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The Texas Juvenile Justice Department and the Juvenile Law Section wish to thank the following individuals for their contributions to the *2021 Special Legislative Issue*.

Managing Editor

Kaci Singer
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FOREWORD
The 87th Texas Legislature 2021
The COVID Sessions

Like everything else, the 87th Texas Legislature was marked by the ongoing COVID-19 pandemic. Gone were the crowded halls of the Capitol and the hours sitting in a room waiting to testify. In its place, though, was the expansion of the ability for constituents to participate in government by being allowed to testify remotely via technology. Despite the challenges, there was no shortage of bills filed and passed and no shortage of the theater that is the Texas legislature, including three special sessions.

As with any session, there were many bills that did not pass and bills that were vetoed. A bill that would have allowed those sent to prison for conduct committed prior to age 18 to have the opportunity to be reviewed for parole earlier, passed. However, Governor Abbott vetoed the bill, stating that the language conflicts with jury instruction required by the Code of Criminal Procedure. New bills were filed in two of the special sessions, but none received a hearing.

This was the fourth session to see Raise the Age addressed. As with past sessions, multiple bills were filed seeking to raise the age of criminal jurisdiction from 17 to 18. As of the end of session, the only states that maintain a criminal jurisdiction age lower than 18 are Texas, Wisconsin, and Georgia. In addition to raising the criminal jurisdiction age, several bills sought to raise the lower age of criminal court jurisdiction from 10. There were several ways this was to be accomplished in the various bills, including at least one bill that had a hearing allowing the court to exercise jurisdiction over younger children alleged to have committed serious offenses. None of the bills seeking to change the ages passed.

The state has continued to pass laws to address human trafficking. With regard to juveniles, there were again attempts to remove prostitution as a form of conduct indicating a need for supervision, in an effort to ensure children who are trafficking victims receive services without going through the juvenile justice system.

The juvenile records laws that were recently revised remained intact, preserving the hard and thoughtful work of the Juvenile Records Advisory Committee from 2015-2019 and ensuring the consistency needed for courts and departments to complete the project of retroactively sealing the records entitled to sealing without an application by the juvenile. Several probation departments saw their enabling legislation amended to allow them to work together to provide probation services in their areas. Chapter 55, Family Code, was amended to allow for outpatient services for youth with IDD who are deemed unfit to proceed, thereby eliminating the requirement that these youth receive only inpatient services.

After 17 months of mostly virtual communication, the juvenile justice field was fortunate to have the opportunity to come together for an in-person legislative conference. The Juvenile Justice Association of Texas hosted a great conference at Horseshoe Bay Resort in August 2021.

Although few bills passed that made significant changes to the juvenile justice field, there are plenty of changes that juvenile justice practitioners need to be aware of. These range from changes to gun laws to the repeal of many costs and fees associated with juvenile court. We have attempted to address the bills that might impact not only juvenile justice practitioners in the court room but also those that impact law enforcement officers, government officials, and probation officers.

Those of you who are long-time readers of this publication may notice some differences. In past issues, the legislation has been organized numerically, with a summary of changes following each section that was added or

changed. Due to time constraints (some may have noticed the lateness of this issue, and we do sincerely apologize), this year the legislation is sorted topically, by bill, and the analysis is done by bill. Repealed sections that seemed important to include so you have access to the language are included. A detailed Table of Contents is included. Appropriations and rider information are not included, but may be accessed through the legislative website or the Legislative Budget Board website.

A special note of thanks goes out to the Texas Juvenile Justice Department for providing staff to help track and analyze legislation, present at the post-legislative conference, and prepare this publication. As always, those with questions may reach out to the TJJD Legal Help line at legalhelp@tjjd.texas.gov.

The Juvenile Law Council Members are looking forward to seeing many of you at the 35th Annual Juvenile Law Conference in San Antonio, February 27 to March 2, 2022. Registration is at www.juvenilelawconference.com.

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 using the Texas Legislature Online website homepage at www.capitol.texas.gov.

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 87th 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.

Legislation Affecting Juvenile Justice

Topic: Conduct Indicating a Need for Supervision

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

(b) Conduct indicating a need for supervision is:

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

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

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

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

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

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

(5) notwithstanding Subsection (a)(1), conduct described by Section <u>43.02 or 43.021</u> [~~43.02(a) or (b)~~], Penal Code; or

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

Commentary by: Kaci Singer
Source: HB 1540
Effective Date: September 1, 2021
Applicability: Applies to offenses occurring on or after the effective date.
Summary of Changes: Under current law, Section 43.02(a), Penal Code, contains the elements of the offense of Prostitution that include offering or agreeing to *receive* a fee from another to engage in sexual conduct while Section 43.02(b), Penal Code, contains the elements of the offense of Prostitution that include offering or agreeing to *pay* a fee to another to engage in sexual conduct with that person. A bill that addressed several human trafficking-related issues relocated Section 43.02(b) into a newly created Section 43.021, named Solicitation of Prostitution. Both types of conduct are considered conduct indicating a need for supervision when engaged in by juveniles. This change to 51.03 reflects the renumbering of 43.02(b) to 43.021. Section 43.021 changed the offense level of solicitation from a Class A misdemeanor to a state jail felony. It also includes conduct that was not previously considered Conduct Indicating a Need for Supervision, which is the second degree felony of solicitation when the person solicited is under 18, represents themselves to be under 18, or is believed by the actor to be under 18. Because this is considered CINS, it is not reported to JJIS and cannot result in a TJJD commitment.

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

(b) Conduct indicating a need for supervision is:

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

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

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

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

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

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

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

(6) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code; or

(7) notwithstanding Subsection (a)(1), conduct that violates Section 42.0601, Penal Code, if the child has not previously been adjudicated as having engaged in conduct violating that section.

