROLE.

(a-1) A school district may not assign an area of deficiency to a teacher solely on the basis of disciplinary referrals made by the teacher or documentation regarding student conduct submitted by the teacher under Section 37.002. This subsection does not prohibit a teacher from being assigned an area of deficiency based on documented evidence of a deficiency in classroom management obtained through observation or a substantiated report.

Commentary by Karol Davidson

Source: SB 1451

Effective Date: June 6, 2019

Applicability: Applies to school district appraisals of educators on or after the effective date.

Summary of Changes: Whereas Section 21.351, Education Code, requires the commissioner of education to prohibit school districts from using teacher removals of a student from class as the basis for a deficiency in the teacher's job performance, the amendment to Section 21.352 prohibits school districts from doing the same. The

school district may address a teacher's deficiency with managing a classroom when there is documented evidence of the deficiency.

Education Code Sec 25.001. ADMISSION. (b)

The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought, and may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma, if:

(1) the person and either parent of the person reside in the school district;

(2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;

(3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;

(4) the person has established a separate residence under Subsection (d);

(5) the person is homeless~~[, as defined by 42 U.S.C. Section 11302]~~, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;

(6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);

(7) the person resides at a residential facility located in the district;

(8) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed; or

(9) the person does not reside in the school district but the grandparent of the person:

(A) resides in the school district; and

(B) provides a substantial amount of after-school care for the person as determined by the board.

Commentary by Karol Davidson

Source: SB 668

Effective Date: June 10, 2019

Applicability: Applies to references to "a person who is homeless" beginning the 2019-2020 school year.

Summary of Changes: This amendment changes references to the definition of "a person who is homeless" to

conform with the definition in Section 7.061(a) Education Code.

Education Code Sec. 25.001. ADMISSION.

(c-1) A person whose parent or guardian is an active-duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, may establish residency for purposes of Subsection (b) by providing to the school district a copy of a military order requiring the parent's or guardian's transfer to a military installation in or adjacent to the district's attendance zone.

(c-2) A person who establishes residency as provided by Subsection (c-1) shall provide to the school district proof of residence in the district's attendance zone not later than the 10th day after the arrival date specified in the order described by that subsection. For purposes of this subsection, "residence" includes residence in a military temporary lodging facility.

Commentary by Karol Davidson

Source: HB 1597

Effective Date: May 28, 2019

Applicability: Applies to residency requirements for admission to schools beginning the 2019-2020 school year.

Summary of Changes: The amendment to Section 25.001 of the Education Code allows students whose parents are active duty military to establish residency for admission to Texas schools using the parent's military orders for transfer in order to reduce delays in students enrolling into schools. When military orders for transfer are used, the orders must be submitted to the school within 10 days of the arrival date. This amendment does not rule out using other methods for establishing residency, such as mortgage statements or leases, utility bills, or valid drivers' licenses.

Education Code Sec 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE. (b) In recognition

of the challenges faced by students who are homeless or in substitute care, the agency shall assist the transition of students who are homeless or in substitute care from one school to another by:

(1) ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is

homeless or in substitute care while enrolled at another school;

(4) developing procedures to ensure that a new school relies on decisions made by the previous school regarding placement in courses or educational programs of a student who is homeless or in substitute care and places the student in comparable courses or educational programs at the new school, if those courses or programs are available;

(5) promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(6) establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(7) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(8) encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(9) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school previously attended by the student, and to provide comparable services to the student during the referral process or until the new school develops an individualized education program for the student;

(10) requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and case-worker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; ~~and~~

(G) use of corporal punishment as provided by Section 37.0011; and

(H) appointment of a surrogate parent for the child under Section 29.0151;

(11) developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(12) ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed;

(13) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit;

(14) designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(15) providing other assistance as identified by the agency.

Commentary by Karol Davidson

Source: HB 1709

Effective Date: June 10, 2019

Applicability: Applies to students who are homeless or in foster care who receive special education services on or after the effective date.

Summary of Changes: Section 25.007(b), Education Code, is amended to require school districts and open-enrollment charter schools to provide the education decision-maker or foster care caseworker for a student who is homeless or in foster care notification if a surrogate parent is appointed to a student.

Education Code Sec. 25.081. OPERATION OF SCHOOLS. (a) Except as authorized under Subsection (b) of this section, Section 25.0815, Section 25.084, or Section 29.0821, for each school year each school district must operate for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses for students.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school districts beginning the 2019-2020 school year.

Summary of Changes: HB 1709 amends Section 25.081, Education Code, to conform with the requirements of Section 25.0815, Education Code, authorizing schools to reduce the required number of minutes of operation and instruction to provide school safety training to school personnel.

Education Code Sec. 25.081. OPERATION OF SCHOOLS. As added by Chapter 1144 (H.B. 441), Acts of the 85th Legislature, Regular Session, 2017. (f) A school district or open-enrollment charter school may not provide student instruction on Memorial Day. If a school district or open-enrollment charter school would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under Subsection (a).

Commentary by Karol Davidson

Source: HB 109

Effective Date: June 6, 2019

Applicability: Applies to open-enrollment charter schools beginning the 2019-2020 school year.

Summary of Changes: Section 25.081, Education Code, is amended to prohibit open-enrollment charter schools from requiring students to attend school on Memorial Day.

Education Code Sec. 25.0815. OPERATION AND INSTRUCTIONAL TIME WAIVERS FOR SCHOOL SAFETY TRAINING. (a) The commissioner shall provide a waiver allowing for fewer minutes of operation and instructional time than required under Section 25.081(a) for a school district that requires each educator employed by the district to attend an approved school safety training course.

(b) A waiver under this section:

(1) must allow sufficient time for the school district's educators to attend the school safety training course; and

(2) may not:

(A) result in an inadequate number of minutes of instructional time for students; or

(B) reduce the number of minutes of operation and instructional time by more than 420 minutes.

(c) To be approved under this section, a school safety training course must apply to the Texas School Safety Center. The Texas School Safety Center may approve a training course if the course satisfies the training requirements as determined by the center.

(d) The commissioner may adopt rules to implement this section.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to operational and instructional time beginning the 2019-2020 school year.

Summary of Changes: Section 25.0815, Education Code, is added to require the commissioner of education to approve waivers of the required number of operational and instructional minutes to fewer than 75,600 minutes per year when requested by schools to provide safety training to school employees. Schools cannot request a waiver of more than 420 minutes and must ensure that students are provided adequate instructional time.

Education Code Sec. 25.086. EXEMPTIONS.

(a) A child is exempt from the requirements of compulsory school attendance if the child:

(1) attends a private or parochial school that includes in its course a study of good citizenship;

(2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;

(3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;

(4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011;

(5) is at least 17 years of age and:

(A) is attending a course of instruction to prepare for the high school equivalency examination, and:

(i) has the permission of the child's parent or guardian to attend the course;

(ii) is required by court order to attend the course;

(iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or

(iv) is homeless [as defined by ~~42 U.S.C. Section 11302~~]; or

(B) has received a high school diploma or high school equivalency certificate;

(6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:

(A) the child is recommended to take the course of instruction by a public agency that

has supervision or custody of the child under a court order; or

(B) the child is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);

(7) is at least 16 years of age and is enrolled in a high school diploma program under Chapter 18;

(8) is enrolled in the Texas Academy of Mathematics and Science under Subchapter G, Chapter 105;

(9) is enrolled in the Texas Academy of Leadership in the Humanities;

(10) is enrolled in the Texas Academy of Mathematics and Science at The University of Texas at Brownsville;

(11) is enrolled in the Texas Academy of International Studies; or

(12) is specifically exempted under another law.

Commentary by Karol Davidson

Source: SB 668

Effective Date: June 10, 2019

Applicability: Applies to compulsory school attendance for students who are homeless on or after the effective date.

Summary of Changes: Section 25.086, Education Code, is amended to remove the reference to 42 U.S.C. §11302 as the definition for a child who is homeless. The definition of a child who is homeless can be found at Section 5.001(1-a), Education Code.

Education Code Sec. 28.002. REQUIRED CURRICULUM. (a) Each school district that offers kindergarten through grade 12 shall offer, as a required curriculum:

(1) a foundation curriculum that includes:

(A) English language arts;

(B) mathematics;

(C) science; and

(D) social studies, consisting of Texas, United States, and world history, government, economics, with emphasis on the free enterprise system and its benefits, and geography; and

(2) an enrichment curriculum that includes:

(A) to the extent possible, languages other than English;

(B) health, with emphasis on:

(i) physical health, including the importance of proper nutrition and exercise;

(ii) mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and

maintaining positive relationships, and responsible decision-making; and

(iii) suicide prevention, including recognizing suicide-related risk factors and warning signs;

- (C) physical education;
- (D) fine arts;
- (E) career and technology education;

(F) technology applications;

(G) religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and

(H) personal financial literacy.

(z) The State Board of Education by rule shall require each school district to incorporate instruction in digital citizenship into the district's curriculum, including information regarding the potential criminal consequences of cyberbullying. In this subsection:

(1) "Cyberbullying" has the meaning assigned by Section 37.0832.

(2) "Digital citizenship" means the standards of appropriate, responsible, and healthy online behavior, including the ability to access, analyze, evaluate, create, and act on all forms of digital communication.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to the enrichment curriculum for health beginning with the 2019-2020 school year.

Summary of Changes: Section 28.002(a)(2)(B), Education Code, is amended to require the enrichment curriculum for health to include an emphasis on physical health, mental health, and suicide prevention. Section 28.002(z) adds definitions for "Cyberbullying" and "Digital Citizenship." All schools are required to incorporate cyberbullying and digital citizenship into school curriculum.

Education Code Sec. 28.004. LOCAL SCHOOL HEALTH ADVISORY COUNCIL AND HEALTH EDUCATION INSTRUCTION. (c) The local school health advisory council's duties include recommending:

- (1) the number of hours of instruction to be provided in health education;
- (2) policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent obesity, cardiovascular disease, Type 2 diabetes, and mental health concerns, including suicide, through coordination of:

- (A) health education;
- (B) physical education and physical activity;
- (C) nutrition services;
- (D) parental involvement;

(E) instruction to prevent the use of e-cigarettes, as defined by Section 161.081, Health and Safety Code, and tobacco;

(F) school health services;

(G) counseling and guidance services;

(H) a safe and healthy school environment; and

(I) school employee wellness;

(3) appropriate grade levels and methods of instruction for human sexuality instruction;

(4) strategies for integrating the curriculum components specified by Subdivision (2) with the following elements in a coordinated school health program for the district:

(A) school health services;

(B) counseling and guidance services;

(C) a safe and healthy school environment; and

(D) school employee wellness; ~~and~~

(5) if feasible, joint use agreements or strategies for collaboration between the school district and community organizations or agencies; and

(6) strategies to increase parental awareness regarding:

(A) risky behaviors and early warning signs of suicide risks and behavioral health concerns, including mental health disorders and substance use disorders; and

(B) available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns.

(o) The local school health advisory council shall make policy recommendations to the district to increase parental awareness of suicide-related risk factors and warning signs and available community suicide prevention services.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to local health advisory councils beginning the 2019-2020 school year.

Summary of Changes: As part of the comprehensive plan for school safety, SB 11 amends Section 25.004(c)(6), Education Code, to require local school health advisory councils to provide recommendations to school districts on strategies to increase parental awareness on warning signs and symptoms of suicide risk, behavioral health concerns, and available programs and local services available to address risk behaviors, suicide risks, and behavioral concerns. This amendment addresses the need to improve awareness of behavioral and

mental health signs and symptoms that could lead a student to harm himself, herself or others.

Education Code Sec. 28.025. HIGH SCHOOL DIPLOMA AND CERTIFICATE; ACADEMIC ACHIEVEMENT RECORD. (c-7) Subject to Subsection (c-8), a student who is enrolled in a special education program under Subchapter A, Chapter 29, may earn an endorsement on the student's transcript by:

(1) successfully completing, with or without modification of the curriculum:

(A) the curriculum requirements identified by the State Board of Education under Subsection (a); and

(B) the additional endorsement curriculum requirements prescribed by the State Board of Education under Subsection (c-2); and

(2) successfully completing all curriculum requirements for that endorsement adopted by the State Board of Education:

(A) without modification of the curriculum; or

(B) with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's admission, review, and dismissal committee.

(c-8) For purposes of Subsection (c-7), the admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn an endorsement on the student's transcript.

Commentary by Karol Davidson

Source: HB 165

Effective Date June 10, 2019

Applicability: Applies to diplomas for students receiving special education services on or after the effective date.

Summary of Changes: Prior to the enactment of HB 165, the commissioner of education rules did not allow a student receiving special education services to receive an endorsement on the student's transcript if any of the curriculum required to be completed was modified by the student's admission, review, and dismissal (ARD) committee. HB 65 amends Section 28.004, Education Code, by adding subsections (c-7) and (c-8) to allow a student receiving special education services to qualify to receive an endorsement on the student's transcript even if the curriculum is modified in the student's individual education plan (IEP). If the curriculum is modified, in order to receive an endorsement, the student must satisfactorily complete the curriculum as provided in the student's IEP and the student's ARD committee must determine that the curriculum is sufficiently rigorous for an endorsement. A student's ARD committee must determine whether the

student is required to satisfactorily complete any end-of-course assessments to earn an endorsement.

Education Code Sec. 28.02123. NOTIFICATION OF CERTAIN HIGH SCHOOL GRADUATION REQUIREMENTS. (a) Not later than September 1 of each school year, a school district shall notify by regular mail or e-mail the parent of or other person standing in parental relation to each student enrolled in grade nine or above that the student is not required to complete an Algebra II course to graduate under the foundation high school program.

(b) The notification must include information regarding the potential consequences to a student of not completing an Algebra II course, including the impact on eligibility for:

(1) automatic college admission under Section 51.803; and

(2) certain financial aid authorized under Title 3, including:

(A) the TEXAS grant program under Subchapter M, Chapter 56; and

(B) the Texas Educational Opportunity Grant Program under Subchapter P, Chapter 56.

Commentary by Karol Davidson

Source: SB 232

Effective Date: June 14, 2019

Applicability: Applies to school districts beginning the 2019-2020 school year.

Summary of Changes: After the 85th legislative session, Algebra II is no longer a required curriculum to obtain a diploma. According to the author of SB 232, Algebra II is required to receive a distinguished level of achievement on a transcript, which is needed for a student to obtain an automatic admission into Texas public universities. To provide parents full information on the potential consequences of not completing Algebra II, SB 232 adds Section 28.02123 to require school districts to provide parents notification by September 1 of each school year that Algebra II is not a required curriculum and to also provide information on the impact that not completing Algebra II could have with admission to Texas public universities and the ability to receive financial aid.

Education Code Sec. 29.023. NOTICE OF RIGHTS. (a) The agency shall develop a notice for distribution as provided by Subsection (c) and posting on the agency's Internet website that indicates:

(1) the change made from 2016 to 2017 in reporting requirements for school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual; and

(2) in plain language, the rights of a child under both federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation under Section 29.004 to determine the child's eligibility for special education services.

(b) A school district or open-enrollment charter school shall include in the notice developed by the agency under Subsection (a) information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation may be found.

(c) By a date established by the commissioner, each school district or open-enrollment charter school shall provide the notice to the parent of each child who attends school in the district or at the school at any time during the 2019-2020 school year. A school district or open-enrollment charter school shall also make the notice available on request to any person. The notice must be available in English and Spanish, and a school district or open-enrollment charter school shall make a good faith effort to provide the notice in the parent's native language if the parent's native language is a language other than English or Spanish.

(d) The notice is in addition to requirements imposed by Section 26.0081.

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

(f) This section expires September 1, 2023.

Commentary by Karol Davidson

Source: SB 139

Effective Date: June 14, 2019

Applicability: Applies to school districts and charter schools beginning the 2019-2020 school year.

Summary of Changes: The Texas Education Agency (TEA) uses a Performance-Based Monitoring System (PBMAS) to annually report on the performance of school districts and charter schools in program areas that includes: bilingual education/English as a second language, career and technical education, federal Title programs, and special education. With respect to special education, TEA collects data that measures the percentage of students who receive special education services and uses it as a factor in determining whether to monitor a school. School districts with higher percentages of students receiving special education services are more likely to be monitored by TEA if other indicators suggest there is a high concern. SB 139 attempts to address any negative impact PBMAS may have on a student's receipt of special education services.

Section 29.023, Education Code, is amended to require TEA to develop a notice of rights for school districts and charter schools to use to provide information on the

PBMAS process and to advise parents of student's attending Texas public schools of their right to seek and how to request evaluation of their child for special education services. School districts are required to post the notice on the school's website and to annually send the notice to parents. In addition to the notice of rights developed by TEA, school districts and charter schools are also required to provide information to parents on the school's procedures for initiating referrals for a full and independent evaluation of whether a student is eligible for special education services.

Education Code Sec. 29.081. COMPENSATORY, INTENSIVE, AND ACCELERATED INSTRUCTION. (d) For purposes of this section, "student at risk of dropping out of school" includes each student who is under 26 years of age and who:

(1) was not advanced from one grade level to the next for one or more school years;

(2) if the student is in grade 7, 8, 9, 10, 11, or 12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;

(3) did not perform satisfactorily on an assessment instrument administered to the student under Subchapter B, Chapter 39, and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110 percent of the level of satisfactory performance on that instrument;

(4) if the student is in prekindergarten, kindergarten, or grade 1, 2, or 3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;

(5) is pregnant or is a parent;

(6) has been placed in an alternative education program in accordance with Section 37.006 during the preceding or current school year;

(7) has been expelled in accordance with Section 37.007 during the preceding or current school year;

(8) is currently on parole, probation, deferred prosecution, or other conditional release;

(9) was previously reported through the Public Education Information Management System (PEIMS) to have dropped out of school;

(10) is a student of limited English proficiency, as defined by Section 29.052;

(11) is in the custody or care of the Department of Family and Protective Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;

(12) is homeless, as defined by 42 U.S.C. Section 11302, and its subsequent amendments; [ø¶]

(13) resided in the preceding school year or resides in the current school year in a residential placement facility in the district, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized child-care home, or general residential operation; or

(14) has been incarcerated or has a parent or guardian who has been incarcerated, within the lifetime of the student, in a penal institution as defined by Section 1.07, Penal Code.

Commentary by Karol Davidson

Source: SB 1746

Effective Date: June 2, 2019

Applicability: Applies to students who have been incarcerated in a penal institution or whose parents have been incarcerated in a penal institution within the lifetime of the student.

Summary of Changes: Section 29.081 is amended to require school districts to provide compensatory, intensive, and accelerated instruction to students who have been incarcerated or whose parents have been incarcerated within the lifetime of the student in a penal institution. In the context of this section, incarcerated does not include in a juvenile justice facility.

Education Code Sec. 33.906. WEBSITE INFORMATION CONCERNING LOCAL PROGRAMS AND SERVICES AVAILABLE TO ASSIST HOMELESS STUDENTS. (a) Except as provided by Subsection (e), each school that maintains an Internet website shall post on the website information regarding local programs and services, including charitable programs and services, available to assist ~~homeless~~ students who are homeless.

(c) A representative of a local program or service available to assist ~~homeless~~ students who are homeless may request to have information concerning the program or service posted on a school's website. A school may determine the information that is posted on the school's website and is not required to post information as requested by the representative.

Commentary by Karol Davidson

Source: SB 668

Effective Date: June 10, 2019

Applicability: Applies to school districts beginning the 2019-2020 school year.

Summary of Changes: This amendment made no substantive changes to Section 33.096, Education Code. It

changes the language regarding students who are homeless to be consistent with "person first" language.

Education Code Sec. 37.001. STUDENT CODE OF CONDUCT. (a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

(A) self-defense;

(B) intent or lack of intent at the time the student engaged in the conduct;

(C) a student's disciplinary history; [ø¶]

(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

(E) a student's status in the conservatorship of the Department of Family and Protective Services; or

(F) a student's status as a student who is homeless;

(5) provide guidelines for setting the length of a term of:

(A) a removal under Section 37.006; and

(B) an expulsion under Section 37.007;

(6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;

(7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions;

(8) provide, as appropriate for students at each grade level, methods, including options, for:

(A) managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;

(B) disciplining students; and

(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists; and

(9) include an explanation of the provisions regarding refusal of entry to or ejection from district property under Section 37.105, including the appeal process established under Section 37.105(h).

Commentary by Karol Davidson

Source: HB 811

Effective Date: May 24, 2019

Applicability: Applies to school districts beginning the 2019-2020 school year.

Summary of Changes: The amendments require school districts to include in the district's student code of conduct a requirement for a student's status as being homeless or in foster care to be considered when a school determines disciplinary action to suspend, expel, or place in a DAEP or JJAEP. The purpose is to address unique circumstances faced by students who are homeless or in foster care that create educational challenges for the students, including challenges that may affect a student's behavior.

Education Code Sec. 37.001. STUDENT CODE OF CONDUCT. (4) "Student who is homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a.

Commentary by Karol Davidson

Source: HB 811

Effective Date: May 24, 2019

Applicability: Applies to references to the defined terms beginning the 2019-2020 school year.

Summary of Changes: The purpose of HB 811 is to create a uniform definition for a "child or youth who is homeless." This amendment changes the definition of a "child, person, or student who is homeless" to refer to 42 U.S.C. Section 11434a. A child, person, or student who is homeless includes individuals who do not have a fixed, regular, or adequate nighttime residence, including situations in which the individual shares housing of other persons due to loss of housing; nighttime residence is a public or private place not designed for regular sleeping; living in cars, parks, public spaces, or abandoned buildings. SB 688 adds children who are migratory and unaccompanied to the definition of child or youth who is homeless.

Education Code Sec. 37.0011. USE OF CORPORAL PUNISHMENT. (h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapters 39 and 39A, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Justice Department, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapters 39 and 39A, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The department shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter [42 ~~or~~] 31 or 48 if the juvenile justice alternative education program receives funding from the department under this subchapter.

Commentary by Karol Davidson

Source: HB 3

Effective Date: September 1, 2019

Applicability: Applies to funding for JJAEPs on or after the effective date.

Summary of Changes: The amendment conforms the language of Section 37.0011, Education Code, to reflect the statutory reference changes for Foundation School Program funding.

Education Code Sec. 37.002. REMOVAL BY TEACHER. (b-1) A teacher may document any conduct by a student that does not conform to the student code of conduct adopted under Section 37.001 and may submit that documentation to the principal. A school district may not discipline a teacher on the basis of documentation submitted under this subsection.

(e) A student who is sent to the campus behavior coordinator's or other administrator's office under Subsection (a) or removed from class under Subsection (b) is not considered to have been removed from the classroom for the purposes of reporting data through the Public Education Information Management System (PEIMS) or other similar reports required by state or federal law.

Commentary by Karol Davidson

Source: SB 1451

Effective Date: June 10, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: This amendment allows a teacher to document student behavior that violates the student code of conduct and to submit that documentation to the school principal without fear of disciplinary action. The school district is prohibited from disciplining a teacher for documenting such behavior and providing it to the school principal. A removal of a student from class by a teacher is not considered a removal for reporting data to TEA. Only removals for disciplinary reasons are considered removals for reporting reasons.

Education Code Sec. 37.0023. PROHIBITED AVERSIVE TECHNIQUES. (a) In this section, “aversive technique” means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

(1) is designed to or likely to cause physical pain, other than an intervention or technique permitted under Section 37.0011;

(2) notwithstanding Section 37.0011, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;

(3) involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student’s face;

(4) denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;

(5) ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;

(6) employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;

(7) impairs the student’s breathing, including any procedure that involves:

(A) applying pressure to the student’s torso or neck; or

(B) obstructing the student’s airway, including placing an object in, on, or over the student’s mouth or nose or placing a bag, cover, or mask over the student’s face;

(8) restricts the student’s circulation;

(9) secures the student to a stationary object while the student is in a sitting or standing position;

(10) inhibits, reduces, or hinders the student’s ability to communicate;

(11) involves the use of a chemical restraint;

(12) constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student’s individualized education program, including isolating the student by the use of physical barriers; or

(13) except as provided by Subsection (c), deprives the student of the use of one or more of the student’s senses.

(b) A school district or school district employee or volunteer or an independent contractor of a school district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a student.

(c) Notwithstanding Subsection (a)(13), an aversive technique described by Subsection (a)(13) may be used if the technique is executed in a manner that:

(1) does not cause the student pain or discomfort; or

(2) complies with the student’s individualized education program or behavior intervention plan.

(d) Nothing in this section may be construed to prohibit a teacher from removing a student from class under Section 37.002.

(e) In adopting procedures under this section, the commissioner shall provide guidance to school district employees, volunteers, and independent contractors of school districts in avoiding a violation of Subsection (b).

Commentary by Karol Davidson

Source: HB 3630/SB 712

Effective Date: June 14, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: Newly added Section 37.0023, Education Code, prohibits school districts from using dangerous restraint and seclusion techniques. The amendment applies to school districts, district employees, volunteers, and independent contractors. The prohibited techniques include those techniques which will cause, or are likely to cause, physical pain or emotional harm. The commissioner of education is required to provide guidelines on how school employees can avoid using aversive techniques.

Education Code Sec. 37.005. SUSPENSION.

(d) A school district or open-enrollment charter school may not place a student who is homeless in out-of-school suspension unless the student engages in conduct described by Subsections (c)(1)-(3) while on school property or while attending a school-sponsored or school-related activity on or off of school property. The campus behavior coordinator may coordinate with the school district’s homeless education liaison to identify appropriate

alternatives to out-of-school suspension for a student who is homeless. In this subsection, “student who is homeless” has the meaning assigned to the term “homeless children and youths” under 42 U.S.C. Section 11434a.

Commentary by Karol Davidson

Source: HB 692

Effective Date: June 7, 2019

Applicability: Applies to school districts and open-enrollment charter schools beginning the 2019-2020 school year.

Summary of Changes: The change to Section 37.005, Education Code prohibits a school district or open-enrollment charter school from placing a student who is homeless in out-of-school suspension unless, while on school grounds or at a school-related program, the student engages in conduct involving possession of a weapon, assault or aggravated assault, sexual assault or aggravated sexual assault, or the possession, use, or distribution of marijuana, controlled substances, or alcohol. The purpose of the provision is to prevent returning a student who is homeless back into a situation that may be the root cause for the student’s behavioral issues.

Education Code Sec. 37.005. SUSPENSION.

(e) A school district shall provide to a student during the period of the student’s suspension under this section, regardless of whether the student is placed in in-school or out-of-school suspension, an alternative means of receiving all course work provided in the classes in the foundation curriculum under Section 28.002(a)(1) that the student misses as a result of the suspension. The district must provide at least one option for receiving the course work that does not require the use of the Internet.

Commentary by Karol Davidson

Source: HB 3012

Effective Date: June 14, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: This change to Section 37.005, Education Code, requires school districts to provide students who are placed in in-school or out-of-school suspension with the course work the student will miss while suspended from school. The purpose is to address the negative impact missing school has on a student’s educational performance. The coursework provided should be the actual material the student would have received if the student had been in class. In order to provide the coursework to students who may not have access to the Internet, at least one method for delivering the coursework to the student must not require the use of the Internet.

Education Code Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT. (a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) commits the following on or within 300 feet of school property, as measured from any point on the school’s real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; ~~(F)~~

(F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code; or

(G) engages in conduct that contains the elements of the offense of harassment under Section 42.07(a)(1), (2), (3), or (7), Penal Code, against an employee of the school district.

Commentary by Karol Davidson

Source: SB 2432

Effective Date: September 1, 2019

Applicability: Applies to school district DAEPs beginning 2019-2020 school year.

Summary of Changes: Section 37.006 requires the removal of a student from a classroom and placement in a DAEP if the student commits the offense of harassment against a school employee by making an obscene comment, request, or suggestion; threatening to inflict bodily

injury or to commit a felony against a school employee or the family or property of a school employee; or sending repeated electronic communications in a manner that is reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend a school employee.

Education Code Sec. 37.0061. FUNDING FOR ALTERNATIVE EDUCATION SERVICES IN JUVENILE RESIDENTIAL FACILITIES. A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a local revenue level [~~wealth per student~~] greater than the guaranteed local revenue [~~wealth~~] level but less than the [~~equalized wealth~~] level established under Section 48.257, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

Commentary by Karol Davidson

Source: HB 3

Effective Date: September 1, 2019

Applicability: Applies to funding for alternative education services for students in pre-adjudication detention or post-adjudication facility operated by a juvenile board on or after the effective date.

Summary of Changes: The amendments conform the language in Section 37.0061, Education Code that relates to changes made with school funding by removing funding references based on wealth equalization.

Education Code Sec. 37.011 JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), or for conduct that contains the elements of the offense of terroristic threat as described by Section 22.07(c-1), (d), or (e), Penal Code, the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:

(1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of

disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;

(3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

Commentary by Karol Davidson

Source: HB 3012

Effective Date: June 14, 2019

Applicability: Applies to the expulsion of students who engaged in conduct that meets the elements of felony terroristic threat on or after the effective date.

Summary of Changes: Section 37.011(b), Education Code, is amended to apply to students who are expelled from school for engaging in conduct involving a school that contains the elements of felony terroristic threat. Terroristic threat is a discretionary expulsion offense under section 37.007(b), Education Code. Prior to the passage of this bill, a student could only be expelled and admitted to a JJAEP if a school district entered a memorandum of understanding (MOU) permitting the admission for discretionary expulsions. With the passage of this bill, JJAEPs are now required to provide educational services to any student expelled for conduct that contains an element of felony terroristic threat. The placement in the JJAEP must occur regardless of whether the juvenile court has jurisdiction over the student. The juvenile court or the juvenile board must also require the student to attend the JJAEP if the student is placed on probation or deferred prosecution.

Since conduct that involves terroristic threat does not require expulsion under Section 37.007(a), (d), or (e), neither the General Appropriations Act of the 86th legislature nor the State Financial Assistance Contract or Grant P authorize TJJD to provide funding for students admitted to a JJAEP for this conduct. School districts may be required to cover the costs of a student to attend a JJAEP for conduct involving felony terroristic threat since Section 37.011(k)(2) requires school districts and JJAEPs to enter an MOU that sets the payments school districts must give JJAEPs for students attending the JJAEP that are not expulsions under 37.011(a), (d), or (e).

Education Code Sec. 37.020. REPORTS RELATING TO OUT-OF-SCHOOL SUSPENSIONS, EXPULSIONS, AND DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PLACEMENTS. (f)

For each out-of-school suspension under Section 37.005, the district shall report:

(1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) information indicating the basis for the suspension;

(3) the number of full or partial days the student was suspended; and

(4) the number of out-of-school suspensions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(3).

Commentary by Karol Davidson

Source: HB 65

Effective Date: June 14, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: In order to enable the State to study the effects of out-of-school suspension on student educational performance, Section 37.020(f), Education Code, is added to require school districts to submit data on students who are issued out-of-school suspensions, the reason and duration of the suspension, and whether or not the suspensions were made consistent with the student code of conduct.

Education Code Sec. 37.023. TRANSITION FROM ALTERNATIVE EDUCATION PROGRAM TO REGULAR CLASSROOM. (a) In this section:

(1) "Alternative education program" includes:

(A) a disciplinary alternative education program operated by a school district or open-enrollment charter school;

(B) a juvenile justice alternative education program; and

(C) a residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity.

(2) "Licensed clinical social worker" has the meaning assigned by Section 505.002, Occupations Code.

(b) As soon as practicable after an alternative education program determines the date of a student's release from the program, the alternative education program administrator shall:

(1) provide written notice of that date to:

(A) the student's parent or a person standing in parental relation to the student; and

(B) the administrator of the campus to which the student intends to transition; and

(2) provide the campus administrator:

(A) an assessment of the student's academic growth while attending the alternative education program; and

(B) the results of any assessment instruments administered to the student.

(c) Not later than five instructional days after the date of a student's release from an alternative education program, the campus administrator shall coordinate the student's transition to a regular classroom. The coordination must include assistance and recommendations from:

(1) school counselors;

(2) school district peace officers;

(3) school resource officers;

(4) licensed clinical social workers;

(5) campus behavior coordinators;

(6) classroom teachers who are or may be responsible for implementing the student's personalized transition plan developed under Subsection (d); and

(7) any other appropriate school district personnel.

(d) The assistance required by Subsection (c) must include a personalized transition plan for the student developed by the campus administrator. A personalized transition plan:

(1) must include recommendations for the best educational placement of the student; and

(2) may include:

(A) recommendations for counseling, behavioral management, or academic assistance for the student with a concentration on the student's academic or career goals;

(B) recommendations for assistance for obtaining access to mental health services provided by the district or school, a local mental health authority, or another private or public entity;

(C) the provision of information to the student's parent or a person standing in parental relation to the student about the process to request a full individual and initial evaluation of the student for purposes of special education services under Section 29.004; and

(D) a regular review of the student's progress toward the student's academic or career goals.

(e) If practicable, the campus administrator, or the administrator's designee, shall meet with the student's parent or a person standing in parental relation to the student to coordinate plans for the student's transition.

(f) This section applies only to a student subject to compulsory attendance requirements under Section 25.085.

Commentary by Karol Davidson

Source: HB 2184

Effective Date: June 10, 2019

Applicability: Applies to students attending a DAEP, JJAEP, or receiving educational services in a juvenile facility operated by or under contract with TJJD or a juvenile board who are subject to compulsory school attendance beginning the 2019-2020 school year.

Summary of Changes: Section 37.023, Education Code, is added to require juvenile justice facilities and programs to coordinate a student's return to a public school district to enable the public school to provide transition services to the student. An alternative education program, includes a JJAEP, DAEP, and residential programs or facilities operated by or under contract with TJJD or a juvenile board.

In order to facilitate the transition of a student back to a public school, alternative education programs are required to provide written notice to the parents of a youth and the school principal or administrator for the school in which the student intends to transition of the date the student will be released. The written notice should be provided as soon as practicable after the release date is set to give the school time to develop the students individualized transition plan. The alternative education program must also provide the school an assessment of the student's performance while attending the alternative education program and the results assessment instruments administered to the students. This information will assist the school in determining the appropriate educational placement for the student, main campus versus DAEP, and any services the student needs that will help the student needs that will assist with the transition.

The school principal or administrator is responsible for developing an individualized transition plan that includes recommendations for placement and may include recommendations for counseling, behavior management, academic assistance, or assistance with obtaining mental health services. The transition plan must be completed within 5 days after the release date from the alternative education program as opposed to within 5 days of admission to the school. The transition plan must include recommendations from other school personnel including counselors, teachers, social workers, and school peace officers.

Education Code Sec. 37.081. SCHOOL DISTRICT PEACE OFFICERS, SCHOOL RESOURCE OFFICERS, AND SECURITY PERSONNEL. (a) The board of trustees of any school district may employ security personnel, enter into a memorandum of understanding with a local law enforcement agency for the provision of school resource officers, and [may] commission peace officers to carry out this subchapter. If a board of trustees authorizes a person employed as security personnel to

carry a weapon, the person must be a commissioned peace officer. The jurisdiction of a peace officer, a school resource officer, or security personnel under this section shall be determined by the board of trustees and may include all territory in the boundaries of the school district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the school district and the board of trustees that employ the peace officer or security personnel or that enter into a memorandum of understanding for the provision of a school resource officer.

(d) ~~The [A school district peace officer shall perform law enforcement duties for the school district as determined by the]~~ board of trustees of the school district shall determine the law enforcement duties of peace officers, school resource officers, and security personnel. The duties must be included in:

(1) the district improvement plan under Section 11.252;

(2) the student code of conduct adopted under Section 37.001;

(3) any memorandum of understanding providing for a school resource officer; and

(4) any other campus or district document describing the role of peace officers, school resource officers, or security personnel in the district.

(d-1) A school district peace officer, a school resource officer, and security personnel shall perform law enforcement duties for the school district that [Those duties] must include protecting:

(1) the safety and welfare of any person in the jurisdiction of the peace officer, resource officer, or security personnel; and

(2) the property of the school district.

(d-2) A school district may not assign or require as duties of a school district peace officer, a school resource officer, or security personnel:

(1) routine student discipline or school administrative tasks; or

(2) contact with students unrelated to the law enforcement duties of the peace officer, resource officer, or security personnel.

(d-3) This section does not prohibit a school district peace officer, a school resource officer, or security personnel from informal contact with a student unrelated to:

(1) the assigned duties of the officer or security personnel; or

(2) an incident involving student behavior or law enforcement.

(d-4) In determining the law enforcement duties under Subsection (d), the board of trustees of the school district shall coordinate with district campus behavior coordinators and other district employees to ensure that school district peace officers, school resource officers, and security personnel are tasked only with duties related

to law enforcement intervention and not tasked with behavioral or administrative duties better addressed by other district employees.

Commentary by Karol Davidson

Source: SB 1707

Effective Date: June 2, 2019

Applicability: Applies to peace officers, school resource officers, and security personnel employed by school districts on or after the effective date.

Summary of Changes: SB 1707 clarifies the role and duties for law enforcement and security officers in a school setting. The change to Section 37.081 requires school districts to establish the duties for peace officers, school resource officers, and security personnel and include those duties in the district improvement plan, student code of conduct, any memorandums of understanding for the employment of peace officers, and any other documents describing the role of law enforcement and security and safety personnel working in a school district. The duties cannot include routine disciplinary or administrative tasks, such as escorting a student to the principal's office or intervening in behavior that should be handled by school personnel. The duties also should not require contact with students that is not related to law enforcement or safety and security matters.

Education Code Sec. 37.0811. SCHOOL MARSHALS: PUBLIC SCHOOLS. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may appoint one or more school marshals for each campus [~~not more than the greater of:~~

~~[(1) one school marshal per 200 students in average daily attendance per campus; or~~

~~[(2) for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction].~~

Commentary by Karol Davidson

Source: HB 1387

Effective Date: September 1, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: This amendment removes the limits for the number of school marshals a school district or open-enrollment charter school may employ on a campus.

Education Code Sec. 37.0812. TRAINING POLICY: SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. A school district [~~with an enrollment of 30,000 or more students~~] that commissions a school district peace officer or at which a school resource officer provides law enforcement

shall adopt a policy requiring the officer to complete the education and training program required by Section 1701.263, Occupations Code.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school districts with enrollment of fewer than 30,000 on or after the effective date.

Summary of Changes: This amendment requires school districts with an enrollment of fewer than 30,000 students to adopt training policies for peace officers and school resource officers by October 1, 2019.

Education Code Sec. 37.0812. TRAINING POLICY: SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. (a) A school district peace officer or school resource officer shall complete an active shooter response training program approved by the Texas Commission on Law Enforcement.

(b) A school district with an enrollment of 30,000 or more students that commissions a school district peace officer or at which a school resource officer provides law enforcement shall adopt a policy requiring the officer to complete the education and training program required by Section 1701.263, Occupations Code.

