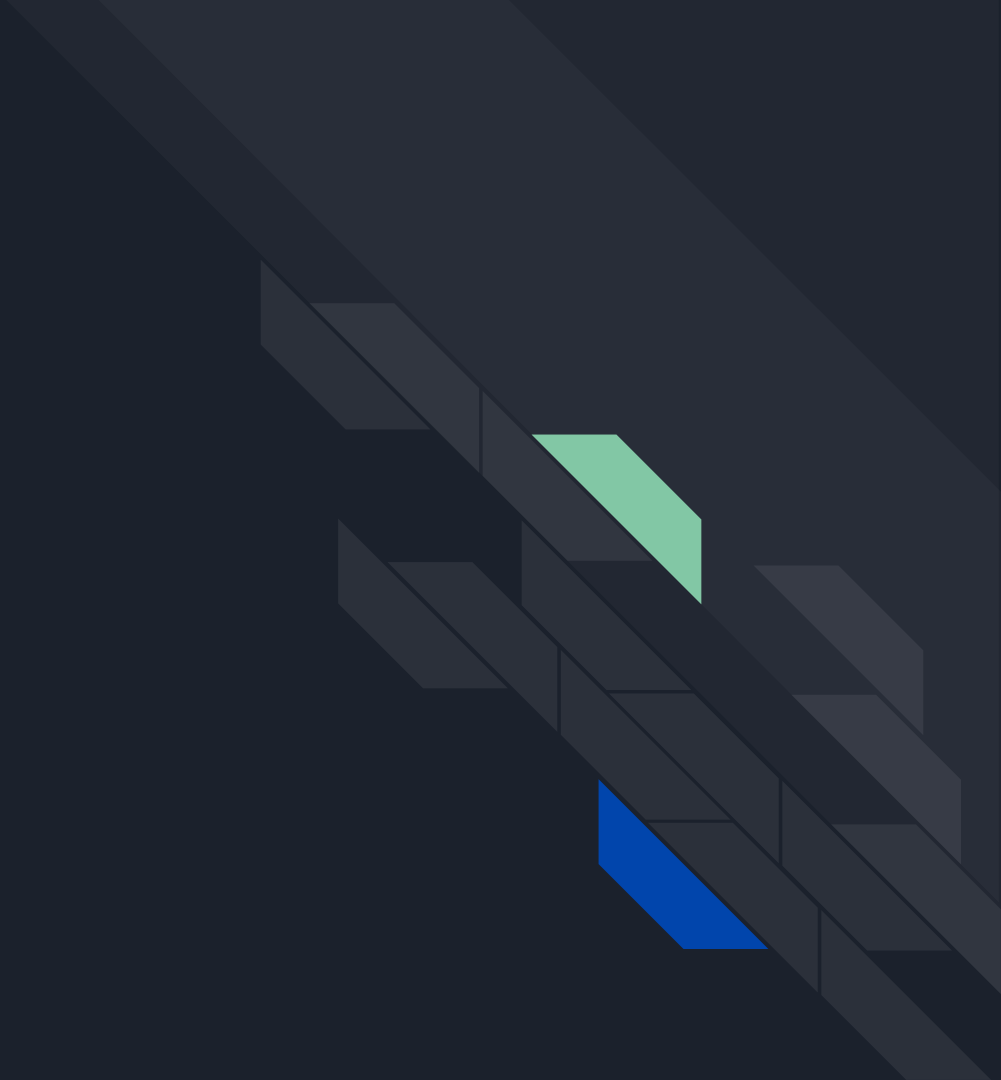


# Sex(ting), Drugs, and ...

Current trends in juvenile cases involving sexting, marijuana enforcement, vaping, and terroristic threats

Sexting





# “Sexting” provisions

Texas does have particular statutes that cover sexting. The legislature has enacted specific legislation aimed at minors texting minors.

Texas has age defenses, relationship defenses, and destruction defenses

Penalties for sexting range from Class C to Class A misdemeanors

No registration requirement under these provisions

HOWEVER



# Many charging options

- Invasive Visual Recording - TPC § 21.15 - State Jail Felony
- Unlawful Disclosure or Promotion of Intimate Visual Material - TPC §21.16 - State Jail Felony
- Unlawful Electronic Transmission of Sexually Explicit Visual Material - TPC § 21.19
- Obscene Display or Distribution - TPC § 43.22 Class C
- Obscenity - TPC § 43.23 - Class A (except promotion is State Jail; 2nd degree felony if material depicts child under 18)
- Sale, Distribution, or Display of Harmful Material to Minor - TPC § 43.24 - Class A (except hiring minor to assist is 3rd degree felony)
- Possession or Promotion of Child Pornography - TPC § 43.26 3rd degree to 1st degree felony
- Electronic Transmission of Certain Visual Material Depicting Minor - TPC § 43.261 - Class C Misdemeanor to Class A Misdemeanor
- Possession or Promotion of Lewd Visual Material Depicting Child - TPC § 43.262 - State Jail Felony, subsequent convictions 3rd degree felony; 2nd degree felony with two or more priors



# Child Pornography

Juveniles can still be charged under the provisions relating to possession and promotion of child pornography.