Commentary by: Kaci Singer
Source: SB 1056
Effective Date: September 1, 2021
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: Newly created Section 42.0601, Penal Code creates a new offense to address SWATTING, which is the slang term for conduct that involves making a false report of a criminal offense or emergency that causes law enforcement or EMS to respond. The offense is a Class A misdemeanor generally, a state jail felony with two prior convictions, and a third degree felony if the false report was of a criminal offense to which a law enforcement agency or other emergency responder responded and a person suffered serious bodily injury or death as a result of lawful conduct arising out of that response. However, for a juvenile, the new offense is considered conduct indicating a need for supervision unless the child has previously been adjudicated for the offense. It is important to note that 54.04(d)(2), which allows the court to commit a child to TJJD provides that this disposition is available "if the court or jury found…that the child engaged in *delinquent conduct*" that is a felony. Thus, even if a child's first violation of the new penal offense results in serious bodily injury and so would be a third degree felony, it does not appear that TJJD commitment is permissible under the law in that instance. Additionally, because the first offense is not delinquent conduct, it does not get reported to DPS as only delinquent conduct is reported to DPS. It also bears noting that this new offense is not a status offense and so status offense provisions do not apply.

Topic: Dual Status and Dual System Children

Family Code Section 51.11. GUARDIAN AD LITEM

(a) In this section:

(1) "Dual-system child" means a child who, at any time before the child's 18th birthday, was referred to the juvenile justice system and was involved in the child welfare system by being:

(A) placed in the temporary or permanent managing conservatorship of the Department of Family and Protective Services;

(B) the subject of a family-based safety services case with the Department of Family and Protective Services;

(C) an alleged victim of abuse or neglect in an active case being investigated by the Department of Family and Protective Services child protective investigations division; or

(D) a victim in a case in which the Department of Family and Protective Services investigation concluded that there was a reason to believe that abuse or neglect occurred.

(2) "Dual-status child" means a dual-system child who is involved with both the child welfare and juvenile justice systems at the same time.

(a-1) If a child appears before the juvenile court without a parent or guardian, the court shall appoint a guardian ad litem to protect the interests of the child. The juvenile court need not appoint a guardian ad litem if a parent or guardian appears with the child.

(d) The juvenile court may appoint the guardian ad litem appointed under Chapter 107 for a child in a suit affecting the parent-child relationship filed by the Department of Family and Protective Services to serve as the guardian ad litem for the child in a proceeding held under this title.

(e) A non-attorney guardian ad litem in a case involving a dual-system child may not:

(1) investigate any charges involving a dual-status child that are pending with the juvenile court; or

(2) offer testimony concerning the guilt or innocence of a dual-status child.

Family Code Section 54.01. DETENTION HEARING.

(c) At the detention hearing, the court may consider written reports from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), or professional consultants in addition to the testimony of witnesses. Prior to the detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision. The court may order counsel not to reveal items to the child or the child's [~~his~~] parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

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

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), or professional consultants in addition to the testimony of witnesses. At least five days prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

Family Code Section 54.04. DISPOSITION HEARING.

(b) At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), or professional consultants in addition to the testimony of witnesses. On or before the second day before the date of the disposition hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in disposition. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

Family Code Section 54.05. HEARING TO MODIFY DISPOSITION.

(e) After the hearing on the merits or facts, the court may consider written reports from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), or professional consultants in addition to the testimony of other witnesses. On or before

the second day before the date of the hearing to modify disposition, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in deciding whether to modify disposition. The court may order counsel not to reveal items to the child or the child's [~~his~~] parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

Family Code Section 54.11. RELEASE OR TRANSFER HEARING.

(d) At a hearing under this section the court may consider written reports and supporting documents from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), professional consultants, employees of the Texas Juvenile Justice Department, or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses. On or before the fifth day before the date of the hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court. All written matter is admissible in evidence at the hearing.

Family Code Section 107.011. MANDATORY APPOINTMENT OF GUARDIAN AD LITEM.

(e) The court may appoint the person appointed as guardian ad litem for the child under Section 51.11 to also serve as the guardian ad litem for the child under this section if the person is qualified under this chapter to serve as guardian ad litem.

Commentary by: Kaci Singer
Source: SB 2049
Effective Date: September 1, 2021
Applicability: Applies to appointment of guardian ad litem on or after the effective date.
Summary of Changes: Texas has long addressed dual status and dual system youth but has never before codified a definition to ensure consistency of terminology throughout the state. The changes to Section 51.11, Family Code set out definitions for both dual status child and dual system child. A dual system youth is one who was ever referred to the juvenile justice system and who also was ever involved with the Department of Family Services in the specified ways, which are: 1) was placed in temporary or permanent managing conservatorship; 2) was the subject of a family-based safety services case; 3) is an alleged victim of abuse or neglect in an active investigation; or 4) was determined to be a victim in an investigation that closed with a finding that there was reason to believe abuse or neglect occurred. The involvement with the two systems does not have to be concurrent for a child to be a dual system child. However, a dual status child refers to a child who is currently involved in both systems. So that one requires both concurrent involvement and that the concurrent involvement be going on presently. If the concurrent involvement was in the past, then dual system child is the proper term.

The other changes in this bill allow a juvenile court to appoint the same guardian ad litem that was appointed to the child in a suit seeking termination of the parent-child relationship under Section 107.011, Family Code. Likewise, the court exercising jurisdiction over that case may appoint the same person that the juvenile court has appointed as guardian ad litem, but only if the person appointed in the juvenile case is qualified to serve as the guardian ad litem in the suit seeking termination of parental rights.

Family Code Section 51.02. DEFINITIONS.

(3-a) "Dual status child" means a child who has been referred to the juvenile justice system and is:

(A) in the temporary or permanent managing conservatorship of the Department of Family and Protective Services;

(B) the subject of a case for which family-based safety services have been offered or provided by the department;

(C) an alleged victim of abuse or neglect in an open child protective investigation; or

(D) a victim in a case in which, after an investigation, the department concluded there was reason to believe the child was abused or neglected.