Commentary by Karol Davidson

Source: HB 2195

Effective Date: June 14, 2019

Applicability: Applies to peace officers and school resource officers employed by a school district on or after the effective date.

Summary of Changes: This amendment requires all peace officers and school resource officers employed with a school district to complete an active shooter training program before August 31, 2020. The training program must be approved by TCOLE.

Education Code Sec 37.0813 SCHOOL MARSHALS: PRIVATE SCHOOLS. (a) The governing body of a private school may appoint one or more school marshals [~~not more than the greater of:~~

~~[(1) one school marshal per 200 students enrolled in the school; or~~

~~[(2) one school marshal per building of the school at which students regularly receive classroom instruction].~~

Commentary by Karol Davidson

Source: HB 1387

Effective Date: September 1, 2019

Applicability: Applies to private schools that employ school marshals on or after the effective date

Summary of Changes: This amendment removes the limit for the number of school marshals a private school may employ.

Education Code Sec. 37.0815. TRANSPORTATION OR STORAGE OF FIREARM AND AMMUNITION BY LICENSE HOLDER IN SCHOOL PARKING AREA. (a) A school district or open-enrollment charter school may not prohibit a person, including a school employee, who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district or charter school and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

Commentary by Karol Davidson

Source: HB 1143

Effective Date: September 1, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: This amendment prohibits a school district or charter school from regulating how handguns, firearms, or ammunition must be stored in cars parked in a parking lot, garage, or parking area owned by a school district. The items must not, however, be in plain view.

Education Code Sec. 37.108. MULTHAZARD EMERGENCY OPERATIONS PLAN; SAFETY AND SECURITY AUDIT. (g) A school district shall include in its multihazard emergency operations plan a policy for responding to an active shooter emergency. The school district may use any available community resources in developing the policy described by this subsection.

Commentary by Karol Davidson

Source: HB 2195

Effective Date: June 14, 2019

Applicability: Applies to school districts and charter schools on or after the effective date.

Summary of Changes: This amendment requires school districts to have a policy on responding to active shooters and include the policy in the school district's multi-hazard emergency operations plan.

Education Code Sec. 37.108. MULTHAZARD EMERGENCY OPERATIONS PLAN; SAFETY AND SECURITY AUDIT. (a) Each school district or public junior college district shall adopt and implement a multihazard emergency operations plan for use

in the district's facilities. The plan must address prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner of education or commissioner of higher education, as applicable [in conjunction with the governor's office of homeland security]. The plan must provide for:

(1) [district employee] training in responding to an emergency for district employees, including substitute teachers;

(2) measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;

(3) measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;

(4) if the plan applies to a school district, mandatory school drills and exercises, including drills required under Section 37.114, to prepare district students and employees for responding to an emergency;

(5) [↔] measures to ensure coordination with the Department of State Health Services and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and

(6) [(4)] the implementation of a safety and security audit as required by Subsection (b).

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a person included in the registry established by the Texas School Safety Center under Section 37.2091 [comparable public or private entity].

(b-1) In a school district's safety and security audit required under Subsection (b), the district must certify that the district used the funds provided to the district through the school safety allotment under Section 42.168 only for the purposes provided by that section.

(c) A school district or public junior college district shall report the results of the safety and security audit conducted under Subsection (b) to the district's board of trustees and, in the manner required by the Texas School Safety Center, to the Texas School Safety Center. The report provided to the Texas School Safety Center under this subsection must be signed by:

(1) for a school district, the district's board of trustees and superintendent; or

(2) for a public junior college district, the president of the junior college district.

(f) A school district shall include in its multihazard emergency operations plan:

(1) a chain of command that designates the individual responsible for making final decisions during a disaster or emergency situation and identifies other individuals responsible for making those decisions if the designated person is unavailable;

(2) provisions that address physical and psychological safety for responding to a natural disaster, active shooter, and any other dangerous scenario identified for purposes of this section by the agency or the Texas School Safety Center;

(3) provisions for ensuring the safety of students in portable buildings;

(4) provisions for ensuring that students and district personnel with disabilities are provided equal access to safety during a disaster or emergency situation;

(5) provisions for providing immediate notification to parents, guardians, and other persons standing in parental relation in circumstances involving a significant threat to the health or safety of students, including identification of the individual with responsibility for overseeing the notification;

(6) provisions for supporting the psychological safety of students, district personnel, and the community during the response and recovery phase following a disaster or emergency situation that:

(A) are aligned with best practice-based programs and research-based practices recommended under Section 161.325, Health and Safety Code;

(B) include strategies for ensuring any required professional development training for suicide prevention and grief-informed and trauma-informed care is provided to appropriate school personnel;

(C) include training on integrating psychological safety and suicide prevention strategies into the district's plan, such as psychological first aid for schools training, from an approved list of recommended training established by the commissioner and Texas School Safety Center for:

(i) members of the district's school safety and security committee under Section 37.109;

(ii) district school counselors and mental health professionals; and

(iii) educators and other district personnel as determined by the district;

(D) include strategies and procedures for integrating and supporting physical and psychological safety that align with the provisions described by Subdivision (2); and

(E) implement trauma-informed policies;

(7) a policy for providing a substitute teacher access to school campus buildings and materials necessary for the substitute teacher to carry out the duties of a district employee during an emergency or a mandatory emergency drill; and

(8) the name of each individual on the district's school safety and security committee established under Section 37.109 and the date of each committee meeting during the preceding year.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Multi-hazard emergency operation plans for school districts, charter schools, and public junior colleges.

Summary of Changes: Section 37.108, Education Code, adds additional requirements for school district multi-hazard emergency operation plans to address prevention in addition to mitigation, preparedness, responses, and recovery in emergency situations that may occur in Texas schools. A school district's multi-hazard emergency operations plan must include provisions for safety and emergency response training for all district employees; teacher access to a telephone or other means of communicating that will allow them to contact emergency services agencies, when in a classroom; and, provisions for ensuring school district communications technology is adequate for communicating during an emergency.

The plan must also address the chain of command for making decisions during an emergency or crisis; security measures for portable buildings; providing immediate notifications to parents of any significant threat to the safety of students; and methods for addressing physical and psychological safety when responding to natural disasters, active shooters, or other crisis type situations. The strategies for supporting physical and psychological trauma must use best practices and a trauma-informed care approach.

Education Code Sec. 37.1081. PUBLIC HEARING ON MULTHAZARD EMERGENCY OPERATIONS PLAN NONCOMPLIANCE. (a) If the board of trustees of a school district receives notice of noncompliance under Section 37.207(e) or 37.2071(g), the board shall hold a public hearing to notify the public of:

(1) the district's failure to:

(A) submit or correct deficiencies in a multihazard emergency operations plan; or

(B) report the results of a safety and security audit to the Texas School Safety Center as required by law;

(2) the dates during which the district has not been in compliance; and

(3) the names of each member of the board of trustees and the superintendent serving in that capacity during the dates the district was not in compliance.

(b) The school district shall provide the information required under Subsection (a)(3) in writing to each person in attendance at the hearing.

(c) The board shall give members of the public a reasonable opportunity to appear before the board and to speak on the issue of the district's failure to submit or correct deficiencies in a multihazard emergency operations plan or report the results of a safety and security audit during a hearing held under this section.

(d) A school district required to hold a public hearing under Subsection (a) shall provide written confirmation to the Texas School Safety Center that the district held the hearing.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: School districts, charter schools, public junior colleges.

Summary of Changes: Section 37.1081, Education Code requires the board of trustees for a school to notify the public if the school fails to report or correct deficiencies in the multi-hazard emergency operations plan or fails to submit an audit of the plan to the Texas School Safety Center. The notification of deficiency must be provided during a public hearing after the district provides the public a reasonable opportunity to appear before the board to speak on the issue.

Education Code Sec. 37.1082. MULTHAZARD EMERGENCY OPERATIONS PLAN NON-COMPLIANCE; APPOINTMENT OF CONSERVATOR OR BOARD OF MANAGERS. (a) If the agency receives notice from the Texas School Safety Center of a school district's failure to submit a multihazard emergency operations plan, the commissioner may appoint a conservator for the district under Chapter 39A. The conservator may order the district to adopt, implement, and submit a multihazard emergency operations plan.

(b) If a district fails to comply with a conservator's order to adopt, implement, and submit a multihazard emergency operations plan within the time frame imposed by the commissioner, the commissioner may appoint a board of managers under Chapter 39A to oversee the operations of the district.

(c) The commissioner may adopt rules as necessary to administer this section.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school districts, charter schools, and public junior colleges on or after the effective date.

Summary of Changes: This amendment authorizes TEA to appoint a conservator to a school district if the school

district does not provide a multi-hazard emergency operations plan to the Texas School Safety Center. A board of managers can be appointed if a school district fails to comply with the orders of the conservator

Education Code Sec. 37.109. SCHOOL SAFETY AND SECURITY COMMITTEE. (a-1) The committee, to the greatest extent practicable, must include:

(1) one or more representatives of an office of emergency management of a county or city in which the district is located;

(2) one or more representatives of the local police department or sheriff's office;

(3) one or more representatives of the district's police department, if applicable;

(4) the president of the district's board of trustees;

(5) a member of the district's board of trustees other than the president;

(6) the district's superintendent;

(7) one or more designees of the district's superintendent, one of whom must be a classroom teacher in the district;

(8) if the district partners with an open-enrollment charter school to provide instruction to students, a member of the open-enrollment charter school's governing body or a designee of the governing body; and

(9) two parents or guardians of students enrolled in the district.

(b) The committee shall:

(1) participate on behalf of the district in developing and implementing emergency plans consistent with the district multihazard emergency operations plan required by Section 37.108(a) to ensure that the plans reflect specific campus, facility, or support services needs;

(2) periodically provide recommendations to the district's board of trustees and district administrators regarding updating the district multihazard emergency operations plan required by Section 37.108(a) in accordance with best practices identified by the agency, the Texas School Safety Center, or a person included in the registry established by the Texas School Safety Center under Section 37.2091;

(3) provide the district with any campus, facility, or support services information required in connection with a safety and security audit required by Section 37.108(b), a safety and security audit report required by Section 37.108(c), or another report required to be submitted by the district to the Texas School Safety Center; ~~and~~

(4) [~~3~~] review each report required to be submitted by the district to the Texas School Safety Center to ensure that the report contains accurate and complete information regarding each campus, facility, or

support service in accordance with criteria established by the center; and

(5) consult with local law enforcement agencies on methods to increase law enforcement presence near district campuses.

(c) Except as otherwise provided by this subsection, the committee shall meet at least once during each academic semester and at least once during the summer. A committee established by a school district that operates schools on a year-round system or in accordance with another alternative schedule shall meet at least three times during each calendar year, with an interval of at least two months between each meeting.

(d) The committee is subject to Chapter 551, Government Code, and may meet in executive session as provided by that chapter. Notice of a committee meeting must be posted in the same manner as notice of a meeting of the district's board of trustees.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school safety and security committees on or after the effective date.

Summary of Changes: Section 37.109 designates the local representatives who should serve as members of each school districts local school safety and security committee. The committee has the added responsibility to make recommendations for updates to the multi-hazard emergency operations plan according to best practices set by the Texas School Safety Center. The committee is required to conduct at least 3 meetings a years, which must comply with the Open Meetings Act. The meetings must be held once each semester and one time during the summer.

Education Code Sec. 37.113. NOTIFICATION REGARDING BOMB THREAT OR TERRORISTIC THREAT. A school district that receives a bomb threat or terroristic threat relating to a campus or other district facility at which students are present shall provide notification of the threat as soon as possible to the parent or guardian of or other person standing in parental relation to each student who is assigned to the campus or who regularly uses the facility, as applicable.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school districts, charter schools, and public junior colleges

Summary of Changes: This amendment requires public schools to provide parents notification of bomb or terroristic threats involving a public school campus as soon as practicable after learning of the threat.

Education Code Sec. 37.114. EMERGENCY EVACUATIONS; MANDATORY SCHOOL DRILLS. The commissioner, in consultation with the Texas School Safety Center and the state fire marshal, shall adopt rules:

(1) providing procedures for evacuating and securing school property during an emergency; and

(2) designating the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills, including designating the number of:

(A) evacuation fire exit drills;

and

(B) lockdown, lockout, shelter-in-place, and evacuation drills.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to mandatory school drills and preparedness for emergency evacuations on or after the effective date.

Summary of Changes: This amendment requires the commissioner of education to establish rules for procedures to be used for emergency evacuation of schools, setting the type and number of drills that must occur each school year.

Education Code Sec. 37.115. THREAT ASSESSMENT AND SAFE AND SUPPORTIVE SCHOOL PROGRAM AND TEAM. (a) In this section:

(1) "Harmful, threatening, or violent behavior" includes behaviors, such as verbal threats, threats of self harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student that could result in:

(A) specific interventions, including mental health or behavioral supports;

(B) in-school suspension;

(C) out-of-school suspension;

or

(D) the student's expulsion or removal to a disciplinary alternative education program or a juvenile justice alternative education program.

(2) "Team" means a threat assessment and safe and supportive school team established by the board of trustees of a school district under this section.

(b) The agency, in coordination with the Texas School Safety Center, shall adopt rules to establish a safe and supportive school program. The rules shall incorporate research-based best practices for school safety, including providing for:

(1) physical and psychological safety;

(2) a multiphase and multihazard approach to prevention, mitigation, preparedness, response, and recovery in a crisis situation;

(3) a systemic and coordinated multi-tiered support system that addresses school climate, the social and emotional domain, and behavioral and mental health; and

(4) multidisciplinary and multiagency collaboration to assess risks and threats in schools and provide appropriate interventions, including rules for the establishment and operation of teams.

(c) The board of trustees of each school district shall establish a threat assessment and safe and supportive school team to serve at each campus of the district and shall adopt policies and procedures for the teams. The team is responsible for developing and implementing the safe and supportive school program under Subsection (b) at the district campus served by the team. The policies and procedures adopted under this section must:

(1) be consistent with the model policies and procedures developed by the Texas School Safety Center;

(2) require each team to complete training provided by the Texas School Safety Center or a regional education service center regarding evidence-based threat assessment programs; and

(3) require each team established under this section to report the information required under Subsection (k) regarding the team's activities to the agency.

(d) The superintendent of the district shall ensure that the members appointed to each team have expertise in counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement. A team may serve more than one campus of a school district, provided that each district campus is assigned a team.

(e) The superintendent of a school district may establish a committee, or assign to an existing committee established by the district, the duty to oversee the operations of teams established for the district. A committee with oversight responsibility under this subsection must include members with expertise in human resources, education, special education, counseling, behavior management, school administration, mental health and substance use, school safety and security, emergency management, and law enforcement.

(f) Each team shall:

(1) conduct a threat assessment that includes:

(A) assessing and reporting individuals who make threats of violence or exhibit harmful, threatening, or violent behavior in accordance with the policies and procedures adopted under Subsection (c); and

(B) gathering and analyzing data to determine the level of risk and appropriate intervention, including:

(i) referring a student for mental health assessment; and

(ii) implementing an escalation procedure, if appropriate based on the team's assessment, in accordance with district policy;

(2) provide guidance to students and school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community, school, or individual; and

(3) support the district in implementing the district's multihazard emergency operations plan.

(g) A team may not provide a mental health care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or person standing in parental relation to the student before providing the mental health care service. The consent required by this subsection must be submitted on a form developed by the school district that complies with all applicable state and federal law. The student's parent or person standing in parental relation to the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.

(h) On a determination that a student or other individual poses a serious risk of violence to self or others, a team shall immediately report the team's determination to the superintendent. If the individual is a student, the superintendent shall immediately attempt to inform the parent or person standing in parental relation to the student. The requirements of this subsection do not prevent an employee of the school from acting immediately to prevent an imminent threat or respond to an emergency.

(i) A team identifying a student at risk of suicide shall act in accordance with the district's suicide prevention program. If the student at risk of suicide also makes a threat of violence to others, the team shall conduct a threat assessment in addition to actions taken in accordance with the district's suicide prevention program.

(j) A team identifying a student using or possessing tobacco, drugs, or alcohol shall act in accordance with district policies and procedures related to substance use prevention and intervention.

(k) A team must report to the agency in accordance with guidelines developed by the agency the following information regarding the team's activities and other information for each school district campus the team serves:

(1) the occupation of each person appointed to the team;

(2) the number of threats and a description of the type of the threats reported to the team;

(3) the outcome of each assessment made by the team, including:

(A) any disciplinary action taken, including a change in school placement;

(B) any action taken by law enforcement; or

(C) a referral to or change in counseling, mental health, special education, or other services;

(4) the total number, disaggregated by student gender, race, and status as receiving special education services, being at risk of dropping out of school, being in foster care, experiencing homelessness, being a dependent of military personnel, being pregnant or a parent, having limited English proficiency, or being a migratory child, of, in connection with an assessment or reported threat by the team:

(A) citations issued for Class C misdemeanor offenses;

(B) arrests;

(C) incidents of uses of restraint;

(D) changes in school placement, including placement in a juvenile justice alternative education program or disciplinary alternative education program;

(E) referrals to or changes in counseling, mental health, special education, or other services;

(F) placements in in-school suspension or out-of-school suspension and incidents of expulsion;

(G) unexcused absences of 15 or more days during the school year; and

(H) referrals to juvenile court for truancy; and

(5) the number and percentage of school personnel trained in:

(A) a best-practices program or research-based practice under Section 161.325, Health and Safety Code, including the number and percentage of school personnel trained in:

(i) suicide prevention; or

(ii) grief and trauma-informed practices;

(B) mental health or psychological first aid for schools;

(C) training relating to the safe and supportive school program established under Subsection (b); or

(D) any other program relating to safety identified by the commissioner.

(I) The commissioner may adopt rules to implement this section.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to the rules adopted by TEA for the creation of the threat assessment and safe school programs and teams in school districts on or after the effective date.

Summary of Changes: Section 37.115, Education Code, is added to create threat assessment and safe and supportive school programs and teams to assist school districts with identifying individuals who are a threat to school safety and with implementing the school district multi-hazard emergency operations program. Each school district is required to have a threat assessment team and to adopt policies and procedures for the team and the safe and supportive school program. The goal is to use research-based practices to establish:

- Physical and psychological safety;
- Multi-phase, multi-hazard approach on mitigation, preparedness, response, and recovery in a crisis situation;
- A coordinated system that addresses school climate, the social and emotional domain, and behavioral and mental health;
- Collaboration across disciplines and agencies to assess risk and threats in schools to provide appropriate interventions.

The team should consist of members who have experience in areas such as counseling, behavioral health, mental health, classroom instruction, emergency management, law enforcement, and school safety and security. The primary role for the team is to assess and report individuals who make threats of violence, or exhibit harmful, threatening, or violent behavior. Harmful, threatening, or violent behavior includes verbal threats, threats of self-harm, bullying, fighting, possession of weapon(s), or other dangerous conduct that could result in discipline or referrals for mental health or behavioral health supports. From that the team would assess information to determine the risk level of the threat and whether any referrals are needed. The team is not authorized to provide direct mental health services. Parental consent is required before any such services are provided. Other roles for the team include assisting the school district with implementing the district's multi-hazard emergency operations plan, gathering information to determine risk level, and helping students and school employees recognize harmful and threatening behavior that may pose a danger to the community, school, or individuals. The team is required to give TEA information on the team's actions and referrals and the outcomes from threat assessments.

Education Code Sec. 37.203. BOARD. (a) The center is advised by a board of directors composed of:

(1) the attorney general, or the attorney general's designee;

(2) the commissioner, or the commissioner's designee;

(3) the executive director of the Texas Juvenile Justice Department, or the executive director's designee;

(4) the commissioner of the Department of State Health Services, or the commissioner's designee;

(5) the commissioner of higher education, or the commissioner's designee; and

(6) the following members appointed by the governor with the advice and consent of the senate:

(A) a juvenile court judge;

(B) a member of a school district's board of trustees;

(C) an administrator of a public primary school;

(D) an administrator of a public secondary school;

(E) a member of the state parent-teacher association;

(F) a teacher from a public primary or secondary school;

(G) a public school superintendent who is a member of the Texas Association of School Administrators;

(H) a school district police officer or a peace officer whose primary duty consists of working in a public school; ~~and~~

(I) a professional architect who is registered in this state and a member of the Texas Society of Architects; and

(J) three ~~two~~ members of the public.

(b) Members of the board appointed under Subsection (a)(6) serve staggered two-year terms, with the terms of the members described by Subsections (a)(6)(A)-(F) ~~[(a)(6)(A)-(E)]~~ expiring on February 1 of each odd-numbered year and the terms of the members described by Subsections (a)(6)(G)-(J) ~~[(a)(6)(F)-(I)]~~ expiring on February 1 of each even-numbered year. A member may serve more than one term.

Commentary by Karol Davidson

Source: HB 4342

Effective Date: September 1, 2019

Applicability: Applies to the board of directors for the Texas School Safety Center on or after the effective date.

Summary of Changes: The amendment to Section 37.203, Education Code, adds a professional architect who is registered as a member of the Texas Society of Architects to serve as a member on the board of the Texas School Safety Center.

Education Code Sec. 37.207. MODEL SAFETY AND SECURITY AUDIT PROCEDURE.

(c) In addition to a review of a district's multi-hazard emergency operations plan under Section 37.2071, the center may require a district to submit its plan for immediate review if the district's audit results indicate that the district is not complying with applicable standards.

(d) If a district fails to report the results of its audit as required under Subsection (b), the center shall provide the district with written notice that the district has failed to report its audit results and must immediately report the results to the center.

(e) If six months after the date of the initial notification required by Subsection (d) the district has still not reported the results of its audit to the center, the center shall notify the agency and the district of the district's requirement to conduct a public hearing under Section 37.1081. This subsection applies only to a school district.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to the responsibilities of the Texas School Safety Center on or after the effective date.

Summary of Changes: This amendment to Section 37.207, Education Code, gives the Texas School Safety Center (TxSSC) authorization to require a school district to submit the district's multi-hazard emergency operations plan for review when an audit of a multi-hazard emergency operations plan indicates the school district is not complying with required standards for the plan. If a school district fails to comply with a request to submit the plan, the TxSSC must notify TEA and the school district of the non-compliance and the requirement for the school district to hold a public hearing on the matter.

Education Code Sec. 37.2071. DISTRICT MULTHAZARD EMERGENCY OPERATIONS PLAN REVIEW AND VERIFICATION.

(a) The center shall establish a random or need-based cycle for the center's review and verification of school district and public junior college district multihazard emergency operations plans adopted under Section 37.108. The cycle must provide for each district's plan to be reviewed at regular intervals as determined by the center.

(b) A school district or public junior college district shall submit its multihazard emergency operations plan to the center on request of the center and in accordance with the center's review cycle developed under Subsection (a).

(c) The center shall review each district's multi-hazard emergency operations plan submitted under Subsection (b) and:

(1) verify the plan meets the requirements of Section 37.108; or

(2) provide the district with written notice:

(A) describing the plan's deficiencies; and

(B) stating that the district must correct the deficiencies in its plan and resubmit the revised plan to the center.

(d) If a district fails to submit its multihazard emergency operations plan to the center for review, the center shall provide the district with written notice stating that the district:

(1) has failed to submit a plan; and

(2) must submit a plan to the center for review and verification.

(e) The center may approve a district multihazard emergency operations plan that has deficiencies if the district submits a revised plan that the center determines will correct the deficiencies.

(f) If three months after the date of initial notification of a plan's deficiencies under Subsection (c)(2) or failure to submit a plan under Subsection (d) a district has not corrected the plan deficiencies or has failed to submit a plan, the center shall provide written notice to the district and agency that the district has not complied with the requirements of this section and must comply immediately.

(g) If a school district still has not corrected the plan deficiencies or has failed to submit a plan six months after the date of initial notification under Subsection (c)(2) or (d), the center shall provide written notice to the school district stating that the district must hold a public hearing under Section 37.1081.

(h) If a school district has failed to submit a plan, the notice required by Subsection (g) must state that the commissioner is authorized to appoint a conservator under Section 37.1082.

(i) Any document or information collected, developed, or produced during the review and verification of multihazard emergency operations plans under this section is not subject to disclosure under Chapter 552, Government Code.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to the responsibilities of school districts, charter schools, and public junior colleges and the Texas School Safety Center (TXSSC) on or after the effective date.

Summary of Changes: This amendment addresses the requirements for the review, approval, and notification of deficiencies of school districts multi-hazard emergency operation plans by the TxSSC. School districts are required to submit the school district multi-hazard emergency plans to TxSSC when requested to allow for TxSSC to conduct random or needs based cyclical reviews. The

amendment also sets procedures for TxSSC to notify school districts when a plan has deficiencies or when a school district fails to comply with remedying the deficiencies and is required to conduct public hearings to address the deficiencies.

Education Code Sec. 37.209. CENTER WEBSITE. (d) ~~The center shall verify the information provided by a person under Subsection (c) to confirm [registry is intended to serve only as an informational resource for school districts and institutions of higher education. The inclusion of a person in the registry is not an indication of] the person's qualifications and [or] ability to provide school safety or security consulting services before adding the person to the registry [or that the center endorses the person's school safety or security consulting services].~~

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to the responsibilities of the Texas School Safety Center on or after the effective date.

Summary of Changes: TxSSC is required to maintain on its website a registry of individuals qualified to provide school security and consulting services. This amendment requires TxSSC to verify the qualifications and ability of the consultant prior to listing the consultant in the registry.

Education Code Sec. 37.220. MODEL THREAT ASSESSMENT TEAM POLICIES AND PROCEDURES. (a) The center, in coordination with the agency, shall develop model policies and procedures to assist school districts in establishing and training threat assessment teams.

(b) The model policies and procedures developed under Subsection (a) must include procedures, when appropriate, for:

(1) the referral of a student to a local mental health authority or health care provider for evaluation or treatment;

(2) the referral of a student for a full individual and initial evaluation for special education services under Section 29.004; and

(3) a student or school personnel to anonymously report dangerous, violent, or unlawful activity that occurs or is threatened to occur on school property or that relates to a student or school personnel.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to the responsibilities of the Texas School Safety Center on or after the effective date.

Summary of Changes: This amendment requires the TxSSC to develop model policies and procedures for the operation and training of threat assessment teams. The policies and procedures must address referrals for mental health services, referrals for special education evaluations, and anonymous reporting of dangerous, violent, or unlawful activity involving schools.

Education Code Sec. 38.030. TRAUMATIC INJURY RESPONSE PROTOCOL. (a) Each school district and open-enrollment charter school shall develop and annually make available a protocol for school employees and volunteers to follow in the event of a traumatic injury.

(b) The protocol required under this section must:

(1) provide for a school district or open-enrollment charter school to maintain and make available to school employees and volunteers bleeding control stations, as described by Subsection (d), for use in the event of a traumatic injury involving blood loss;

(2) ensure that bleeding control stations are stored in easily accessible areas of the campus that are selected by the district's school safety and security committee or the charter school's governing body;

(3) require that agency-approved training on the use of a bleeding control station in the event of an injury to another person be provided to:

(A) each school district peace officer commissioned under Section 37.081 or school security personnel employed under that section who provides security services at the campus;

(B) each school resource officer who provides law enforcement at the campus; and

(C) all other district or school personnel who may be reasonably expected to use a bleeding control station; and

(4) require the district or charter school to annually offer instruction on the use of a bleeding control station from a school resource officer or other appropriate district or school personnel who has received the training under Subdivision (3) to students enrolled at the campus in grade seven or higher.

(c) A district's school safety and security committee or the charter school's governing body may select, as easily accessible areas of the campus at which bleeding control stations may be stored, areas of the campus where automated external defibrillators are stored.

(d) A bleeding control station required under this section must contain all of the following required supplies in quantities determined appropriate by the superintendent of the district or the director of the school:

(1) tourniquets approved for use in battlefield trauma care by the armed forces of the United States;

(2) chest seals;

(3) compression bandages;

(4) bleeding control bandages;

(5) space emergency blankets;

(6) latex-free gloves;

(7) markers;

(8) scissors; and

(9) instructional documents developed

by the American College of Surgeons or the United States Department of Homeland Security detailing methods to prevent blood loss following a traumatic event.

(e) In addition to the items listed under Subsection (d), a school district or open-enrollment charter school may also include in a bleeding control station any medical material or equipment that:

(1) may be readily stored in a bleeding control station;

(2) may be used to adequately treat an injury involving traumatic blood loss; and

(3) is approved by local law enforcement or emergency medical services personnel.

(f) To satisfy the training requirement of Subsection (b)(3), the agency may approve a course of instruction that has been developed or endorsed by:

(1) the American College of Surgeons or a similar organization; or

(2) the emergency medicine department of a health-related institution of higher education or a hospital.

(g) The course of instruction for training described under Subsection (f) may not be provided as an online course. The course of instruction must use nationally recognized, evidence-based guidelines for bleeding control and must incorporate instruction on the psychomotor skills necessary to use a bleeding control station in the event of an injury to another person, including instruction on proper chest seal placement.

(h) The course of instruction described under Subsection (f) may be provided by emergency medical technicians, paramedics, law enforcement officers, firefighters, representatives of the organization or institution that developed or endorsed the training, educators, other public school employees, or other similarly qualified individuals. A course of instruction described under Subsection (f) is not required to provide for certification in bleeding control. If the course of instruction does provide for certification in bleeding control, the instructor must be authorized to provide the instruction for the purpose of certification by the organization or institution that developed or endorsed the course of instruction.

(i) The good faith use of a bleeding control station by a school district or open-enrollment charter school employee to control the bleeding of an injured person is incident to or within the scope of the duties of the employee's position of employment and involves the exercise of judgment or discretion on the part of the employee for purposes of Section 22.0511, and a school district or open-enrollment charter school and the employees of the

district or school are immune from civil liability, as provided by that section, from damages or injuries resulting from that good faith use of a bleeding control station. A school district or open-enrollment charter school volunteer is immune from civil liability from damages or injuries resulting from the good faith use of a bleeding control station to the same extent as a professional employee of the district or school, as provided by Section 22.053.

(j) Nothing in this section limits the immunity from liability of a school district, open-enrollment charter school, or district or school employee or volunteer under:

(1) Sections 22.0511 and 22.053;

(2) Section 101.051, Civil Practice and Remedies Code; or

(3) any other applicable law.

(k) This section does not create a cause of action against a school district or open-enrollment charter school or the employees or volunteers of the district or school.

Commentary by Karol Davidson

Source: HB 496

Effective Date: June 15, 2019

Applicability: Applies to school districts and open-enrollment charter schools on or after the effective date.

Summary of Changes: This amendment requires school districts and open-enrollment charter schools to have protocols for responding to traumatic injuries. The amendment specifically addresses the requirements for bleeding control stations, including requirements to ensure that bleeding control stations are readily accessible, appropriate staff are trained on how to use the bleeding control stations, and requirements for the items that must be included in a bleeding control station. School employees and volunteers who use the bleeding control stations to control bleeding of an injured person is immune from civil liability from the good faith use of the bleeding control station.

Education Code Sec. 38.036. TRAUMA-INFORMED CARE POLICY. (a) Each school district shall adopt and implement a policy requiring the integration of trauma-informed practices in each school environment. A district must include the policy in the district improvement plan required under Section 11.252.

(b) A policy required by this section must address:

(1) using resources developed by the agency, methods for:

(A) increasing staff and parent awareness of trauma-informed care; and

(B) implementation of trauma-informed practices and care by district and campus staff; and

(2) available counseling options for students affected by trauma or grief.

(c) The methods under Subsection (b)(1) for increasing awareness and implementation of trauma-informed care must include training as provided by this subsection. The training must be provided:

(1) through a program selected from the list of recommended best practice-based programs and research-based practices established under Section 161.325, Health and Safety Code;

(2) as part of any new employee orientation for all new school district educators; and

(3) to existing school district educators on a schedule adopted by the agency by rule that requires educators to be trained at intervals necessary to keep educators informed of developments in the field.

(d) For any training under Subsection (c), each school district shall maintain records that include the name of each district staff member who participated in the training.

(e) Each school district shall report annually to the agency the following information for the district as a whole and for each school campus:

(1) the number of teachers, principals, and counselors employed by the district who have completed training under this section; and

(2) the total number of teachers, principals, and counselors employed by the district.

(f) If a school district determines that the district does not have sufficient resources to provide the training required under Subsection (c), the district may partner with a community mental health organization to provide training that meets the requirements of Subsection (c) at no cost to the district.

(g) The commissioner shall adopt rules as necessary to administer this section.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school districts and open-enrollment charter schools on or after the effective date.

Summary of Changes: The Texas Legislature, during the 86th Regular Session, introduced trauma-informed care best practices in many bills involving children and youth. This amendment requires Texas schools to incorporate trauma-informed care practices into educational and other services for students. Schools policies on trauma-informed care should provide methods for increasing school staff and parent awareness of trauma-informed care and methods for implementation of trauma-informed care practices by school staff, as well as provide options for counseling for students affected by trauma and grief. Methods for increasing awareness and implementation of trauma-informed care practice must including training for district employees using research-based and best practices models required to be developed by TEA. School districts

must provide trauma-informed care training to new employees at new employee orientation.

Editor's Note: The excerpts of Sections 38.251 through 38.256 from SB 11 are followed by a consolidated commentary.

Education Code Sec. 38.251. RUBRIC TO IDENTIFY RESOURCES. (a) The agency shall develop a rubric for use by regional education service centers in identifying resources related to student mental health that are available to schools in their respective regions. The agency shall develop the rubric in conjunction with:

(1) the Health and Human Services Commission;
 (2) the Department of Family and Protective Services;
 (3) the Texas Juvenile Justice Department;
 (4) the Texas Higher Education Coordinating Board;
 (5) the Texas Child Mental Health Care Consortium;
 (6) the Texas Workforce Commission;
 and
 (7) any other state agency the agency considers appropriate.

(b) The rubric developed by the agency must provide for the identification of resources relating to:

(1) training and technical assistance on practices that support the mental health of students;
 (2) school-based programs that provide prevention or intervention services to students;
 (3) community-based programs that provide school-based or school-connected prevention or intervention services to students;
 (4) Communities In Schools programs described by Subchapter E, Chapter 33;
 (5) school-based mental health providers; and
 (6) public and private funding sources available to address the mental health of students.

(c) Not later than December 1 of each odd-numbered year, the agency shall revise the rubric as necessary to reflect changes in resources that may be available to schools and provide the rubric to each regional education service center.

Education Code Sec. 38.252. REGIONAL INVENTORY OF MENTAL HEALTH RESOURCES.

(a) Each regional education service center shall use the rubric developed under Section 38.251 to identify resources related to student mental health available to schools in the center's region, including evidence-based and promising programs and best practices, that:

(1) create school environments that support the social, emotional, and academic development of students;

(2) identify students who may need additional behavioral or mental health support before issues arise;

(3) provide early, effective interventions to students in need of additional support;

(4) connect students and their families to specialized services in the school or community when needed; and

(5) assist schools in aligning resources necessary to address the mental health of students.

(b) A regional education service center may consult with any entity the center considers necessary in identifying resources under Subsection (a), including:

(1) school districts;
 (2) local mental health authorities;
 (3) community mental health services providers;

(4) education groups;

(5) hospitals; and

(6) institutions of higher education.

(c) Not later than March 1 of each even-numbered year, each regional education service center shall:

(1) use the revised rubric received from the agency under Section 38.251 to identify, in the manner provided by this section, any additional resources that may be available to schools in the center's region; and

(2) submit to the agency a report on resources identified through the process, including any additional resources identified under Subdivision (1).

Education Code Sec. 38.253. STATEWIDE INVENTORY OF MENTAL HEALTH RESOURCES.

(a) The agency shall develop a list of statewide resources available to school districts to address the mental health of students, including:

(1) training and technical assistance on practices that support the mental health of students;

(2) school-based programs that provide prevention or intervention services to students;

(3) community-based programs that provide school-based or school-connected prevention or intervention services to students;

(4) school-based mental health providers; and

(5) public and private funding sources available to address the mental health of students.

(b) In developing the list required under Subsection (a), the agency shall collaborate with:

(1) the Health and Human Services Commission;

(2) the Department of Family and Protective Services;

(3) the Texas Juvenile Justice Department;

(4) the Texas Higher Education Coordinating Board;
(5) the Texas Child Mental Health Care Consortium;
(6) the Texas Workforce Commission;
(7) one or more representatives of Communities In Schools programs described by Subchapter E, Chapter 33, who are designated by the Communities In Schools State Office;
(8) hospitals or other health care providers;
(9) community service providers;
(10) parent, educator, and advocacy groups; and
(11) any entity the agency determines can assist the agency in compiling the list.

(c) The agency shall include on the list any resource available through an entity identified as a resource under Subsection (b), including an entity described by Subsection (b), that provides evidence-based and promising programs and best practices that:

(1) create school environments that support the social, emotional, and academic development of students;

(2) identify students who may need additional behavioral or mental health support before issues arise;

(3) provide early, effective interventions to students in need of additional support; and

(4) connect students and their families to specialized services in the school or community when needed.

(d) The agency shall revise the list not later than March 1 of each even-numbered year.

Education Code Sec. 38.254. STATEWIDE PLAN FOR STUDENT MENTAL HEALTH. (a) The agency shall develop a statewide plan to ensure all students have access to adequate mental health resources. The agency shall include in the plan:

(1) a description of any revisions made to the rubric required by Section 38.251;

(2) the results of the most recent regional inventory of mental health resources required by Section 38.252, including any additional resources identified;

(3) the results of the most recent statewide inventory of mental health resources required by Section 38.253, including any additional resources identified;

(4) the agency's goals for student mental health access to be applied across the state, including goals relating to:

(A) methods to objectively measure positive school climate;

(B) increasing the availability of early, effective school-based or school-connected mental health interventions and resources for students in need of additional support; and

(C) increasing the availability of referrals for students and families to specialized services for students in need of additional support outside the school;

(5) a list of actions the commissioner may take without legislative action to help all districts reach the agency's goals described by the plan; and

(6) recommendations to the legislature on methods to ensure that all districts can meet the agency's goals described in the plan through legislative appropriations or other action by the legislature.

(b) In developing the agency's goals under Subsection (a)(4), the agency shall consult with any person the agency believes is necessary to the development of the goals, including:

(1) educators;

(2) mental health practitioners;

(3) advocacy groups; and

(4) parents.

(c) The agency shall revise the plan not later than April 1 of each even-numbered year.

(d) As soon as practicable after completing or revising the plan, the agency shall:

(1) submit an electronic copy of the plan to the legislature;

(2) post the plan on the agency's Internet website; and

(3) hold public meetings in each regional education service center's region to present the statewide plan and shall provide an opportunity for public comment at each meeting.

Education Code Sec. 38.255. AGENCY USE OF STATEWIDE PLAN. (a) The agency shall use the statewide plan for student mental health required by Section 38.254 to develop and revise the agency's long-term strategic plan.