## Section 43.26 Possession or Promotion of Child Pornography

(a) A person commits an offense if:

- (1) The person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8); and
- (2) The person knows that the material depicts a child as described by Subdivision (1)

Third degree felony offense (unless prior convictions)



# Child Pornography (cont'd)

(e) A person commits an offense if:

- (1) The person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and
- (2) The person knows that the material depicts the child as described by Subsection (a)(1)

Possibility of registration as a sex offender under this provision

Defense available if subject depicted is within two years of age of perpetrator



# Distribution of material harmful to minors

TPC § 43.24 Sale, Distribution, or Display of Harmful Material to Minor

(b)A person commits an offense if, knowing that the material is harmful:

- 1) And knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;
- 2) He displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or
- 3) He hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or(b)(2)

Class A Misdemeanor unless (b)(3)



# Electronic Transmission of Certain Visual Material Depicting Minor

(b) A person who is a minor commits an offense if the person intentionally or knowingly:

- 1) By electronic mean promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or
- 2) Possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.

Class C misdemeanor unless the actor promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another - then Class B. Also can be enhanced if previous convictions.

Subsection (h) Notwithstanding Section 51.13 , Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for purposes of Subsections (c)and (d)






# Unwanted sexting

New legislation passed in 2019 makes it a Class C misdemeanor to send unwanted, unsolicited sexually explicit pictures.

Probably only applies to adults.

Likely to have the same constitutional issues that the invasive photography and revenge porn statutes have faced.



# Possession of Mari(h)uana in the age of Hemp legalization

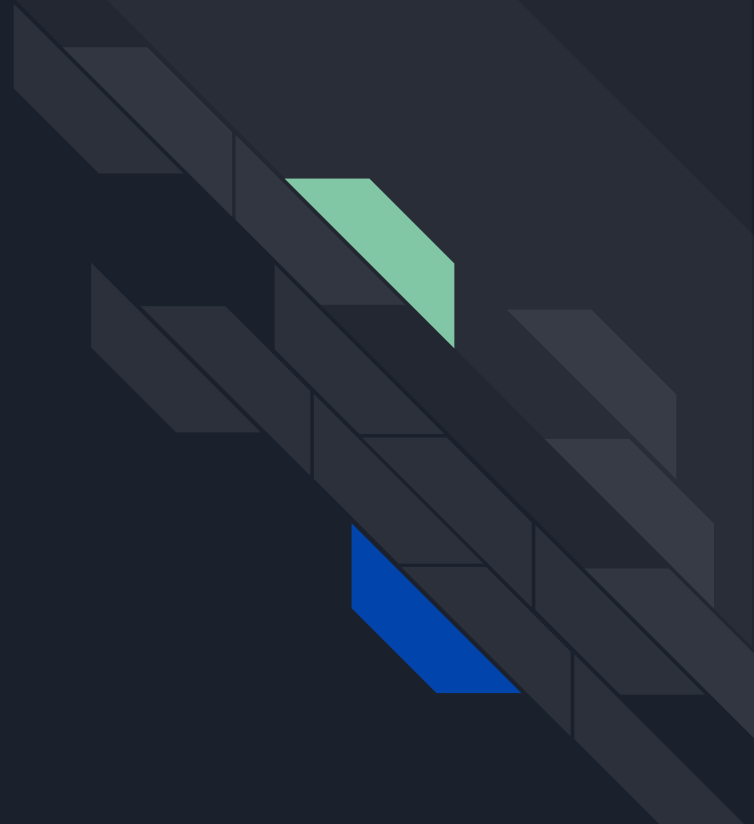
HB 1325 - Effective June 1, 2019

Intended to regulate the growth, production, transportation, sale, and consumption of legal hemp products in Texas

Unintended Consequences at the time of enactment:

- Crime labs were not equipped for distinguishing the difference between legal hemp and illegal marijuana at the time of enactment.
- State agencies were not ready to regulate hemp at the time of enactment
- The law did not have the usual prospective language making it applicable to cases after it was enacted

6 months later ...





# Are Marijuana cases being prosecuted?

In 2018, Prosecutors filed approximately  
5900 marijuana cases per month

In November 2019, Prosecutors filed less  
than 2000 cases per month



# Waltz Across Texas?

Bexar County - generally no arrests if less than 4 ounces. However, the county did approve purchase of crime lab equipment upgrade but is concentrating on backlogged felony cases.

Bell County - arresting as usual. Using a private lab to test substance if defense asserts that it is hemp. Charging defendants for lab tests and expert testimony costs of lab technician

Collin County - Frisco and Plano police plan to pursue all suspected marijuana offenses, submitting cases to private labs for testing. Collin County required lab results for misdemeanor cases. Plano reports that these cases are costing the city hundreds of dollars more per test to go through private labs.