Family Code Section 51.04. JURISDICTION.
(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 a dual status [~~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.

Family Code Section 51.0414. DISCRETIONARY TRANSFER TO COMBINE PROCEEDINGS.
(a) The juvenile court may transfer a dual status 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.

Commentary by: Kaci Singer
Source: HB 3774
Effective Date: September 1, 2021
Applicability: On or after the effective date
Summary of Changes: Similar to SB 2049, described above, this bill adds a definition for dual status child. It does not define dual system child. The definitions have the same meaning in both bills and so do not conflict. A dual status child is one who is currently involved in both the juvenile and child protection systems. Sections 51.04(h) and 51.0414, Family Code, already apply to a child that is currently being served by both systems; these changes insert the newly-defined term of dual system child into those statutes. There are no substantive changes to how the statutes operate.

Topic: Trafficked Persons Program

Family Code Section 54.04012. JUDICIAL PROCEEDINGS.
(b) A juvenile court may require a child adjudicated to have engaged in delinquent conduct or conduct indicating a need for supervision and who is believed to be a victim of an offense of trafficking of persons as defined by Article 56B.003, [~~conduct that constitutes an offense under Section 20A.02, Penal~~] Code of Criminal Procedure, to participate in a program established under Section 152.0017, Human Resources Code.

Human Resources Code Section 152.0017. TRAFFICKED PERSONS PROGRAM.
(a) A juvenile board may establish a trafficked persons program under this section for the assistance, treatment, and rehabilitation of children who:

(1) are alleged to have engaged in or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; [~~and~~]

(2) may be victims of an offense of trafficking of persons as defined by Article 56B.003, [~~conduct that constitutes an offense under Section 20A.02, Penal~~] Code of Criminal Procedure; and

(3) have been referred to the program by the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, or the governor's program for victims of child sex trafficking established under Section 772.0063, Government Code.

(c) A facility qualified to provide one or more services under this section may apply for a grant under Section 50.0155, Health and Safety Code, only for the purposes of providing constitutionally secure shelter and research-based treatment services to human trafficking victims.

Health and Safety Code Section 50.0155. TRAFFICKED PERSONS GRANT PROGRAM.

(a) The commission shall establish the trafficked persons grant program to provide grants to applicants for dedicated housing and treatment facilities provided to human trafficking victims.

(b) The commission by rule shall establish and publish on its Internet website eligibility criteria for grant recipients. The commission must develop the criteria using research-based best practices and require the recipient to provide:

(1) immediate trauma support to a human trafficking victim on the victim's initial rescue or recovery from trafficking;

(2) wraparound services to facilitate a continuity of care for human trafficking victims placed in the recipient's facility as assisted by:

(A) the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code; or

(B) the governor's program for victims of child sex trafficking established under Section 772.0063, Government Code; and

(3) safe and constitutionally secure shelter that considers the clear and present danger of organized crime to the children and youth housed in the facility.

(c) A grant applicant must provide to the commission plans that include:

(1) a process for obtaining the consent of a qualified guardian of a human trafficking victim for the applicant's services and treatment;

(2) a strategy for addressing the spectrum of needs for human trafficking victims, including victims whose history of trauma poses a risk to other residents of the shelter or facility;

(3) a statement on whether the shelter or facility will provide:

(A) acute or subacute services to address the immediate medical or treatment needs of the victims;

(B) short-term housing services following initial rescue or recovery of victims; and

(C) residential treatment services to meet long-term needs of victims; and

(4) a statement on whether the shelter or facility will provide separate housing space according to age, risk, and medical or mental health needs of victims.

(d) In determining whether to award a grant under this section, the commission shall prioritize applicants operating a shelter or facility that:

(1) satisfies the requirements under Chapter 42, Human Resources Code;

(2) provides dedicated housing or shelter space for the exclusive use of human trafficking victims; and

(3) has not adopted a policy that allows the facility to refuse for any reason to provide facility services to persons presented to the facility by any person involved in the recovery of human trafficking victims.

Commentary by: Kaci Singer
Source: HB 2633 (only select portions of the bill are in this newsletter)
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: This bill creates a Trafficked Persons Grant Program that is designed to substantiate the state's interest in publicly operated and funded shelter and treatment for trafficking victims; to prevent the recruitment of trafficking victims within mixed-status child, youth, and young adult shelters; for consistent and recurrent funding of long-term solutions; for financial stability in planning, building, and maintaining dedicated housing and recovery programs; and to raise awareness and strengthen public and private partnerships.

With regard to juvenile justice, changes are made to the statute that allows a juvenile board to operate a Trafficked Persons Program. These are typically court programs. There are three substantive changes under the new law that affect the program. First, rather than being a victim solely of the offense of trafficking of persons under Section 20A.02, Penal Code, the child may have been a victim of trafficking of persons as defined by Article 56B.003, which includes the following Penal Code offenses: 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, and 43.26. Second, if there is a facility providing services to children as part of the Trafficked Persons Program, it may apply for one of these new grants

only for the purposes of providing constitutionally secure shelter and research-based treatment services to trafficking victims.

The third change is the most substantive. Under current law, this program is for children alleged to have engaged in or adjudicated to have engaged in delinquent conduct or conduct indicating a need for supervision who may be victims of the offense of trafficking of persons. The new law adds that they must also have been referred to the program by the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, or the governor's program for victims of child sex trafficking established under Section 772.0063, Government Code. The materials accompanying this bill give no explanation as to why the law was changed to limit who may participate in these juvenile court programs to only children referred from the Sex Trafficking Prevention Unit or the governor's program.

Topic: Polygraph Examinations

Family Code Section 54.0405. CHILD PLACED ON PROBATION FOR CONDUCT CONSTITUTING SEXUAL OFFENSE.

(d) A polygraph examination required as a condition of probation under Subsection (a) must be administered by an individual who is [~~:~~ ~~(1)~~] specified by the local juvenile probation department supervising the child[~~;and (2) licensed as a polygraph examiner under Chapter 1703, Occupations Code~~].