(b) The agency shall use the recommendations to the legislature required by Section 38.254(a)(6) to develop each agency legislative appropriations request.

Education Code Sec. 38.256. REPORTS TO LEGISLATURE. In addition to any other information required to be provided to the legislature under this chapter, not later than November 1 of each even-numbered year the agency shall provide to the legislature:

(1) a description of any changes the agency has made to the rubric required by Section 38.251; and

(2) an analysis of each region's progress toward meeting the agency's goals developed under Section 38.254.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to TEA and regional education service centers (ESC) on or after the effective date.

Summary of Changes: Subchapter F, Education Code, titled Mental Health Resources, provides requirements for TEA and ESCs to work with state and local agencies and stakeholders to identify both statewide and local available resources to increase mental health services to students. TEA will develop a guide for regional educational service centers to use when identifying resources for student mental health issues. Using the guide developed by TEA, regional ESCs will collaborate with school districts in the ESC region and local stakeholders to identify resources related to student mental health issues. The resources must be evidence-based and promising and must use best practices. TEA is also required to collaborate with other state agencies and stakeholders to develop a list of statewide resources school districts may use to address mental health related issues for students, including training, technical assistance, prevention and intervention services, school-based mental health services providers, and public or private funding.

Education Code Sec. 42.006. PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM (PEIMS). (a-6) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information disaggregated by campus and grade regarding:

(1) the number of children who are required to attend school under Section 25.085, are not exempted under Section 25.086, and fail to attend school without excuse for 10 or more days or parts of days within a six-month period in the same school year;

(2) the number of students for whom the district initiates a truancy prevention measure under Section 25.0915(a-4); and

(3) the number of parents of students against whom an attendance officer or other appropriate school official has filed a complaint under Section 25.093.

Commentary by Karol Davidson

Source: HB 548

Effective Date: September 1, 2019

Applicability: Applies to PEIMS reporting on or after the effective date.

Summary of Changes: In 2015, the 84th Legislature removed criminal penalties for truancy or “skipping school,” now known as truant conduct under Title 3A of the Family Code. When this was done, it also ended data collection on truancy. This amendment requires school districts and charter schools to collect truant conduct data

in order to enable the state to assess the effects of skipping school on a student’s educational progress and to develop and provide prevention and intervention services to alleviate the impact skipping school has on a student’s educational performance. The data must be reported through the Public Education Information Management System (PEIMS).

Education Code Sec. 42.168. SCHOOL SAFETY ALLOTMENT. (a) From funds appropriated for that purpose, the commissioner shall provide to a school district an annual allotment in the amount provided by appropriation for each student in average daily attendance.

(b) Funds allocated under this section must be used to improve school safety and security, including costs associated with:

(1) securing school facilities, including:

(A) improvements to school

infrastructure;

(B) the use or installation of

physical barriers; and

(C) the purchase and maintenance of:

(i) security cameras

or other security equipment; and

(ii) technology, including communications systems or devices, that facilitates communication and information sharing between students, school personnel, and first responders in an emergency;

(2) providing security for the district, including:

(A) employing school district peace officers, private security officers, and school marshals; and

(B) collaborating with local law enforcement agencies, such as entering into a memorandum of understanding for the assignment of school resource officers to schools in the district;

(3) school safety and security training and planning, including:

(A) active shooter and emergency response training;

(B) prevention and treatment programs relating to addressing adverse childhood experiences; and

(C) the prevention, identification, and management of emergencies and threats, including:

(i) providing mental health personnel and support;

(ii) providing behavioral health services; and

(iii) establishing threat reporting systems; and

(4) providing programs related to suicide prevention, intervention, and postvention.

(c) A school district may use funds allocated under this section for equipment or software that is used for a school safety and security purpose and an instructional purpose, provided that the instructional use does not compromise the safety and security purpose of the equipment or software.

(d) A school district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level is entitled to a credit, in the amount of the allotments to which the district is to receive as provided by appropriation, against the total amount required under Section 41.093 for the district to purchase attendance credits.

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

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 19, 2019

Applicability: Applies to school districts, charter schools, and public junior colleges on or after the effective date.

Summary of Changes: This amendment creates the school safety allotment program, managed by TEA, to provide school districts funds that can be used to improve school safety and security. These funds will offset the costs for and help public schools implement school safety requirements for improving school facility infrastructure, physical barriers, surveillance, and communications systems; providing for the security of the school district through the employment or collaboration with local law enforcement; school safety and security training and planning; suicide prevention and intervention programs; and mental and behavioral health services.

Health and Safety Code

Health and Safety Code Sec. 161.325. MENTAL HEALTH PROMOTION AND INTERVENTION, SUBSTANCE ABUSE PREVENTION AND INTERVENTION, AND SUICIDE PREVENTION.

(d) A school district may develop practices and procedures concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

(1) include a procedure for providing educational material to all parents and families in the district that contains information on identifying risk factors, accessing resources for treatment or support provided on and off campus, and accessing available student accommodations provided on campus;

(2) include a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(3) [~~(2)~~] include a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(4) [~~(3)~~] establish that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention; and

(5) [~~(4)~~] set out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention.

Commentary by Karol Davidson

Source: SB 11

Effective Date: June 6, 2019

Applicability: Applies to school districts and charter schools on or after the effective date.

Summary of Changes: Section 161.325, Health and Safety Code, requires the Department of State Health Services, in coordination with TEA and regional education service centers (ESC), to publish a list of recommended best-practices programs and research-based practices that schools can use to locate programs and services for mental health intervention, substance abuse and suicide prevention and intervention, trauma-informed practices, substance abuse prevention and intervention services, positive school climates, and positive behavior supports. This amendment authorizes schools to develop and provide educational materials to parents and families that will help them identify risk factors, understand how to access resources for treatment and support for their children, and understand how to access accommodations offered by a school.

4. Legislation Affecting Government Transparency

Government Code Sec. 551.001. OPEN MEETINGS; DEFINITIONS. (2) “Deliberation” means a verbal or written exchange [~~during a meeting~~] between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body [~~or any public business~~].

Commentary by Nydia Thomas

Source: SB 1640

Effective Date: June 10, 2019

Applicability: Applies to meetings of a governing body that occur on or after the effective date.

Summary of Changes: Meetings held by a governmental body, such as a juvenile board, must be accessible to the public and adhere to the requirements of the Texas Open Meetings Act. In recent years, the Texas Legislature has attempted to address circumstances when members of a governing body are attending trainings, functions, and other gatherings that are an extension of their official duties. In particular, it prohibited the “walking quorum” in order to limit discussions of public business or formal actions outside the context of a regular, special, or called meeting of a governing body. The Court of Criminal Appeals ruled in March 2019 that language relating to the “walking quorum” was unconstitutionally vague. SB 1640 contained provisions to address the court ruling and to clarify certain aspects of the prohibition. Section 551.001(2) revises the definition of “deliberation” to encompass verbal or written exchanges between a quorum of a governmental body or another person regarding an issue under its jurisdictional oversight. The requirement that the deliberation must occur during a meeting has been stricken so that the prohibition extends to a written or oral exchange in any context in which a quorum is present. The criminal penalty for violating this open meetings prohibition includes a fine and possible jail time.

Government Code Sec. 551.007. PUBLIC TESTIMONY. (a) This section applies only to a governmental body described by Sections 551.001(3) (B)-(L).

(b) A governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body’s consideration of the item.

(c) A governmental body may adopt reasonable rules regarding the public’s right to address the body under this section, including rules that limit the total amount of time that a member of the public may address the body on a given item.

(d) This subsection applies only if a governmental body does not use simultaneous translation equipment in a manner that allows the body to hear the translated public

testimony simultaneously. A rule adopted under Subsection (c) that limits the amount of time that a member of the public may address the governmental body must provide that a member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the body.

(e) A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. This subsection does not apply to public criticism that is otherwise prohibited by law.

Commentary by Nydia Thomas

Source: HB 2840

Effective Date: September 1, 2019

Applicability: Applies to meetings of a governing body that occur on or after the effective date.

Summary of Changes: Public involvement in the decision-making process of a governing body is an essential component of participatory government. Under the open meetings laws, members of the public are allowed to comment on matters that have been timely posted on the agenda. Many times, public comments are reserved until the conclusion of the meeting. The amendment to newly added Section 551.007 of the Government Code clarifies that members of the public may address a governing body and provide comment on agenda items prior to, during, or after the meeting. This change expands public engagement and enhances discussion of the matters before the governing body. In the context of the juvenile justice system, juvenile boards, commissioners courts, and the Texas Juvenile Justice Board are examples of governing bodies that are subject to the Open Meetings Act.

Government Code Sec. 551.045 EXCEPTION TO GENERAL RULE: NOTICE OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA. (a) In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda [~~of a subject added as an item to the agenda~~] for a meeting for which notice has been posted in accordance with this subchapter, is sufficient if the notice or supplemental notice [~~it~~] is posted for at least one hour [~~two hours~~] before the meeting is convened.

(a-1) A governmental body may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than:

(a-1) A governmental body may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than:

(1) a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting as provided by Subsection (c); or

(2) an agenda item listed on a notice of the meeting before the supplemental notice was posted.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety, including a threat described by Subdivision (2) if imminent; or

(2) a reasonably unforeseeable situation, including:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(B) power failure, transportation failure, or interruption of communication facilities;

(C) epidemic; or

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. ~~Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection must be given to members of the news media as provided by Section 551.047 not later than one hour before the meeting.]~~

Commentary by Nydia Thomas

Source: SB 494

Effective Date: September 1, 2019

Applicability: Applies to notices posted or transmitted on or after the effective date.

Summary of Changes: Generally, open meetings laws require a governing body to post meeting notices at least 72 hours in advance, with certain exceptions. One exception relates to notices of emergency meetings or emergency additions to a posted agenda. As amended, Section 551.045 of the Government Code requires an agenda to be posted at least one hour in advance of when the board deliberates and takes action in an emergency or other matter of urgent public necessity. This provision also clarifies that the governing body may not deliberate or take action at an emergency meeting or pertaining to an emergency supplemental agenda item unless the matter is in direct response to the emergency described in the posted notice or an item listed on the notice before the emergency meeting or supplemental agenda was posted.

Government Code Sec. 551.047. SPECIAL NOTICE TO NEWS MEDIA OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA. (c) The presiding officer or member shall give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened.

Commentary by Nydia Thomas

Source: SB 494

Effective Date: September 1, 2019

Applicability: Applies to notices posted or transmitted on or after the effective date.

Summary of Changes: As amended, Section 551.047(c) shortens the timeframe in which a presiding officer of a governmental body is required to communicate notice to the news media of an emergency meeting or emergency addition to an agenda. This conforming amendment changes the required advanced notice to media outlets from two hours to at least one (1) hour before a meeting is convened.

Government Code Sec. 551.142. MANDAMUS; INJUNCTION. (c) The attorney general may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of Section 551.045(a-1) by members of a governmental body.

(d) A suit filed by the attorney general under Subsection (c) must be filed in a district court of Travis County.

Commentary by Nydia Thomas

Source: SB 494

Effective Date: September 1, 2019

Applicability: Applies to violations of certain meeting notice requirements and related injunctive actions by the attorney general on or after the effective date.

Summary of Changes: Section 551.142 of the Government Code authorizes the Texas Attorney General to bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the meeting notice requirements and related deliberations or actions of a governing body. This injunctive relief is available to address open meetings violations arising from an emergency or other matter of urgent public necessity described in Section 551.045.

Government Code Sec. 551.143. PROHIBITED SERIES OF COMMUNICATIONS [~~CONSPIRACY TO CIRCUMVENT CHAPTER~~]; OFFENSE; PENALTY. (a) A member [~~or group of members~~] of a governmental body commits an offense if the member:

(1) [~~or group of members~~] knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the

members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and

(2) knew at the time the member engaged in the communication that the series of communications:

(A) involved or would involve a quorum; and

(B) would constitute a deliberation once a quorum of members engaged in the series of communications [~~conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter].~~

Commentary by Nydia Thomas

Source: SB 1640

Effective Date: June 10, 2019

Applicability: Applies to meetings of a governing body that occur on or after the effective date.

Summary of Changes: In 2019, the Court of Criminal Appeals ruled that statutory language in the Open Meetings Act relating to a series of communications between members of a governing board or a “walking quorum” was unconstitutionally vague. Under prior law, Section 551.143 of the Government Code made it illegal to conspire to circumvent the requirements of Chapter 551, the Texas Open Meetings Act. This session, the offense has been renamed Prohibited Series of Communications. As amended, the statute describes the elements of the offense and the penalty that public officials would face for violating this provision. A member of a governing body commits an offense if the member knowingly engages in at least one communication among a series of private communications relating to a matter within the jurisdictional oversight of the governing body. The private exchange of official business must be between individuals or fewer members than a quorum. The offense requires the member to have known that the series of communications involved or could involve a quorum and that the discussions (verbal or written) constitute a deliberation. These changes are intended to address the recent court ruling that overturned the application of Section 551.143 under prior law. The consequence of violating this open meetings prohibition is classified as a misdemeanor offense and is punishable by up to a \$500 fine and possible jail time of up to six months.

Government Code Sec. 552.002. DEFINITION OF PUBLIC INFORMATION; MEDIA CONTAINING PUBLIC INFORMATION. (d) “Protected health information” as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to requests and disclosures under the Public Information Act that occur on or after the effective date.

Summary of Changes: The Health Insurance Portability and Accountability Act (HIPAA) regulates the use and disclosure of particular categories of health care information, known as protected health information, maintained by organizations and entities covered under federal law. HIPAA was enacted in 1996 and contained a 2003 compliance deadline. While HIPAA has been in effect for nearly two decades, the Public Information Act did not include language to clarify the definition of protected health information under state law. HIPAA laws in the juvenile justice system tend to be complex and are based on an organization’s status as a covered entity, the nature of the transaction, and whether a county is designated as a government-hybrid entity. It should be noted that juvenile pre-adjudication and post-adjudication correctional facilities that are registered with TJJJD fall under the correctional institution exemption. Determinations of this kind are ultimately best made by local counsel. As amended this session, Section 552.002 of the Government Code defines and clarifies that protected health information is not public information and prohibits its disclosure. In addition to the terminology changes, the definition also includes a cross-reference to the state medical privacy laws under the Health and Safety Code.

Government Code Sec. 552.003. DEFINITIONS. (7) “Temporary custodian” means an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer’s agent. The term includes a former officer or employee of a governmental body who created or received public information in the officer’s or employee’s official capacity that has not been provided to the officer for public information of the governmental body or the officer’s agent.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to requests and disclosures under the Public Information Act on or after the effective date.

Summary of Changes: Section 552.003 of the Government Code defines a “temporary custodian” as an officer or employee who creates or receives public information in the transaction of official business that has not been provided to the public information officer or the officer’s agent. The term also applies to a former officer or employee who created or received public information in his or

her official capacity that has not been provided to the public information officer or the officer's agent. This definition conforms with other changes this session that clarify who actually owns information in the possession, custody, and control of current or former employees of a governmental entity.

Government Code Sec. 552.004. PRESERVATION OF INFORMATION. (a) A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which information that is not currently in use will be preserved, subject to Subsection (b) and to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

(b) A current or former officer or employee of a governmental body who maintains public information on a privately owned device shall:

(1) forward or transfer the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a); or

(2) preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under Subsection (a).

(c) The provisions of Chapter 441 of this code and Title 6, Local Government Code, governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to the preservation of information maintained by a governmental body on or after the effective date.

Summary of Changes: Section 552.004 of the Government Code is an existing provision that has been amended to require a current or former officer or employee who maintains public information on a privately owned device to forward or transfer the information to the governmental body or server so that the information can be preserved. In the alternative, the information can be preserved in its original form in a backup or archive on the privately owned device in accordance with the retention or preservation period determined by the governmental body or elected county office. This change also references that the preservation, destruction, or other disposition of the information must be handled in accordance with the Texas State Library and Archives Commission (TSLAC) provisions in Chapter 441 of the Government Code.

Government Code Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175;

(7) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(8) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(9) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code, regardless of whether the current or former officer complies with Section 552.024 or 552.1175;

(10) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(11) a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001; ~~or~~

(12) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former attorney complies with Section 552.024 or 552.1175; ~~or~~

(13) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

~~(14) [(12)]~~ a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office, regardless of whether the current or former employee complies with Section 552.024 or 552.1175; or

~~(15) [(12)]~~ a current or former federal judge or state judge, as those terms are defined by Section 13.0021(a), Election Code, or a spouse of a current or former federal judge or state judge; ~~or~~

~~[(13) a current or former district attorney, criminal district attorney, or county attorney whose jurisdiction includes any criminal law or child protective services matter].~~

Commentary by Nydia Thomas

Source: HB 1351

Effective Date: September 1, 2019

Applicability: Applies to requests and disclosures of information on or after the effective date.

Summary of Changes: This session, the Legislature clarified that information provided to the Texas Veterans Commission is confidential and is not subject to disclosure under the Public Information Act. In a conforming amendment, Section 551.1175 of the Government Code includes the information of a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces to the exceptions regarding the disclosure of personal information. The provision related to district and county prosecutors with jurisdiction in any criminal law or child protective matter has been removed to conform to enactments from prior sessions.

Government Code Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. (a)

In relevant part...

~~(14) [(12)]~~ a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

~~(15) [(12)]~~ a current or former federal judge or state judge, as those terms are defined by Section 1.005 [~~13.0021(a)~~], Election Code, or a spouse of a current or former federal judge or state judge; or

~~(16) a current or former United States attorney or assistant United States attorney and the spouse or child of the attorney [(13) a current or former district attorney, criminal district attorney, or county attorney whose jurisdiction includes any criminal law or child protective services matter].~~

Commentary by Nydia Thomas

Source: HB 2910

Effective Date: September 1, 2019

Applicability: Applies to requests and disclosures of public information on or after the effective date.

Summary of Changes: Another amendment to Section 551.1175 of the Government Code adds the information of a current or former United States attorney or assistant United States attorney and the spouse or child of the attorney to the exceptions on disclosure of personal information maintained by a governmental body. This change conforms to related Election Code changes that make information furnished on a voter registration application confidential and prohibits disclosure under the Public Information Act.

Government Code Sec. 552.1175. CONFIDENTIALITY OF CERTAIN PERSONAL IDENTIFYING INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, EMPLOYEES OF CERTAIN STATE AGENCIES OR CERTAIN CRIMINAL OR JUVENILE JUSTICE AGENCIES OR OFFICES, AND FEDERAL AND STATE JUDGES. (a)

This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure, or special investigators as described by Article 2.122, 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) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(5-a) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);

(7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(8) police officers and inspectors of the United States Federal Protective Service;

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement;

(10) current or former juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(11) current or former employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;

(12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department;

(13) federal judges and state judges as defined by Section 1.005 [13.002], Election Code; and

(14) current or former employees of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office.

Commentary by Nydia Thomas

Source: HB 2910

Effective Date: September 1, 2019

Applicability: Applies to requests and disclosures of personal information on or after the effective date.

Summary of Changes: Section 552.1175(a)(1) of the Government Code protects from disclosure the personal information of certain special investigators who serve as federal officers or agents. The special investigators referenced in this provision have law enforcement powers of arrest, search, and seizure for felony offenses but are not considered peace officers as defined in Article 2.12 of the Code of Criminal Procedure. Subdivision (13) changes a cross-reference to the definitions of federal judge and state judge as added to Section 1.005 of the Election Code. In 2013, current or former employees of the Texas Juvenile Justice Department (or predecessor agencies), certified officers, and employees of a juvenile justice facility or program

were added to the list of persons protected under this exception to the Public Information Act.

Government Code Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC INFORMATION. Each officer for public information, subject to penalties provided in this chapter, shall:

(1) make public information available for public inspection and copying;

(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; ~~and~~

(3) repair, renovate, or rebind public information as necessary to maintain it properly; and

(4) make reasonable efforts to obtain public information from a temporary custodian if:

(A) the information has been requested from the governmental body;

(B) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;

(C) the officer for public information is unable to comply with the duties imposed by this chapter without obtaining the information from the temporary custodian; and

(D) the temporary custodian has not provided the information to the officer for public information or the officer's agent.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applicable to the duties of a public information officer on or after the effective date.

Summary of Changes: The Public Information Act outlines in Section 552.203 of the Government Code the general duties of the person designated by a governmental body to coordinate and respond to requests for information maintained by the entity. As amended, this provision requires a public information officer (PIO) to make reasonable efforts to obtain information from a temporary custodian when: 1) the information has been requested of the governmental body; 2) the temporary custodian is reasonably believed to have possession, custody, or control of public information; or 3) is otherwise unable to comply and has not provided the information to the PIO or the officer's agent.

Government Code Sec. 552.233. TEMPORARY SUSPENSION OF REQUIREMENTS FOR GOVERNMENTAL BODY IMPACTED BY CATASTROPHE. (a) In this section:

(1) “Catastrophe” means a condition or occurrence that interferes with the ability of a governmental body to comply with the requirements of this chapter, including:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(B) power failure, transportation failure, or interruption of communication facilities;

(C) epidemic; or

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(2) “Suspension period” means the period of time during which a governmental body may suspend the applicability of the requirements of this chapter to the governmental body under this section.

(b) The requirements of this chapter do not apply to a governmental body during the suspension period determined by the governmental body under Subsections (d) and (e) if the governmental body:

(1) is currently impacted by a catastrophe; and

(2) complies with the requirements of this section.

(c) A governmental body that elects to suspend the applicability of the requirements of this chapter to the governmental body must submit notice to the office of the attorney general that the governmental body is currently impacted by a catastrophe and has elected to suspend the applicability of those requirements during the initial suspension period determined under Subsection (d). The notice must be on the form prescribed by the office of the attorney general under Subsection (j).

(d) A governmental body may suspend the applicability of the requirements of this chapter to the governmental body for an initial suspension period. The initial suspension period may not exceed seven consecutive days and must occur during the period that:

(1) begins not earlier than the second day before the date the governmental body submits notice to the office of the attorney general under Subsection (c); and

(2) ends not later than the seventh day after the date the governmental body submits that notice.

(e) A governmental body may extend an initial suspension period if the governing body determines that the governing body is still impacted by the catastrophe on which the initial suspension period was based. The initial suspension period may be extended one time for not more than seven consecutive days that begin on the day following the day the initial suspension period ends. The governing body must submit notice of the extension to the office of the attorney general on the form prescribed by the office under Subsection (j).

(f) A governmental body that suspends the applicability of the requirements of this chapter to the governmental body under this section must provide notice to the public of the suspension in a place readily accessible to the public and in each other location the governmental body is required to post a notice under Subchapter C, Chapter 551. The governmental body must maintain the notice of the suspension during the suspension period.

(g) Notwithstanding another provision of this chapter, a request for public information received by a governmental body during a suspension period determined by the governmental body is considered to have been received by the governmental body on the first business day after the date the suspension period ends.

(h) The requirements of this chapter related to a request for public information received by a governmental body before the date an initial suspension period determined by the governmental body begins are tolled until the first business day after the date the suspension period ends.

(i) The office of the attorney general shall continuously post on the Internet website of the office each notice submitted to the office under this section from the date the office receives the notice until the first anniversary of that date.

(j) The office of the attorney general shall prescribe the form of the notice that a governmental body must submit to the office under Subsections (c) and (e). The notice must require the governmental body to:

(1) identify and describe the catastrophe that the governmental body is currently impacted by;

(2) state the date the initial suspension period determined by the governmental body under Subsection (d) begins and the date that period ends;

(3) if the governmental body has determined to extend the initial suspension period under Subsection (e):

(A) state that the governmental body continues to be impacted by the catastrophe identified in Subdivision (1); and

(B) state the date the extension to the initial suspension period begins and the date the period ends; and

(4) provide any other information the office of the attorney general determines necessary.

Commentary by Nydia Thomas

Source: SB 494

Effective Date: September 1, 2019

Applicability: Applies to the suspension of the requirements of the Public Information Act as a result of a catastrophe that occurs on or after the effective date.

Summary of Changes: The addition of Section 552.233 of the Government Code is aimed at addressing exigent circumstances, such as a catastrophe, that may affect the ordinary business operations of a governmental body. In such circumstances, a governmental body is authorized to temporarily suspend compliance with the Public Information

Act. As defined, a catastrophe means a condition or occurrence that interferes with the ability of a governmental body to comply with the requirements of the Public Information Act. Subsection (b) specifies that the Act does not apply during a period of suspension determined by a governmental body that meets certain requirements under the statute. Specifically, the governmental body must submit notice of the suspension period to the Texas Attorney General for an initial period not to exceed seven consecutive days and must post notice that is accessible to the public in the locations set by law. The statute also outlines the steps that a governmental body that continues to be affected by the catastrophe must take in order to extend the period of suspension.

Government Code Sec. 552.233. OWNERSHIP OF PUBLIC INFORMATION. (a) A current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

(b) A temporary custodian with possession, custody, or control of public information shall surrender or return the information to the governmental body not later than the 10th day after the date the officer for public information of the governmental body or the officer's agent requests the temporary custodian to surrender or return the information.

(c) A temporary custodian's failure to surrender or return public information as required by Subsection (b) is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by this chapter or other law.

(d) For purposes of the application of Subchapter G to information surrendered or returned to a governmental body by a temporary custodian under Subsection (b), the governmental body is considered to receive the request for that information on the date the information is surrendered or returned to the governmental body.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to public information in the possession, custody, and control of a temporary custodian made on or after the effective date.

Summary of Changes: New Section 552.233 of the Government Code clarifies the ownership of information maintained by a temporary custodian. Specifically, this amendment states that a current or former officer or employee of a governmental body does not have a personal or property right to public information created or received while acting in an official capacity. The temporary custodian with possession, custody, and control of public information is re-

quired to surrender and return information to the governmental body not later than the 10th day after a public information officer, or the officer's agent, requests the temporary custodian to surrender or return the information. Failure to return the information is grounds for the governmental body to take disciplinary action or initiate other penalties under law against temporary custodian. For purposes of complying with the timelines for responding to a request regarding public information held by a temporary custodian, a governmental body is considered to have received the request for information on the date the information is surrendered or returned.

Government Code Sec. 552.234. METHOD OF MAKING WRITTEN REQUEST FOR PUBLIC INFORMATION. (a) A person may make a written request for public information under this chapter only by delivering the request by one of the following methods to the applicable officer for public information or a person designated by that officer:

- (1) United States mail;
- (2) electronic mail;
- (3) hand delivery; or
- (4) any other appropriate method approved by the governmental body, including:

(A) facsimile transmission; and

(B) electronic submission

through the governmental body's Internet website.

(b) For the purpose of Subsection (a)(4), a governmental body is considered to have approved a method described by that subdivision only if the governmental body includes a statement that a request for public information may be made by that method on:

- (1) the sign required to be displayed by the governmental body under Section 552.205; or
- (2) the governmental body's Internet website.

(c) A governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information. The governmental body shall provide the designated mailing address and electronic mailing address to any person on request.

(d) A governmental body that posts the mailing address and electronic mail address designated by the governmental body under Subsection (c) on the governmental body's Internet website or that prints those addresses on the sign required to be displayed by the governmental body under Section 552.205 is not required to respond to a written request for public information unless the request is received:

(1) at one of those addresses;

(2) by hand delivery; or

(3) by a method described by Subsection

(a)(4) that has been approved by the governmental body.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to written requests for information delivered on or after the effective date.

Summary of Changes: SB 944 made a number of revisions to the Public Information Act. Newly added Section 552.234 updates the methods by which a requestor may make a written request for information maintained by a governmental body. Specifically, a written request for public information may be delivered to the public information officer by U.S. mail, email, hand delivery or any appropriate method approved by the governmental body, such as fax or via a website. The governmental body must provide information on the governmental body's website or on signage required by Section 552.205 regarding the approved method for delivering requests. Each governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information. The centralized email or mail address must be made available to any person upon request.

Government Code Sec. 552.235. PUBLIC INFORMATION REQUEST FORM. (a) The attorney general shall create a public information request form that provides a requestor the option of excluding from a request information that the governmental body determines is:

(1) confidential; or

(2) subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

(b) A governmental body that allows requestors to use the form described by Subsection (a) and maintains an Internet website shall post the form on its website.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to requests for information made on or after the effective date.

Summary of Changes: As added, Section 552.235 of the Government Code, requires the Office of the Attorney General (AG) to create a public information request form by October 1, 2019, that gives requestors an option to exclude from a request any information that the governmental body determines is confidential or subject to an exception to disclosure. If a governmental body that maintains a website opts to use the AG's form, it must be posted and available to requestors online.

Government Code Section 552.301(c) REQUEST FOR ATTORNEY GENERAL DECISION. Subsection 552.301(c) is repealed.

Commentary by Nydia Thomas

Source: SB 944

Effective Date: September 1, 2019

Applicability: Applies to written requests on or after the effective date.

Summary of Changes: Section 552.234, as amended, clarifies the methods for delivering a request for public information to a governmental body. SB 944 contains a conforming repeal of Section 552.301 as a result of these changes. Under prior law, a written request included a request made in writing that is sent to the public information officer or designee by electronic mail or facsimile transmission.

5. Legislation Affecting Justice and Municipal Courts

Code of Criminal Procedure Art. 45.004. GENERAL DEFINITION. In this chapter, “cost” includes any fee imposed on a defendant by the justice or judge at the time a judgment is entered.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a cost, fee, or fine on conviction for an offense committed on or after the effective date.

Summary of Changes: SB 346 is a lengthy bill that consolidates many criminal court costs in current law and makes amendments to the way they are consolidated and allocated. The Office of Court Administration identified 143 distinct criminal court costs in 17 different categories, the sheer volume of which makes it difficult for clerks to administer and for the state to audit. Significant resources are devoted at both the state and local level to ensure compliance with state law. Additionally, the Texas Court of Criminal Appeals ruled in *Salinas v. State*, 524 S.W.3d 103 (2017), that revenue generated by court costs could not be used to fund counseling programs for abused children or rehabilitative services for persons with traumatic brain or spinal cord injuries, holding that using criminal court costs as an alternative means of collecting taxes to finance programs that are not related to a legitimate criminal justice purpose are unconstitutional. Several other court cases have since ruled that several other court costs do not serve a legitimate criminal justice purpose. This particular change inserts a definition of “cost” for justice and municipal court purposes to include any fee imposed when judgment is entered.

Code of Criminal Procedure Art. 45.0201. APPEARANCE BY TELEPHONE OR VIDEOCONFERENCE. If the justice or judge determines that requiring a defendant to appear before the justice or judge in person for a hearing under Article 45.0445 or 45.045 would impose an undue hardship on the defendant, the justice or judge may allow the defendant to appear by telephone or videoconference.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a proceeding that commences before, on, or after the effective date.

Summary of Changes: The judge in a municipal court or justice in a justice court may allow a defendant to appear by telephone or video conference in a hearing to reconsider a fine or cost (45.0445) or a hearing involving a *capias* pro

fine (45.045) if the judge or justice determines that requiring the defendant to appear in person would impose an undue hardship on the defendant.

Code of Criminal Procedure Art. 45.0211. PLEA BY DEFENDANT CHARGED WITH FAMILY VIOLENCE OFFENSE. (a) In this article, “family violence” has the meaning assigned by Section 71.004, Family Code.

(b) If a defendant is charged with an offense involving family violence, the judge or justice must take the defendant’s plea in open court.

Commentary by Kaci Singer

Source: HB 1528

Effective Date: September 1, 2019

Applicability: Applies to the entry of a plea with respect to an offense committed on or after the effective date.

Summary of Changes: This bill was filed due to a belief that misdemeanor family violence offenses warrant an in-person admonishment from the judge due to the serious nature of the offenses. There is a belief that the option of written pleas by defendants charged with such offenses do not accurately impress about the defendant the seriousness of the offense. New Article 45.0211 requires the judge or justice to take the defendant’s plea in open court if the defendant is charged with a family violence offense.

Code of Criminal Procedure Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS. (i) The justice or municipal court shall require a person who requests expungement under this article to pay a reimbursement fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expungement under this article.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: As part of the revisions to court costs, fees that are designed to cover costs incurred by the court are now referred to as reimbursement fees.

Code of Criminal Procedure Art. 45.026. JURY TRIAL; FAILURE TO APPEAR. (a) A justice or municipal court may order a party who does not waive a jury trial in a justice or municipal court and who fails to appear for the trial to pay a reimbursement fee for the costs incurred for impaneling the jury.

(b) The justice or municipal court may release a party from the obligation to pay the reimbursement fee [costs] under this section for good cause.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: As part of the revisions to court costs, fees that are designed to cover costs incurred by the court are now referred to as reimbursement fees.

Code of Criminal Procedure Art. 45.041.

JUDGMENT. (3) Article 45.041(a-1), as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017 is repealed.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: The 85th Legislature (2017) passed two bills creating Article 45.041(a-1). They were nearly identical. This change repeals one of them to eliminate the duplication in the law.

Code of Criminal Procedure Art. 45.0445. RE-CONSIDERATION OF FINE OR COSTS. (a) If the defendant notifies the justice or judge that the defendant has difficulty paying the fine and costs in compliance with the judgment, the justice or judge shall hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.

(b) For purposes of Subsection (a), a defendant may notify the justice or judge by:

(1) voluntarily appearing and informing the justice or judge or the clerk of the court in the manner established by the justice or judge for that purpose;

(2) filing a motion with the justice or judge;

(3) mailing a letter to the justice or judge;

or
(4) any other method established by the justice or judge for that purpose.

(c) If the justice or judge determines at the hearing under Subsection (a) that the judgment imposes an undue hardship on the defendant, the justice or judge shall consider whether to allow the defendant to satisfy the fine and costs through one or more methods listed under Article 45.041(a-1).

(d) The justice or judge may decline to hold a hearing under Subsection (a) if the justice or judge:

(1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or

(2) is able to determine without holding a hearing that:

(A) the judgment imposes an undue hardship on the defendant; and

(B) the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1).

(e) The justice or judge retains jurisdiction for the purpose of making a determination under this article.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a notification received by a court on or after the effective date, regardless of whether the judgment of conviction was entered before, on, or after the effective date.

Summary of Changes: This language in Article 45.0445 of the Code of Criminal Procedure was amended to SB 346 from another bill. It is designed to address instances in which fines and costs impose an undue hardship on a defendant who is unable to pay. This provision requires the court, upon notice from the defendant, to hold a hearing to determine if the judgment imposes an undue hardship on the defendant. If it does, the court must consider whether to allow the defendant to satisfy the judgment through alternative methods. No hearing is required if one was previously held and the court is able to determine without a hearing that no undue hardship exists. A hearing is also not required if the court can determine without a hearing that undue hardship does exist and the defendant should satisfy the fines and costs through alternative methods.

Code of Criminal Procedure Art. 45.045 CAPIAS PRO FINE. (a-2) The court may not issue a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant [on the defendant's ability to satisfy the judgment] and the defendant fails to:

(1) ~~the defendant fails to~~ appear at the hearing; or

(2) comply with an order issued under Subsection (a-4) as a result of the hearing [based on evidence presented at the hearing, the court determines that the capias pro fine should be issued].

(a-3) If the justice or judge determines at the hearing under Subsection (a-2) that the judgment imposes an undue hardship on the defendant, the justice or judge shall determine whether the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1). The justice or judge retains jurisdiction for the purpose of making a determination under this subsection.

(a-4) If the justice or judge determines at the hearing under Subsection (a-2) that the judgment does not impose an undue hardship on the defendant, the justice or judge shall order the defendant to comply with the judgment not later than the 30th day after the date the determination is made.

(a-5) The court shall recall a capias pro fine if, before the capias pro fine is executed, the defendant:

(1) provides notice to the justice or judge under Article 45.0445 and a hearing is set under that article; or

(2) [the defendant] voluntarily appears and makes a good faith effort to resolve the capias pro fine [amount owed; and

(2) the amount owed is resolved in any manner authorized by this chapter].

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a capias pro fine issued on or after the effective date.

Summary of Changes: The language in Article 45.045 of the Code of Criminal Procedure was amended to SB 346 from another bill. It is designed to address instances in which fines and costs impose an undue hardship on a defendant who is unable to pay. Under current law, a justice or municipal court is prohibited from issuing a capias pro fine unless it holds a hearing on the defendant's ability to satisfy the judgment and the defendant fails to appear at the hearing or the judge determines, based on evidence presented at the hearing, that the capias pro fine should be issued. The court is also required to recall a capias pro fine if the defendant voluntarily appears to resolve the amount owed and it is resolved. With this change, the court may not issue a capias pro fine unless it holds a hearing to determine if the judgement imposes an undue hardship on the defendant and the defendant either fails to appear or fails to comply with an order issued at that hearing that there is no undue hardship and the defendant must comply within 30 days. If the judge determines at the hearing that there is undue hardship, he or she must then determine if the fine and costs should be satisfied through an alternative method. The court is now required to recall a capias pro fine if the defendant provides notice under 45.0445 (discussed above) and a hearing is set or the defendant voluntarily appears and makes a good faith effort to resolve the capias pro fine.

Code of Criminal Procedure Art. 45.049. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS. Reenacted as amended by Chapters 977 (H.B. 351) and 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017. (c) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

Commentary by Kaci Singer

Source: HB 4170

Effective Date: September 1, 2019

Summary of Changes: This is part of a non-substantive revision of statutes. The 85th Legislature (2017) passed two bills amending this section. The two bills were similar but not identical. This change consolidates them into one subsection without changing the court's ability to order a defendant to perform community service in lieu of paying a fine or costs.

Code of Criminal Procedure Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. (a) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of a fine [~~or costs~~] imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine [~~or costs~~] or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine [~~or costs~~] under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

(b) A defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine or costs for purposes of Subsection (a) or (d) if the defendant:

(1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or

(2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

(c) A determination of undue hardship made under Subsection (a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

(1) significant physical or mental impairment or disability;

(2) pregnancy and childbirth;

(3) substantial family commitments or responsibilities, including child or dependent care;

(4) work responsibilities and hours;

(5) transportation limitations;

(6) homelessness or housing insecurity;

and

(7) any other factors the court determines relevant.

(d) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child as defined by Article 45.058(h).

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.0491, Code of Criminal Procedure applies to children and indigent defendants in justice or municipal court. The court may waive fines under subsection (a) if the court determines: 1) the defendant is indigent, does not have sufficient resources, or was a child when the offense was committed and 2) discharging the fine through community service under 45.049 would impose an undue hardship. The court may waive costs under subsection (d) if it determines the defendant is indigent, does not have sufficient resources, or was a child when the offense was committed. New subsection (c) provides circumstances the court may consider in determining if there is undue hardship, including a catch-all “any other factors the court determines relevant.”