El Paso - arresting as usual. Placing burden on defendant to prove substance is hemp rather than marijuana.

Harris County - possession of marijuana cases that involved 4 oz. of pot and under would not be prosecuted without a lab test result showing that the substance has THC of more than 0.3%



# Waltz Across Texas?

McLennan County - not prosecuting if under 5 ounces but some law enforcement agencies are collecting info in case lab test become available

Tarrant County - dropped over 200 misdemeanor marijuana cases in June after law enacted. Requiring lab tests to prosecute.

Travis County - No arrests on low level possession of marijuana cases, juvenile or adult. Austin passed specific legislation in January that they will not arrest on low level possession cases. Austin PD has stated that they will still ticket and arrest for marijuana possession.



# Impact on Juvenile Probation?

No age restrictions in the hemp legislation

Most probation rules require drug testing and require probationers to remain drug free while on probation

Possession in a drug-free zone still is a mandatory expulsion/DAEP

Waxes, Oils, edibles still potentially charged under controlled substance statute - felony conduct  
- but likely subject to same concerns about THC levels and testing evidence



# Vaping

Texas passed Senate Bill 21 which went into effect on September 1, 2019. It increased the legal age for a person to 21 years of age for the sale, distribution, possession, purchase, consumption or receipt of cigarettes, e-cigarettes or tobacco products. Previous age was 18.

Exceptions:

- Individuals who are at least 18 years of age in the US Military or state military and show valid military ID
- Individuals born on or before August 31, 2001 (essentially grandfathering the law for people who were age eligible before law went into effect).

New law also removes the provision allowing minors to possess tobacco products in the presence of a parent, guardian or spouse.

Federal law passed in December 2019 similar but does not have exceptions for either the military or persons that were already 18.





# Vaping Concerns

CDC issued a statement warning about a vaping “epidemic”

Texas DSHS has also issued warnings and is studying cases of lung disease in this population

Vape pens have become pretty pervasive in the juvenile population - the CDC estimates that the usage of traditional cigarettes among US high school students dropped from 15.8% to 7.6% between 2011 and 2017 but that use of e-cigarettes grew from 1.5% to 11.7 percent in the same time frame.

In 2018, 20.8% of U.S. high school students reported using e-cigarettes in the past 30 days. This was a 9.1 percent increase from 2017. From 2017-2018, U.S. middle school students who used e-cigarettes in the past 30 days increased from 3.3% to 4.9%

Some are vaping tobacco, some are vaping THC products

DSHS is keeping statistics on people who have severe lung disease from vaping. They are tracking 244 cases. The median age is 22 and a quarter of the cases involve minors.



# Terroristic Threats

Impact of school shooting fears - 2018 had the most school shootings on record, across the United States. Between January 2018 and December 2018, there were 27 incidents of mass attacks (3 or more harmed). 91 people were killed and 107 more were injured in locations where people should feel safe, including workplaces, schools, and other public areas.

18 percent of all school shootings have taken place since the shootings at Sandy Hook Elementary School.

Texas was not immune to this trend. On May 18, 2018 a student fatally shot 10 and injured 13 at a high school in Santa Fe, TX.

In this climate, threats are taken seriously by law enforcement. Including social media threats.



# Terroristic Threat - Six Separate Offenses

Texas Penal Code § 22.07

- Punishment ranges from Class B Misdemeanor to a Third Degree Felony
- Intent is an element in all 6 subsections
- Jury must be unanimous as to the manner and means



# Terroristic Threat (a)(1)

A person commits an offense if he threatens to commit any offense involving violence to a person or property with the intent to:

- (1) Cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies

Class B Misdemeanor.



## Terroristic Threat (a)(2)

A person commits an offense if he threatens to commit any offense regarding violence with intent to:

(2) place any person in fear of imminent serious bodily injury

Class B misdemeanor. Requires both that the actor had the intent of placing the person in fear AND that it be of IMMEDIATE nature

Class A misdemeanor if victim is a family member or a public servant

State Jail felony if victim is a peace officer or a judge



## Terroristic Threat (a)(3)

A person commits an offense if he threatens to commit any offense regarding violence with intent to:

(3) prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place

Class A misdemeanor unless loss over \$1,500, in which case it is a State Jail felony



# Terroristic Threat (a)(4)

A person commits an offense if he threatens to commit any offense regarding violence with intent to:

(4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service

3rd degree felony



# Terroristic Threat (a)(5)

A person commits an offense if he threatens to commit any offense regarding violence with intent to:

(5) place the public or a substantial group of the public in fear of serious bodily injury

3rd degree felony





# Terroristic Threat (a)(6)

A person commits an offense if he threatens to commit any offense regarding violence with intent to:

(6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state

3rd degree felony