Human Resources Code Section 245.053. SEX OFFENDER COUNSELING AND TREATMENT.

(d) A polygraph examination required as a condition of release under Subsection (a) must be administered by an individual who is [~~:~~ ~~(1)~~] specified by the department [~~; and (2) licensed as a polygraph examiner under Chapter 1703, Occupations Code~~].

Commentary by: Kaci Singer
Source: HB 1560
Effective Date: September 1, 2021
Applicability: Applies to polygraph examinations conducted on or after September 1, 2021.
Summary of Changes: Current law provides that a youth adjudicated of a registerable sex offense and required to register as a sex offender may be required to submit to a polygraph examination as a term of probation and that only a licensed polygraph examiner may conduct that examination. Similarly, TJJD may require a youth required to register as a sex offender may be required to submit to a polygraph examination as a term of parole and only a licensed polygraph examiner may conduct that examination. The legislature has determined that polygraph examiners do not need to be licensed by the state. This change in law reflects that change. Now the polygraph examination must be administered by a person specified by the probation department. Statutory intent documents indicate that although there is no longer a license, there are still standards required to be complied with in order to conduct polygraph examinations.

Topic: Chapter 55

Family Code Section 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED.

(a) If the juvenile court or jury determines under Section 55.32 that a child is unfit <u>as a result of mental illness or an intellectual disability</u> to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) [~~if the unfitness to proceed is a result of mental illness or an intellectual disability: (A)~~] provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; [~~or~~]

<u>(2)</u> [~~(B)~~] on application by the child's parent, guardian, or guardian ad litem, order the child

placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if:

(A) the unfitness to proceed is a result of mental illness; and

(B) the placement is agreed to in writing by the administrator of the facility; or

(3) subject to Subsection (c), [~~(2)~~] if [~~the unfitness to proceed is a result of mental illness and~~] the court determines that the child may be adequately treated or served in an alternative setting, order the child to receive treatment for mental illness or services for the child's intellectual disability, as appropriate, on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(2) [~~(a)(1)(B)~~], the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

(c) Before issuing an order described by Subsection (a)(3), the court shall consult with the probation department and with local treatment or service providers to determine the appropriate treatment or services for the child.

Family Code Section 55.34. TRANSPORTATION TO AND FROM FACILITY.

(a) If the court issues a placement order under Section 55.33(a)(1) or (2), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

Family Code Section 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.33(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment or services provided to [~~of~~] the child [~~provided~~] by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed.

Family Code Section 55.43. RESTORATION HEARING.

(a) The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of mental illness or an intellectual disability; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health or intellectual disability services;

(ii) committed by a court to a residential care facility; or

(iii) ordered by a court to receive treatment or services on an outpatient basis; or

(B) is discharged or currently on furlough from a mental health facility or outpatient center before the child reaches 18 years of age.

Family Code Section 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT.

(a) If the court or jury finds that a child is not responsible for the child's conduct under Section 55.51 as a result of mental illness or an intellectual disability, the court shall:

(1) [~~if the lack of responsibility is a result of mental illness or an intellectual disability: (A)~~] provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; [~~or~~]

(2) [~~(B)~~] on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days,

which order may not specify a shorter period, but only if:

(A) the child's lack of responsibility is a result of mental illness; and

(B) the placement is agreed to in writing by the administrator of the facility; or

(3) subject to Subsection (c), [~~(2)~~] if [~~the child's lack of responsibility is a result of mental illness and~~] the court determines that the child may be adequately treated or served in an alternative setting, order the child to receive treatment for mental illness or services for the child's intellectual disability, as appropriate, on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(2) [~~(a)(1)(B)~~], the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

(c) Before issuing an order described by Subsection (a)(3), the court shall consult with the probation department and with local treatment or service providers to determine the appropriate treatment or services for the child.

Family Code Section 55.53. TRANSPORTATION TO AND FROM FACILITY.

(a) If the court issues a placement order under Section 55.52(a)(1) or (2), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

Family Code Section 55.54. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.52(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment or services provided to [~~of~~] the child [~~provided~~] by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child has a mental illness or an intellectual disability.

Commentary by: Kaci Singer
Source: HB 2107
Effective Date: September 1, 2021
Applicability: Applies to orders issued on or after the effective date
Summary of Changes: Under current law, if a court finds a child is unfit to proceed due to mental illness or finds the child lacks responsibility for the conduct due to mental illness, the court can order the child to receive inpatient or outpatient treatment. However, for such findings related to a child with an intellectual disability, only inpatient services may be ordered. The changes to Section 55.33, Family Code, allow for the court to now also order outpatient services for a child found unfit to proceed due to intellectual disability. The changes in Section 55.52, Family Code, allow the court to now also order outpatient services for a child found to lack responsibility due to intellectual disability. Additionally, for both unfitness to proceed and lack of responsibility findings, the court is now to consult with the probation department and local treatment or service providers to determine the appropriate treatment or services for the child. The other changes are conforming changes.

Topic: Juvenile Records

Family Code Section 58.256. APPLICATION FOR SEALING RECORDS.

(a-1) An application filed under this section may be sent to the juvenile court by any reasonable method authorized under Rule 21, Texas Rules of Civil Procedure, including secure electronic means.

Commentary by: Kaci Singer
Source: HB 1401
Effective Date: September 1, 2021
Applicability: Applies to applications for sealing filed on or after September 1, 2021.
Summary of Changes: Chapter 58, Family Code currently does not explicitly specify how an application for sealing is filed. However, that is covered by Section 51.17(a), which specifies that the Texas Rules of Civil Procedure govern proceedings under Title 3 except for the burden

of proof in adjudicating a child or when otherwise in conflict with Title 3. As such, Rule 21, Texas Rules of Civil Procedure already applies to the filing of an application for sealing records.