Code of Criminal Procedure Art. 45.0492. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS. Reenacted as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, and as amended by Chapters 977 (H.B. 351) and 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017 (d) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;
(E) a counseling program, including a self-improvement program;

(F) a mentoring program;

(G) a tutoring program; or

(H) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(b) Article 45.0492(d), Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, and as amended by Chapters 977 (H.B. 351) and 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017, is reenacted to read as follows:

(d) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

Commentary by Kaci Singer

Source: HB 4170

Effective Date: September 1, 2019

Applicability: Applies to non-substantive revisions on various state law on or after the effective date.

Summary of Changes: This is part of a non-substantive revision of laws. There are still two versions of Section 45.0492. Both apply to a justice or municipal court’s discretion to allow a child defendant under the age of 17 to discharge all or part of the fines or costs by performing community service. One includes attendance at a tutoring program as a type of community service while the other

does not. The two can be reconciled to allow attendance at a tutoring program for community service.

Code of Criminal Procedure Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. In issuing the order of deferral, the judge may impose a fine [~~special expense fee~~] on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The fine [~~special expense fee~~] may be collected at any time before the date on which the period of probation ends. The judge may elect not to impose the fine [~~special expense fee~~] for good cause shown by the defendant. If the judge orders the collection of a fine under this subsection [~~special expense fee~~], the judge shall require that the amount of the fine [~~special expense fee~~] be credited toward the payment of the amount of any [~~the~~] fine imposed by the judge as punishment for the offense. An order of deferral under this subsection terminates any liability under a bond given for the charge.

(b) During the deferral period, the judge may require the defendant to:

(1) post a bond in the amount of the fine assessed as punishment for the offense to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed as punishment for the offense;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program, such as:

(A) a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code; or

(B) an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code;

(7) pay as reimbursement fees the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(b-2) A person examined as required by Subsection (b-1)(3) must pay a \$10 reimbursement fee for the examination [~~fee~~].

(b-3) The reimbursement fee collected under Subsection (b-2) must be deposited to the credit of a special account in the general revenue fund and may be used only by the Department of Public Safety for the administration of Chapter 521, Transportation Code.

(g) If a judge requires a defendant under Subsection (b) to attend an alcohol awareness program or drug education program as described by Subdivision (6) of that subsection, unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay a reimbursement fee for the cost of attending the program. The judge may allow the defendant to pay the fee [~~cost of attending the program~~] in installments during the deferral period.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: The amendments in Section 45.051 of the Code of Criminal Procedure change terms in a deferred adjudication in justice or municipal court to clarify which are fines and which are reimbursement fees.

Code of Criminal Procedure Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a-1), as amended by Chapters 227 (H.B. 350) and 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read: (a-1) Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all fines and court costs as required by Subsection (a), the judge may:

(1) allow the defendant to enter into an agreement for payment of those fines and costs in installments during the defendant's period of probation;

(2) require an eligible defendant to discharge all or part of those fines and costs by performing community service or attending a tutoring program under Article 45.049 or under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011; [~~or~~]

(3) waive all or part of those fines and costs under Article 45.0491; or

(4) take any combination of actions authorized by Subdivision (1), [~~or~~] (2), or (3).

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.051 expands the judge's ability to allow a defendant to pay costs in a deferred adjudication probation period to also include fines. Other changes allow the court to require the defendant to discharge the fines, in addition to costs, through community service or a tutoring program under Article 45.049 or Article 45.0492 (version added by HB 350 in 2011). Alternatively, the judge may waive all or part of the fines and costs or take any combination of authorized actions.

Code of Criminal Procedure Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (c-1) In this subsection, "state electronic Internet portal" has the meaning assigned by Section 2054.003, Government Code. As an alternative to receiving the defendant's driving record under Subsection (c)(2), the judge, at the time the defendant requests a driving safety course or motorcycle operator training course dismissal under this article, may require the defendant to pay a reimbursement fee in an amount equal to the sum of the amount of the fee established by Section 521.048, Transportation Code, and the state electronic Internet portal fee and, using the state electronic Internet portal, may request the Texas Department of Public Safety to provide the judge with a copy of the defendant's driving record that shows the information described by Section 521.047(b), Transportation Code. As soon as practicable and using the state electronic Internet portal, the Texas Department of Public Safety shall provide the judge with the requested copy of the defendant's driving record. The reimbursement fee authorized by this subsection is in addition to any other fee required under this article. If the copy of the defendant's driving record provided to the judge under this subsection shows that the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense, the judge shall allow the defendant to complete the appropriate course as provided by this article. The custodian of a municipal or county treasury who receives reimbursement fees collected under this subsection shall keep a record of the fees and, without deduction or proration, forward the fees to the comptroller, with and in the manner required for other fees and costs received in connection with criminal cases. The comptroller shall credit fees received under this subsection to the Texas Department of Public Safety.

(f) In addition to court costs and fees authorized or imposed by a law of this state and applicable to the offense, the court may:

(1) require a defendant requesting a course under Subsection (b) to pay a reimbursement [~~an administrative~~] fee [~~set by the court~~] to cover the cost of administering this article in [~~at~~] an amount of not more than \$10; or

(2) require a defendant requesting a course under Subsection (d) to pay a fine [~~fee~~] set by the

court at an amount not to exceed the maximum amount of the fine for the offense committed by the defendant.

(g) A defendant who requests but does not take a course is not entitled to a refund of the reimbursement fee or fine assessed under Subsection (f).

(h) Money [~~Fees~~] collected by a municipal court shall be deposited in the municipal treasury. Money [~~Fees~~] collected by another court shall be deposited in the county treasury of the county in which the court is located.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: Changes terminology regarding fees.

Code of Criminal Procedure Art. 45.052. DISMISSAL OF MISDEMEANOR CHARGE ON COMPLETION OF TEEN COURT PROGRAM. (e) The justice or municipal court may require a person who requests a teen court program to pay a reimbursement fee not to exceed \$10 that is set by the court to cover the costs of administering this article. Reimbursement fees [~~Fees~~] collected by a municipal court shall be deposited in the municipal treasury. Reimbursement fees [~~Fees~~] collected by a justice court shall be deposited in the county treasury of the county in which the court is located. A person who requests a teen court program and fails to complete the program is not entitled to a refund of the fee.

(g) In addition to the reimbursement fee authorized by Subsection (e) [~~of this article~~], the court may require a child who requests a teen court program to pay a \$10 reimbursement fee to cover the cost to the teen court for performing its duties under this article. The court shall pay the fee to the teen court program, and the teen court program must account to the court for the receipt and disbursement of the fee. A child who pays a fee under this subsection is not entitled to a refund of the fee, regardless of whether the child successfully completes the teen court program.

(i) Notwithstanding Subsection (e) or (g), a justice or municipal court that is located in the Texas-Louisiana border region, as defined by Section 2056.002, Government Code, may charge a reimbursement fee of \$20 under those subsections.

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: Changes terminology regarding Teen Court fees.

Code of Criminal Procedure Art. 45.056. JUVENILE CASE MANAGERS. (d) ~~The~~ [~~Pursuant to Article 102.0174, the~~] court or governing body may pay the salary and benefits of a juvenile case manager and the costs

of training, travel, office supplies, and other necessary expenses relating to the position of the juvenile case manager from the local truancy prevention and diversion [juvenile case manager] fund established under Section 134.156, Local Government Code.

(h) The commissioners court or governing body of the municipality that administers a local truancy prevention and diversion [juvenile case manager] fund under Section 134.156, Local Government Code. [Article 102.0174] shall require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (f).

Commentary by Kaci Singer

Source: SB 346

Effective Date: January 1, 2020

Summary of Changes: Changes the name of the juvenile case manager fund to the local truancy prevention and diversion fund.

Code of Criminal Procedure Art. 102.0173. COURT COSTS; JUSTICE COURT ASSISTANCE AND TECHNOLOGY FUND. (a) The commissioners court of a county by order shall create a justice court assistance and technology fund. A defendant convicted of a misdemeanor offense in justice court shall pay a \$4 justice court assistance and technology fee as a cost of court for deposit in the fund.

(c) The justice court clerk shall collect the costs and pay the funds to the county treasurer, or to any other official who discharges the duties commonly delegated to the county treasurer, for deposit in a fund to be known as the justice court assistance and technology fund.

(d) A fund designated by this article may be used only to finance:

(1) the cost of providing court personnel, including salaries and benefits for the court personnel;

(2) the cost of continuing education and training for justice court judges and court personnel [clerks regarding technological enhancements for justice courts]; and

(3) [(2)] the purchase and maintenance of technological enhancements for a justice court, including:

- (A) computer systems;
- (B) computer networks;
- (C) computer hardware;
- (D) computer software;
- (E) imaging systems;
- (F) electronic kiosks;
- (G) electronic ticket writers;

and

- (H) docket management systems.

items.

(e) The justice court assistance and technology fund shall be administered by or under the direction of the commissioners court of the county.

(f) A justice court may, subject to the approval of the commissioners court, use a fund designated by this article to assist a constable's office or other county department with a technological enhancement, or cost related to the enhancement, described by Subsection (d)(3) [(d)(1) or (2)] if the enhancement directly relates to the operation or efficiency of the justice court. ~~[This subsection applies only to a county that:~~

[(1) has a population of 125,000 or more;

[(2) is not adjacent to a county of two million or more;

[(3) contains a portion of the Guadalupe River; and

[(4) contains a portion of Interstate Highway 10.]

Commentary by Kaci Singer

Source: SB 1840

Effective Date: September 1, 2019

Summary of Changes: This expands the use of the technology fund for justice courts to allow the funds to be used for court assistance, such as additional court personnel and training for court personnel. This is to address the fact that many small counties do not generate enough money to afford hiring court personnel. Counties are now allowed to charge the \$4 fee to people who receive deferred adjudication in justice court as opposed to only those convicted. It also removes a bracket so that now any county, not just Guadalupe County, may use the fund to assist a constable's office or other county department with technological enhancements that are directly related to the operation or efficiency of the justice court.

6. Legislation Affecting Mental Health

Code of Criminal Procedure

Code of Criminal Procedure Art. 16.22. HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY. As reenacted and amended by Chapters 748 (S.B. 1326) and 950 (S.B. 1849), Acts of the 85th Legislature, Regular Session, 2017, (a)(1) Not later than 12 hours after the sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the sheriff or municipal jailer shall provide written or electronic notice to the magistrate. The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the magistrate, except as provided by Subdivision (2), shall order the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to:

(A) interview the defendant if the defendant has not previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the defendant was arrested for the offense for which the defendant is in custody and otherwise collect information regarding whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003, Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment or service; and

(B) provide to the magistrate a written report [assessment] of an interview described by Paragraph (A) and the other information collected under that paragraph [Paragraph (A)] on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(c) [614.0032(b)], Health and Safety Code.

(2) The magistrate is not required to order the interview and collection of other information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined

to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a jail, or in another place determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority, for a reasonable period not to exceed 72 hours. If applicable, the county in which the committing court is located shall reimburse the local mental health authority or local intellectual and developmental disability authority for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel regulations in effect at the time.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to assessments by mental health experts on or after the effective date.

Summary of Changes: Currently, if a magistrate determines there is reasonable cause to believe a defendant in custody has a mental illness or an intellectual disability, the magistrate must order the local mental health authority, the local intellectual and developmental authority, or another qualified mental health or intellectual disability expert to collect information and prepare an assessment on whether the defendant has a mental illness or intellectual disability. First, the change to Article 16.22 of the Code of Criminal Procedure adds mental health and intellectual disability service providers that contract with jails to the list of mental health experts the magistrate may order to perform the assessment. Second, this change requires the mental health expert to interview the defendant regarding the possible mental illness or intellectual disability if that defendant has not previously been interviewed by a mental health expert since committing the offense for which the defendant is in custody. The mental health expert must provide a report of the interview to the magistrate, as well as other information collected through the current process.

Code of Criminal Procedure Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY. As reenacted and amended by Chapters 748 (S.B. 1326) and 950 (S.B. 1849), Acts of the 85th Legislature, Regular Session, 2017. (b) Notwithstanding Article 17.03(b), or a bond schedule adopted or a standing order entered by a judge, a magistrate shall release a defendant on personal bond unless good cause is shown otherwise if:

(1) the defendant is not charged with and has not been previously convicted of a violent offense;

(2) the defendant is examined by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert under Article 16.22;

(3) the applicable expert, in a written report ~~[assessment]~~ submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual and developmental disability services for the defendant, as applicable;

(4) the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual and developmental disability services for the defendant are available in accordance with Section 534.053 or 534.103, Health and Safety Code, or through another mental health or intellectual and developmental disability services provider; and

(5) the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

(c) The magistrate, unless good cause is shown for not requiring treatment or services, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment or intellectual and developmental disability services as recommended by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert if the defendant's:

(1) mental illness or intellectual disability is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services ~~[is not treated]~~.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to assessments by mental health experts on or after the effective date.

Summary of Changes: This Article requires the magistrate to release a defendant on personal bond if the mental health expert's assessment under Article 16.22 concludes the defendant has a mental illness or intellectual disability, there are appropriate services for the defendant, and the magistrate finds that a personal bond would reasonably ensure the defendant's appearance in court. The magistrate also must require the defendant to submit to treatment or intellectual disability services as a condition of the personal bond. Other conforming changes relate to the mental health and intellectual disability service providers that contract with jails as added to Article 16.22 and includes the developmental disability services that are recommended by the mental health expert(s).

Code of Criminal Procedure Art. 42.09. COMMENCEMENT OF SENTENCE; STATUS DURING APPEAL; PEN PACKET. (a) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall deliver to an officer designated by the department:

(1) a copy of the judgment entered pursuant to Article 42.01, completed on a standardized felony judgment form described by Section 4 of that article;

(2) a copy of any order revoking community supervision and imposing sentence pursuant to Article 42A.755, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4, Article 42.01; and

(B) a copy of the client supervision plan prepared for the defendant by the community supervision and corrections department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the

county prosecuting the offense and the county in which the case was tried;

(6) if requested, information regarding the criminal history of the defendant, including the defendant's state identification number if the number has been issued;

(7) a copy of the indictment or information for each offense;

(8) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) accompany the defendant;

(9) if prepared, a copy of a presentence or postsentence report prepared under Subchapter F, Chapter 42A;

(10) a copy of any detainer, issued by an agency of the federal government, that is in the possession of the county and that has been placed on the defendant;

(11) if prepared, a copy of the defendant's Texas Uniform Health Status Update Form; ~~and~~

(12) a written description of a hold or warrant, issued by any other jurisdiction, that the county is aware of and that has been placed on or issued for the defendant; and

(13) a copy of any mental health records, mental health screening reports, or similar information regarding the mental health of the defendant.

(c) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall also deliver to the designated officer any presentence or postsentence investigation report, revocation report, psychological or psychiatric evaluation of the defendant, including a written report provided to a court under Article 16.22(a)(1)(B) or an evaluation prepared for the juvenile court before transferring the defendant to criminal court and contained in the criminal prosecutor's file, and available social or psychological background information relating to the defendant and may deliver to the designated officer any additional information upon which the judge or jury bases the punishment decision.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to convictions resulting in a sentence to TDCJ occurring on or after the effective date.

Summary of Changes: The changes in Article 42.09 of the Code of Criminal Procedure require a district court to provide TDCJ with a copy of any mental health records, screening reports, or similar information regarding the mental health of the defendant. The courts already prepare the judgment, orders, and other reports, and will now be required to provide TDCJ information on the defendant's mental health. The court must also provide TDCJ the mental health/intellectual disability report prepared under Article 16.22(a) (1) (B). This will include the interview with the defendant as required by the amended section above.

The juvenile court evaluation has been required for some time now.

Code of Criminal Procedure Art. 46B.001. DEFINITIONS. In this chapter:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) "Commission" means the Health and Human Services Commission.

(3) "Competency restoration" means the treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.

(4) "Developmental period" means the period of a person's life from birth through 17 years of age.

(5) "Electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Inpatient mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(8) ~~[(2)]~~ "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period [has the meaning assigned by Section 591.003, Health and Safety Code].

(9) ~~[(3)]~~ "Local mental health authority" has the meaning assigned by Section 571.003, Health and Safety Code.

(10) ~~[(4)]~~ "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(11) ~~[(5)]~~ "Mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(12) ~~[(6)]~~ "Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that grossly impairs:

(A) a person's thought, perception of reality, emotional process, or judgment; or

(B) behavior as demonstrated by recent disturbed behavior [has the meaning assigned by Section 571.003, Health and Safety Code].

(13) ~~[(7)]~~ "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

(14) "Subaverage general intellectual functioning" means a measured intelligence two or more

standard deviations below the age-group mean, using a standardized psychometric instrument.

~~[(8) “Electronic broadcast system” means a two way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.~~

~~[(9) “Competency restoration” means the treatment or education process for restoring a person’s ability to consult with the person’s attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.]~~

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to proceedings occurring on or after the effective date.

Summary of Changes: This section provides several new definitions for competency hearings. New definitions include “adaptive behavior” and “subaverage general intellectual functioning.” The definitions for “intellectual disability” and “mental illness” are the same; however the bill brought the definitions from the Health and Safety Code into this article. Of note, a new definition for “developmental period” is provided.

Code of Criminal Procedure Art. 46B.0021. FACILITY DESIGNATION. The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to proceedings occurring on or after the effective date.

Summary of Changes: Article 46B.0021 of the Code of Criminal Procedure requires HHSC to commit defendants to facilities HHSC operates or facilities with whom HHSC contracts. Currently, Article 46B.073 allows defendants charged with a violent offense to be committed to a maximum-security unit of a facility designated by DSHS, a federal mental hospital, or a Veterans Affairs hospital. Other articles in this chapter require DSHS to designate a provider for competency restoration.

Code of Criminal Procedure Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY. (c) If the defendant is charged with an offense listed in Article 17.032(a)[, other than an offense under Section 22.01(a)(1), Penal Code,] or if the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant

for competency restoration services to a [~~the maximum security unit of any~~] facility designated by the commission [Department of State Health Services, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital].

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to proceedings occurring on or after the effective date.

Summary of Changes: As mentioned above, DSHS currently designates facilities for competency restoration. This amended portion requires defendants charged with a violent offense to be committed for competency restoration to a facility designated by HHSC. It also removes the requirement the defendant be placed in a maximum-security unit.

Code of Criminal Procedure Art. 46B.0831. DETERMINATION WHETHER DEFENDANT IS MANIFESTLY DANGEROUS. A defendant committed to a maximum security unit by the commission may be assessed, at any time before the defendant is restored to competency, by the review board established under Section 46B.105 to determine whether the defendant is manifestly dangerous. If the review board determines the defendant is not manifestly dangerous, the commission shall transfer the defendant to a non-maximum security facility designated by the commission.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to assessments occurring on or after the effective date.

Summary of Changes: This section provides a brand new article regarding “manifestly dangerous” defendants. If HHSC commits a defendant to a maximum security unit for competency restoration, the review board created through this chapter may review the defendant, before competency is restored, to determine if the defendant is manifestly dangerous. If the defendant is not, then he/she will be transferred to a non-maximum security facility. This changes the process quite a bit. Currently, as discussed above, if the defendant is charged with a violent crime, the defendant is automatically sent to a maximum security unit through DSHS or the federal government for competency restoration. There is an avenue for a defendant to be reviewed after 60 days of being in placement, but only if the defendant has not been found manifestly dangerous. This change allows the review to occur at any point after placement.

Code of Criminal Procedure Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the ~~[maximum security unit of any]~~ facility designated by the commission ~~[Department of State Health Services]~~ if:

(1) the defendant is charged with an offense listed in Article 17.032(a) ~~[, other than an offense listed in Article 17.032(a)-(6)]~~; or

(2) the indictment charging the offense alleges an affirmative finding under Article 42A.054(c) or (d).

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to defendants charged or indicted for specified offenses on or after the effective date.

Summary of Changes: Article 46B.104, Code of Criminal Procedure, contains mostly conforming changes. It strikes the requirement that a defendant be placed in a maximum security unit, and it changes the designating agency from DSHS to HHSC. If a defendant is charged with any violent offense under Article 17.032 or indicted for a 42A.054 offense (formerly known as 3(g) offenses) involving a deadly weapon or firearm, then the defendant will be committed to a facility designated by HHSC.

Code of Criminal Procedure Art. 46B.105. TRANSFER FOLLOWING CIVIL COMMITMENT PLACEMENT. (a) Unless a defendant committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board established under Subsection (b), not later than the 60th day after the date the defendant arrives at the maximum security unit, the defendant shall be transferred to:

(1) a unit of an inpatient mental health facility other than a maximum security unit;

(2) a residential care facility; or

(3) a program designated by a local mental health authority or a local intellectual and developmental disability authority.

(b) The executive commissioner ~~[of state health services]~~ shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or an intellectual disability, to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(e) If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, the matter shall be referred to the executive commissioner ~~[of state health services]~~. The executive commissioner shall decide whether the defendant is manifestly dangerous.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to review board determinations made on or after the effective date.

Summary of Changes: This provision makes more conforming changes, some of which were described in the above analysis. Although the new Article 46B.0831 allows the review board to make a determination as to whether the defendant is manifestly dangerous at any time after placement, this article remains in place. The defendant committed to a maximum security unit by HHSC will be released within 60 days of placement if the review board has not determined the defendant to be manifestly dangerous.

Code of Criminal Procedure Art. 46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE. (a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to:

(1) a facility designated by the commission ~~[Department of State Health Services or the Department of Aging and Disability Services, as appropriate]~~; or

(2) an outpatient treatment program.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to commitments to HHSC on or after the effective date.

Summary of Changes: This section includes conforming changes, replacing DSHS authority to commit a defendant with HHSC.

Code of Criminal Procedure Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT. (a) The release of a defendant committed under this chapter from the commission ~~[Department of State Health Services, the Department of Aging and Disability Services]~~, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(d) The court shall, on receiving notice from the head of a facility or outpatient treatment provider of intent to release the defendant under Subsection (b) [may, on motion of the attorney representing the state or on its own motion], hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7,

Health and Safety Code, regardless of whether the court receives notice that the head of a facility or outpatient treatment provider provides notice of intent to release the defendant under Subsection (b). The court may conduct the hearing:

- (1) at the facility; or
- (2) by means of an electronic broadcast system as provided by Article 46B.013.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to notices of intent to release and related hearings occurring on or after the effective date.

Summary of Changes: Replaces DSHS authority with HHSC. As amended, Article 46B.107 requires the court to hold a hearing if the head of a facility treatment provider provides notice to the court of the intent to release a defendant. Currently, the hearing is not mandatory and is triggered by a motion by the prosecutor. This avenue for the hearing is still in place, but this section adds the required hearing upon a notice from the treatment provider.

Code of Criminal Procedure Art. 46B.151. COURT DETERMINATION RELATED TO CIVIL COMMITMENT. (c) Notwithstanding Subsection (b), a defendant placed in a facility of the commission [~~Department of State Health Services or the Department of Aging and Disability Services~~] pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming change replacing DSHS authority with HHSC.

Code of Criminal Procedure Art. 46C.001. [INSANITY DEFENSE] DEFINITIONS.

(1) “Commission” means the Health and Human Services Commission [~~“Commissioner” means the commissioner of state health services~~].

(2) “Executive commissioner” means the executive commissioner of the Health and Human Services Commission [~~“Department” means the Department of State Health Services~~].

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Similar to the changes in Chapter 46B, regarding competency restoration, Chapter 46C is also amended to fall under the purview of HHSC and not DSHS as it is currently. These definitions reflect the change.

Code of Criminal Procedure Art. 46C.001. FACILITY DESIGNATION. The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Similar to the changes in Chapter 46B, this section states HHSC may only commit a defendant to a facility it operates or is under contract with.

Code of Criminal Procedure Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO EXAMINATION. (a) For the purposes described by this chapter, the court may order any defendant to submit to examination, including a defendant who is free on bail. If the defendant fails or refuses to submit to examination, the court may order the defendant to custody for examination for a reasonable period not to exceed 21 days. Custody ordered by the court under this subsection may include custody at a facility operated by the commission [~~department~~].

(b) If a defendant who has been ordered to a facility operated by the commission [~~department~~] for examination remains in the facility for a period that exceeds 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel rules in effect at that time.

(c) The court may not order a defendant to a facility operated by the commission [~~department~~] for examination without the consent of the head of that facility.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming changes replacing DSHS authority with HHSC.

Code of Criminal Procedure Art. 46C.106. COMPENSATION OF EXPERTS. (b) The county in which the indictment was returned or information was filed shall reimburse a facility operated by the commission [~~department~~] that accepts a defendant for examination under this subchapter for expenses incurred that are determined by the commission [~~department~~] to be reasonably necessary and incidental to the proper examination of the defendant.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming changes replacing DSHS authority with HHSC.

Code of Criminal Procedure Art. 46C.160. DETENTION PENDING FURTHER PROCEEDINGS. (b) The court may order a defendant detained in a facility of the commission [~~department or a facility of the Department of Aging and Disability Services~~] under this article only with the consent of the head of the facility.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming changes replacing Department of Aging and Disability Services authority with HHSC.

Code of Criminal Procedure Art. 46C.202. DETENTION OR RELEASE. (a) Notwithstanding Article 46C.201(b), a person placed in a commission [~~department~~] facility [~~or a facility of the Department of Aging and Disability Services~~] pending civil hearing as described by that subsection may be detained only with the consent of the head of the facility and under an Order of Protective Custody issued under Subtitle C or D, Title 7, Health and Safety Code.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming changes replacing Department of Aging and Disability Services authority with HHSC.

Code of Criminal Procedure Art. 46C.251. COMMITMENT FOR EVALUATION AND TREATMENT; REPORT. (a) The court shall order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the [~~maximum security unit of any~~] facility designated by the commission [~~department~~]. The period of commitment under this article may not exceed 30 days.

(b) The court shall order that:

(1) a transcript of all medical testimony received in the criminal proceeding be prepared as soon as possible by the court reporter and the transcript be forwarded to the facility to which the acquitted person is committed; and

(2) the following information be forwarded to the facility and [~~as applicable,~~] to the commission [~~department or the Department of Aging and Disability Services~~]:

(A) the complete name, race, and gender of the person;

(B) any known identifying number of the person, including social security number, driver's license number, or state identification number;

(C) the person's date of birth; and

(D) the offense of which the person was found not guilty by reason of insanity and a statement of the facts and circumstances surrounding the alleged offense.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming changes replacing Department of Aging and Disability Services authority with HHSC.

Code of Criminal Procedure Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NON-MAXIMUM SECURITY [~~NONSECURE~~] FACILITY.

(a) A person committed to a facility under this subchapter shall be committed to a [~~the maximum security unit of any~~] facility designated by the commission [~~department~~].

(b) A person committed under this subchapter shall be transferred to the designated facility [~~maximum security unit~~] immediately on the entry of the order of commitment.

(c) Unless a [~~the~~] person committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board under this article [~~within the department~~], not later than the 60th day following the date of the person's arrival at the maximum security unit the person shall be transferred to a non-maximum security [~~nonsecure~~] unit of a facility designated by the commission [~~department or the Department of Aging and Disability Services, as appropriate~~].

(d) The executive commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illnesses or with mental retardation, to determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

(e) If the head of the facility at which the maximum security unit is located disagrees with the determination, then the matter shall be referred to the executive commissioner. The executive commissioner shall decide whether the person is manifestly dangerous.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: Conforming changes replacing Department of Aging and Disability Services authority, and DSHS authority, with HHSC.

Education Code

Education Code Sec. 38.301. COLLABORATIVE TASK FORCE ON PUBLIC SCHOOL MENTAL HEALTH SERVICES: DEFINITIONS. In this subchapter:

(1) “Institution of higher education” has the meaning assigned by Section 61.003.

(2) “Task force” means the Collaborative Task Force on Public School Mental Health Services.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: HB 906 creates a collaborative task force to study and evaluate the mental health services offered in public school districts and open-enrollment charter schools. The task force will also make recommendations to the Texas Education Agency (TEA) on ways to improve programming. This section provides ordinary meaning definitions for “institution of higher education” and “task force.” The task force members must be appointed by October 1, 2019.

Education Code Sec. 38.302. ESTABLISHMENT. The Collaborative Task Force on Public School Mental Health Services is established to study and evaluate:

(1) mental health services that are funded by this state and provided at a school district or open-enrollment charter school directly to:

(A) a student enrolled in the district or school;

(B) a parent or family member of or person standing in parental relation to a student enrolled in the district or school; or

(C) an employee of the district or school;

(2) training provided to an educator employed by the district or school to provide the mental health services described by Subdivision (1); and

(3) the impact the mental health services described by Subdivision (1) have on:

(A) the number of violent incidents that occur at school districts or open-enrollment charter schools;

(B) the suicide rate of the individuals who are provided the mental health services described by Subdivision (1);

(C) the number of public school students referred to the Department of Family and Protective Services for investigation services and the reasons for those referrals;

(D) the number of individuals who are transported from each school district or open-enrollment charter school for an emergency detention under Chapter 573, Health and Safety Code; and

(E) the number of public school students referred to outside counselors in accordance with Section 38.010.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: Section 38.302 of the Education Code sets the requirements for the task force. The Task Force must study and evaluate the state-funded mental health services; the training provided to a district employee who provides the mental health services; and the impact of those mental health services on violent incidents, suicide rates, students referred to DFPS or outside counselors, and persons transferred from schools for an emergency detention.

Education Code Sec. 38.303. MEMBERSHIP.

(a) The task force is composed of:

(1) the commissioner or the commissioner’s designee;

(2) the following additional members appointed by the commissioner:

(A) three parents of students who are enrolled in school districts or open-enrollment charter schools and receive the mental health services described by Section 38.302(1);

(B) one person who provides the mental health services described by Section 38.302(1) or the training described by Section 38.302(2) and who is:

(i) a licensed professional counselor, as defined by Section 503.002, Occupations Code;

(ii) a licensed clinical social worker, as defined by Section 505.002, Occupations Code; or

(iii) a school counselor certified under Subchapter B, Chapter 21;

(C) one person who is a psychiatrist;

(D) two persons who are administrators of districts or schools that provide the mental health services described by Section 38.302(1) or the training described by Section 38.302(2);

(E) one person who is a member of a foundation that invests in the mental health services described by Section 38.302(1) or the training described by Section 38.302(2);

(F) one person who is an employee of an institution of higher education designated under Section 38.307; and

(G) one person who is a licensed specialist in school psychology, as defined by Section 501.002, Occupations Code; and

(3) for any other entity the task force considers necessary, one person appointed by the task force for each such entity.

(b) Appointments to the task force shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Chapter 2110, Government Code, does not apply to the task force.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: Professional members of the task force include: the Texas Education Agency (TEA) commissioner or designee; one licensed counselor, social worker, or school counselor; a licensed psychiatrist; and a licensed specialist in school psychology. Parents, school districts, universities with experience in evaluating these services, and foundations investing in mental health services are also represented on the task force. All members are appointed by the TEA commissioner.

Education Code Sec. 38.304. OFFICERS. (a) The commissioner is designated as the interim presiding officer for purposes of calling and conducting the initial meeting of the task force.

(b) The task force:

(1) shall at its initial meeting select a presiding officer from among its members for the purpose of calling and conducting meetings; and

(2) may select an assistant presiding officer and a secretary from among its members.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: The task force chooses its own officers, including its presiding officer, and an assistant presiding officer and secretary if the task force chooses. The TEA commissioner is the interim presiding officer until the presiding officer is selected.

Education Code Sec. 38.305. COMPENSATION; REIMBURSEMENT. A member of the task force may not receive compensation or reimbursement for service on the task force.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: Task force members may not receive compensation or reimbursement for their service.

Education Code Sec. 38.306. MEETINGS. (a) After its initial meeting, the task force shall meet at least twice each year at a time and place determined by the presiding officer.

(b) The task force may meet at other times the task force considers appropriate. The presiding officer may call a meeting on the officer's own motion.

(c) The task force may meet by teleconference.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: The task force must meet at least twice each year, but they may meet as many times as appropriate. Members may meet by teleconference. It is not clear whether the task force is subject to the open meeting requirements in Chapter 551, Texas Government Code. However, there are several attorney general opinions on this similar issue.

Education Code Sec. 38.307. SUPPORT SERVICES FOR TASK FORCE. (a) The commissioner shall designate one institution of higher education with experience in evaluating mental health services to serve as the lead institution for the task force. The institution designated under this subsection shall provide faculty, staff, and

administrative support services to the task force as determined necessary by the task force to administer this subchapter.

(b) The commissioner shall designate two institutions of higher education with experience in evaluating mental health services to assist the task force and the lead institution designated under Subsection (a) as determined necessary by the task force to administer this subchapter.

(c) In making a designation under this section, the commissioner shall give preference to at least one predominantly black institution, as defined by 20 U.S.C. Section 1067q(c)(9).

(d) On request of the task force, the agency, a school district, or an open-enrollment charter school shall provide information or other assistance to the task force.

(e) The agency shall maintain the data collected by the task force and the work product of the task force in accordance with:

(1) the agency's information security plan under Section 2054.133, Government Code; and

(2) the agency's records retention schedule under Section 441.185, Government Code.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: The TEA commissioner must appoint one institution of higher education as the "lead institution" for the task force. One employee of the lead institution will also be appointed as a member of the task force (see Section 38.303). Two additional institutions of higher education are appointed to assist the task force. In appointing the institutions, the commissioner must give preference to at least one historically black college and university (HBCU). School districts, open-enrollment charter schools, and the TEA must provide assistance and information when requested. The task force will follow the information security and record retention requirements of the TEA.

Education Code Sec. 38.308. DUTIES OF TASK FORCE. The task force shall:

(1) gather data on:

(A) the number of students enrolled in each school district and open-enrollment charter school;

(B) the number of individuals to whom each school district or open-enrollment charter school provides the mental health services described by Section 38.302(1);

(C) the number of individuals for whom each school district or open-enrollment charter

school has the resources to provide the mental health services described by Section 38.302(1);

(D) the number of individuals described by Paragraph (B) who are referred to an inpatient or outpatient mental health provider;

(E) the number of individuals who are transported from each school district or open-enrollment charter school for an emergency detention under Chapter 573, Health and Safety Code; and

(F) the race, ethnicity, gender, special education status, educationally disadvantaged status, and geographic location of:

(i) individuals who are provided the mental health services described by Section 38.302(1);

(ii) individuals who are described by Paragraph (D); and

(iii) individuals who are described by Paragraph (E); and

(2) study, evaluate, and make recommendations regarding the mental health services described by Section 38.302(1), the training described by Section 38.302(2), and the impact of those mental health services, as described by Section 38.302(3), including addressing:

(A) the outcomes and the effectiveness of the services and training provided, including the outcomes and effectiveness of the service and training providers and the programs under which services and training are provided, in:

(i) improving student academic achievement and attendance;

(ii) reducing student disciplinary proceedings, suspensions, placements in a disciplinary alternative education program, and expulsions; and

(iii) delivering prevention and intervention services to promote early mental health skills, including:

(a) building skills relating to managing emotions, establishing and maintaining positive relationships, and making responsible decisions;

(b) preventing substance abuse;

(c) preventing suicides;

(d) adhering to the purpose of the relevant program services or training;

(e) promoting trauma-informed practices;

(f) promoting a positive school climate, as defined by Section 161.325(a-3), Health and Safety Code, in the district or school; and

(g) improving physical and emotional safety and well-being in the district or school and reducing violence in the district or school;

(B) best practices for districts and schools in implementing the services or training;

(C) disparities in the race, ethnicity, gender, special education status, and geographic location of individuals receiving the services; and

(D) best practices to replicate the services or training for all districts and schools.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: This section provides the meat of HB 906. The purpose of this task force is to evaluate these state-funded mental health programs' impact on overall school safety. The task force tracks the effectiveness through a number of metrics, including the demographics of students enrolled in the schools and the programs, students that could be offered these programs, and students referred to mental health providers and emergency detentions. The task force must report the effectiveness of the programs in improving academic achievement, reducing student disciplinary incidents, preventing substance abuse and suicides, promoting trauma-informed practices, and improving the safety and well-being of the schools. The required report is due by November 1st of each even numbered year (see below), presumably so that TEA can prepare for the upcoming legislative session regarding these mental health programs.

Education Code Sec. 38.309. PRIVACY OF INFORMATION. The task force shall ensure that data gathered, information studied, and evaluations conducted under this subchapter:

(1) comply with federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information; and

(2) may not be shared with a federal agency or state agency, including an institution of higher education, except as otherwise provided by this subchapter or other law.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: The task force, and TEA for record retention purposes, must comply with all state and federal

student confidentiality laws, including HIPAA and FERPA. The task force and TEA may not share any student information with other federal and state agencies, except as allowed through this subchapter.

Education Code Sec. 38.310. REPORTS. Not later than November 1 of each even-numbered year, the task force shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the agency a report of the results of the task force's activities conducted under Section 38.308 and any recommendations for legislative or other action.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: The task force must submit a report by November 1 of each even-numbered year regarding its activities and findings, including legislative recommendations.

Education Code Sec. 38.311. FUNDING; ADMINISTRATIVE COST RESTRICTION; GIFTS AND GRANTS. (a) Of state funds allocated to the agency for public school mental health services, the commissioner may provide not more than 10 percent for purposes of the task force established under this subchapter.

(b) The task force may not spend for the administration of the task force more than 10 percent of any money allocated to the task force for the purposes of this subchapter.

(c) The task force may accept a gift or grant from a person other than the federal government.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: Funding comes from TEA's appropriations for mental health services, although the agency may not commit more than 10% to the task force. The task force must also limit administrative expenditures to 10% of its budget. Grants and donations are acceptable, but not from the federal government.

Education Code Sec. 38.312. EXPIRATION. The task force is abolished and this subchapter expires December 1, 2025. Not later than October 1, 2019, the commissioner of education shall:

(1) appoint the members of the Collaborative Task Force on Public School Mental Health Services

that are to be appointed by the commissioner, as required by Section 38.303, Education Code, as added by this Act; and

(2) designate the institutions of higher education to provide support services, as required by Section 38.307, Education Code, as added by this Act.

Commentary by Sean Grove

Source: HB 906

Effective Date: June 14, 2019

Applicability: Applies to the appointment and duties of the collaborative task force on school mental health services on or after the effective date.

Summary of Changes: The TEA commissioner must appoint members and the designated universities (see Section 38.307 above) by October 1, 2019. The task force is abolished on December 1, 2025. This is not a sunset provision as there is no mention to Chapter 325, Government Code (Texas Sunset Act). The task force is more than a work group; its intended purpose is to report metrics and make recommendations on the effectiveness of these mental health programs. There is nothing prohibiting the legislature from potentially extending the task force during the 89th Legislative Session.

Family Code

CHAPTER 35A. TEMPORARY AUTHORIZATION FOR INPATIENT MENTAL HEALTH SERVICES FOR MINOR CHILD *(New Chapter Heading)*

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to child inpatient mental health screenings on or after the effective date.

Summary of Changes: SB 1238 changes the screening requirements for child inpatient mental health services. Current Texas law requires a mental health professional and a physician to screen and examine a child before the child may be admitted for voluntary inpatient mental health treatment. Federal law requires the child to be re-examined after admission. New Family Code Chapter 35A sets forth mental health screening requirements and allows physicians to screen a minor child up to 72 hours before admission or within 24 hours *after* admission. This streamlines the admission processes and helps ensure a continuity of care for the children.

Family Code Sec. 35A.001. APPLICABILITY.

This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001(a)(1), (2), or (3), and who has

had actual care, custody, and control of the child for the six months preceding the filing of a petition under this chapter.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to petitions for voluntary inpatient mental health services on or after the effective date.

Summary of Changes: Section 35A.001 of the Family Code establishes the applicability of new Chapter 35A relating to Temporary Authorization For Inpatient Mental Health Services For Minor Child. The new provision gives grandparents, adult siblings, and aunts and uncles who had custody of a child for the preceding six months standing to file a petition under this new chapter.

Family Code Sec. 35A.002. TEMPORARY AUTHORIZATION. A person described by Section 35A.001 may seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child by filing a petition in the district court in the county in which the person resides.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to petitions for voluntary inpatient mental health services on or after the effective date.

Summary of Changes: The persons mentioned in the commentary above may temporarily consent to inpatient mental health treatment by filing a petition in a district court of their home county.

Family Code Sec. 35A.003. PETITION FOR TEMPORARY AUTHORIZATION. A petition for temporary authorization to consent to voluntary inpatient mental health services for a child must:

(1) be styled "ex parte" and be in the name of the child;

(2) be verified by the petitioner;

(3) state:

(A) the name, date of birth, and current physical address of the child;

(B) the name, date of birth, and current physical address of the petitioner; and

(C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;

(4) describe the status and location of any court proceeding in this or another state with respect to the child;

(5) describe the petitioner's relationship to the child;

(6) provide the dates during the preceding six months that the child has resided with the petitioner;

(7) contain a certificate of medical examination for mental illness prepared by a physician who has examined the child not earlier than the third day before the date the petition is filed and be accompanied by a sworn statement containing the physician's opinion, and the detailed reasons for that opinion, that the child is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and

(8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to petitions for voluntary inpatient mental health services on or after the effective date.

Summary of Changes: Section 35A.003 of the Family Code sets the requirements for the petition. Of note, the petition must include the status of any court proceedings involving the child, and a certificate of medical examination for mental illness prepared by a physician within 72 hours prior to the petition's filing. The examination must contain a physician's sworn statement that the child demonstrates symptoms of a serious emotional disorder and presents a risk of serious harm to his/herself and others.

Family Code Sec. 35A.004. NOTICE; HEARING. (a) On receipt of the petition, the court shall set a hearing.

(b) A copy of the petition and notice of the hearing shall be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to hearings on a petition for voluntary inpatient mental health services on or after the effective date.

Summary of Changes: The court must set a hearing upon receipt of the petition and must properly serve parents or guardians.

Family Code Sec. 35A.005. ORDER FOR TEMPORARY AUTHORIZATION. (a) At the hearing on the petition, the court may hear evidence relating to the child's need for inpatient mental health services by the pe-

itioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian.

(b) The court shall dismiss the petition for temporary authorization if an objection is made by the child's parent, conservator, or guardian.

(c) The court shall grant the petition for temporary authorization only if the court finds:

(1) by a preponderance of the evidence that the child does not have available a parent, conservator, guardian, or other legal representative to give consent under Section 572.001, Health and Safety Code, for voluntary inpatient mental health services; and

(2) by clear and convincing evidence that the child is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(d) Subject to Subsection (e), the order granting temporary authorization under this chapter expires on the earliest of:

(1) the date the petitioner requests that the child be discharged from the inpatient mental health facility;

(2) the date a physician determines that the criteria listed in Subsection (c)(2) no longer apply to the child; or

(3) subject to Subsection (e), the 10th day after the date the order for temporary authorization is issued under this section.

(e) The order granting temporary authorization continues in effect until the earlier occurrence of an event described by Subsection (d)(1) or (2) if the petitioner obtains an order for temporary managing conservatorship before the order expires as provided by Subsection (d)(3).

(f) A copy of an order granting temporary authorization must:

(1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and

(2) be sent to the last known address of the child's parent, conservator, or guardian.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to hearings on a petition for voluntary inpatient mental health services on or after the effective date.

Summary of Changes: The court may, but is not required to, hear evidence regarding the need for the child to attend inpatient mental health treatment. The court must deny the petition if the child's parent, conservator, or guardian objects to the treatment. The court must grant the petition if it

finds by clear and convincing evidence that the child has a mental illness or demonstrates a serious emotional disorder, and the child presents a risk of serious harm to him/herself or others. The court must also find by a preponderance of the evidence that the child lacks an available parent or guardian who may authorize voluntary inpatient mental health services under Section 572.001, Health and Safety Code. The temporary authorization expires on the date the petitioner requests the child be discharged, the date a physician no longer believes the services are warranted under this subchapter, or the 10th date after the order is issued, whichever is earliest. The order must be filed in any court that granted a conservatorship or guardian order over the child and it must be delivered to the child's parent or guardian's last known address.

Family Code Sec. 55.13. COMMITMENT PROCEEDINGS IN JUVENILE COURT. (d) After conducting a hearing on an application under this section, the juvenile court shall:

- (1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services for the child; or
- (2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services for the child.

Commentary by Sean Grove

Source: SB 362

Effective Date: September 1, 2019

Applicability: Applies to commitment proceedings in juvenile court on or after the effective date.

Summary of Changes: SB 362 separates orders for inpatient mental health services and orders for outpatient mental health services. This change to Section 55.13 of the Family Code includes the new, separate processes for commitment proceedings in juvenile courts. Health and Safety Code Sections 574.034 and 574.0355 are the new processes for ordering outpatient mental health services and extended outpatient mental health services, respectively. Additional analyses on these sections are contained in the commentary below.

Family Code Sec. 55.38. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS. (b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

- (1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or
- (2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

Commentary by Sean Grove

Source: SB 362

Effective Date: September 1, 2019

Applicability: Applies to juvenile court orders for temporary or extended mental health services on or after the effective date.

Summary of Changes: The changes to Section 55.38 of the Family Code make conforming changes from the addition of the orders for outpatient mental health services and extended outpatient mental health services, which were created by SB 362. A juvenile court shall order the temporary or extended mental health services if the criteria under the new Sections 574.0345 and 574.0355, Health and Safety Code, are met.

Family Code Sec. 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS. (b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

- (1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or
- (2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

Commentary by Sean Grove

Source: SB 362

Effective Date: September 1, 2019

Applicability: Applies to orders for outpatient mental health services on or after the effective date.

Summary of Changes: This provision contains additional changes relating to the orders for outpatient mental health services and extended outpatient mental health services that were created by SB 362. A juvenile court shall order the temporary or extended mental health services if the criteria under the new Sections 574.0345 and 574.0355, Health and Safety Code, are met.

Government Code

Government Code Sec. 511.0085. RISK FACTORS; RISK ASSESSMENT PLAN. (a) The commission shall develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under the commission's jurisdiction. The set of risk factors must include:

- (1) a history of the jail's compliance with state law and commission rules, standards, and procedures;
- (2) the population of the jail;
- (3) the number and nature of complaints regarding the jail, including complaints regarding a violation of any required ratio of correctional officers to inmates;

(4) problems with the jail's internal grievance procedures;

(5) available mental and medical health reports relating to inmates in the jail, including reports relating to infectious disease or pregnant inmates;

(6) recent turnover among sheriffs and jail staff;

(7) inmate escapes from the jail;

(8) the number and nature of inmate deaths at the jail, including the results of the investigations of those deaths; and

(9) whether the jail is in compliance with commission rules, standards developed by the Texas Correctional Office on Offenders with Medical or Mental Impairments, and the requirements of Article 16.22, Code of Criminal Procedure, regarding screening and assessment protocols for the early identification of and reports concerning persons with mental illness or an intellectual disability.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to mental health and intellectual disability screenings and assessments on or after the effective date.

Summary of Changes: HB 601 changed certain requirements on courts ordering screening of defendants for mental illnesses and intellectual disabilities (see above). This section is a conforming change that would require the Commission on Jail Standards to also review a jail's compliance with Article 16.22, Code of Criminal Procedure, as it relates to screening and assessments of defendants with intellectual disabilities.

Government Code Sec. 531.471. [STATE-WIDE BEHAVIORAL HEALTH COORDINATING COUNCIL:] DEFINITION. In this subchapter, "council" means the statewide behavioral health coordinating council.

Government Code Sec. 531.472. PURPOSE. The council is established to ensure a strategic statewide approach to behavioral health services.

Commentary by Sean Grove

Source: HB 2813

Effective Date: June 10, 2019

Applicability: Applies to the duties and responsibilities of the Statewide Behavioral Health Coordinating Council on or after the effective date.

Summary of Changes: The Statewide Behavioral Health Coordinating Council has operated since the 84th Legislature as part of the budget. HB

2813 provides statutory requirements for this council. This section provides a contextual definition of "council" and establishes the council's purpose. The addition of Section 531.471-531.476, Government Code, are nearly identical to the requirements that were initially brought by the General Appropriations Act of the 84th Legislature.

Government Code Sec. 531.473. COMPOSITION OF COUNCIL. (a) The council is composed of at least one representative designated by each of the following entities:

(1) the governor's office;

(2) the Texas Veterans Commission;

(3) the commission;

(4) the Department of State Health Services;

(5) the Department of Family and Protective Services;

(6) the Texas Civil Commitment Office;

(7) The University of Texas Health Science Center at Houston;

(8) The University of Texas Health Science Center at Tyler;

(9) the Texas Tech University Health Sciences Center;

(10) the Texas Department of Criminal Justice;

(11) the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(12) the Commission on Jail Standards;

(13) the Texas Indigent Defense Commission;

(14) the Court of Criminal Appeals;

(15) the Texas Juvenile Justice Department;

(16) the Texas Military Department;

(17) the Texas Education Agency;

(18) the Texas Workforce Commission;

(19) the Health Professions Council, representing;

iners;

(A) the State Board of Dental Exam-

iners;

(B) the Texas State Board of Phar-

macy;

(C) the State Board of Veterinary

Medical Examiners;

(D) the Texas Optometry Board;

(E) the Texas Board of Nursing; and

(F) the Texas Medical Board; and

(20) the Texas Department of Housing and
Community Affairs.

(b) The executive commissioner shall determine
the number of representatives that each entity may desig-
nate to serve on the council.

(c) The council may authorize another state
agency or institution that provides specific behavioral
health services with the use of appropriated money to desig-
minate a representative to the council.

(d) A council member serves at the pleasure of the
designating entity.

Commentary by Sean Grove

Source: HB 2813

Effective Date: June 10, 2019

Applicability: Applies to the appointments, duties, and responsibilities of the Statewide Behavioral Health Coordinating Council on or after the effective date.

Summary of Changes: This section sets out the membership of the Statewide Behavioral Health Coordinating Council. Of note, TJJD must designate staff to be its representative on the council.

Government Code Sec. 531.474. PRESIDING OFFICER. The mental health statewide coordinator shall serve as the presiding officer of the council.

Government Code Sec. 531.475. MEETINGS. The council shall meet at least once quarterly or more frequently at the call of the presiding officer.

Commentary by Sean Grove

Source: HB 2813

Effective Date: June 10, 2019

Applicability: Applies to the appointments, duties, and responsibilities of the Statewide Behavioral Health Coordinating Council on or after the effective date.

Summary of Changes: The council must meet at least once per quarter, and as many times as the presiding officer deems necessary.

Government Code Sec. 531.476. POWERS AND DUTIES. The council:

(1) shall develop and monitor the implementation of a five-year statewide behavioral health strategic plan;

(2) shall develop a biennial coordinated statewide behavioral health expenditure proposal;

(3) shall annually publish an updated inventory of behavioral health programs and services that are funded by the state that includes a description of how those programs and services further the purpose of the statewide behavioral health strategic plan;

(4) may create subcommittees to carry out the council's duties under this subchapter; and

(5) may facilitate opportunities to increase collaboration for the effective expenditure of available federal and state funds for behavioral and mental health services in this state.

Commentary by Sean Grove

Source: HB 2813

Effective Date: June 10, 2019

Applicability: Applies to the appointments, duties, and responsibilities of the Statewide Behavioral Health Coordinating Council on or after the effective date.

Summary of Changes: The council must create a statewide behavioral health strategic plan, develop a coordinated expenditure proposal, and provide an annual report of the behavioral health services provided by the state.

Health and Safety Code

Health and Safety Code Sec. 532.013. FORENSIC DIRECTOR. (a) In this section:

(1) "Forensic patient" means a person with mental illness or a person with an intellectual disability who is:

(A) examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure;

(B) found incompetent to stand trial under Subchapter C, Chapter 46B, Code of Criminal Procedure;

(C) committed to court-ordered mental health services under Subchapter E, Chapter 46B, Code of Criminal Procedure; [Ø]

(D) found not guilty by reason of insanity under Chapter 46C, Code of Criminal Procedure;

(E) examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51, Family Code; or

(F) found unfit to proceed under Subchapter C, Chapter 55, Family Code.

(2) “Forensic services” means a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a department facility.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Summary of Changes: As amended, Section 532.013 of the Health and Safety Code adds persons with intellectual disabilities to the definition of “forensic patient.” It also includes those persons found to have a mental illness or intellectual disability who were examined by a juvenile court on the issue of fitness to proceed under Chapter 51, Family Code, and those who were found unfit to proceed under Chapter 55, Family Code.

Health and Safety Code Sec. 532.013. FORENSIC DIRECTOR.

(a) In this section:

(1) “Forensic patient” means a person with mental illness or a person with an intellectual disability who is:

(A) examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure;

(B) found incompetent to stand trial under Subchapter C, Chapter 46B, Code of Criminal Procedure;

(C) committed to court-ordered mental health services under Subchapter E, Chapter 46B, Code of Criminal Procedure; ~~or~~

(D) found not guilty by reason of insanity under Chapter 46C, Code of Criminal Procedure;

(E) examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51, Family Code; or

(F) found unfit to proceed under Subchapter C, Chapter 55, Family Code.

(2) “Forensic services” means a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a department facility.

Commentary by Sean Grove

Source: SB 562

Effective Date: June 14, 2019

Summary of Changes: Section 532.013 contains similar changes as the previous section, but these changes appear in HHSC general provisions. The definition of “forensic patient” is the same as above; it includes persons with intellectual disabilities who were examined by a juvenile court on fitness to proceed or found unfit to proceed.

Health and Safety Code Sec. 572.001. REQUEST FOR ADMISSION. (a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. Subject to Subsection (c-1), the [The] parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) A person eligible to consent to treatment for the person under Section 32.001(a)(1), (2), or (3), Family Code, may request temporary authorization for the admission of the person to an inpatient mental health facility by petitioning under Chapter 35A, Family Code, in the district court in the county in which the person resides for an order for temporary authorization to consent to voluntary mental health services under this section. The petitioner for temporary authorization may be represented by the county attorney or district attorney.

(a-2) Except as provided by Subsection (c-1) ~~[(e)],~~ an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person’s parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, Chapter 55, Family Code, ~~[other state law,]~~ or department rule.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Summary of Changes: Section 572.001 carries forward the changes to the Family Code from SB 1238 (see above) to the Health and Safety Code chapter for voluntary mental health services. The new subsection (a-1) restates the provisions that are in the new Chapter 35A, Family Code.

Health and Safety Code Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer:

(1) has reason to believe and does believe that:

(A) the person is a person with mental illness; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

Commentary by Sean Grove

Source: SB 1238

Effective Date: September 1, 2019

Applicability: Applies to juvenile custody events on or after the effective date.

Summary of Changes: This section provides a fairly substantial change. Typically, a peace officer's ability to arrest a juvenile is controlled by Section 52.01, Family Code. A juvenile may be taken into custody pursuant to a juvenile court's order, with probable cause the juvenile has engaged in conduct indicating a need for supervision or delinquent conduct, pursuant to a directive to apprehend, or if there is probable cause to believe the juvenile violated a condition of probation. This change specifically allows a peace officer to take a juvenile into custody if the peace officer has reason to believe the juvenile has a mental illness and presents a substantial risk of harm to the juvenile or others.

Health and Safety Code. Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment.

(b) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(c) An order for temporary outpatient mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(d) A judge may not issue an order for temporary outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Commentary by Sean Grove

Source: SB 362

Effective Date: September 1, 2019

Applicability: Applies to orders for temporary outpatient mental health services on or after the effective date.

Summary of Changes: SB 362 attempts to add best practices into procedures on diverting individuals with mental health conditions from the criminal justice system. In doing so, SB 362 separates the standards for inpatient and outpatient commitment. New Section 574.0345 of the Health and Safety Code empowers the courts to also order temporary outpatient mental health services. If the court finds clear and convincing evidence that the patient has severe mental illness, and as a result of that illness the patient would lose the ability to independently function absent treatment, the court may order temporary outpatient mental health services. The court must also find the services are needed to prevent a relapse and that the patient lacks the ability to participate in the outpatient services voluntarily. Expert testimony of behavior patterns is necessary to confirm the need for treatment and decline in independent functionality absent the treatment. These orders are valid for up to 45 days, unless the court determines a period of up to 90 days is necessary.

Health and Safety Code. Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(b) The jury or judge is not required to make the finding under Subsection (a)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(c) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(d) An order for extended outpatient mental health services must provide for a period of treatment not to exceed 12 months.

(e) A judge may not issue an order for extended outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Commentary by Sean Grove

Source: SB 362

Effective Date: September 1, 2019

Applicability: Applies to orders extending outpatient mental health services on or after the effective date.

Summary of Changes: Section 574.0355 makes conforming changes from the separation of inpatient and outpatient mental health services brought by SB 362 (see commentary above). Similar to the current process for extending mental health services under Section 574.035, Health and Safety Code, this section provides the court the mechanism to extend the outpatient mental health services. The criteria for commitment is the same as the new 574.0345, but the court must also find that the condition is expected to continue longer than 90 days to order the extended mental health services. This order may not exceed 12 months.

Health and Safety Code Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [COMPETENCY OR FITNESS TO PROCEED]. (c) The office shall approve and make generally available in electronic format a standard form for use by a person providing a written report under Article 16.22(a)(1)(B), Code of Criminal Procedure.

Commentary by Sean Grove

Source: HB 601

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of the Texas Correctional Office on Offenders with Medical or Mental Impairments on or after the effective date.

Summary of Changes: This sections requires TCOOMMI to create an electronic form for the report required under Article 16.22(a)(1)(B), Code of Criminal Procedure (see above analysis).

Occupations Code

Occupations Code Sec. 110.001(7) COUNCIL ON SEX OFFENDER TREATMENT DEFINITIONS.

(7) "Sex offender treatment provider" means a person, licensed by the council and recognized based on training and experience to provide assessment and treatment to adult sex offenders or juveniles with sexual behavioral problems who have been convicted, adjudicated, awarded deferred adjudication, or referred by a state agency or a court, and licensed in this state to practice as a physician, psychiatrist,

psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master social worker under a clinical supervision plan approved by the Texas Behavioral Health Executive Council [~~State Board of Social Worker Examiners~~], or advanced practice nurse recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for rehabilitation of sex offenders.

Commentary by Sean Grove

Source: HB 1501

Effective Date: September 1, 2019

Applicability: Applies to the duties and responsibilities of the Council on Sex Offender Treatment on or after the effective date.

Summary of Changes: HB 1501 came from the sunset review of the state's four behavioral health licensing boards. This legislation created the Behavioral Health Executive Council, of which the four behavioral health licensing boards are members. This is a conforming change to the definition of "sex offender treatment provider" for the Council on Sex Offender Treatment. TJJJD is a member of the Council on Sex Offender Treatment. This does not expand the definition, but clarifies here that the clinical supervision plan for these licensed social workers and counselors comes from the new Behavioral Health Executive Council, and not the State Board of Social Worker Examiners.

7. Legislation Affecting Sex Offenses, Human Trafficking, and Victims

Civil Practice and Remedies Code

Civil Practice and Remedies Code Sec. 98A.001. [LIABILITY FOR COMPELLED PROSTITUTION AND CERTAIN PROMOTION OF PROSTITUTION:] DEFINITIONS. (1-a) “Aggravated online promotion of prostitution” means conduct that constitutes an offense under Section 43.041, Penal Code.

(4-a) “Online promotion of prostitution” means conduct that constitutes an offense under Section 43.031, Penal Code.

Civil Practice and Remedies Code 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, online promotion of prostitution, aggravated promotion of prostitution, or aggravated online 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.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Senate Bill 20 is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This change adds the newly created offenses of online promotion of prostitution and aggravated online promotion of prostitution to the list of offenses for which a defendant may be found liable for damages to a victim if the defendant knowingly or intentionally engages in the conduct.

Code of Criminal Procedure

Code of Criminal Procedure Art. 2.305. REPORT REQUIRED CONCERNING HUMAN TRAFFICKING CASES. (a) This article applies only to:

- (1) a municipal police department, sheriff’s department, constable’s office, county attorney’s of-

— fice, district attorney’s office, and criminal district attorney’s office, as applicable, in a county with a population of more than 50,000; and

(2) the Department of Public Safety.

(b) An entity described by Subsection (a) that investigates the alleged commission of an offense under Chapter 20A, Penal Code, or the alleged commission of an offense under Chapter 43, Penal Code, which may involve human trafficking, shall submit to the attorney general the following information:

(1) the offense being investigated, including a brief description of the alleged prohibited conduct;

(2) regarding each person suspected of committing the offense and each victim of the offense:

(A) the person’s:

(i) age;

(ii) gender; and

(iii) race or ethnicity,

as defined by Article 2.132; and

(B) the case number associated with the offense and the person suspected of committing the offense;

(3) the date, time, and location of the alleged offense;

(4) the type of human trafficking involved, including:

(A) forced labor or services, as defined by Section 20A.01, Penal Code;

(B) causing the victim by force, fraud, or coercion to engage in prohibited conduct involving one or more sexual activities, including conduct described by Section 20A.02(a)(3), Penal Code; or

(C) causing a child victim by any means to engage in, or become the victim of, prohibited conduct involving one or more sexual activities, including conduct described by Section 20A.02(a)(7), Penal Code;

(5) if available, information regarding any victims’ service organization or program to which the victim was referred as part of the investigation; and

(6) the disposition of the investigation, regardless of the manner of disposition.

(c) An attorney representing the state who prosecutes the alleged commission of an offense under Chapter 20A, Penal Code, or the alleged commission of an offense under Chapter 43, Penal Code, which may involve human trafficking, shall submit to the attorney general the following information:

(1) the offense being prosecuted, including a brief description of the alleged prohibited conduct;

(2) any other charged offense that is part of the same criminal episode out of which the offense described by Subdivision (1) arose;

(3) the information described by Subsections (b)(2), (3), (4), and (5); and

(4) the disposition of the prosecution, regardless of the manner of disposition.

(d) The attorney general shall enter into a contract with a university that provides for the university's assistance in the collection and analysis of information received under this article.

(e) In consultation with the entities described by Subsection (a), the attorney general shall adopt rules to administer this article, including rules prescribing:

(1) the form and manner of submission of a report required by Subsection (b) or (c); and

(2) additional information to include in a report required by Subsection (b) or (c).

Commentary by Kaci Singer

Source: HB 3800

Effective Date: September 1, 2019

Applicability: Applies to investigations occurring on or after the implementation date. The Department of Public Safety (DPS) is not required to comply until August 1, 2020. An entity other than DPS that is located in a county with a population of more than 500,000 is not required to comply until August 1, 2020. An entity other than DPS that is located in a county with a population of 500,000 or less is not required to comply until August 1, 2021. (Implementation dates are in Section 2 of the bill.)

Summary of Changes: Applies to the following entities in a county with a population of 50,000 or more: municipal police department, sheriff's office, constable's office, district attorney's office, criminal district attorney's office, and county attorney's office. It also applies to DPS. If any of those entities investigates an alleged offense under Chapter 20A (Trafficking of Persons) or Chapter 43 (Public Indecency), Penal Code, that might involve human trafficking, the entity is required to report certain information to the Office of the Attorney General, including the offense being investigated, with a brief description; the date, time, and location of the offense; the type of trafficking involved; the age, gender, and race or ethnicity of each suspect and victim; the case number; information on victims' organizations or programs to which victims were referred, if available; and the disposition of the investigation. An attorney prosecuting the case must report the same information as well as any other charged offenses arising from the same criminal episode and the disposition of the prosecution. The attorney general is required to contract with a university for the university's assistance in the collection and analysis of the information received. The attorney general is mandated to consult with the entities involved and adopt rules to administer this law, including rules prescribing the form and manner for submitting the report and any additional information that must be included in the report.

Code of Criminal Procedure CHAPTER 7A. PROTECTIVE ORDER FOR VICTIMS OF SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING. (Chapter Heading Change)

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to protective orders filed on or after the effective date.

Summary of Changes: This chapter heading change conforms with the newly created offense of Indecent Assault.

Code of Criminal Procedure Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. Article 7A.01(a), Code of Criminal Procedure, is amended to read as follows:

(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, 22.012, 22.021, or 42.072, Penal Code;

(2) a person who is the victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1);

(4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or

(5) a prosecuting attorney acting on behalf of a person described by Subdivision (1), (2), (3), or (4).

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to protective orders filed on or after the effective date.

Summary of Changes: Adds the newly created offense of Indecent Assault, developed to provide greater penalties for groping that does not meet the elements of sexual assault, to the list of offenses for which a victim may request a protective order without regard to the relationship between the applicant and the alleged offender.

Code of Criminal Procedure Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. (a-1) Except as provided by Subsection (a-2), if an application has not yet been filed in the case under Subsection (a), the attorney representing the state shall promptly file an application for a protective order with respect to each victim of an offense listed in Subdivision (1) or (2) of that subsection following the offender's conviction of or placement on deferred adjudication community supervision for the offense.

(a-2) The attorney representing the state may not file an application under Subsection (a-1) with respect to a victim who is at least 18 years of age if the victim requests that the attorney representing the state not file the application.

Commentary by Kaci Singer

Source: HB 1343

Effective Date: September 1, 2019

Applicability: Applies to a conviction or deferred adjudication entered on or after the effective date.

Summary of Changes: The conditions of sex offender registration prohibit an offender from contacting the victim. However, registration does not occur while a person is incarcerated. The purpose of this law change is to expand protective orders so that a victim has protection against such contact while the person is incarcerated. The change in Article 7A.01 the Code of Criminal Procedure requires the prosecuting attorney to file an application for protective order for each victim promptly upon conviction or placement of the defendant on deferred adjudication if no protective order application has been filed yet. This applies to all offenses for which a protective order is available. The only exception to the prosecutor's requirement to file the application is when a victim who is at least 18 years old asks the prosecutor not to file the application.

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, indecent assault, 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 Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to protective orders filed on or after the effective date.

Summary of Changes: Adds the newly created offense of Indecent Assault to the list of offenses for which a court may file a temporary ex parte protective order.

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, indecent assault, stalking, or trafficking.

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to protective orders filed on or after the effective date.

Summary of Changes: Adds the newly created offense of Indecent Assault to the list of offenses for which the court must make findings prior to issuing a protective order.

Code of Criminal Procedure Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (c) An offender's conviction of or placement on deferred adjudication community supervision for an offense listed in Article 7A.01(a)(1) or (2) constitutes reasonable grounds under Subsection (a).

Commentary by Kaci Singer

Source: HB 1343

Effective Date: September 1, 2019

Applicability: Applies to a conviction or order of deferred adjudication community supervision entered on or after the effective date.

Summary of Changes: Provides that a conviction or order of adjudication for community supervision for offenses for which a protective order may be granted constitutes the reasonable grounds required for a court to issue a protective order.

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

(1) no limitation:

(A) murder and manslaughter;

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

(C) sexual assault, if:

(i) during the investigation of the offense biological matter is collected and the matter:

(a) has not yet been subjected to forensic DNA testing; or

(b) has been subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii) probable cause exists to believe that the defendant has committed the same or a similar ~~sex~~ [sexual] offense against five or more victims;

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

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

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

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

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

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

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

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

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

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

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

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

(F) arson;

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

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

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

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

(B) securing execution of document by deception;

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

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

(E) money laundering;

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

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

(H) exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

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

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

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

(A) theft or robbery;

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

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

(D) abandoning or endangering a child; or

(E) insurance fraud;

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

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

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

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

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

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

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

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

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

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Does not apply to an offense if the prosecution of the offense becomes barred by limitation before

the effective date. The prosecution of that offense remains barred as if this Act had not taken effect.

Summary of Changes: In 1985, when she was 13 years old, Lavinia Masters was raped at knifepoint in her Dallas home by an unknown intruder. Her family immediately notified the police and took her to the hospital. A forensic medical exam was performed and a rape kit was used to collect DNA evidence. One or two days later, police came and showed her pictures of potential perpetrators; she was unable to identify her attacker. She did not hear anything about her case for 21 years. She had assumed they had been unable to find her due to moves or that they had called her mother. In 2005, she saw an ad in the *Dallas Morning News* for a Dallas Police Department initiative to solve old rape cases. Under the federal Debbie Smith Act, law enforcement had received funds to test old rape kits. Ms. Masters called in immediately. She found out that the police had closed her case after 72 hours, citing a lack of evidence. She also found out that the rape kit had never been tested. It took the police two to three months to find her kit and another five to six months to get a DNA match for the perpetrator. He had spent time in and out of prison for other crimes. Unfortunately, by the time they found him, the statute of limitations had passed and she was unable to press charges. Though devastated, this prompted her to action. She became actively involved in promoting federal and state legislation to address this issue. Nationwide there are up to 400,000 cases involving untested rape kits. This change in law provides that there is no statute of limitations in a sexual assault case if the rape kit has not yet been subjected to forensic DNA testing.

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

In relevant part...

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

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

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

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

(7) two years from the date the offense was discovered: sexual assault punishable as a state jail felony under Section 22.011(f)(2), Penal Code; or

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

Commentary by Kaci Singer

Source: SB 1259

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This bill is designed to address situations in which health care providers are inserting donated reproductive material into patients and the material used either belongs to the health care provider or to another individual that the health care provider knows is not the person from whom the patient has consented to receive material. The new offense under sexual assault is a state jail felony with a two-year statute of limitations that begins on the date the offense was discovered.

Code of Criminal Procedure Art. 13.072. CONTINUOUS VIOLENCE AGAINST THE FAMILY COMMITTED IN MORE THAN ONE COUNTY. An offense under Section 25.11, Penal Code, may be prosecuted in any county in which the defendant engaged in the conduct constituting an offense under Section 22.01(a)(1), Penal Code, against a person described by Section 25.11(a), Penal Code.

Commentary by Kaci Singer

Source: HB 1661

Effective Date: September 1, 2019

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This Act is known as Rachel's Law after Rachel Pesek, who testified in committee hearings that she was severely beaten by her domestic partner to the point of needing emergency care at Brooks Army Medical Center in San Antonio. This was not the first time she had been beaten, but the other times it was in another county. When she called the San Antonio Police Department, the officer told her the case was a Class C misdemeanor because it was not considered repeated for the purposes of Continuous Violence Against the Family under Section 25.11, Penal Code, since it was the first assault in Bexar County (there was no explanation as to why an assault the result in the level of care she received was not at least a Class A misdemeanor).

The purpose of this law change is to close a potential loophole in the law as initially passed in 2009. The law provides that if a person, on two or more occasions in a 12-month period, engages in conduct constituting assault with bodily injury against a family member, member of their household, or person with whom they have a dating relationship, then the offense is a third degree felony. Prosecutors determined that, due to venue provisions, multiple offenses occurring in contiguous counties could be prosecuted together for the offense of Continuous Violence Against the Family under Section 25.11, Penal Code, but those in non-contiguous counties could not (see

Art. 13.04, Code of Criminal Procedure). This new provision provides that an offense under Section 25.11, Penal Code, may be prosecuted in any county where conduct constituting the offense of Assault – Bodily Injury occurred.

Code of Criminal Procedure Art. 17.292. MAGISTRATE’S ORDER FOR EMERGENCY PROTECTION. (a) At a defendant’s appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 20A.02, 20A.03, 22.011, 22.012, 22.021, or 42.072, Penal Code, the magistrate may issue an order for emergency protection on the magistrate’s own motion or on the request of:

- (1) the victim of the offense;
- (2) the guardian of the victim;
- (3) a peace officer; or
- (4) the attorney representing the state.

(g) An order for emergency protection issued under this article must contain the following statements printed in bold-face type or in capital letters:

“A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN ~~[FAMILY VIOLENCE OR]~~ A SEPARATE ~~[STALKING OR TRAFFICKING]~~ OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A VIOLATION OF THIS ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN 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, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

“NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.”

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to protective orders filed on or after the effective date.

Summary of Changes: This provision adds the newly created offense of Indecent Assault to the list of offense for which a magistrate may issue an emergency protective order and makes conforming changes to the language that must be in the order.

Code of Criminal Procedure Art. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE ISSUED. A judge of competent jurisdiction may issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

(1) a felony under any of the following provisions of the Health and Safety Code:

(A) Chapter 481, other than felony possession of marihuana;

(B) Chapter 483; or

(C) Section 485.032;

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

(A) Section 19.02;

(B) Section 19.03;

(C) Section 20.03;

(D) Section 20.04;

(E) Chapter 20A;

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

(G) Section 38.11;

(H) Section 43.04;

(I) Section 43.041;

(J) Section 43.05; or

(K) ~~[#]~~ Section 43.26; or

(3) an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2).

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change adds aggravated online promotion of prostitution to the list of offenses for which an intercept order may be issued. SB 20 contains the recommendations of the Texas Human Trafficking Prevention Task Force.

Code of Criminal Procedure Art. 38.371. EVIDENCE IN PROSECUTION ~~[PROSECUTIONS]~~ OF OFFENSE COMMITTED AGAINST MEMBER

OF DEFENDANT'S FAMILY OR HOUSEHOLD OR PERSON IN DATING RELATIONSHIP WITH DEFENDANT [CERTAIN OFFENSES INVOLVING FAMILY VIOLENCE]. (a) This article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, for which the alleged victim is [that is committed under:

~~[(1) Section 22.01, 22.02, or 22.04, Penal Code, against]~~ a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code ~~[- or~~

~~[(2) Section 25.07 or 25.072, Penal Code, if the offense is based on a violation of an order or a condition of bond in a case involving family violence].~~

Commentary by Kaci Singer

Source: SB 2136

Effective Date: September 1, 2019

Applicability: Applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date.

Summary of Changes: Current law allows for the admission of testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining if the defendant committed assault or aggravated assault or violated certain restraining orders if the victim was in a dating relationship with the defendant or was a member of the defendant's family or household, including testimony or evidence regarding the nature of the relationship between the actor and the alleged victim. Because family violence occurs in other types of offenses, such as sexual assault and burglary of a habitation, this change expands the law so that it applies to every offense in which the victim is a member of the defendant's family or household or is a person in a dating relationship with the defendant. Currently this law applies only to specific offenses. Under this provision, each party will be able to offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining if the defendant committed the offense, including testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.

Code of Criminal Procedure Art. 38.43. EVIDENCE CONTAINING BIOLOGICAL MATERIAL. (c) An entity or individual described by Subsection (b) shall ensure that biological evidence, other than the contents of a sexual assault examination kit subject to Subsection (c-1), collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved:

(1) for not less than 40 years, or until any [the] applicable statute of limitations has expired, if there is an unapprehended actor associated with the offense; or

(2) in a case in which a defendant has been convicted, placed on deferred adjudication community supervision, or adjudicated as having engaged in delinquent conduct and there are no additional unapprehended actors associated with the offense:

(A) until the inmate is executed, dies, or is released on parole, if the defendant is convicted of a capital felony;

(B) until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment in the Texas Department of Criminal Justice;

(C) until the defendant completes the defendant's term of community supervision, including deferred adjudication community supervision, if the defendant is placed on community supervision;

(D) until the defendant dies, completes the defendant's sentence, or is released on parole, mandatory supervision, or juvenile probation, if the defendant is committed to the Texas Juvenile Justice Department; or

(E) until the defendant completes the defendant's term of juvenile probation, including a term of community supervision upon transfer of supervision to a criminal court, if the defendant is placed on juvenile probation.

(c-1) An entity or individual described by Subsection (b) shall ensure that the contents of a sexual assault examination kit collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved for not less than 40 years, or until any applicable statute of limitations has expired, whichever period is longer. This subsection applies regardless of whether a person has been apprehended for or charged with committing the offense.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies only to biological evidence destroyed on or after the effective date.

Summary of Changes: This change requires a governmental or public entity that collects or stores biological evidence to ensure that the contents of a sexual assault examination kit collected pursuant to the investigation or prosecution of a felony be retained and preserved for the longer of 40 years or the statute of limitations for the offense. The provision applies regardless of whether a person has been apprehended for or charged with the offense.

Code of Criminal Procedure Art. 38.471. EVIDENCE IN PROSECUTION FOR EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In the prosecution of an offense under Section 32.53, Penal Code, evidence that the defendant has engaged in other conduct that is similar

to the alleged criminal conduct may be admitted for the purpose of showing the defendant's knowledge or intent regarding an element of the offense.

(b) 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 the Texas Rules of Evidence or other applicable law.

Commentary by Kaci Singer

Source: SB 2136

Effective Date: September 1, 2019

Applicability: Applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date.

Summary of Changes: Allows for the admissibility in a case of Exploitation of a Child, Elderly Individual, or Disabled Individual of evidence to show the defendant has engaged in other similar conduct for the purpose of showing knowledge or intent regarding an element of the offense. Article 38.471 of the Code of Criminal Procedure provides that Rule 403, which allows for the exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay or needless presentation of cumulative evidence, applies. The law also specifies that it does not allow the presentation of character evidence that would otherwise be inadmissible under the Rules of Evidence or other applicable law.

Code of Criminal Procedure Art. 56.01 DEFINITIONS. (2-b) "Sexual assault examiner" and "sexual assault nurse examiner" have the meanings assigned by Section 420.003, Government Code.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Applicability: Applies to a forensic medical exam that occurs on or after the effective date.

Summary of Changes: Inserts definitions of sexual assault examiner and sexual assault nurse examiner into the statute on crime victims' rights.

Code of Criminal Procedure Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING. (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 120 [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.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Applicability: Applies to forensic medical exams occurring on or after the effective date.

Summary of Changes: Under current law, if a victim reports a sexual assault to law enforcement within 96 hours or arrives at a health care facility within 96 hours of the offense, the victim is entitled to a forensic medical examination. This extends that period to 120 hours.