It seems that the intent of this change in law was to duplicate that provision and to explicitly state that secure electronic filing is a way to seal records. However, it is unclear that such has been accomplished. First, the language in the statute seems to suggest that after an application has been filed, the application may be sent to the juvenile court as authorized under Rule 21. However, Rule 21 is about how to file a pleading, plea, motion, or application with the court clerk, not how the clerk sends it to the court after filing. Assuming that the intent is to apply this change to the filing itself despite the language used, this new statute appears to conflict with Rule 21 with regard to electronic filing. That is because Rule 21 explicitly provides that documents to which access is restricted by law or court order "must not be filed electronically." Because juvenile records are confidential by law with limited access by law, Rule 21 provides that they are not to be filed electronically. Because this new statute is permissive and the prohibition on electronic filing of confidential documents is not, the provisions in Rule 21 should probably prevail over the reference to using secure filing set out in this change. Because Rule 21 was already applicable to filing of a juvenile record, this interpretation means this statute creates no change.

Family Code Section 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 or secure electronic means[~~,regular mail, or e-mail~~].

Commentary by: Kaci Singer
Source: HB 1401
Effective Date: September 1, 2021
Applicability: Applies to orders issued on or after September 1, 2021.
Summary of Changes: Current law provides that a copy of a sealing order is to be sent to all entities listed in the order by any reasonable method and provides examples of reasonable methods, to include certified mail, regular mail, or email. This changes the list of examples to only certified mail and secure electronic means. Because Section 312.011 provides that the terms "includes" and "including" are "terms of enlargement ant not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded," this change does not impact the ways in which a sealing order may be transmitted to those entities listed in the order. The provision of law is still that they may be sent by any reasonable method.

Family Code Section 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM.

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

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

(2) to a criminal justice agency as defined by Section 411.082, Government Code;

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

(4) to a juvenile justice agency;

(5) to the Texas Juvenile Justice Department;

(6) to the office of independent ombudsman of the Texas Juvenile Justice Department;

(7) to a district, county, justice, or municipal court exercising jurisdiction over a juvenile; and

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

Commentary by: Kaci Singer
Source: HB 4158
Effective Date: June 8, 2021
Applicability: Applies to records requested on or after the effective date.
Summary of Changes: This change allows the Health and Human Services Commission to access juvenile records from DPS for the same purposes that DFPS can access them, which is to perform background checks for people seeking employment with them and for people working in childcare facilities as well as people providing child care through adoptive, foster, or in-home care or providing care to elderly persons and persons with disabilities.

Topic: Reinstatement of Medical Assistance Eligibility

Human Resources Code Section 32.0264. SUSPENSION AND [~~AUTOMATIC~~] REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES.
(b-1) Notwithstanding Subsection (b), if, during the period a child is placed in a juvenile facility, the child is hospitalized or becomes an inpatient in another type of medical facility, the commission shall reinstate the child's eligibility for medical assistance during the period of the child's inpatient stay. The executive commissioner shall adopt rules necessary to implement this subsection, including rules governing the procedure for reinstating a child's eligibility for medical assistance under this subsection.

Commentary by: Kaci Singer
Source: HB 1664
Effective Date: September 1, 2021
Applicability: If the Health and Human Services Commission determines that a memorandum of understanding with the Texas Juvenile Justice Department or that the adoption of policies or procedures is necessary for the implementation of this law, the Health and Human Services Commission may delay implementation until the earlier of the date such is completed or March 1, 2022. Additionally, if a state agency determines a waiver or authorization from a federal agency is necessary for implementation, the affected agency shall request the waive for authorization and may delay implementation until the waiver or authorization is granted.
Summary of Changes: Under current law, when a juvenile is placed in a facility, the child's eligibility for medical assistance is suspended or terminated until the child is released. This change in law requires the Health and Human Services Commission to reinstate the child's eligibility for medical assistance if the child becomes hospitalized or becomes an inpatient in another type of medical facility while the child is legally placed in any type of juvenile facility. The executive commissioner of the Health and Human Services Commission is charged with adopting rules necessary to implement the provision. Juvenile facility is defined to mean a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

Topic: Juvenile Boards

Human Resources Code Section 152.2051. ROCKWALL COUNTY.
(a) The Rockwall County Juvenile Board is composed of:
(1) the judges of the county courts at law in Rockwall County [~~the judge of the County Court at Law of Rockwall County~~];
(2) the district judges in Rockwall County;
(3) one county commissioner appointed by the commissioners court;
(4) one member of the board of trustees of the Rockwall Independent School District selected by the board of trustees of the Rockwall Independent School District; and
(5) one member of the board of trustees of the Royse City Independent School District selected by the board of trustees of the Royse City Independent School District.

Commentary by: Kaci Singer
Source: HB 4568
Effective Date: June 14, 2021
Applicability: Applies on or after the effective the date.
Summary of Changes: Rockwall County was given an additional county court at law in 2019. However, the statute regarding their juvenile board makeup was not changed and included only the singular county court at law. It has now been updated to include all the county court at law judges.

Human Resources Code Section 152.0601. CROSBY COUNTY.
(g) The juvenile board of Crosby County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Crosby County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Human Resources Code Section 152.1581. LUBBOCK COUNTY.
(i) The juvenile board of Lubbock County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Lubbock County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Commentary by: Kaci Singer
Source: SB 511
Effective Date: May 24, 2021
Applicability: Applies on or after the effective date.
Summary of Changes: This change in law allows Lubbock County and Crosby County juvenile boards agree to operate together with the juvenile boards of one or more counties that are adjacent to or in close proximity to them.

Topic: Courts, District Attorneys, County Attorneys

Government Code Section 24.60029. 484TH JUDICIAL DISTRICT (CAMERON COUNTY).
(a) The 484th Judicial District is composed of Cameron County.
(b) The 484th District Court shall give preference to juvenile matters under Title 3, Family Code.