Code of Criminal Procedure Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING. (d) This subsection applies only to a victim of an offense under Section 20A.02, 20A.03,

21.02, 21.11, 22.011, 22.012, 22.021, 42.072, or 43.05, Penal Code. In addition to the rights enumerated in Article 56.02 and, if applicable, Subsection (a) of this article, a victim described by this subsection or a parent or guardian of the victim is entitled to the following rights within the criminal justice system:

(1) the right to request that the attorney representing the state, subject to the Texas Disciplinary Rules of Professional Conduct, file an application for a protective order under Article 7A.01 on behalf of the victim;

(2) the right to be informed:

(A) that the victim or the victim's parent or guardian, as applicable, may file an application for a protective order under Article 7A.01;

(B) of the court in which the application for a protective order may be filed; and

(C) that, on request of the victim or of the victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state may file the application for a protective order;

(3) if the victim or the victim's parent or guardian, as applicable, is present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the court the information described by Subdivision (2) and, if the court has jurisdiction over applications for protective orders that are filed under Article 7A.01, the right to file an application for a protective order immediately following the defendant's conviction or placement on deferred adjudication community supervision; and

(4) if the victim or the victim's parent or guardian, as applicable, is not present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the attorney representing the state the information described by Subdivision (2).

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Adds the newly created offense of Indecent Assault to the list of offenses for which the rights of a victim under Article 56.021, Code of Criminal Procedure, apply.

Code of Criminal Procedure Art. 56.06. FORENSIC MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS. (a) This article applies to health care facilities described by Article 56.065.

(a-1) If a sexual assault is reported to a law enforcement agency within 120 [96] hours of the assault, the law enforcement agency, with the consent of the victim, a

person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a forensic medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a forensic medical examination under this subsection only if the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and if there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a-1) [~~(a)~~], on receiving the consent described by that subsection the law enforcement agency may request a forensic medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

(b-1) If a sexual assault is reported to a law enforcement agency as provided by Subsection (a-1) or (b), the law enforcement agency shall document, in the form and manner required by the attorney general, whether the agency requested a forensic medical examination. The law enforcement agency shall:

(1) provide the documentation of the agency's decision regarding a request for a forensic medical examination to:

(A) the health care facility and the sexual assault examiner or sexual assault nurse examiner, as applicable, who provides services to the victim that are related to the sexual assault; and

(B) the victim or the person who consented to the forensic medical examination on behalf of the victim; and

(2) maintain the documentation of the agency's decision in accordance with the agency's record retention policies.

(b-2) On application to the attorney general, a health care facility that provides a forensic medical examination to a sexual assault survivor in accordance with this article, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, is entitled to be reimbursed in an amount set by attorney general rule for:

(1) the reasonable costs of the forensic portion of that examination; and

(2) the evidence collection kit.

(b-3) The application under Subsection (b-2) must be in the form and manner prescribed by the attorney general and must include:

(1) the documentation that the law enforcement agency requested the forensic medical examination, as required under Subsection (b-1); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(b-4) A health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (b-2)

shall accept reimbursement from the attorney general as payment for the costs unless:

(1) the health care facility or sexual assault examiner or sexual assault nurse examiner, as applicable:

(A) requests, in writing, additional reimbursement from the attorney general; and

(B) provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

(2) the attorney general determines that there is a reasonable justification for additional reimbursement.

(b-5) A health care facility is not entitled to reimbursement under this article unless the forensic medical examination was conducted at the facility by a physician, sexual assault examiner, or sexual assault nurse examiner.

(g) The attorney general shall adopt rules necessary to implement this article.

(h) On request, the attorney general may provide training to a health care facility regarding the process for applying for reimbursement under this article.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Applicability: Applies to forensic medical exams occurring on or after the effective date.

Summary of Changes: Under current law, law enforcement pays a health care facility for certain costs related to a forensic exam and evidence collection kits related to reports of sexual assault. Law enforcement then obtains reimbursement from the attorney general. Concerns have been raised about the amount of law enforcement resources used in this process. These changes aim to create a more efficient process by having the health care facility, sexual assault examiner, or sexual assault nurse examiner, as appropriate, request reimbursement directly from the attorney general, thereby reducing the burden on law enforcement and creating efficiencies in the process. It applies to health care facilities described by Article 56.065. If a sexual assault is reported to law enforcement within 120, rather than 96, hours of the assault, the law enforcement agency is to request a forensic medical exam of the victim (with consent). If reported after that time, the agency may, but is not required to, request an exam. For each report, the law enforcement agency must document whether it requested an exam and provided documentation for its decision to request an exam to the health care facility and sexual assault examiner or sexual assault nurse examiner who provides services to the victim and to the victim or person who consented to the exam on behalf of the victim. The agency must maintain the documentation of its decision in accordance with its records retention policy. Upon application to the attorney general, the health care facility is entitled to reimbursement, in an

amount set by attorney general rule, for the reasonable costs of the forensic portion of the exam and the evidence collection kit. It is possible to request additional reimbursement if justified. No reimbursement is authorized unless the exam was conducted at the facility by a physician, sexual assault examiner, or sexual assault nurse examiner. The attorney general may provide training to a health care facility regarding the reimbursement process.

Government Code Sec. 56.06. FORENSIC MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS. Subsection 56.06 (c) is REPEALED.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Summary of Changes: Repeals the provision of law regarding reimbursing law enforcement agencies for the cost of forensic medical examination in an alleged sexual assault. This is no longer necessary given the other changes in this bill, which provide for reimbursement directly to the health care facility as opposed to the law enforcement agency.

Government Code Sec. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS NOT REPORTED ASSAULT; COSTS. Subsections 56.065 (a)(3) and (d) are REPEALED.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Summary of Changes: Repeals the provision of law defining sexual assault examiner and sexual assault nurse examiner, as those definitions were moved to 56.01. Repeals the provision of law regarding reimbursing law enforcement agencies for the cost of forensic medical examination in an alleged sexual assault. This is no longer necessary given the other changes in this bill, which provide for reimbursement directly to the health care facility as opposed to the law enforcement agency.

Code of Criminal Procedure Art. 56.32. DEFINITIONS. (a) (14) “Trafficking of persons” means any offense that results in a person engaging in forced labor or services, including sexual conduct, and that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041, 43.05, 43.25, 43.251, or 43.26, Penal Code.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This is a conforming change to add the newly created offenses of online promotion of prostitution and aggravated online promotion of prostitution to the definition of trafficking of persons.

Code of Criminal Procedure Art. 56.42. LIMITS ON COMPENSATION. (d) A ~~[victim who is a]~~ victim of stalking, family violence, or trafficking of persons, ~~[or]~~ a victim of sexual assault who is assaulted in the victim's place of residence, or a child who is a victim of a murder attempt in the child's place of residence may receive a onetime-only assistance payment in an amount not to exceed:

(1) \$2,000 to be used for relocation expenses, including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and for out-of-state moves, transportation, lodging, and meals; and

(2) \$1,800 to be used for housing rental expenses.

Commentary by Kaci Singer

Source: HB 2079

Effective Date: September 1, 2019

Applicability: Applies to a criminal offense occurring on or after the effective date.

Summary of Changes: In May of 2018, four-year-old Sir Romeo Milam was watching television with his grandmother in their apartment when a shootout began outside. A stray bullet struck Sir Romeo, resulting in him spending seven months in the hospital and undergoing numerous surgeries and physical therapy. Medical bills for the family have reached into the millions, leaving them little money to relocate from the apartment, which is unsafe and a scene of trauma for him. This change in law makes a child who is a victim of a murder attempt in the child's home eligible to receive relocation cost reimbursement under the Crime Victims' Compensation Program.

Code of Criminal Procedure Art. 56.54. FUNDS.
(k) The attorney general may use the compensation to victims of crime fund to:

(1) reimburse a health care facility or a sexual assault examiner or sexual assault nurse examiner for certain costs of a forensic medical examination that are incurred by the facility or the examiner ~~[reimburse a law enforcement agency for the reasonable costs of a forensic medical examination that are incurred by the agency]~~ under Article 56.06 or 56.065, as provided by those articles; and

(2) make a payment to or on behalf of an individual for the reasonable costs incurred for medical

care provided under Article 56.06 or 56.065 in accordance with Section 323.004, Health and Safety Code.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Applicability: Applies to forensic medical exams occurring on or after the effective date.

Summary of Changes: This change allows the attorney general to provide reimbursement directly to a health facility or sexual assault examiner or sexual assault nurse examiner for certain costs of a forensic medical exam as opposed to reimbursing the law enforcement agency for the amount it has paid the health care facility.

Code of Criminal Procedure Art. 56.81. DEFINITIONS. (7) "Trafficking of persons" means any conduct that constitutes an offense under Section 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041, 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 Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This is a conforming change to add the newly created offenses of online promotion of prostitution and aggravated online promotion of prostitution to the definition of trafficking of persons.

Code of Criminal Procedure Art. 62.001. SEX OFFENDER REGISTRATION PROGRAM: DEFINITIONS. (5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.04 (Aggravated promotion of prostitution), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(3) of that section;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), (K), or (L);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), (K), or (L), but not if the violation results in a deferred adjudication;

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code;

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code; or

(L) a violation of Section 20A.03 (Continuous trafficking of persons), Penal Code, if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

Commentary by Kaci Singer

Source: SB 1802

Effective Date: September 1, 2019

Applicability: Applies to a person required to register as sex offender on the basis of a conviction or adjudication for or based on an offense committed on or after the effective date.

Summary of Changes: Adds aggravated promotion of prostitution to the list of offenses for which sex offender registration is applicable.

Code of Criminal Procedure Art. 62.001. SEX OFFENDER REGISTRATION PROGRAM: DEFINITIONS. (5) “Reportable conviction or adjudication” means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

In relevant part...

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(2) [~~(c-1)(3)~~] of that section;

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This is a conforming change related to changes and renumbering in Section 43.02, Penal Code, discussed later in this chapter.

Education Code

Education Code Sec. 38.0041. POLICIES ADDRESSING SEXUAL ABUSE AND OTHER MALTREATMENT OF CHILDREN. As reenacted and amended by as amended by Chapter 762 (S.B. 2039), Acts of the 85th Legislature, Regular Session, 2017. (a) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

(a-1) A school district may collaborate with local law enforcement and outside consultants with expertise in the prevention of sexual abuse and sex trafficking to create the policy required under Subsection (a), and to create a referral protocol for high-risk students.

(b) A policy required by this section must address:

(1) methods for increasing staff, student, and parent awareness of issues regarding sexual

abuse, sex trafficking, and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, sex trafficking, or other maltreatment, using resources developed by the agency or the commissioner regarding those issues, including resources developed by the agency under Section 38.004 [~~or by the commissioner under Section 28.017~~];

(2) actions that a child who is a victim of sexual abuse, sex trafficking, or other maltreatment should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse, sex trafficking, or other maltreatment.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children must include training, as provided by this subsection, concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities. The training:

(1) must be provided, as part of a new employee orientation, to all new school district and open-enrollment charter school employees and to existing district and open-enrollment charter school employees on a schedule adopted by the agency by rule until all district and open-enrollment charter school employees have taken the training; and

(2) must include training concerning:

(A) factors indicating a child is at risk for sexual abuse, sex trafficking, or other maltreatment;

(B) likely warning signs indicating a child may be a victim of sexual abuse, sex trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, sex trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk of sexual abuse, sex trafficking, or other maltreatment; and

(E) community organizations that have relevant existing research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff members, students, and parents.

Commentary by Kaci Singer

Source: HB 111

Effective Date: May 31, 2019

Applicability: Applies beginning the 2019-2020 school year.

Summary of Changes: Modifies the law to require that existing training that is required regarding increasing staff, student, and parent awareness of issues regarding sexual abuse, sex trafficking, and other mistreatment of children also include training regarding sexual abuse, sex trafficking, and other mistreatment of children with significant cognitive disabilities, as these individuals are victimized at higher rates than those without disabilities and are also less likely to report abuse. The purpose of the change is to better equip schools with tools to help decrease child abuse and neglect incidents in Texas.

Family Code

Family Code Sec. 51.17. PROCEDURE AND EVIDENCE. (h) Articles 58.001, 58.101, 58.102, 58.103, 58.104, 58.105, [57.04] and 58.106 [57.02], Code of Criminal Procedure, relating to the use of a pseudonym by a victim in a criminal case, apply in a proceeding held under this title.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: This is a non-substantive revision. Chapter 57, Code of Criminal Procedure, relating to Confidentiality of Identifying Information of Sex Offense Victims was repealed and the substance of it placed in Chapter 58, Code of Criminal Procedure. References to Chapter 57 have been updated in Family Code Section 51.17.

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 56B [~~56~~], Code of Criminal Procedure, including information related to the costs that may be compensated under that ~~chapter~~ [~~subchapter~~] and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that ~~chapter~~ [~~subchapter~~], the payment of medical expenses under Subchapter F, Chapter 56A [~~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 for inclusion in the person's file information to be considered by the department 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 Subchapter B, Chapter 56A [~~Article 56.02 or 56.021~~], Code of Criminal Procedure.

(b) In notifying a victim of the release or escape of a person, the Texas Juvenile Justice Department shall use the same procedure established for the notification of the release or escape of an adult offender under Subchapter K, Chapter 56A [~~Article 56.14~~], Code of Criminal Procedure.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: This is a non-substantive revision. Chapter 56, Code of Criminal Procedure, relating to the Rights of Crime Victims, was repealed and the substance of it placed in Chapters 56A and 56B, Code of Criminal Procedure. References to Chapter 56 have been updated in Family Code Section 57.002.

Family Code Sec. 57.003. DUTIES OF JUVENILE BOARD AND VICTIM ASSISTANCE COORDINATOR. (d) The victim assistance coordinator shall ensure that at a minimum, a victim, guardian of a victim, or close relative of a deceased victim receives:

(1) a written notice of the rights outlined in Section 57.002;

(2) an application for compensation under the Crime Victims' Compensation Act ([~~Subchapter B,~~] Chapter 56B [~~56~~], Code of Criminal Procedure); and

(3) a victim impact statement with information explaining the possible use and consideration of the victim impact statement at detention, adjudication, and release proceedings involving the juvenile.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: This is a non-substantive revision. Chapter 56, Code of Criminal Procedure, relating to the Rights of Crime Victims, was repealed and the substance of it placed in Chapters 56A and 56B, Code of Criminal Procedure. References to Chapter 56 have been updated in Family Code Section 57.003.

Family Code Sec. 57.0031. NOTIFICATION OF RIGHTS OF VICTIMS OF JUVENILES. At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the juvenile probation office having the responsibility for the disposition of the juvenile, the office shall provide the victim a written notice:

(1) containing information about the availability of emergency and medical services, if applicable;

(2) stating that the victim has the right to receive information regarding compensation to victims

of crime as provided by the Crime Victims' Compensation Act (~~Subchapter B,~~ Chapter 56B [56], Code of Criminal Procedure), including information about:

(A) the costs that may be compensated and the amount of compensation, eligibility for compensation, and procedures for application for compensation;

(B) the payment for a medical examination for a victim of a sexual assault; and

(C) referral to available social service agencies that may offer additional assistance;

(3) stating the name, address, and phone number of the victim assistance coordinator for victims of juveniles;

(4) containing the following statement: "You may call the crime victim assistance coordinator for the status of the case and information about victims' rights.";

(5) stating the rights of victims of crime under Section 57.002;

(6) summarizing each procedural stage in the processing of a juvenile case, including preliminary investigation, detention, informal adjustment of a case, disposition hearings, release proceedings, restitution, and appeals;

(7) suggesting steps the victim may take if the victim is subjected to threats or intimidation;

(8) stating the case number and assigned court for the case; and

(9) stating that the victim has the right to file a victim impact statement and to have it considered in juvenile proceedings.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: This is a non-substantive revision. Chapter 56, Code of Criminal Procedure, relating to the Rights of Crime Victims, was repealed and the substance of it placed in Chapters 56A and 56B, Code of Criminal Procedure. References to Chapter 56 have been updated in Family Code Section 57.003.

Government Code

Government Code Sec. 402.034. HUMAN TRAFFICKING PREVENTION COORDINATING COUNCIL. (a) In this section, "council" means the human trafficking prevention coordinating council.

(b) The office of the attorney general shall establish the human trafficking prevention coordinating council to develop and implement a five-year strategic plan for preventing human trafficking in this state.

(c) The council is composed of the following:

(1) the governor or the governor's designee;

(2) the attorney general or the attorney general's designee;

(3) the commissioner of the Department of Family and Protective Services or the commissioner's designee;

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

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

(A) the Texas Workforce Commission;

(B) the Texas Alcoholic Beverage Commission;

(C) the Parks and Wildlife Department; and

(D) the Texas Department of Licensing and Regulation; and

(6) one representative of any other state agency appointed by the chief administrative officer of the agency, if the human trafficking prevention task force established under Section 402.035 and the council determine that a representative from the state agency is a necessary member of the council.

(d) The presiding officer of the council is the attorney general or the attorney general's designee.

(e) For each five-year period, the council shall:

(1) develop and implement a strategic plan for preventing human trafficking in this state; and

(2) submit the strategic plan to the legislature.

(f) The strategic plan must include:

(1) an inventory of human trafficking prevention programs and services in this state that are administered by state agencies, including institutions of higher education, and political subdivisions;

(2) regarding the programs and services described by Subdivision (1):

(A) a report on the number of persons served by the programs and services; and

(B) a plan to coordinate the programs and services to achieve the following goals:

(i) eliminate redundancy;

(ii) ensure the agencies' use of best practices in preventing human trafficking; and

(iii) identify and collect data regarding the efficacy of the programs and services; and

(3) in relation to the goals for programs and services as described by Subdivision (2)(B), a plan to coordinate the expenditure of state funds allocated to prevent human trafficking in this state, including the expenditure of state funds by the human trafficking prevention task force established under Section 402.035.

(g) Not later than December 1 of each year, beginning with the year following the year the council submits a strategic plan to the legislature under Subsection (e)(2), the council shall submit to the legislature an annual report detailing the progress of the strategic plan's implementation. The annual report must include:

(1) a description of the level of participation in the strategic plan by each agency represented on the council and how the implementation of the strategic plan serves to coordinate the programs and services described by Subsection (f)(1) and achieve the goals described by Subsection (f)(2)(B); and

(2) an update of the inventory of programs and services described by Subsection (f)(1) and how each program or service furthers the goals of the strategic plan.

(h) The office of the attorney general shall make available on the office's Internet website the strategic plan and the annual reports required under Subsection (g).

Commentary by Kaci Singer

Source: SB 72

Effective Date: September 1, 2019

Summary of Changes: Creates a State Human Trafficking Prevention Coordinating Council for the purposes of developing a state plan and collaborating and coordinating human trafficking-related expenditures among state agencies.

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' offices for all of the federal districts of Texas; and

(B) special agents or customs and border protection officers and border patrol agents of:

(i) the Federal Bureau of Investigation;

(ii) the United States Drug Enforcement Administration;

(iii) the Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iv) United States Immigration and Customs Enforcement; or

(v) the United States Department of Homeland Security;

(2) collect, organize, and periodically publish statistical data on the nature and extent of human trafficking in this state, including data described by Subdivisions (4)(A), (B), (C), (D), and (E);

(3) solicit cooperation and assistance from state and local governmental agencies, political subdivisions of the state, nongovernmental organizations,

and other persons, as appropriate, for the purpose of collecting and organizing statistical data under Subdivision (2);

(4) ensure that each state or local governmental agency and political subdivision of the state and each state or local law enforcement agency, district attorney, or county attorney that assists in the prevention of human trafficking collects statistical data related to human trafficking, including, as appropriate:

(A) the number of investigations concerning, arrests and prosecutions for, and convictions of:

(i) the offense of trafficking of persons;

(ii) the offense of forgery or an offense under Chapter 43, Penal Code, if the offense was committed as part of a criminal episode involving the trafficking of persons; and

(iii) an offense punishable under Section 43.02(c-1)(2) [43.02(e-1)(3)], Penal Code, regardless of whether the offense was committed as part of a criminal episode involving the trafficking of persons;

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

(C) geographic routes by which human trafficking victims are trafficked, including routes by which victims are trafficked across this state's international border, and geographic patterns in human trafficking, including the country or state of origin and the country or state of destination;

(D) means of transportation and methods used by persons who engage in trafficking to transport their victims; and

(E) social and economic factors that create a demand for the labor or services that victims of human trafficking are forced to provide;

(5) work with the Texas Commission on Law Enforcement to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking;

(6) work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:

(A) develop a list of key indicators that a person is a victim of human trafficking;

(B) develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(C) train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(D) develop and conduct training for personnel from the Department of Family and Protective Services and the Health and Human Services Commission on methods for identifying children in foster care who may be at risk of becoming victims of human trafficking; and

(E) develop a process for referring identified human trafficking victims and individuals at risk of becoming victims to appropriate entities for services;

(7) on the request of a judge of a county court, county court at law, or district court or a county attorney, district attorney, or criminal district attorney, assist and train the judge or the judge's staff or the attorney or the attorney's staff in the recognition and prevention of human trafficking;

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

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

(10) develop recommendations on how to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, curb markets and other economic avenues that facilitate human trafficking and investigate and prosecute human trafficking offenders;

(11) examine the extent to which human trafficking is associated with the operation of sexually oriented businesses, as defined by Section 243.002, Local Government Code, and the workplace or public health concerns that are created by the association of human trafficking and the operation of sexually oriented businesses;

(12) develop recommendations for addressing the demand for forced labor or services or sexual conduct involving victims of human trafficking, including recommendations for increased penalties for individuals who engage or attempt to engage in prostitution with victims younger than 18 years of age; and

(13) identify and report to the governor and legislature on laws, licensure requirements, or other regulations that can be passed at the state and local level to curb trafficking using the Internet and in sexually oriented businesses.

(f-3) The attorney general may enter into a contract with an institution of higher education or private or independent institution of higher education, as those terms

are defined by Section 61.003, Education Code, for the institution's assistance in the collection and analysis of information received under this section. The attorney general may adopt rules to administer the submission and collection of information under this section.

...

(h) [Subsection (h)] as amended by Chapter 762 (S.B. 2039), Acts of the 85th Legislature, Regular Session, 2017, and repealed by Chapter 685 (H.B. 29), Acts of the 85th Legislature, Regular Session, 2017, is repealed.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. The change in subsection (d)(4) is a conforming change related to the changes in Penal Code 43.02, discussed later in this chapter. The change in subsection (f-3) allows the attorney general to enter into a contract with an institution of higher education for assistance in collecting and analyzing the information required to be collected under this provision of law.

Government Code Sec. 411.042. BUREAU OF IDENTIFICATION AND RECORDS. (b) The bureau of identification and records shall:

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(A) offenses in which family violence was involved;

(B) offenses under Sections 22.011 and 22.021, Penal Code; and

(C) offenses under Sections 20A.02, 43.02(a), 43.02(b), 43.03, and 43.05, Penal Code;

(3) make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4) cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5) maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702, Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense;

(6) collect information concerning the number and nature of protective orders and magistrate's orders of emergency protection and all other pertinent information about all persons subject to active orders, including pertinent information about persons subject to conditions of bond imposed for the protection of the victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case. Information in the law enforcement information system relating to an active order shall include:

(A) the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B) any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C) the name and county of residence of the person protected by the order;

(D) the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Article 17.292(e), Code of Criminal Procedure;

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Article 17.292(e), Code of Criminal Procedure;

(F) the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed;

(G) the conditions of bond imposed on the person to whom the order is directed, if any, for the protection of a victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case;

(H) any minimum distance the person subject to the order is required to maintain from the protected places or persons; and

(I) the date the order expires;

(7) grant access to criminal history record information in the manner authorized under Subchapter F;

(8) collect and disseminate information regarding offenders with mental impairments in compliance with Chapter 614, Health and Safety Code; and

(9) record data and maintain a state database for a computerized criminal history record system and computerized juvenile justice information system that serves:

(A) as the record creation point for criminal history record information and juvenile justice information maintained by the state; and

(B) as the control terminal for the entry of records, in accordance with federal law and regulations, federal executive orders, and federal policy, into the federal database maintained by the Federal Bureau of Investigation.

(g) The department may adopt reasonable rules under this section relating to:

(1) law enforcement information systems maintained by the department;

(2) the collection, maintenance, and correction of records;

(3) reports of criminal history information submitted to the department;

(4) active protective orders and reporting procedures that ensure that information relating to the issuance and dismissal of an active protective order is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered by the local law enforcement agency in the state's law enforcement information system;

(5) the collection of information described by Subsection (h);

(6) a system for providing criminal history record information through the criminal history clearinghouse under Section 411.0845; and

(7) active conditions of bond imposed on a defendant for the protection of a victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case, and reporting procedures that ensure that information relating to the issuance, modification, or removal of the conditions of bond is reported, at the time of the issuance, modification, or removal, to:

(A) the victim or, if the victim is deceased, a close relative of the victim; and

(B) the local law enforcement agency for entry by the local law enforcement agency in the state's law enforcement information system.

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change related to the creation of the offense of Indecent Assault.

Government Code Sec. 411.042. BUREAU OF IDENTIFICATION AND RECORDS. (b) The bureau of identification and records shall:

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted

of a criminal offense, regardless of whether the conviction is probated;

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(A) offenses in which family violence was involved;

(B) offenses under Sections 22.011 and 22.021, Penal Code; and

(C) offenses under Sections 20A.02, 43.02(a), 43.02(b), 43.03, 43.031, 43.04, 43.041, and 43.05, Penal Code;

Remaining sections deleted...see above

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This adds online promotion of prostitution, aggravated online promotion of prostitution, and aggravated promotion of prostitution to the list of offenses for which the bureau of identification and records must collect certain information.

Government Code Sec. 420.003. [SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES:] DEFINITIONS. (1-a) “Active criminal case” means a case:

(A) in which:

(i) a sexual assault or other sex offense has been reported to a law enforcement agency; and

(ii) physical evidence of the offense [~~assault~~] has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(B) for which:

(i) the statute of limitations has not run with respect to the prosecution of the offense [~~sexual assault~~]; or

(ii) a DNA profile was obtained that is eligible under Section 420.043 for comparison with DNA profiles in the state database or CODIS DNA database.

(1-d) “Law enforcement agency” means a state or local law enforcement agency in this state with jurisdiction over the investigation of a sexual assault or other sex offense.

(3) “Sex offense” means an offense under Chapter 21, Penal Code, for which biological evidence is collected in an evidence collection kit.

(8) “Survivor” means an individual who is a victim of a sexual assault or other sex offense, regardless of whether a report or conviction is made in the incident.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date.

Summary of Changes: Adds a definition of “sex offense” for the purposes of the changes made to Chapter 420 under HB 8.

Government Code Sec. 420.012. CONSULTATIONS. In implementing this chapter, the attorney general shall consult with:

(1) state sexual assault coalitions;

(2) state agencies, task forces, and councils that have duties relating to the prevention, investigation, or prosecution of sexual assault or other sex offenses or services provided to survivors;

(3) forensic science experts; and

(4) individuals [~~persons~~] and organizations having knowledge and experience relating to the issues of sexual assault and other sex offenses.

Commentary by Kaci Singer

Source: HB 1590

Effective Date: June 4, 2019

Summary of Changes: Chapter 420, Government Code, is known as the Sexual Assault Prevention and Crisis Services Act. Current law requires the attorney general, in implementing the chapter, to consult “persons and organizations having knowledge and experience relating to sexual assault.” This amendment expands to specify that the attorney general must also consult with state sexual assault coalitions; state agencies, task forces, and councils with duties relating to preventing, investigating, or prosecuting sexual assault or other sex offenses or providing services to survivors; and forensic science experts.

Government Code Sec. 420.031. EVIDENCE COLLECTION PROTOCOL; KITS. (c) In developing the evidence collection kit and protocol, the attorney general shall consult with the individuals and organizations listed in Section 420.012 [~~having knowledge and experience in the issues of sexual assault and other sex offenses~~].

Commentary by Kaci Singer

Source: HB 1590

Effective Date: June 4, 2019

Summary of Changes: This is a conforming change related to the changes in 420.012, described above.

Government Code Sec. 420.031. EVIDENCE COLLECTION PROTOCOL; KITS. Subsection 420.031 (d) is REPEALED.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Summary of Changes: Repeals the provision of law regarding reimbursing law enforcement agencies for the cost of forensic medical examination in an alleged sexual assault. This is no longer necessary given the other changes in this bill, which provide for reimbursement directly to the health care facility as opposed to the law enforcement agency.

Government Code Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement, department, and laboratory personnel who handle ~~[sexual assault]~~ evidence of a sexual assault or other sex offense under this chapter or other law shall maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date.

Summary of Changes: Expands the requirement regarding maintaining a chain of custody to include other sex offenses, defined as an offense under Chapter 21, Penal Code, for which biological evidence is collected in an evidence collection kit.

Government Code Sec. 420.035. DUTY TO ENTER CERTAIN INFORMATION INTO VIOLENT CRIMINAL APPREHENSION PROGRAM DATABASE. (a) In this section, “database” means the national database of the Violent Criminal Apprehension Program established and maintained by the Federal Bureau of Investigation, or a successor database.

(b) Each law enforcement agency in this state shall request access from the Federal Bureau of Investigation to enter information into the database.

(c) A law enforcement agency that investigates a sexual assault or other sex offense shall enter into the database the following information regarding the investigation of the sexual assault or other sex offense, as available:

(1) the suspect’s name and date of birth;

(2) the specific offense being investigated;

gated;

(3) a description of the manner in which the offense was committed, including any pattern of conduct occurring during the course of multiple offenses suspected to have been committed by the suspect; and

(4) any other information required by the Federal Bureau of Investigation for inclusion in the database.

(d) Information entered into the database under this section is excepted from required disclosure under Chapter 552 in the manner provided by Section 552.108.

Commentary by Kaci Singer

Source: HB 3106

Effective Date: September 1, 2019

Applicability: Applies to a pending investigation of a sexual assault, regardless of whether the sexual assault occurred on, before, or after the effective date.

Summary of Changes: In April 2017, 22-year-old Molly Jane Matheson was raped and murdered in her Fort Worth home. The defendant indicted for Molly Jane’s murder has also been indicted for the murder of Meghan Leigh Gertrum in Plano, which occurred days after Molly Jane’s murder. He has been linked to other cases, including choking and raping a 20-year-old in South Padre in 2014. Police in North Texas had no way to know that he was being investigated in South Texas for similar conduct. This change in law is designed to require law enforcement agencies to enter certain information in the Violent Criminal Apprehension Program (ViCAP), administered by the FBI. This information is excepted from required disclosure under the Public Information Act as provided by 552.108, which relates to the disclosure of law enforcement information.

Government Code Sec. 420.035. EVIDENCE RELEASE. (a) If a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense receives signed, written consent to release the evidence as provided by Section 420.0735, the facility or entity shall promptly notify any law enforcement agency investigating the alleged offense.

(b) Except as provided by Subsection (c), a law enforcement agency that receives notice from a health care facility or other entity under Subsection (a) shall take possession of the evidence not later than the seventh day after the date the law enforcement agency receives notice.

(c) A law enforcement agency that receives notice from a health care facility or other entity that is located more than 100 miles from the law enforcement

agency shall take possession of the evidence not later than the 14th day after the date the law enforcement agency receives notice.

(d) Failure to comply with evidence collection procedures or requirements under this section does not affect the admissibility of the evidence in a trial of the offense.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date.

Summary of Changes: Requires a health care facility or other entity performing a medical examination to collect evidence of a sexual assault or other sex offense to promptly notify the investigating law enforcement agency if the facility has received signed, written consent to release the evidence in accordance with Section 420.0735. The law enforcement agency has seven days to take possession of the evidence unless it is located more than 100 miles away, in which case it has 14 days. Failure to comply with this section does not affect admissibility of the evidence at trial.

Government Code Sec. 420.041. SUBCHAPTER B-1. ANALYSIS OF ~~[SEXUAL ASSAULT]~~ EVIDENCE OF SEXUAL ASSAULT OR OTHER SEX OFFENSE; APPLICABILITY OF SUBCHAPTER.

This subchapter applies only to physical evidence of a sexual assault or other sex offense that is collected with respect to an active criminal case.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date.

Summary of Changes: This section includes conforming changes related to the inclusion of “other sex offenses” in this chapter.

Government Code Sec. 420.042. ANALYSIS OF ~~[SEXUAL ASSAULT]~~ EVIDENCE. (a) A law enforcement agency that receives ~~[sexual assault]~~ evidence of a sexual assault or other sex offense that is collected under this chapter or other law shall submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which that evidence was received.

(b) A person who submits ~~[sexual assault]~~ evidence of a sexual assault or other sex offense to a public accredited crime laboratory under this chapter or other

law shall provide the following signed, written certification with each submission: “This evidence is being submitted by (name of person making submission) in connection with a criminal investigation.”

(c) If sufficient personnel and resources are available, a public accredited crime laboratory, as soon as practicable but not later than the 90th day after the date on which the laboratory received the evidence, shall complete its analysis of ~~[sexual assault]~~ evidence of a sexual assault or other sex offense that is submitted under this chapter or other law.

(c-1) With respect to a criminal case in which evidence of a sexual assault or other sex offense is collected and the number of offenders is uncertain or unknown, a public accredited crime laboratory shall analyze any evidence of the sexual assault or other sex offense submitted to the laboratory under this chapter or other law that is necessary to identify the offender or offenders.

(d) To ensure the expeditious completion of analyses, the department and other applicable public accredited crime laboratories may contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories.

(e) The failure of a law enforcement agency to take possession of evidence of a sexual assault or other sex offense within the period required by Section 420.035 or to submit that ~~[sexual assault]~~ evidence within the period required by this section does not affect the authority of:

(1) the agency to take possession of the evidence;

(2) the agency to submit the evidence to an accredited crime laboratory for analysis; ~~or~~

(3) ~~(2)~~ an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons; or

(4) the department or a public accredited crime laboratory authorized under Section 420.043(b) to compare the DNA profile obtained from the biological evidence with DNA profiles in the databases described by Section 420.043(a).

(f) Failure to comply with the requirements under this section does not affect the admissibility of the evidence in a trial of the offense.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date except that subsection (c) applies only to evidence received by a public accredited crime lab on or after January 1, 2021.

Summary of Changes: Section 420.042 includes conforming changes related to the inclusion of “other sex offenses” in this Chapter. It also sets a time limit of 90 days

from the date of receipt of evidence for a public accredited crime lab to complete its analysis of evidence of a sexual assault or other sex offense, if sufficient personnel and resources are available. It provides that failure of law enforcement to timely take possession of evidence or provide it to the crime lab does not affect the authority of the law enforcement agency to take possession of the evidence or of the crime lab to compare the DNA profile with profiles in the database. It further provides that failure to comply with the section does not affect the admissibility of the evidence in trial.

Government Code Sec. 420.043. DATABASE COMPARISON REQUIRED. (a) Not later than the 30th day after the date [On the request of any appropriate person and after] an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, except as provided by Subsection (b), the department shall compare the DNA profile obtained from the biological evidence with DNA profiles maintained in:

(1) state databases, including the DNA database maintained under Subchapter G, Chapter 411, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and

(2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

(b) If the evidence kit containing biological evidence is analyzed by a public accredited crime laboratory, the laboratory, instead of the department, may perform the comparison of DNA profiles required under Subsection (a) provided that:

(1) the laboratory performs the comparison not later than the 30th day after the date the analysis is complete and any necessary quality assurance reviews have been performed;

(2) the law enforcement agency that submitted the evidence collection kit containing biological evidence gives permission; and

(3) the laboratory meets applicable federal and state requirements to access the databases described by Subsection (a).

(c) The department may use appropriated funds to employ personnel and purchase equipment and technology necessary to comply with the requirements of this section.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date.

Summary of Changes: These changes require DPS to compare the profile obtained from the biological evidence with DNA profiles maintained in state databases and in CODIS no later than 30 days after the crime lab has analyzed the evidence collection kit and any necessary quality assurance reviews have been performed. However, if the evidence is analyzed by a public accredited crime lab, the lab may perform the comparisons instead of DPS as long as the lab does so within 30 days, has permission of the law enforcement agency that submitted the kit, and meets applicable federal and state requirements to access the databases. DPS may use appropriated funds to employ personnel and purchase equipment and technology necessary to comply with this section.

Government Code Sec. 420.044. GRANT FUNDS. The department shall apply for any available federal grant funds applicable to the analysis of evidence collection kits containing biological evidence, including grant money available under the National Institute of Justice's DNA Capacity Enhancement and Backlog Reduction Program.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Summary of Changes: DPS is required to apply for any available federal grant funds that apply to the analysis of evidence collection kits containing biological evidence.

Government Code Sec. 420.045. REPORT OF UNANALYZED EVIDENCE OF SEXUAL ASSAULT OR OTHER SEX OFFENSE. Each law enforcement agency and public accredited crime laboratory shall submit a quarterly report to the department identifying the number of evidence collection kits that the law enforcement agency has not yet submitted for laboratory analysis or for which the crime laboratory has not yet completed an analysis, as applicable.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to sexual assault evidence and evidence of other sex offenses collected on or after the effective date.

Summary of Changes: Requires each law enforcement agency to submit a quarterly report to DPS identifying the number of evidence collection kits the law enforcement agency has not submitted to the lab for analysis. It also

requires each public accredited crime lab to submit a report to DPS identifying the number of evidence collection kits for which the lab has not yet completed an analysis.

Government Code Sec. 420.046. NONCOMPLIANCE. Failure to comply with the requirements of this subchapter may be used to determine eligibility for receiving grant funds from the department, the office of the governor, or another state agency.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Failure to comply with the requirements prior to January 15, 2020, does not impact eligibility for grants if the entity is in compliance on that date.

Summary of Changes: Provides that failure to comply with this subchapter of Chapter 420 relating to Sexual Assault Prevention and Crisis Services may be used to determine eligibility for grant funds from DPS, the Governor's Office, or another state agency.

Government Code Sec. 420.047. AUDIT OF UNANALYZED EVIDENCE OF SEXUAL ASSAULT OR OTHER SEX OFFENSE. (a) A law enforcement agency in possession of an evidence collection kit that has not been submitted for laboratory analysis shall:

(1) not later than December 15, 2019, submit to the department a list of the agency's active criminal cases for which an evidence collection kit collected on or before September 1, 2019, has not yet been submitted for laboratory analysis;

(2) not later than January 15, 2020, and subject to the availability of laboratory storage space, submit to the department or a public accredited crime laboratory, as appropriate, all evidence collection kits pertaining to those active criminal cases that have not yet been submitted for laboratory analysis; and

(3) if the law enforcement agency submits an evidence collection kit under Subdivision (2) to a laboratory other than a department laboratory, notify the department of:

(A) the laboratory to which the evidence collection kit was sent; and

(B) any analysis completed by the laboratory to which the evidence collection kit was sent and the date on which the analysis was completed.