Commentary by: Kaci Singer
Source: HB 3774 (only portions of the bill relevant to juvenile law are included)
Effective Date: January 1, 2021
Applicability: The court is created on the effective date.
Summary of Changes: This change in law creates a new district court in Cameron County that is to give preference to juvenile matters under Title 3.

Government Code Section 25.2071. SAN PATRICIO COUNTY.
(a) San Patricio County has the following [~~one~~] statutory county courts:
(1) [~~court,~~] the County Court at Law of San Patricio County; and
(2) the County Court at Law No. 2 of San Patricio County.

Government Code Section 25.2072. SAN PATRICIO COUNTY COURT AT LAW PROVISIONS.
(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in San Patricio County has concurrent jurisdiction with the district court except that a county court at law does not have jurisdiction of:
(1) felony criminal matters; and
(2) civil cases in which the matter in controversy exceeds the maximum amount provided by Section 25.0003 [~~in matters involving the juvenile and child welfare law of this state~~].
(d) [~~The judge of a county court at law shall be paid an annual salary in an amount of not less than $43,000.~~] The judge of a county court at law is entitled to receive travel and necessary office

expenses, including administrative and clerical assistance.

(g-1) The county clerk serves as clerk of a county court at law except in family law cases. In family law cases, including juvenile and child welfare cases, the district clerk serves as clerk of a county court at law. The district clerk shall establish a separate family law docket for each county court at law.

(g-2) The commissioners court shall provide the deputy clerks, bailiffs, and other personnel necessary to operate the county courts at law.

(m) The judge of the county court and the judges [~~judge~~] of the [~~a~~] county courts [~~court~~] at law may agree on a plan governing the filing, numbering, and docketing of cases within the concurrent jurisdiction of their courts and the assignment of those cases for trial. The plan may provide for the centralized institution and filing of all such cases with one court, clerk, or coordinator designated by the plan and for the systemized assignment of those cases to the courts participating in the plan, and the provisions of the plan for the centralized filing and assignment of cases shall control notwithstanding any other provisions of this section. If the judges of the county court and the county courts [~~court~~] at law are unable to agree on a filing, docketing, and assignment of cases plan, a board of judges composed of the district judges and the county court at law judges for San Patricio County [~~the presiding judge of the 36th Judicial District~~] shall design a plan for the [~~both~~] courts.

Commentary by: Kaci Singer
Source: HB 3774 (only portions of the bill relevant to juvenile law are included)
Effective Date: January 1, 2023
Applicability: The court is created on the effective date. The other provisions apply beginning on the effective date.
Summary of Changes: This change adds the County Court at Law Number 2 of San Patricio County to the statutory county courts in that county. The county court at law has concurrent jurisdiction with the district court except that the county court at law does not have jurisdiction over felony criminal matters or civil cases in which the matter in controversy exceeds the amount in Section 25.003, Government Code ($250,000). This change also specifies that the county clerk is the clerk of a county court at law except for in family cases. For family law cases, including juvenile and child welfare cases, the district clerk serves as the clerk for the county court at law. The district clerk is to establish a separate family law docket for each county court at law. The commissioners court is responsible for providing the deputy clerks, bailiffs, and other personnel necessary to operate the county courts at law. The judge's salary is also removed from statute.

Government Code Section 43.137. 70th JUDICIAL DISTRICT.

(c) In addition to exercising the duties and authority conferred on district attorneys by general law, the district attorney represents the state in the district and inferior courts in Ector County in all criminal cases, juvenile matters under Title 3, Family Code, and matters involving children's protective services.

(d) The district attorney has no power, duty, or privilege in any civil matter, other than civil asset forfeiture and civil bond forfeiture matters.

Government Code Section 45.168. ECTOR COUNTY.

(a) It is the primary duty of the county attorney in Ector County to represent the state, Ector County, and the officials of the county in all civil matters, other than asset forfeiture and bond forfeiture matters for which the district attorney is responsible, pending before the courts of Ector County and any other court in which the state, Ector County, or the county officials have matters pending.

(b) The county attorney has no power, duty, or privilege in Ector County relating to criminal matters, juvenile matters under Title 3, Family Code, or matters involving children's protective services.

Commentary by: Kaci Singer
Source: HB 3774 (only portions of the bill relevant to juvenile law are included)
Effective Date: September 1, 2021
Applicability: Applies to a proceeding commenced on or after the effective date.
Summary of Changes: These changes give the district attorney in Ector County the responsibility over all criminal cases, juvenile

matters under Title 3, and matters involving children's protective services and specify that the county attorney has no power over those types of cases. The county attorney is responsible for all civil matters except for bond forfeitures and asset forfeitures, which are the only civil matters that the district attorney is authorized to work on.

Topic: Drug Education and Alcohol Awareness Programs

Family Code Section 53.03. DEFERRED PROSECUTION.

(h-1) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, deferred prosecution under this section may include a condition that the child successfully complete [~~attend~~] a drug education program that is designed to educate persons on the dangers of drug abuse [~~and is approved by the Department of State Health Services~~] in accordance with Section 521.374(a)(1) [~~521.374~~], Transportation Code, and that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, Government Code.

(h-2) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, deferred prosecution under this section may include a condition that the child successfully complete [~~attend~~] an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code, that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, Government Code.

Family Code Section 54.047. ALCOHOL OR DRUG RELATED OFFENSE.

(a) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that constitutes a violation of Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the court may order that the child successfully complete [~~attend~~] a drug education program that is designed to educate persons on the dangers of drug abuse [~~and is approved by the Department of State Health Services~~] in accordance with Section 521.374(a)(1) [~~521.374~~], Transportation Code, and that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, Government Code.

(b) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, the court may order that the child successfully complete [~~attend~~] an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code, that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, Government Code.