(b) Not later than September 1, 2020, the department shall submit to the governor and the appropriate standing committees of the senate and the house of representatives a report containing:

(1) a projected timeline for the completion of laboratory analyses, in accordance with this chapter, of all unanalyzed evidence collection kits submitted under Subsection (a)(2);

(2) a request for any necessary funding to accomplish the analyses under Subdivision (1), including a request for a grant of money under Article 102.056(e), Code of Criminal Procedure, if money is available under that subsection;

(3) as appropriate, application materials for requests made as required by Subdivision (2); and

(4) if the department determines that outsourcing certain evidence collection kits is necessary for timely analyses of the kits:

(A) a proposal for determining which evidence collection kits should be outsourced; and

(B) a list of laboratories the department determines are capable of completing the outsourced analyses.

(c) Not later than September 1, 2022, and to the extent that funding is available, the department shall, as provided by Sections 420.042 and 420.043, analyze or contract for the analysis of, and complete the required database comparison, or ensure that a public accredited laboratory completed the comparison, regarding all evidence collection kits submitted to the department under Subsection (a)(2).

(d) Notwithstanding Subsection (c), the department is not required to use under this section in a state fiscal year any amount of money from the state highway fund that exceeds the amount the department has historically used in a state fiscal year to fund laboratory analyses of evidence collection kits under this chapter.

(e) To supplement funding of laboratory analyses under this section, the department may solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by this chapter.

(f) This section expires September 1, 2023.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Applicability: Applies to an evidence collection kit in the possession of law enforcement on the effective date.

Summary of Changes: No later than December 15, 2019, each law enforcement agency must submit to DPS a list of the agency's criminal cases for which an evidence kit collected prior to September 1, 2019, has not yet been submitted for lab analysis. No later than January 15, 2020, subject to the availability of lab space, the law enforcement agency must submit to DPS or a public accredited crime lab, as appropriate, all evidence collection kits related to active criminal cases that have not yet been submitted for lab analysis. If the agency submits those kits to a lab rather than DPS, the agency must notify DPS of the lab to which the kit was sent and any analysis completed by that lab, including the date the analysis was completed. No later than September 1, 2020, DPS must submit to the governor and the appropriate standing committees of the house and the senate a projected timeline to complete a

lab analysis of all unanalyzed kits, a request for funding to complete the analyses, and a proposal for determining which, if any, kits should be outsourced and a list of labs capable of completing the outsourced analyses. No later than September 1, 2022, to the extent funding is available, DPS must analyze or contract for the analysis of and complete the database comparisons (or ensure a public accredited lab does so) regarding all the identified untested kits. DPS is not required to use money from the state highway fund in an amount that exceeds the amount DPS has historically used to fund lab analyses of evidence kits. To supplement funding of the lab analyses, DPS may solicit and receive grants, gifts, or donations from federal government or private sources. The section expires September 1, 2023.

Government Code Chapter 420, SUBCHAPTER E. STATEWIDE TELEHEALTH CENTER FOR SEXUAL ASSAULT FORENSIC MEDICAL EXAMINATION *(New Subchapter)*

Government Code Sec. 420.101. DEFINITIONS. In this subchapter:

(1) “Center” means the statewide telehealth center for sexual assault forensic medical examination.

(2) “Telehealth service” has the meaning assigned by Section 111.001, Occupations Code.

Government Code Sec. 420.102. ESTABLISHMENT OF CENTER. The attorney general shall establish the statewide telehealth center for sexual assault forensic medical examination to expand access to sexual assault nurse examiners for underserved populations.

Government Code Sec. 420.103. POWERS OF CENTER. (a) In accordance with other law, the center may facilitate in person or through telecommunications or information technology the provision by a sexual assault nurse examiner of:

(1) training or technical assistance to a sexual assault examiner on:

(A) conducting a forensic medical examination on a survivor; and

(B) the use of telehealth services; and

(2) consultation services, guidance, or technical assistance to a sexual assault examiner during a forensic medical examination on a survivor.

(b) With permission from the facility or entity where a forensic medical examination on a survivor is conducted and to the extent authorized by other law, the center may facilitate the use of telehealth services during a forensic medical examination on a survivor.

(c) The center may deliver other services as requested by the attorney general to carry out the purposes of this subchapter.

Government Code Sec. 420.104. OPERATION PROTOCOLS REQUIRED. (a) The center and the attorney general shall develop operation protocols to address compliance with applicable laws and rules governing:

(1) telehealth services;

(2) standards of professional conduct for licensure and practice;

(3) standards of care;

(4) maintenance of records;

(5) technology requirements;

(6) data privacy and security of patient information; and

(7) the operation of a telehealth center.

(b) The center shall make every effort to ensure the system through which the center operates for the provision of telehealth services meets national standards for interoperability to connect to telehealth systems outside of the center.

Government Code Sec. 420.105. AUTHORIZED CONTRACTS. The attorney general may enter into any contract the attorney general considers necessary to implement this subchapter, including a contract to:

(1) develop, implement, maintain, or operate the center;

(2) train or provide technical assistance for health care professionals on conducting forensic medical examinations and the use of telehealth services; or

(3) provide consultation, guidance, or technical assistance for health care professionals using telehealth services during a forensic medical examination.

Government Code Sec. 420.106. FUNDING. (a) The legislature may appropriate money to the attorney general to establish the center.

(b) The attorney general may provide funds to the center for:

(1) establishing and maintaining the operations of the center;

(2) training conducted by or through the center;

(3) travel expenses incurred by a sexual assault nurse examiner for:

(A) carrying out the nurse’s duties under Section 420.103(a); or

(B) testifying as a witness outside the nurse’s county of residence;

(4) equipment and software applications for the center; and

(5) any other purpose considered appropriate by the attorney general.

Government Code Sec. 420.107. CONSULTATION REQUIRED. In implementing this subchapter, the attorney general shall consult with persons with expertise in medicine and forensic medical examinations, a

statewide sexual assault coalition, a statewide organization with expertise in the operation of children's advocacy programs, and attorneys with expertise in prosecuting sexual assault offenses.

Government Code Sec. 420.108. RULES. The attorney general may adopt rules as necessary to implement this subchapter.

Commentary by Kaci Singer

Source: HB 8/SB 71

Effective Date: September 1, 2019

Summary of Changes: There is a shortage of sexual assault nurse examiners (SANE) in most Texas communities as there are 354 total in the state and 84 percent of counties do not have one. If there is no SANE, sexual assault survivors have a choice to receive care from ER staff, drive to a location with a SANE, or decide not to have evidence collected. This legislation creates a telehealth program to connect certified sexual assault nurse examiners to underserved areas.

Government Code Sec. 552.138. EXCEPTION: CONFIDENTIALITY OF FAMILY VIOLENCE SHELTER CENTER, VICTIMS OF TRAFFICKING SHELTER CENTER, AND SEXUAL ASSAULT PROGRAM INFORMATION. (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 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;~~

(3) ~~(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;

(4) ~~(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

(5) ~~(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.

(b-1) Information that relates to the location or physical layout of a family violence shelter center or victims of trafficking shelter center is confidential.

(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 (5) or that is confidential under Subsection (b-1) ~~[(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 Kaci Singer

Source: HB 3091

Effective Date: September 1, 2019

Applicability: Applies to a request for public information received on or after the effective date.

Summary of Changes: Under current law, information that relates to the location or physical layout of a family violence shelter center or victims of trafficking shelter is excepted from disclosure under the Public Information Act. That means that an entity may choose not to disclose the information on request by asserting there is a valid exception and getting an opinion from the Attorney General. Failure to timely claim the exception results in the information being disclosed. This changes the law so that such information is expressly confidential, not simply excepted from disclosure, which means that, under Section 552.007, Government Code, a governmental body is prohibited from disclosing it.

Government Code Sec. 772.0064. SEXUAL ASSAULT SURVIVORS' TASK FORCE. (a) In this section:

(1) "Sexual assault," "sexual assault nurse examiner," and "survivor" have the meanings assigned by Section 420.003.

(2) "Task force" means the Sexual Assault Survivors' Task Force.

(b) The governor shall establish the Sexual Assault Survivors' Task Force within the criminal justice division established under Section 772.006.

(c) The task force shall include a steering committee composed of the following members:

(1) the governor or the governor's designee;

(2) the president of the state sexual assault coalition, as defined by Section 420.003, or the president's designee; and

(3) the president of the statewide organization described by Section 264.409, Family Code, or the president's designee.

(d) The task force is composed of the following members:

(1) the governor or the governor's designee;

(2) a representative of each state agency that has duties relating to the prevention, investigation, or prosecution of sexual assault or other sex offenses or provides services to survivors, including:

(A) the office of the attorney general; and

(B) the Health and Human Services Commission;

(3) the executive director of the Texas Commission on Law Enforcement or the executive director's designee;

(4) the presiding officer of the Texas Forensic Science Commission or the presiding officer's designee;

(5) the division director of the law enforcement support division of the Texas Department of Public Safety with authority over the Crime Laboratory Service or the division director's designee;

(6) the president of the Texas Association of Crime Laboratory Directors or the president's designee;

(7) the president of the Texas District and County Attorney's Association or the president's designee;

(8) the president of the Texas Society of Pathologists or the president's designee;

(9) the president of the International Association of Forensic Nurses Texas Chapter or the president's designee;

(10) the president of the statewide organization described by Section 264.409, Family Code, or the president's designee;

(11) the president of the state sexual assault coalition, as defined by Section 420.003, or the president's designee;

(12) a representative from a law enforcement agency appointed by the steering committee described by Subsection (c);

(13) a sexual assault nurse examiner appointed by the steering committee described by Subsection (c) to represent the interests of health care facilities that perform sexual assault forensic exams; and

(14) other members considered appropriate by the steering committee described by Subsection (c).

(e) An appointed member serves at the pleasure of the appointing official.

(f) The governor is the presiding officer of the task force.

(g) The task force shall meet at the call of the governor.

(h) The steering committee shall:

(1) create within the task force;

(A) a working group focusing on survivors who are children; and

(B) a working group focusing on survivors who are adults;

(2) ensure that the task force identifies systemic issues and solutions pertaining to survivors of all ages;

(3) ensure that the task force does not unnecessarily duplicate existing standards, information, and protocol in preventing, investigating, prosecuting, and responding to sexual assault and other sex offenses; and

(4) review and approve all task force reports, recommendations, resources, protocols, advice, and other information before release.

(i) The task force shall:

(1) develop policy recommendations to allow the state to:

(A) effectively coordinate funding for services to child and adult survivors; and

(B) better prevent, investigate, and prosecute incidents of sexual assault and other sex offenses;

(2) facilitate communication and cooperation between state agencies that have duties relating to the prevention, investigation, or prosecution of sexual assault or other sex offenses or services provided to survivors in order to identify and coordinate state resources available for assisting survivors;

(3) collect, analyze, and make publicly available information, organized by region, regarding the prevention, investigation, and prosecution of sexual assault and other sex offenses and services provided to survivors, including a list of SAFE-ready facilities designated under Section 323.0015, Health and Safety Code;

(4) make and periodically update recommendations regarding the collection, preservation, tracking, analysis, and destruction of evidence in cases of sexual assault or other sex offenses, including recommendations:

(A) to the attorney general regarding:

(i) evidence collection kits for use in the collection and preservation of evidence of sexual assault or other sex offenses;

(ii) protocols for the collection and preservation of evidence of sexual assault or other sex offenses;

(iii) the curriculum for training programs on collecting and preserving evidence of sexual assault and other sex offenses; and

(iv) the requirements for certification of sexual assault nurse examiners; and

(B) to other appropriate individuals or organizations, regarding:

(i) the procedures for obtaining patient authorization for forensic medical examinations of child and adult survivors under Articles 56.06 and 56.065, Code of Criminal Procedure;

(ii) the requirements for maintaining an appropriate evidentiary chain of custody;

(iii) the identification and reporting of untested evidence throughout the state; and

(iv) standards for the submission of evidence to forensic laboratories for analysis, including procedures for submitting evidence in cases for which no evidence has been previously submitted or tested;

(5) advise and provide resources to the Texas Commission on Law Enforcement and other law enforcement organizations to improve law enforcement officer training related to the investigation and documentation of cases involving sexual assault and other sex offenses, with a focus on the interactions between law enforcement officers and survivors;

(6) provide to law enforcement agencies, prosecutors, and judges with jurisdiction over sexual assault or other sex offense cases information and resources to maximize effective and empathetic investigation, prosecution, and hearings, including information and resources:

(A) regarding trauma-informed practices and the dynamics and effects of sexual assault and other sex offenses on child and adult survivors;

(B) intended to improve the understanding of and the response to sexual assault or other sex offenses;

(C) regarding best practices in the investigation and prosecution of sexual assault or other sex offenses; and

(D) for judges regarding common issues in the criminal trials of sexual assault and other sex offenses;

(7) biennially contract for a survey of the resources provided to survivors by nonprofit organizations, health care facilities, institutions of higher education, sexual assault response teams, and other governmental entities in each region of the state;

(8) make recommendations as necessary to improve the collecting and reporting of data on the investigation and prosecution of sexual assault and other sex offenses; and

(9) develop a statewide standard for best practices in the funding and provision of services to survivors by nonprofit organizations, health care facilities, institutions of higher education, sexual assault response teams, and other governmental entities.

(j) Not later than November 1 of each even-numbered year, the task force shall analyze the data from the survey performed under Subsection (i), prepare a report, or contract with a private entity for the preparation of a report, and submit to the legislature the report, which must include:

(1) a description of the resources provided to child and adult survivors by nonprofit organizations, health care facilities, institutions of higher education, sexual assault response teams, and governmental entities in each region of the state;

(2) a description of the differences between the resources provided to both child and adult survivors and the statewide standard, comparable by region and by year;

(3) recommendations on measures the state and each region could take to better comply with the statewide standard;

(4) a description of potential sources and mechanisms of funding available to implement the recommendations; and

(5) recommendations for accomplishing policy goals.

(k) To the extent possible, all recommendations, standards, and resource information provided by the task force must be evidence-based and consistent with standards of practice and care in this state and throughout the country.

(l) The task force shall use any available federal or state funding for the purposes of this section.

(m) This section expires September 1, 2023.

Commentary by Kaci Singer

Source: HB 1590

Effective Date: June 4, 2019

Summary of Changes: This requires the governor to establish the Sexual Assault Survivors' Task Force within the criminal justice division of the Governor's Office. The task force has several responsibilities designed to improve issues related to sexual assault and other sex offense cases and treatment of survivors. The statute expires September 1, 2023.

Government Code Sec. 2155.0061. PROHIBITION ON CERTAIN BIDS AND CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING.

(a) A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking.

(b) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) If a state agency determines that an individual or business entity holding a state contract was ineligible

to have the bid accepted or contract awarded under this section, the state agency may immediately terminate the contract without further obligation to the vendor.

(d) This section does not create a cause of action to contest a bid or award of a state contract.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies only in relation to a state contract for which the request for bids or proposals or other applicable expressions of interest are made public on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This change prohibits a state agency from accepting a bid or awarding a contract that includes proposed financial participation by a person who, in the preceding five years, was convicted of an offense related to the direct support or promotion of human trafficking. It also requires all bids and awards to include the particular language set out in subsection (b).

Government Code Sec. 2155.077. BARRING VENDOR FROM PARTICIPATION IN STATE CONTRACTS. (a-1) The commission shall bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if the vendor has been:

(1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; [ø]

(2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or

(3) convicted of any offense related to the direct support or promotion of human trafficking.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies only to a contract entered into on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This change requires the Comptroller to bar any vendor from participating in state contracts if the vendor has been convicted of any offense related to the direct

support or promotion of human trafficking. The bar is for a period of five years from the date the vendor was convicted or the penalty was assessed.

Health and Safety Code

Health and Safety Code Subtitle B, Title 2, CHAPTER 50. SEX TRAFFICKING PREVENTION AND VICTIM TREATMENT PROGRAMS. (*New Chapter*)

Health and Safety Code Chapter 50, SUBCHAPTER A. TREATMENT PROGRAM FOR VICTIMS OF CHILD SEX TRAFFICKING.

Health and Safety Code Sec. 50.0001. DEFINITIONS. In this subchapter:

(1) “Child sex trafficking” has the meaning assigned by Section 772.0062, Government Code.

(2) “Program” means the treatment program for victims of child sex trafficking established under this subchapter.

Health and Safety Code Sec. 50.0002. ESTABLISHMENT; PURPOSE. The commission, in collaboration with the institution designated under Section 50.0003, shall establish a program to improve the quality and accessibility of care for victims of child sex trafficking in this state.

Health and Safety Code Sec. 50.0003. DESIGNATION OF INSTITUTION; OPERATION OF PROGRAM. (a) The commission shall designate a health-related institution of higher education to operate the program.

(b) The designated institution shall improve the quality and accessibility of care for victims of child sex trafficking by:

(1) dedicating a unit at the institution to provide or contract for inpatient care for victims of child sex trafficking;

(2) dedicating a unit at the institution to provide or contract for outpatient care for victims of child sex trafficking;

(3) creating opportunities for research and workforce expansion related to treatment of victims of child sex trafficking; and

(4) assisting other health-related institutions of higher education in this state to establish similar programs.

(c) The commission shall solicit and review applications from health-related institutions of higher education before designating an institution under this section.

Health and Safety Code Sec. 50.0004. FUNDING. In addition to money appropriated by the legislature, the designated institution may accept gifts, grants, and donations from any public or private person for the purpose of carrying out the program.

Health and Safety Code Sec. 50.0005. RULES. The executive commissioner shall adopt rules necessary to implement this subchapter.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This new subchapter requires HHSC, in collaboration with a designated health-related institution of higher education, to operate a program to improve the quality and accessibility of care for victims of child sex trafficking in Texas.

Health and Safety Code Chapter 50, SUBCHAPTER B. MATCHING GRANT PROGRAM FOR MUNICIPAL SEX TRAFFICKING PREVENTION PROGRAMS.

Health and Safety Code Sec. 50.0051. ESTABLISHMENT OF MATCHING GRANT PROGRAM.

(a) The commission shall establish a matching grant program to award to a municipality a grant in an amount equal to the amount committed by the municipality for the development of a sex trafficking prevention needs assessment. A municipality that is awarded a grant must develop the needs assessment in collaboration with a local institution of higher education and on completion submit a copy of the needs assessment to the commission.

(b) A sex trafficking prevention needs assessment developed under Subsection (a) must outline:

(1) the prevalence of sex trafficking crimes in the municipality;

(2) strategies for reducing the number of sex trafficking crimes in the municipality; and

(3) the municipality's need for additional funding for sex trafficking prevention programs and initiatives.

Health and Safety Code Sec. 50.0052. APPLICATION. (a) A municipality may apply to the commission in the form and manner prescribed by the commission for a matching grant under this subchapter. To qualify for a grant, an applicant must:

(1) develop a media campaign and appoint a municipal employee to oversee the program; and

(2) provide proof that the applicant is able to obtain or secure municipal money in an amount at least equal to the amount of the awarded grant.

(b) The commission shall review applications for a matching grant submitted under this section and award matching grants to each municipality that demonstrates in the application the most effective strategies for reducing the number of sex trafficking crimes in the municipality and the greatest need for state funding.

(c) The commission may provide a grant under Subsection (b) only in accordance with a contract between the commission and the municipality. The contract must include provisions under which the commission is granted sufficient control to ensure the public purpose of sex trafficking prevention is accomplished and the state receives the return benefit.

Health and Safety Code Sec. 50.0053. FUNDING. In addition to money appropriated by the legislature, the commission may solicit and accept gifts, grants, or donations from any source to administer and finance the matching grant program established under this subchapter.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This new subchapter requires HHSC to establish a matching grant program to award municipalities grants for the development of a sex trafficking prevention needs assessment that outlines the prevalence of sex trafficking crimes in the municipality, strategies for reducing the number of sex trafficking crimes in the municipality, and the municipality's need for additional funding for sex trafficking prevention programs and initiatives. To qualify, the municipality must develop a media campaign and appoint a municipal employee to oversee the program and provide proof the municipality can obtain or secure municipal money in an amount at least equal to the amount of the awarded grant.

Health and Safety Code Chapter 50, SUBCHAPTER C. SEX TRAFFICKING PREVENTION GRANT PROGRAM FOR LOCAL LAW ENFORCEMENT.

Health and Safety Code Sec. 50.0101. ESTABLISHMENT OF GRANT PROGRAM.

(a) The office of the governor, in collaboration with the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, shall establish and administer a grant program to train local law enforcement officers to recognize signs of sex trafficking.

(b) The office of the governor may establish eligibility criteria for a grant applicant.

(c) A grant awarded under this section must include provisions under which the office of the governor is provided sufficient control to ensure the public purpose of

sex trafficking prevention is accomplished and the state receives the return benefit.

Health and Safety Code Sec. 50.0102. FUNDING. In addition to money appropriated by the legislature, the office of the governor may solicit and accept gifts, grants, or donations from any source to administer and finance the grant program established under this subchapter.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This new subchapter requires the Office of the Governor, in collaboration with the Child Sex Trafficking Prevention Unit, to establish and administer a grant program to train local law enforcement officers to recognize the signs of sex trafficking. The governor's office is authorized to establish eligibility criteria.

Health and Safety Code Sec. 241.1031. PRESERVATION OF RECORD FROM FORENSIC MEDICAL EXAMINATION. (a) A hospital may not destroy a medical record from the forensic medical examination of a sexual assault victim conducted under Article 56.06 or 56.065, Code of Criminal Procedure, until the 20th anniversary of the date the record was created.

(b) A hospital may maintain a medical record described by Subsection (a) in the same form in which the hospital maintains other medical records.

Commentary by Kaci Singer

Source: HB 531

Effective Date: September 1, 2019

Applicability: Applies only to a medical record created on or after March 1, 2020.

Summary of Changes: There are concerns that hospitals are not required to keep records for a sufficient amount of time given the backlog of rape kits. This requires them to maintain medical records from the forensic medical exam of a sexual assault victim for at least 20 years.

Health and Safety Code Sec. 323.005. INFORMATION FORM. (a) The department shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications;

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation, including:

(A) a statement that public agencies are responsible for paying for the forensic portion of an examination conducted under Article 56.06 or 56.065, Code of Criminal Procedure, and for the evidence collection kit used in connection with the examination[~~:-~~

~~[(i) a law enforcement agency will pay for the forensic portion of an examination requested by the agency under Article 56.06, Code of Criminal Procedure, and for the evidence collection kit; or~~

~~[(ii) the Department of Public Safety will pay the appropriate fees for the forensic portion of an examination conducted under Article 56.065, Code of Criminal Procedure, and for the evidence collection kit]; and~~

(B) ~~[reimbursement]~~ information regarding the reimbursement of the survivor for the medical portion of the examination;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide; and

(7) information regarding postexposure prophylaxis for HIV infection.

(d) In addition to providing the information form described by Subsection (a), a health care facility shall ensure that the information described by Subsection (a)(4)(A) is orally communicated to the survivor.

Commentary by Kaci Singer

Source: HB 8/HB 616

Effective Date: September 1, 2019

Summary of Changes: Makes changes to what must be included on the form provided to sexual assault survivors, including a statement that public agencies are responsible for paying for the forensic portion of an examination and for the evidence collection kit used. Further, the health care facility must also communicate the information in writing.

Health and Safety Code Sec. 323.005. INFORMATION FORM. (a) The department shall develop a

standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications;

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation, including:

(A) a statement that:

(i) a law enforcement agency will pay for the forensic portion of an examination requested by the agency under Subchapter F, Chapter 56A [Article 56.06], Code of Criminal Procedure, and for the evidence collection kit; or

(ii) the Department of Public Safety will pay the appropriate fees for the forensic portion of an examination conducted under Subchapter G, Chapter 56A [Article 56.065], Code of Criminal Procedure, and for the evidence collection kit; and

(B) reimbursement information for the medical portion of the examination;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide; and

(7) information regarding postexposure prophylaxis for HIV infection.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: This is a non-substantive revision. Chapter 56, Code of Criminal Procedure, relating to the Rights of Crime Victims, was repealed and the substance of it placed in Chapters 56A and 56B, Code of Criminal Procedure. References to Chapter 56 have been updated in Health and Safety Code Section 323.005.

Health and Safety Code Sec. 323.0051. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS AT CERTAIN FACILITIES. (a) The department shall develop a standard information form for sexual assault survivors who arrive at a health care facility

that is not a SAFE-ready facility. The information form must include:

(1) information regarding the benefits of a forensic medical examination conducted by a sexual assault forensic examiner;

(2) the Internet website address to the department's list of SAFE-ready facilities that includes the facilities' physical addresses as required by Section 323.008;

(3) the following statements:

(A) "As a survivor of sexual assault, you have the right to receive a forensic medical examination at this hospital emergency room if you are requesting the examination not later than 120 [96] hours after the assault.";

(B) "A report to law enforcement is not required, but if you make a report, law enforcement must first authorize the examination."; and

(C) "Call 1-800-656-HOPE to be connected to a rape crisis center for free and confidential assistance."; and

(4) information on the procedure for submitting a complaint against the health care facility.

Commentary by Kaci Singer

Source: HB 616

Effective Date: September 1, 2019

Applicability: Applies to a forensic medical exam that occurs on or after the effective date.

Summary of Changes: The information that must be in the form to be provided to sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility, must include information that the survivor has the right to receive a forensic medical examination if the request is made no later than 120 hours rather than 96 hours from the time of the assault.

Health and Safety Code Sec. 323.0052. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS WHO HAVE NOT REPORTED AS-

SAULT. (a) The department shall develop a standard information form that, as described by Subsection (b), is to be provided to sexual assault survivors who have not given signed, written consent to a health care facility to release the evidence as provided by Section 420.0735, Government Code. The form must include the following information:

(1) the Department of Public Safety's policy regarding storage of evidence of a sexual assault or other sex offense that is collected under Article 56.065, Code of Criminal Procedure, including:

(A) a statement that the evidence will be stored until the fifth anniversary of the date on which the evidence was collected before the evidence becomes eligible for destruction; and

(B) the department's procedures regarding the notification of the survivor before a planned destruction of the evidence;

(2) a statement that the survivor may request the release of the evidence to a law enforcement agency and report a sexual assault or other sex offense to the agency at any time;

(3) the name, phone number, and e-mail address of the law enforcement agency with jurisdiction over the offense; and

(4) the name and phone number of a local rape crisis center.

(b) A health care facility that provides care to a sexual assault survivor who has not given consent as described by Subsection (a) shall provide the standard form developed under Subsection (a) to the survivor before the survivor is released from the facility.

Commentary by Kaci Singer

Source: HB 8

Effective Date: September 1, 2019

Summary of Changes: Requires DPS to develop a standard form to be provided to sexual assault survivors who have not given signed, written consent to a health care facility to release the evidence from the exam. Specific information must be on the form. The form must be provided before the survivor is released from the facility.

Occupations Code

Occupations Code Sec. 116.001. [TRAINING COURSE ON HUMAN TRAFFICKING PREVENTION] DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health care practitioner" means an individual who holds a license, certificate, permit, or other authorization issued under this title to engage in a health care profession and who provides direct patient care.

Occupations Code Sec. 116.002. REQUIRED TRAINING COURSE ON HUMAN TRAFFICKING PREVENTION FOR CERTAIN HEALTH CARE PROVIDERS. (a) A health care practitioner, other than a physician or nurse, within the time prescribed by commission rule shall successfully complete a training course approved by the executive commissioner on identifying and assisting victims of human trafficking.

(b) The executive commissioner shall:

(1) approve training courses on human trafficking prevention, including at least one course that is available without charge; and

(2) post a list of the approved training courses on the commission's Internet website.

(c) The executive commissioner shall update the list of approved training courses described by Subsection (b) as necessary and consider for approval training courses conducted by health care facilities.

Occupations Code Sec. 116.003. TRAINING REQUIRED FOR LICENSE RENEWAL. A health care practitioner, other than a physician or nurse, shall successfully complete a training course described by Section 116.002 as a condition for renewal of a license issued to the health care practitioner under this title.

Occupations Code Sec. 156.060. CONTINUING EDUCATION IN HUMAN TRAFFICKING PREVENTION. (a) A physician licensed under this subtitle who submits an application for renewal of a registration permit and who designates a direct patient care practice must complete, as part of the hours of continuing medical education required for compliance with Section 156.051(a)(2), a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission under Section 116.002.

(b) The board shall designate the human trafficking prevention course required by Subsection (a) as a medical ethics or professional responsibility course for purposes of complying with continuing medical education required by Section 156.051(a)(2).

(c) The board shall adopt rules to implement this section.

Occupations Code Sec. 301.308. CONTINUING EDUCATION IN HUMAN TRAFFICKING PREVENTION. (a) As part of a continuing competency program under Section 301.303, a license holder who provides direct patient care shall complete a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission under Section 116.002.

(b) The board shall adopt rules to implement this section.

Commentary by Kaci Singer

Source: HB 2059

Effective Date: September 1, 2019

Applicability: Health care providers are required to comply beginning September 1, 2020.

Summary of Changes: Certain licensed health care providers are required to obtain training in human trafficking prevention.

Occupations Code Sec. 1701.253. SCHOOL CURRICULUM. (b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the recognition, investigation, and documentation of cases that involve [;] ~~[(A)]~~ child abuse and ~~[(B)]~~ neglect, [;]

~~[(B)]~~ family violence, [;] and ~~[(C)]~~ sexual assault, including the use of best practices and trauma-informed response techniques to effectively recognize, investigate, and document those cases;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

Commentary by Kaci Singer

Source: SB 586

Effective Date: September 1, 2019

Applicability: TCOLE shall establish the required curriculum no later than January 1, 2020.

Summary of Changes: Requires TCOLE to include the use of best practices and trauma-informed response techniques in its training on cases involving child abuse, family violence, and sexual assault.

Occupations Code Sec. 1701.253. SCHOOL CURRICULUM. (p) As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program on the trafficking of persons developed under Section 1701.258(a). An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

Commentary by Kaci Singer

Source: HB 292

Effective Date: September 1, 2019

Applicability: TCOLE must adopt rules no later than December 1, 2019

Summary of Changes: TCOLE must require peace officers to complete basic education and training on trafficking of persons as part of the peace officer's minimum curriculum requirements. The officer must complete the program before the second anniversary of the date the officer is licensed unless he or she completes the program as part of the basic training course.

Occupations Code Sec. 1701.253. SCHOOL CURRICULUM. (b-1) The commission shall consult with the Sexual Assault Survivors' Task Force established under Section 772.0064, Government Code, regarding minimum curriculum requirements for training in the investigation and documentation of cases that involve sexual assault or other sex offenses.

(b-2) This subsection and Subsection (b-1) expire September 1, 2023.

Commentary by Kaci Singer

Source: HB 1590

Effective Date: June 4, 2019

Summary of Changes: Requires the Texas Commission on Law Enforcement (TCOLE) to consult with the newly established Sexual Assault Survivors' Task Force regarding the minimum curriculum requirements for training in the investigation and documentation of cases that involve sexual assault or other sex offenses. This section expires in September 1, 2023 as specified in the enabling provisions of the Task Force found in Section 772.0064, Government Code.

Occupations Code Sec. 1701.258. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS. (a) The commission by rule shall require an officer ~~[first licensed by the commission on or after January 1, 2011,]~~ to complete ~~[within a reasonable time after obtaining the license]~~ a one-time basic education and training program on the trafficking of persons. The program must:

- (1) consist of at least four hours of training; and
- (2) include a review of the substance of Sections 20A.02 and 43.05, Penal Code.

Commentary by Kaci Singer

Source: HB 292

Effective Date: September 1, 2019

Applicability: TCOLE must adopt rules no later than December 1, 2019.

Summary of Changes: Removes language related to timelines from when the trafficking training requirements were first implemented.

Occupations Code Sec. 1701.352. CONTINUING EDUCATION PROGRAMS. (b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

- (1) topics selected by the agency; and
- (2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:
 - (A) civil rights, racial sensitivity, and cultural diversity;
 - (B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments;

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition, ~~and~~ documentation, and investigation of cases that involve child abuse or neglect, family violence, and sexual assault, including the use of best practices and trauma-informed techniques to effectively recognize, document, and investigate those cases; and

(ii) issues concerning sex offender characteristics.

Commentary by Kaci Singer

Source: SB 586

Effective Date: September 1, 2019

Summary of Changes: TCOLE must require state, county, special district, and municipal agencies that appoint or employ peace officers to provide training at least once every 48 months and now the training must include the use of best practices and trauma-informed response techniques in its training on cases involving child abuse, family violence, and sexual assault.

Occupations Code Sec. 1701.4045. CERTIFICATION OF OFFICERS FOR FAMILY VIOLENCE AND SEXUAL ASSAULT ASSIGNMENTS. (a) The commission by rule shall establish minimum requirements for the training, testing, and certification of special officers for responding to allegations of family violence or sexual assault.

(b) The commission may certify a peace officer as a special officer for responding to allegations of family violence or sexual assault if the person:

(1) completes an advanced training course administered by the commission on recognizing, documenting, and investigating family violence and sexual assault using best practices and trauma-informed techniques; and

(2) passes an examination administered by the commission that is designed to test the person's:

(A) knowledge and recognition of the signs of family violence and sexual assault; and

(B) skill at documenting and investigating family violence and sexual assault using best practices and trauma-informed techniques.

(c) The commission may issue a professional achievement or proficiency certificate to a peace officer who meets the requirements of Subsection (b).

Commentary by Kaci Singer

Source: SB 586

Effective Date: September 1, 2019

Applicability: TCOLE must adopt rules to implement this change as soon as practicable after the effective date.

Summary of Changes: TCOLE must adopt rules that establish minimum requirements for training, testing, and certifying special officers to respond to allegations of family violence or sexual assault. To be certified, the officer must complete an advanced training course and pass an examination.

Penal Code

Penal Code Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. (b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(3) an offense:

(A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(4) an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure;

(5) an offense:

(A) under Section 20A.02, 20A.03, or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section [~~both sections~~]; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section [~~both sections~~]; or

(6) an offense:

(A) under Section 22.04(a)(1) or (2) or Section 22.04(a-1)(1) or (2) that is punishable as a felony of the first degree, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This bill is based on the recommendations of the Texas Human Trafficking Prevention Task Force. This change adds Continuous Trafficking of Persons to the list of offenses for which a person may be given a consecutive sentence for multiple offenses arising out of the same criminal episode.

Penal Code Sec. 20.07. OPERATION OF STASH HOUSE. (a) A person commits an offense if the person knowingly:

(1) uses or permits another to use any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under the person's control to commit an offense or to facilitate the commission of an offense under Section 20.05, 20.06, 20A.02, 20A.03, 43.04, or 43.05; or

(2) rents or leases any property to another, intending that the property be used as described by Subdivision (1).

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

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

Commentary by Kaci Singer

Source: HB 2613

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: Creates a new Class A misdemeanor for the operation of a stash house. The purpose of this law is to address the fact that stash houses are often used to facilitate trafficking and human smuggling.

Penal Code Sec. 20A.02. TRAFFICKING OF PERSONS. (a-1) For purposes of Subsection (a)(3), "coercion" as defined by Section 1.07 includes:

(1) destroying, concealing, confiscating, or withholding from a [the] trafficked person, or threatening to destroy, conceal, confiscate, or withhold from a [the] trafficked person, the [trafficked] person's actual or purported:

(A) [(+) government records;

or

(B) [(2)] identifying information or documents;

(2) causing a trafficked person, without the person's consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person's ability to appraise the nature of the prohibited conduct or to resist engaging in that conduct; or

(3) withholding alcohol or a controlled substance to a degree that impairs the ability of a trafficked person with a chemical dependency, as defined by Section 462.001, Health and Safety Code, to appraise the nature of the prohibited conduct or to resist engaging in that conduct.

Commentary by Kaci Singer

Source: SB 1802

Effective Date: September 1, 2019

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Modifies the definition of coercion for the purposes of trafficking of persons to include either causing a trafficked person to become intoxicated without their consent or to withhold alcohol or a controlled substance to a degree that impairs the person's ability to appraise the nature of the prohibited conduct or to resist engaging in that conduct.

Penal Code Sec. 22.011. SEXUAL ASSAULT. (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; [ø]

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code; or

(12) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is:

(1) a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01; or

(2) a state jail felony if the offense is committed under Subsection (a)(1) and the actor has not received express consent as described by Subsection (b)(12).

Commentary by Kaci Singer

Source: SB 1259

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This creates a new way to commit the offense of sexual assault, which is for a health care provider, in the course of performing an assisted reproduction procedure on another person, to use reproductive material from a donor knowing that the other person has not expressly consented to the use of the material from that particular donor. An offense is a state jail felony.

Penal Code Sec. 22.011. SEXUAL ASSAULT.
(c)(6) "Assisted reproduction" and "donor" have the meanings assigned by Section 160.102, Family Code.

(7) "Human reproductive material" means:

(A) a human spermatozoon or ovum; or

(B) a human organism at any stage of development from fertilized ovum to embryo.

Commentary by Kaci Singer

Source: SB 1259

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This adds definitions of assisted reproduction, donor, and human productive material to the sexual assault statute.

Penal Code Sec. 22.011. SEXUAL ASSAULT.
(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:
(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not;

(a) a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01; or

(b) a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was:

(1) a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01; or

(2) a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02.

Commentary by Kaci Singer

Source: HB 667

Effective Date: September 1, 2019

Applicability: Applies to an offense occurring on or after the effective date.

Summary of Changes: This Act is known as Melissa’s law. In 2017, 17-year-old Melissa’s uncle picked her up at a bus stop and drove her to his property in Lamb County. He kept her there for nearly 24 hours, beating, raping, and sodomizing her. No deadly weapon was used, and her injuries did not rise to the level to meet the definition of serious bodily injury so aggravated sexual assault was not charged. Prosecutors considered charging him with a first-degree felony under Section 22.11(f), which reads that a sexual assault is a first-degree felony if the victim was “a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.” Section 25.01 is the statute that prohibits bigamy. According to prosecutors, courts have held that the bigamy enhancement provision was unconstitutional because it punished married individuals more harshly than unmarried individuals. That is not the only issue with the statute addressed by the courts.