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

Commentary by: Kaci Singer
Source: SB 1480
Effective Date: September 1, 2021
Applicability: Applies to programs after certain state agencies make changes to rules.
Summary of Changes: The main purpose of this bill was to change the entity regulating certain programs to the Texas Department of Licensing and Regulation. This change is reflected in the above Family Code statutes relevant to juvenile

justice. The main substantive change for juvenile courts to be aware of is that the law was changed from allowing the court to order children to *attend* alcohol awareness or drug education programs for certain offenses to now allowing the court to order them to *successfully complete* the programs.

Topic: Driver License Suspension or Denial for Certain Drug-Related Offenses

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Code of Criminal Procedure Article 102.0179. FINE FOR CERTAIN DRUG AND TEXAS CONTROLLED SUBSTANCE ACT CONVICTIONS.

(a) In this article, "convicted" includes an adjudication under juvenile proceedings.

(b) In addition to any other fees and fines imposed under this subchapter, a defendant convicted of a misdemeanor drug offense as defined by Section 521.371, Transportation Code, whose driver's license is not suspended under Section 521.372, Transportation Code, as a result of that conviction, shall pay a fine of $100.

(c) The court shall waive imposition of a fine under this article if the defendant's driver's license is suspended under Section 521.372, Transportation Code, or under another provision of that code as a result of the conviction of:

(1) an offense described by Section 521.372(a), Transportation Code; or

(2) another offense arising from the same criminal episode.

(d) A fine imposed under this article is due regardless of whether the defendant is granted community supervision in the case. The court shall collect the fine under this article in the same manner as court costs are collected in the case.

(e) A fine collected under this article shall be deposited to the credit of the Texas mobility fund.

Transportation Code Chapter 521, Subchapter P. [~~AUTOMATIC~~] SUSPENSION FOR CERTAIN DRUG OFFENSES.

Transportation Code Section 521.372. [~~AUTOMATIC~~] SUSPENSION OR[~~;~~] LICENSE DENIAL.

(a) A person's driver's license is automatically suspended on final conviction of:

(1) an offense under the Controlled Substances Act;

(2) a felony drug offense; [~~or~~]

(3) a misdemeanor drug offense, if the person has been previously convicted of a drug offense committed less than 36 months before the commission of the instant offense; or

(4) a felony under Chapter 481, Health and Safety Code, that is not a drug offense.

(b) The department may not issue a driver's license to a person convicted of an offense specified in Subsection (a) who, on the date of the conviction, did not hold a driver's license.

(b-1) Except as provided by Subsection (a)(3), the court may order that the department suspend the license of a person who holds a license at the time of final conviction of a misdemeanor drug offense if the court makes a written determination that the suspension is in the interest of public safety.

(c) Except as provided by Section 521.374(b), the period of suspension or license denial under this section is 90 [~~the 180~~] days after the date of a final conviction[~~, and the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver's license~~].

Transportation Code Section 521.374. EDUCATIONAL PROGRAM OR EQUIVALENT.

(a) A person whose license is suspended under Section 521.372 may:

(1) successfully complete [~~attend~~] an in-person or online educational program, approved by the Texas Department of Licensing and Regulation [~~Department of State Health Services~~] under rules adopted by the Texas Commission of Licensing and Regulation [~~executive commissioner of the~~

~~Health and Human Services Commission~~] and the department, that is designed to educate persons on the dangers of drug abuse; or

(2) successfully complete education on the dangers of drug abuse approved by the Department of State Health Services as equivalent to the educational program described by Subdivision (1), while the person is a resident of a facility for the treatment of drug abuse or chemical dependency, including:

(A) a substance abuse treatment facility or substance abuse felony punishment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code;

(B) a community corrections facility, as defined by Section 509.001, Government Code; or

(C) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code.

(b) The period of suspension or prohibition under Section 521.372(c) continues <u>until the earlier of:</u>

<u>(1) the date</u> [~~for an indefinite period until~~] the individual successfully completes the <u>in-person or online</u> educational program <u>under Subsection (a)(1)</u> or is released from the residential treatment facility at which the individual successfully completed equivalent education <u>under Subsection (a)(2)</u>, as applicable<u>; or</u>

<u>(2) the second anniversary of the date the suspension or prohibition was imposed</u>.

Commentary by: Kaci Singer
Source: SB 181 (only portions of the bill are included)
Effective Date: September 1, 2021, with some exceptions
Applicability: The Texas Commission of Licensing and Regulation and DPS shall adopt rules no later than September 1, 2022, to implement Sections 521.374, 521.375, and 521.376, Transportation Code.
The provisions relating to discretionary license suspension take effect on the 91st day after the date the office of the attorney general publishes in the Texas Register a finding that:

(1) the legislature of this state has adopted a resolution expressing the legislature's opposition to a law meeting the requirements of 23 U.S.C. Section 159 in suspending, revoking, or denying the driver's license of a person convicted of a drug offense for a period of six months;
(2) the governor has submitted to the United States secretary of transportation:

(A) a written certification of the governor's opposition to the enactment or enforcement of a law required under 23 U.S.C. Section 159; and

(B) a written certification that the legislature has adopted the resolution described by Subdivision (1) of this subsection; and

(3) the United States secretary of transportation has responded to the governor's submission and certified that highway funds will not be withheld from this state in response to the modification or full or partial repeal of the law required under 23 U.S.C. Section 159.

On the 180th day after that effective date, DPS shall reinstate any driver's license that:
(1) was suspended under Section 521.372, Transportation Code, before that effective date; and
(2) remains subject to suspension under that section on the 180th day after that effective date.
Summary of Changes: Under current law, there is automatic suspension of an existing driver license or denial of the issuance of a new driver license if a person is convicted or adjudicated of an offense int eh Texas Controlled Substances Act, a "drug offense" as defined by 23 USC Section 159(c), and a felony in Chapter 481, Health and Safety Code, that is not a "drug offense." The suspension or denial period is 180 days unless the person is ordered to attend an educational program, in which case it is an indefinite period of time until the person successfully completes the program.