In *Arteaga v. State*, 521 S.W.3d 329 (Tex.Crim.App. 2017), the defendant was charged with 28 counts of sexual assault against his young daughter and for possession of child pornography. During the period of the sexual assaults, the defendant was not married. The trial court included in the abstract portion of the jury charge Section 6.201, Family Code, which defines when a marriage is void based on consanguinity (relationship). However, there was no mention of consanguinity in the application

portion of the jury charge. The jury was instructed that it could convict defendant only under circumstances alleged in the indictment (that he was prohibited from marrying his daughter). Defendant was convicted and the jury found that he was prohibited from marrying his daughter. He appealed, arguing that the wording of Section 22.011(f) meant that the State was required to prove that he was prohibited from marrying his daughter under the bigamy statute, not the consanguinity statute. The court of appeals disagreed, holding that the language in Section 22.011(f) is ambiguous and that defendant’s interpretation would lead to an absurd result. *Arteaga v. State*, 511 S.W.3d 675 (Tex.App.-Corpus Christi 2016, rev’d). The court of appeals held that the requirement to prove facts under the bigamy statute applied only when the victim was a person the defendant was prohibited from claiming to marry or living under the appearance of being married.

The Court of Criminal Appeals analyzed the structure of 22.011(f) and determined it was grammatically ambiguous. It analyzed 22.011(f) in concert with 25.01 and determined that the only way to enhance under Section 22.011(f) was to “prove facts constituting bigamy under all three provisions of 22.011(f)” (when prohibited from marrying the victim, claiming to marry the victim, or living with the victim under the appearance of being married), meaning that proof the marriage is prohibited due to consanguinity is insufficient. In making its ruling, the Court of Criminal Appeals also analyzed the legislative history, which indicated that while the bill that passed that added the language in 22.011(f) was one broadly aimed at providing more protection to children and the elderly, the language in 22.011(f) was an amendment that came directly from a bill that did not pass that was specifically aimed at addressing bigamy and polygamy.

Both a footnote and concurring opinion in *Arteaga* sought to clarify that, despite the court’s language, the State was not in fact required to prove that defendant is actually in a bigamous relationship with the victim but rather than marrying the victim would result in a bigamous relationship. However, in a currently unpublished opinion, the Fort Worth Court of Appeals held that it was unable to reconcile the footnote with the actual language of the opinion. *Senn v. State*, 2018 WL 5291889 (Tex.App.-Fort Worth 2018). As such, that court held there was insufficient evidence to support a conviction against defendant who sexually assaulted his daughter while married to her stepmother since there was no evidence he married her, claimed to marry her, or was living with her under the appearance of being married. In a case with similar facts, the Houston Court of Appeals applied the footnote language to uphold the conviction on the grounds that, because defendant was married, he would have been prohibited from marrying the victim, his daughter, under the bigamy statute. *Rodriguez v. State*, 571 S.W.3d (Tex.App.-Houston [1st Dist.] 2018). The court of Criminal Appeals has granted the petition for discretionary review in both cases.

The issue cited in hearings on this particular bill was not related to the strict application of the bigamy statute to the enhancement in 22.011(f). Instead, it was a potential constitutional issue under the Equal Protection Clause with the fact that only married individuals could have the punishment enhanced under this provision since only married individuals can commit bigamy and thus are the only ones subject to the enhanced penalty. Thus, an unmarried parent who sexually assaults his teenage daughter is subject to a second degree felony whereas a married parent engaging in the same conduct is subject to a first-degree felony. The Court of Appeals applied a rational-basis review to defendant's constitutional challenge and determined the statute was unconstitutional as applied to him. *Estes v. State*, 487 S.W.3d 737 (Tex.App.-Fort Worth 2016, rev'd). However, when this issue was examined by the Court of Criminal Appeals in 2018, the court held that the statute as applied is rationally related to the State's interest in protecting children from sexual exploitation and remanded the case to the Court of Appeals to determine if strict scrutiny was the proper standard of review. *Estes v. State*, 546 S.W.3d 691 (Tex.Crim.App. 2018). On remand, the Court of Appeals determined that strict scrutiny was not the appropriate review because the statute does not impinge on defendant's fundamental personal right to marry. Thus, the finding of the Court of Criminal Appeals that the statute is rationally related to a legitimate government interest remains intact.

This change in law seeks to resolve the court issues. It leaves the bigamy-related enhancement untouched while adding a provision that makes it a first degree felony if the victim is a person whom the actor is prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02, Family Code, namely the actor's parent, child, stepchild or stepparent (current or former), sibling, aunt or uncle, niece or nephew, or cousin. All relationships include by blood (whole or half) and most include by adoption (aunt or uncle does not appear to) but do not include those relationships that are by marriage. Thus, while the new language makes it clear that the enhanced penalty for sexual assault of one's immediate family members is a first-degree felony and addresses the issues identified in the bigamy-enhancement cases, it appears there may be a previously unidentified gap for certain relationships. For example, because Section 25.02 does not include relationships by marriage, a defendant's sexual assault of his niece (who is at least 14 years of age) is a first degree felony if she is the daughter of his sister but is a second degree felony if she is the daughter of his wife's sister. This is not the situation that the law was designed to address, but it is important to be aware of the distinction when handling one of these cases.

The change that may have the most impact on younger people is the change to the affirmative defense in Section

22.01(e). Section 22.011(a)(2) makes it an offense to engage in sexual intercourse with a child under the age of 17. Because a child cannot consent to sex, consent is not an element of the offense. However, in recognition of the fact that children under 17 do willingly engage in sexual intercourse, the legislature created an affirmative defense to Section 22.011(a)(2). This defense is not available in cases in which the sexual intercourse was without consent as those are cases under Section 22.011(a)(1). Under current law, it is an affirmative defense if the child who is the alleged victim was at least 14 and the other actor: was not more than three years older, was not required to register as a sex offender for life, and did not have a reportable conviction or adjudication for a sex offense listed in Chapter 62, CCP. In 2005, the law was changed to add that the affirmative defense was not available if the bigamy statute language was applicable; in other words, there was no affirmative defense if the victim was a person the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01. Practically speaking, the affirmative defense is available only for people who are 14 to 19 and knowingly engaging in sex with someone not more than 3 years younger than them. Those who are 14, 15, or 16 are unable to consent by law, so if both actors fall in those age ranges, prosecution for sexual assault is not likely to occur as both would be victims. However, the 17, 18, and 19 year olds are not victims under the law; this change means the affirmative defense is not available to them if the other person involved is a relative with whom the actor is prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02.

Penal Code Sec. 22.012. INDECENT ASSAULT. (a) A person commits an offense if, without the other person's consent and with the intent to arouse or gratify the sexual desire of any person, the person:

(1) touches the anus, breast, or any part of the genitals of another person;

(2) touches another person with the anus, breast, or any part of the genitals of any person;

(3) exposes or attempts to expose another person's genitals, pubic area, anus, buttocks, or female areola; or

(4) causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person.

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

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

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Under current law, intentionally groping someone without their consent may be prosecuted only as Assault – Offensive Contact, which is a Class C misdemeanor that carries a fine of up to \$500 and no jail time. It was determined that, given the traumatic impact of such conduct on a victim, a greater potential penalty was warranted. The newly created offense of Indecent Assault makes it a Class A misdemeanor, with the intent to arouse or gratify the sexual desire of any person and without consent, to touch the anus, breast, or genitals of another person; to touch another person with someone else's anus, breast, or genitals; to expose or attempt to expose another person's genitals, pubic area, buttocks, or female areola; or to cause another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine or feces of any person. If conduct under this section also constitutes an offense under another law, the actor may be prosecuted under either law or under both laws.

Penal Code Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE. This section takes effect only if the comptroller determines that Sections 14 and 69, H.B. 7, Acts of the 85th Legislature, Regular Session, 2017, took effect as provided by H.B. 7.

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Chapter 7A, Code of Criminal Procedure, 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, Chapter 85, Family Code, or Subchapter F, Chapter 261, 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 20A.02, 22.011, 22.012, 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;

(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 or condition of bond; or

(6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019, if it takes effect

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change related to the new offense of Indecent Assault, for which a protective order may be issued. This section takes effect only if the Comptroller determines that Sections 14 and 69 of HB 7 from the 85th Legislative Session (2017) took effect. Those sections made changes to this statute involving protective orders in certain cases involving abuse or neglect of a child. If those sections did not take effect, then the provision below this one is the one that takes effect. Whether those sections took effect or not makes no difference to the meaning of the language in this bill.

Penal Code Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, [CHILD ABUSE OR NEGLECT,] SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE. This section takes effect only if the comptroller determines that Sections 14 and 69, H.B. 7, Acts of the 85th Legislature, Regular Session, 2017, did not take effect as provided by H.B. 7. (a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Chapter 7A, Code of Criminal Procedure, 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 20A.02, 22.011, 22.012, 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;

(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 or condition of bond; or

(6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019, if it takes effect.

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change related to the new offense of Indecent Assault, for which a protective order may be issued. This section takes effect only if the Comptroller determines that Sections 14 and 69 of HB 7 from the 85th Legislative Session (2017) did not take effect. Those sections made changes to this statute involving protective orders in certain cases involving abuse or neglect of a child. If those sections did take effect, then the provision above this one is the one that takes

effect. Whether those sections took effect or not makes no difference to the meaning of the language in this bill.

Penal Code Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE. This change takes effect only if the comptroller determines that Sections 14 and 69, H.B. 7, Acts of the 85th Legislature, Regular Session, 2017, did take effect as provided by H.B. 7.

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019, if it takes effect.

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change related to the new offense of Indecent Assault, for which a protective order may be issued. This section takes effect only if the Comptroller determines that Sections 14 and 69 of HB 7 from the 85th Legislative Session (2017) took effect. Those sections made changes to this statute involving protective orders in certain cases involving abuse or neglect of a child. If those sections did not take effect, then the provision below this one is the one that takes effect. Whether those sections took effect or not makes no difference to the meaning of the language in this bill.

Penal Code Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE, ~~CHILD ABUSE OR NEGLECT,~~ SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE. This section takes effect only if the comptroller determines that Sections 14 and 69, H.B. 7, Acts of the 85th Legislature, Regular Session, 2017, did not take effect as provided by H.B. 7.

Commentary by Kaci Singer

Source: SB 194

Effective Date: September 1, 2019, if it takes effect.

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change related to the new offense of Indecent Assault, for which a protective order may be issued. This section takes effect only if the Comptroller determines that Sections 14 and 69 of HB 7 from the 85th Legislative Session (2017) did not take effect. Those sections made changes to this statute involving protective orders in certain cases involving abuse or neglect of a child. If those sections did take effect, then the provision above this one is the one that takes

effect. Whether those sections took effect or not makes no difference to the meaning of the language in this bill.

Penal Code Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY. (b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a), ~~the~~ the exact date when that conduct occurred, or the county in which each instance of the conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).

Commentary by Kaci Singer

Source: HB 1661

Effective Date: September 1, 2019

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This change is part of Rachel's Law, discussed earlier. It relieves the jury from the need to unanimously agree on the county in which each instance of assault making up the offense of Continuous Violence Against the Family occurred.

Penal Code Sec. 37.082. MISREPRESENTING CHILD AS FAMILY MEMBER AT PORT OF ENTRY. (a) In this section:

(1) "Child" means a person younger than 18 years of age.

(2) "Family member" means a person who is related to another person by consanguinity or affinity.

(3) "Port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to enforce customs laws.

(b) A person commits an offense if the person, with intent to commit an offense under Section 20A.02, knowingly misrepresents a child as a family member of the person to a peace officer or federal special investigator at a port of entry.

(c) An offense under this section is a Class B misdemeanor.

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

Commentary by Kaci Singer

Source: HB 888

Effective Date: September 1, 2019

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This new statute creates a Class B misdemeanor if a person, with the intent to commit the offense of trafficking of persons under Section 20A.02, misrepresents a child to be a member of the person's family to either a peace officer or federal special investigator at a port of entry. The purpose of this law is to address child trafficking in which captors misrepresent children as family.

Penal Code Sec. 42.075. DISCLOSURE OF CONFIDENTIAL INFORMATION REGARDING FAMILY VIOLENCE OR VICTIMS OF TRAFFICKING SHELTER CENTER. (a) In this section, "family violence shelter center" and "victims of trafficking shelter center" have the meanings assigned by Section 552.138, Government Code.

(b) A person commits an offense if the person, with the intent to threaten the safety of any inhabitant of a family violence shelter center or victims of trafficking shelter center, discloses or publicizes the location or physical layout of the center.

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

(d) If conduct constituting an offense under this section also constitutes an offense under Section 552.352, Government Code, the actor may be prosecuted under either section.

Commentary by Kaci Singer

Source: HB 3091

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This is a new Penal Code offense designed to address instances in which a person, with malicious intent, discloses or publicizes the location or physical layout of a family violence shelter or a trafficking shelter center. It is a Class A misdemeanor to disclose or publicize the location or physical layout of such a center with the intent to threaten the safety of any inhabitant of the center.

Penal Code Sec. 43.01. DEFINITIONS. (1)

"Access software provider" means a provider of software, including client or server software, or enabling tools that perform one or more of the following functions:

(A) filter, screen, allow, or disallow content;

(B) select, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(1-a) [(+) “Deviate sexual intercourse” means any contact between the genitals of one person and the mouth or anus of another person.

(1-b) [(1-a)] “Fee” means the payment or offer of payment in the form of money, goods, services, or other benefit.

(1-c) “Information content provider” means any person or entity that is wholly or partly responsible for the creation or development of information provided through the Internet or any other interactive computer service.

(1-d) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access to a computer server by multiple users, including a service or system that provides access to the Internet or a system operated or service offered by a library or educational institution.

(1-e) “Internet” means the international computer network of both federal and nonfederal interoperable packet switched data networks.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This change adds definitions to Chapter 43, Penal Code, to define terms used in the newly created offenses of online promotion of prostitution and aggravated online promotion of prostitution.

Penal Code Sec. 43.02. PROSTITUTION.

(c-1) An offense under Subsection (b) is a Class A [B] misdemeanor, except that the offense is:

(1) [a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (b)];

[(2)] a state jail felony if the actor has previously been convicted [three or more times] of an offense under Subsection (b); or

(2) [(3)] a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense;

(B) represented to the actor as younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: Current law provides that a first conviction of prostitution as the buyer (“John”) is a Class B misdemeanor, a second or third conviction is a Class A misdemeanor, and all subsequent convictions are state jail felonies. This changes the law so that the first conviction is a Class A misdemeanor and the second and subsequent are state jail felonies. The current law making it a second degree felony to agree to pay for sexual conduct with a person under 18, represented to be under 18, or believed by the actor to be under 18 remains unchanged.

Penal Code Sec. 43.03. PROMOTION OF PROSTITUTION. (b) An offense under this section is a felony of the third degree [state jail felony], except that the offense is:

(1) a felony of the second [third] degree if the actor has been previously convicted of an offense under this section; or

(2) a felony of the first [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 of the offense.

Commentary by Kaci Singer

Source: SB 1802

Effective Date: September 1, 2019

Applicability: Applies to an offense occurring on or after the effective date.

Summary of Changes: Increases the penalties of the offense of promotion of prostitution.

Penal Code Sec. 43.031. ONLINE PROMOTION OF PROSTITUTION. (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor:

(1) has been previously convicted of an offense under this section or Section 43.041; or

(2) engages in conduct described by Subsection (a) 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 of the offense.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This adds an offense of online promotion of prostitution if a person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote prostitution of another person or to facilitate another person to engage in prostitution. The first conviction is a third degree felony, and subsequent convictions are second degree felonies. If the conduct involves a person younger than 18 engaging in prostitution, the offense is a second degree felony, regardless of whether the actor knows the age of the person.

Penal Code Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION. (b) An offense under this section is a felony of the ~~[second degree, except that the offense is a felony of the]~~ first degree ~~[if 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 of the offense].~~

Commentary by Kaci Singer

Source: SB 1802

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: Modifies the penalty for the offense of aggravated promotion of prostitution so that it is a first degree felony regardless of the age of the victim.

Penal Code Sec. 43.041. AGGRAVATED ONLINE PROMOTION OF PROSTITUTION. (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the actor:

(1) has been previously convicted of an offense under this section; or

(2) engages in conduct described by Subsection (a) involving two or more persons younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the persons at the time of the offense.

Commentary by Kaci Singer

Source: SB 20

Effective Date: September 1, 2019

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: This adds an offense of aggravated online promotion of prostitution if a person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote prostitution of five or more persons or to facilitate five or more persons to engage in prostitution. The first conviction is a second degree felony, and subsequent convictions are first degree felonies. If the conduct involves two or more persons younger than 18 engaging in prostitution, the offense is a first degree felony, regardless of whether the actor knows the age of the persons.

Penal Code Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if the person knowingly:

(1) causes another by force, threat, coercion, or fraud to commit prostitution; or

(2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.

(b) An offense under this section ~~[Subsection (a)(1) is a felony of the second degree. An offense under Subsection (a)(2)]~~ is a felony of the first degree.

(d) For purposes of this section, “coercion” as defined by Section 1.07 includes:

(1) destroying, concealing, confiscating, or withholding from a person, or threatening to destroy, conceal, confiscate, or withhold from a person, the person’s actual or purported:

(A) government records; or

(B) identifying information or documents;

(2) causing a person, without the person’s consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person’s ability to appraise the nature of the person’s conduct that constitutes prostitution or to resist engaging in that conduct; or

(3) withholding alcohol or a controlled substance to a degree that impairs the ability of a person with a chemical dependency, as defined by Section 462.001, Health and Safety Code, to appraise the nature of the person’s conduct that constitutes prostitution or to resist engaging in that conduct.

Commentary by Kaci Singer

Source: SB 1802

Effective Date: September 1, 2019

Applicability: Applies to an offense occurring on or after the effective date.

Summary of Changes: Adds coercion as a means by which one may commit the offense of compelling prostitution. Uses the definition of coercion that is in Section 20A.02, Penal Code (Trafficking of Persons).

8. Legislation Affecting the Texas Juvenile Justice Department

Government Code

Government Code Sec. 659.303. TEXAS JUVENILE JUSTICE DEPARTMENT EMPLOYEES.

(a) The department may include hazardous duty pay in the compensation paid to an individual for services rendered during a month if the individual:

(1) has:

(A) routine direct contact with youth:

(i) ~~(A)~~ placed in a residential facility of the department; or

(ii) ~~(B)~~ released under the department's supervision; and

(B) ~~(2)~~ ~~has~~ completed at least 12 months of lifetime service credit not later than the last day of the preceding month; or

(2) is an investigator, inspector general, security officer, or apprehension specialist employed by the office of the inspector general of the department.

(d) Except for the inclusion of hazardous duty pay in the compensation paid to an individual described by Subsection (a)(2), the ~~The~~ department may not pay hazardous duty pay:

(1) from funds authorized for payment of an across-the-board employee salary increase; or

(2) to an employee who works at the department's central office.

Commentary by Kaci Singer

Source: HB 3689

Effective Date: September 1, 2019

Applicability: Applies to disbursements of hazardous duty pay on or after the effective date.

Summary of Changes: Allows the Texas Juvenile Justice Department (TJJD) to provide hazardous duty pay to investigators, security officers, and apprehension specialists employed by the Office of Inspector General and to pay that from funds authorized for payment of an across-the-board salary increase and to employees working at Central Office.

Human Resources Code

Human Resources Code Sec. 202.010. SUNSET PROVISION. The Texas Juvenile Justice Board and the Texas Juvenile Justice Department are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished September 1, 2023 ~~[2024]~~.

Commentary by Kaci Singer

Source: SB 619

Effective Date: June 10, 2019

Summary of Changes: The amendments to Section 202.010 of the Human Resources Code updated TJJD's sunset date from September 1, 2021, to September 1, 2023.

Human Resources Code Sec. 241.007. CERTAIN CRIMES CONCERNING THE DEPARTMENT.

(e) The chief inspector general of the office of inspector general, at the direction of the board of directors of the special prosecution unit, shall notify the foreperson ~~[foreman]~~ of the appropriate grand jury, in the manner provided by Article 20A.051 ~~[20.09]~~, Code of Criminal Procedure, if:

(1) the chief inspector general receives credible evidence of illegal or improper conduct by department officers, employees, or contractors that the inspector general reasonably believes jeopardizes the health, safety, and welfare of children in the custody of the department;

(2) the chief inspector general reasonably believes the conduct:

(A) could constitute an offense under Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a department facility or an investigation related to the alleged abuse; and

(3) the chief inspector general has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

Commentary by Kaci Singer

Source: HB 4173

Effective Date: January 1, 2021

Summary of Changes: This is a conforming change related to a non-substantive revision of laws in which Article 20.09, Code of Criminal Procedure, was renumbered to Article 20A.051.

Human Resources Code Sec. 242.102. OFFICE OF INSPECTOR GENERAL.

(a) The office of inspector general is established at the department under the direction of the board as a law enforcement agency for the purpose of ~~[investigating]~~:

(1) preventing and investigating:

(A) crimes committed by department employees, including parole officers employed by or under a contract with the department; and

(B) ~~(2)~~ crimes and delinquent conduct committed at a facility operated by the department, a residential facility operated by another entity under a contract with the department, or any facility in which a child

committed to the custody of the department is housed or receives medical or mental health treatment, including:

(i) unauthorized or illegal entry into a department facility;

(ii) the introduction of contraband into a department facility;

(iii) escape from a secure facility; and

(iv) organized criminal activity; and

(2) investigating complaints received under Section 203.010 involving allegations of abuse, neglect, or exploitation of children in juvenile justice programs or facilities.

Commentary by Kaci Singer

Source: HB 3689

Effective Date: September 1, 2019

Summary of Changes: Specifies that the TJJD Office of Inspector General (OIG) is a law enforcement agency and expands its responsibilities to include prevention, as well as investigation of crimes by agency employees. This provision also gives authority to the OIG to prevent and investigate crimes and delinquent conduct at agency facilities, including unauthorized or illegal entry, introduction of contraband, escape from a secure facility, and organized criminal activity. It also gives the Office of Inspector General the responsibility to investigate complaints TJJD receives involving alleged abuse, neglect, or exploitation of children in juvenile justice programs or facilities.

Human Resources Code Sec. 243.008. INFORMATION CONCERNING FOSTER CARE HISTORY. (e) Not later than January 31 of each even-numbered year, the department shall submit a report to the governor, the lieutenant governor, and each member of the legislature [~~the speaker of the house of representatives, and each standing committee having primary jurisdiction over the department~~]. The department shall also make the report available to the public on the department's Internet website. The report must summarize statistical information concerning the total number and percentage of children in the custody of the department during the preceding two years who have at any time been in foster care. Data in the report must be disaggregated by:

(1) age;

(2) sex;

(3) race or ethnicity;

(4) the conduct for which children were committed to the department; and

(5) children entering the juvenile justice system for the first time.

Commentary by Kaci Singer

Source: HB 2229

Effective Date: June 10, 2019

Summary of Changes: Current law requires TJJD to provide the speaker of the house, the lieutenant governor, and each standing committee with primary jurisdiction over TJJD with a report summarizing the total number of juveniles committed to TJJD who had ever been in foster care. This changes so that the data in the report must be disaggregated by age, sex, race or ethnicity, committing conduct, and whether the child was entering the juvenile justice system for the first time. The report must be provided to every member of the legislature.

Human Resources Code Sec. 243.051. APPREHENSION AFTER ESCAPE OR VIOLATION OF RELEASE CONDITIONS. (a) If a child who has been committed to the department and placed by the department in any institution or facility has escaped or has been released under supervision and broken the conditions of release:

(1) a sheriff, deputy sheriff, constable, special investigator, or peace [pøliee] officer may, without a warrant, arrest the child; or

(2) a department employee designated by the executive director may, without a warrant or other order, take the child into the custody of the department.

Commentary by Kaci Singer

Source: HB 3688

Effective Date: September 1, 2019

Applicability: Applies to a custodial event occurring on or after the effective date.

Summary of Changes: There were concerns raised regarding the authority of some peace officers to take a child into custody without a warrant when that child had escaped or violated a condition of release. This change clarifies that special investigators and peace officers may take a child into custody without a warrant if the child has escaped from a TJJD facility or has violated a condition of release.

Human Resources Code Sec. 261.001. [INDEPENDENT OMBUDSMAN] DEFINITIONS.

(1) "Child" means an individual who is:

(A) 10 years of age or older and younger than 19 years of age; and

(B) committed to or placed in a facility described by Section 261.101(f) by an order issued by a juvenile court.

(1-a) "Independent ombudsman" means the individual who has been appointed under this chapter to the office of independent ombudsman.

Commentary by Kaci Singer

Source: HB 3648

Effective Date: September 1, 2019

Applicability: Applies to the powers of the TJJD Independent Ombudsman on or after the effective date.

Summary of Changes: For years there have been questions concerning the authority of the TJJJ Independent Ombudsman with regard to facilities that serve juveniles on probation, such as post-adjudication secure correctional facilities. The questions have been due to the limitations of the language in the statute. HB 3648 seeks to make clear that the authority does extend to juveniles on probation who are in placement by defining child so that it is inclusive of them as well as juveniles committed to TJJJ.

Human Resources Code Sec. 261.101. DUTIES AND POWERS. (f) Notwithstanding any other provision of this chapter, the powers of the office include:

(1) the inspection of:

(A) a facility operated by the department under Subtitle C;

(B) a post-adjudication secure correctional facility under Section 51.125, Family Code;

(C) a nonsecure correctional facility under Section 51.126, Family Code; and

(D) any other residential facility in which a child adjudicated as having engaged in conduct indicating a need for supervision or delinquent conduct is placed by court order; and

(2) the investigation of complaints alleging a violation of the rights of the children committed to or placed in a facility described by this subsection.

Commentary by Kaci Singer

Source: HB 3648/SB 1702

Effective Date: September 1, 2019

Summary of Changes: This change also applies to the TJJJ Independent Ombudsman. It seeks to make it clear that the OIO powers include the inspection of TJJJ facilities as well as post-adjudication secure correctional facilities, nonsecure correctional facilities, and any other residential facilities at which a child on probation is placed by court order. The powers also include the investigation of complaints alleging a violation of the rights of children in such facilities.

Human Resources Code Sec. 261.101. DUTIES AND POWERS. The following provisions are repealed:

(1) Section 261.101(e), as added by Section 11(b), Chapter 854 (S.B. 1149), Acts of the 84th Legislature, Regular Session, 2015; and

(2) Section 261.101(e), as amended by Chapter 962 (S.B. 1630), Acts of the 84th Legislature, Regular Session, 2015.

Commentary by Kaci Singer

Source: HB 3648/SB 1702

Effective Date: September 1, 2019

Summary of Changes: Repeals both existing versions of Section 261.101(e). Because of the new subsection (f), these provisions are no longer necessary.

Occupations Code

Occupations Code Sec. 53.003. LEGISLATIVE INTENT; LIBERAL CONSTRUCTION OF SUBCHAPTER. (a) It is the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has:

(1) been convicted of an offense; and

(2) discharged the sentence for the offense.

(b) This chapter shall be liberally construed to carry out the intent of the legislature.

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license occurring on or after the effective date.

Summary of Changes: Section 53.003, Occupations Code, addresses the legislative intent of HB 1342 and is designed to limit barriers to eligibility for an occupational license based solely on a conviction. This section sets out the intent of the legislature and an instruction that the chapter is to be liberally construed to carry out that intent.

Occupations Code Sec. 53.021. AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE. (a)

Subject to Section 53.0231, a [A] licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) [an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;

[(3)] an offense listed in Article 42A.054, Code of Criminal Procedure; or

(3) [(4)] a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license submitted on or after the effective date.

Summary of Changes: Section 53.021 changes the grounds upon which a licensing authority, such as TJJJ,

may suspend or revoke a license (which includes a certification), disqualify a person from receiving a license, or deny a person the opportunity to take a licensing exam based on a conviction so that now only a conviction for an Article 42A.054 CCP offense (formerly 3g), a sexually violent offense under Article 62.001, CCP, or an offense directly related to the duties and responsibilities of the licensed occupation may be used. The ability to use any offense that was committed within the 5 years preceding the application date has been removed. The new law is subject to the notice requirements in new Section 53.0231, discussed below.

Occupations Code Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION DIRECTLY RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed [an] occupation, the licensing authority shall consider each of the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~
- (4) the relationship of the crime to the ability or ~~capacity~~ ~~[or fitness]~~ required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license submitted on or after the effective date.

Summary of Changes: When determining if a conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority is required to consider certain factors. This change in law adds a factor, requiring the entity to consider any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

Occupations Code Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER AFTER DETERMINING CONVICTION DIRECTLY RELATES TO OCCUPATION. (a) If a licensing authority determines under Section 53.022 that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, ~~In determining the~~

~~fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime,~~ the licensing authority shall consider the following in determining whether to take an action authorized by Section 53.021 ~~[in addition to the factors listed in Section 53.022]:~~

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; ~~and~~
- (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- (7) other evidence of the person's fitness, including letters of recommendation ~~from:~~
 - ~~[(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;~~
 - ~~[(B) the sheriff or chief of police in the community where the person resides; and~~
 - ~~[(C) any other person in contact with the convicted person].~~

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described ~~[of the prosecution, law enforcement, and correctional authorities as required]~~ by Subsection (a)(7) ~~[(a)(6)]~~.

~~[(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:~~

- ~~(1) maintained a record of steady employment;~~
- ~~(2) supported the applicant's dependents;~~
- ~~(3) maintained a record of good conduct; and~~
- ~~(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.]~~

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license submitted on or after the effective date.

Summary of Changes: Once a licensing authority determines that a conviction directly relates to the duties and responsibilities of a licensed occupation, it must also determine whether it is going to suspend or revoke a license, disqualify the person from receiving a license, or deny the person the opportunity to take an exam required for the license. In making that determination, the licensing authority must consider the factors in this statute. The amendment

adds evidence of the person's compliance with conditions of probation or parole to the list of things to consider. It also makes a general clean up to the language regarding letters of recommendation, which can be from anyone under both current law and the new law. The applicant is no longer required to provide proof to the licensing authority that he or she has maintained steady employment, supported dependents, maintained a record of good conduct, and paid all outstanding court costs, fines, fees, and restitution.

Occupations Code Sec. 53.0231. NOTICE OF PENDING DENIAL OF LICENSE. (a) Notwithstanding any other law, a licensing authority may not deny a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense unless the licensing authority:

(1) provides written notice to the person of the reason for the intended denial; and

(2) allows the person not less than 30 days to submit any relevant information to the licensing authority.

(b) A notice required under Subsection (a) must contain, as applicable:

(1) a statement that the person is disqualified from receiving the license or being examined for the license because of the person's prior conviction of an offense specified in the notice; or

(2) a statement that:

(A) the final decision of the licensing authority to deny the person a license or the opportunity to be examined for the license will be based on the factors listed in Section 53.023(a); and

(B) it is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in Section 53.023(a).

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license submitted on or after the effective date.

Summary of Changes: This section requires a licensing entity to provide written notice to a person regarding the reason for denial of a license or the opportunity to be examined for a license based on their prior conviction. Additionally, the licensing entity must give the person at least 30 days to submit any relevant information to the licensing authority. The notice must include the information specified in the statute, as applicable.

Occupations Code Sec. 53.026. APPLICANT BEST PRACTICES GUIDE. (a) The state auditor shall, in collaboration with licensing authorities, develop a guide of best practices for an applicant with a prior conviction to

use when applying for a license. The state auditor shall publish the guide on the state auditor's Internet website.

(b) A licensing authority shall include a link to the guide on the authority's Internet website and in each notice described by Section 53.051 and letter described by Section 53.104.

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: The guide must be published no later than September 1, 2020

Summary of Changes: The state auditor is required to collaborate with licensing authorities to develop a best practices guide for applicants with prior convictions to use when applying for a license. Each licensing authority must include a link to the guide on the authority's Internet website.

Occupations Code Sec. 53.051. NOTICE. A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense [~~a crime and the relationship of the crime to the license~~] shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification, including any factor considered under Section 53.022 or 53.023 that served as the basis for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Section 53.052; and

(3) the earliest date the person may appeal the action of the licensing authority.

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license submitted on or after the effective date.

Summary of Changes: A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license based on a prior conviction must notify the person in writing of the reason, including any factor considered under 53.022 or 53.023 that served as the basis for the suspension, the review procedure provided by 53.052, and the earliest date the person may appeal the action.

Occupations Code Sec. 53.104. DETERMINATION OF ELIGIBILITY; LETTER. (b) If a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility, including any factor considered under Section 53.022 or 53.023 that served

as the basis for potential ineligibility, and the authority's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Commentary by Kaci Singer

Source: HB 1342

Effective Date: September 1, 2019

Applicability: Applies to an application for license submitted on or after the effective date.

Summary of Changes: Section 53.102 allows a person to request a licensing authority to issue a criminal history evaluation letter regarding that person's eligibility for a license if the person is enrolled in or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license and has reason to believe he or she is ineligible due to a conviction or deferred adjudication. The request must state the basis for the person's potential ineligibility. If the licensing authority determines the person is ineligible, it must send a letter setting out the basis, including any factor that served as the determination that the person is ineligible.

Occupations Code Sec. 53.0231. LIMITATION REGARDING CONSIDERATION OF CERTAIN ARRESTS. For purposes of determining a person's fitness to perform the duties and discharge the responsibilities of the licensed occupation, a licensing authority may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.

Commentary by Kaci Singer

Source: SB 1217

Effective Date: June 14, 2019

Summary of Changes: New Section 53.0231 provides that a licensing authority may not consider an arrest that did not result in conviction or placement on deferred adjudication community supervision in determining a person's fitness to perform the duties and discharge the responsibilities of the licensed occupation.

9. Other Legislation of Interest

Child Welfare and Human Services

HB 53 Relating to the transitional living services program for certain youth in foster care.
Effective 9-1-2019

HB 965 Relating to updating references to certain former health services state agencies and certain terms used to describe persons with intellectual or developmental disabilities in the Education Code.
Effective 9-1-2019

SB 568 Relating to the regulation of child-care facilities and family homes; providing administrative penalties.
Effective 9-1-2019

SB 632 Relating to the composition of the governing bodies and the consultation policies of local mental health authorities with respect to sheriffs, their representatives, and local law enforcement agencies
Effective 9-1-2019

SB 821 Relating to children's advocacy centers.
Effective 9-1-2019

SB 1978 Relating to the protection of membership in, affiliation with, and support provided to religious organizations.
Effective 9-1-2019

Courts

HB 598 Relating to the use of funds appropriated for the continuing legal education of certain appointed masters, magistrates, referees, and associate judges.
Effective 9-1-2019

SB 40 Relating to locations, terms, sessions, and procedures for conducting court proceedings. (*Disasters*)
Effective 6-7-2019

Criminal Justice

HB 1279 Relating to jury instructions regarding parole eligibility.
Effective 9-1-2019

HB 2298 Relating to designating January 28 as Sexual Assault Survivors Day.
Effective 9-1-2019

HB 2624 Relating to the prosecution of certain criminal offenses involving fraud.
Effective 9-1-2019

HB 2758 Relating to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision.
Effective 9-1-2019

SB 1164 Relating to the disposition of an item bearing a counterfeit trademark seized in connection with a criminal offense.
Effective 9-1-2019

SB 1570 Relating to the effect of certain felony convictions of certain corrections employees.
Effective 6-10-2019

Licensing

HB 1342 Relating to a person's eligibility for an occupational license; providing an administrative penalty.
Effective 9-1-2019

HB 1501 Relating to regulation of psychologists, marriage and family therapists, professional counselors, and social workers to the Texas Behavioral Health Executive Council; providing civil and administrative penalties; authorizing a fee.
Effective 9-1-2019

Public Information

HB 81 Relating to the disclosure under the public information law of certain information related to parades, concerts, or other entertainment events open to the general public that are paid for with public funds.
Effective 5-17-2019

SB 943 Relating to the disclosure of certain contracting information under the public information law.
Effective 1-20-20

Schools

- SB 11** Relating to policies, procedures, and measures for school safety and mental health promotion in public schools and the creation of the Texas Child Mental Health Care Consortium. (*Excerpts covered in Legislation Affecting Education*)
Effective 6-6-2019
- HB 18** Relating to consideration of the mental health of public school students in training requirements for certain school employees, curriculum requirements, counseling programs, educational programs, state and regional programs and services, and health care services for students and to mental health first aid program training and reporting regarding local mental health authority and school district personnel.
Effective 12-1-2019
- HB 3906** Relating to the assessment of public school students, including the development and administration of assessment instruments, and technology permitted for use by students.
Effective 6-14-2019 and 9-1-2021 (Sec.2)

State and Local Government

- SB 65** Relating to oversight of and requirements applicable to state agency contracting and procurement.
Effective 9-1-2019
- HB 793** Relating to certain government contracts with companies that boycott Israel.
Effective 5-7-2019
- HB 1999** Relating to certain construction liability claims concerning public buildings and public works.
Effective 6-14-2019
- HB 3834** Relating to the requirement that certain state and local government employees and state contractors complete a cybersecurity training program certified by the Department of Information Resources.
Effective 6-14-2019
- SB 27** Relating to recovery of damages, attorney's fees, and costs related to frivolous claims and regulatory actions by state agencies
Effective 9-1-2019

SB 285 Relating to information, outreach, and other actions regarding hurricane preparedness and mitigation
Effective 9-1-2019

SB 819 Relating to state agency electronic information and processes.
Effective 9-1-2019

Studies, Workgroups, and Reports

HB 1769 Relating to the creation of a statewide alert system for certain missing adults and to a study of the alert system.
Effective 9-1-2019

HB 3040 Relating to an interim study by the Texas Commission on Judicial Selection regarding the method by which certain trial and appellate judges are selected.
Effective 6-14-2019

HB 3116 Relating to the establishment of a task force to conduct a comprehensive study on best practice standards for the detention of persons with intellectual and developmental disabilities.
Effective 9-1-2019

HB 3316 Relating to the Texas Crime Stoppers Council.
Effective 9-1-2019

HB 3980 Relating to a requirement that the Statewide Behavioral Health Coordinating Council prepare a report regarding suicide rates in this state and state efforts to prevent suicides.
Effective 9-1-2019

HB 4754 Relating to a study on the number of active releasees on a parole officer's caseload.
Effective 6-14-2019

SB 355 Relating to developing a strategic plan regarding implementation of prevention and early intervention services and community-based care and conducting a study regarding the resources provided to foster parents.
Effective 6-14-2019

Training

HB 1074 Relating to the prohibition against age discrimination in certain employment training programs.
Effective 9-1-2019

10. Juvenile Justice Reform Act of 2018

H.R. 6494

EDITOR'S NOTE

In December 2018, the Juvenile Justice Delinquency Prevention Act of 1974 was, for the second time since 2002, reauthorized by the United States Congress. This article contains a convenience reprint of the Juvenile Justice Reform Act in its entirety. An electronic version of the act can be accessed online at:

<https://www.congress.gov/bill/115th-congress/house-bill/6964/text>

Juvenile Justice Reform Act of 2018, Pub. L. No. 115-385, H.R. 6964, 115th Cong.

State Bar Section Report



STATE BAR OF TEXAS
P.O. 12487
Austin, Texas 78711-2487