Under the new law, the suspension or denial remains automatic for the covered felony offenses. However, it is not automatic for a misdemeanor unless the person had a drug offense conviction in the prior 36 months. For the non-automatic suspension or denial, the court may suspend if the court determines it is in the interest of public safety to do so. Whether the

suspension or denial is automatic or not, the period is now 90 days rather than 180 unless the person is ordered to attend an educational program. If the person is ordered to attend an educational program, the period is the earlier of the date of completion or two years from the date of suspension or denial. There is no longer an indefinite period. The education programs will also now be available online.

Newly added Article 102.0179, Code of Criminal Procedure, provides that a defendant convicted of a misdemeanor drug offense as defined by Section 521.371, Transportation Code, whose license is not suspended as a result of the conviction shall pay a fine of $100 in addition to any other fees and fines imposed under Subchapter A, Chapter 102. It defines conviction to include an adjudication. Nothing in that chapter applies to juveniles, however, so it is unclear how this fine is supposed to work in a juvenile court.

There are certain things that must occur before most of this law can become effective, as explained in the applicability section.

Topic: Duty to Report Abuse or Neglect

Family Code Section 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT.

(a) A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has reasonable cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first has reasonable cause to believe [~~suspects~~] that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "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 or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

(b-1) In addition to the duty to make a report under Subsection (a) or (b), a person or professional shall make a report in the manner required by Subsection (a) or (b), as applicable, if the person or professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of:

(1) another child; or

(2) an elderly person or person with a disability as defined by Section 48.002, Human Resources Code.

Commentary by: Kaci Singer
Source: HB 3379
Effective Date: September 1, 2021
Applicability: Applies only to a report of suspected abuse or neglect of a child that is made on or after the effective date.
Summary of Changes: According to the analysis accompanying this bill, there are concerns that the current standard of being required to report abuse or neglect when there is cause to believe that a child has been abused or neglected is overly broad and can lead to false reports or to prosecution for failing to report when the person had no real information to indicate there was abuse or neglect. This changes the standard to provide for reasonable cause to believe a child was abused or neglected.

Topic: Juvenile Family Drug Court Program

Government Code, Chapter 130, Subtitle K, Title 2. CHAPTER 130. JUVENILE FAMILY DRUG COURT PROGRAM

Government Code Section 130.001. JUVENILE FAMILY DRUG COURT PROGRAM DEFINED.
In this chapter, "juvenile family drug court program" means a program that has the following essential characteristics:

(1) the integration of substance abuse treatment services in the processing of cases and proceedings under Title 3, Family Code;
(2) the use of a comprehensive case management approach involving court-appointed case managers and court-appointed special advocates to rehabilitate an individual who is suspected of substance abuse and who resides with a child who is the subject of a case filed under Title 3, Family Code;
(3) early identification and prompt placement of eligible individuals who volunteer to participate in the program;
(4) comprehensive substance abuse needs assessment and referrals to appropriate substance abuse treatment agencies for participants;
(5) a progressive treatment approach with specific requirements for participants to meet for successful completion of the program;
(6) monitoring of abstinence through periodic screening for alcohol or screening for controlled substances;
(7) ongoing judicial interaction with program participants;
(8) monitoring and evaluation of program goals and effectiveness;
(9) continuing interdisciplinary education for the promotion of effective program planning, implementation, and operation; and
(10) development of partnerships with public agencies and community organizations.

Government Code Section 130.002. AUTHORITY TO ESTABLISH PROGRAM.
The commissioners court of a county may establish a juvenile family drug court program for individuals who:

(1) are suspected by the Department of Family and Protective Services or the court of having a substance abuse problem; and
(2) reside in the home of a child who is the subject of a case filed under Title 3, Family Code.

Government Code Section 130.003. PARTICIPANT PAYMENT FOR TREATMENT AND SERVICES.
A juvenile family drug court program may require a participant to pay the cost of all treatment and services received while participating in the program, based on the participant's ability to pay.

Government Code Section 130.004. FUNDING.
A county that creates a juvenile family drug court under this chapter shall explore the possibility of using court improvement project money to finance the juvenile family drug court in the county. The county also shall explore the availability of federal and state matching money to finance the court.

Commentary by: Kaci Singer
Source: HB 454
Effective Date: September 1, 2021
Applicability: Applies to a program created on or after the effective date.
Summary of Changes: This change in law allows a commissioners court to create a juvenile family drug court program for individuals who are suspected by the Department of Family and Protective Services or the court of having a substance abuse problem and reside in the home of a child who is subject of a juvenile case filed under Title 3, Family Code. The statute sets out the essential characteristics of the program. The statute does not set out what gives a court jurisdiction over one of these individuals. It also does not include the juvenile board, which is the governmental entity that has authority over juvenile court programs.

Topic: Identification Documents for TJJD Youth

Human Resources Code Section 245.0535. COMPREHENSIVE REENTRY AND REINTEGRATION PLAN FOR CHILDREN; STUDY AND REPORT.

(e) The department may contract and coordinate with private vendors, units of local government, or other entities to implement the comprehensive reentry and reintegration plan developed under this section, including contracting to:

(1) coordinate the supervision and services provided to children during the time children are in the custody of the department with any supervision or services provided children who have been released under supervision or finally discharged from the department;

(2) provide children awaiting release under supervision or final discharge with documents that are necessary after release or discharge, including identification papers that include, if available, personal identification certificates obtained under Section 245.0536, medical prescriptions, job training certificates, and referrals to services; and

(3) provide housing and structured programs, including programs for recovering substance abusers, through which children are provided services immediately following release under supervision or final discharge.

Human Resources Code Section. 245.0536. PROVIDING RELEASED OR DISCHARGED CHILD WITH STATE-ISSUED IDENTIFICATION.

(a) Before releasing a child under supervision or finally discharging a child, the department shall:

(1) determine whether the child has:

(A) a valid license issued under Chapter 521, Transportation Code; or

(B) a valid personal identification certificate issued under Chapter 521, Transportation Code; and

(2) if the child does not have a valid license or certificate described by Subdivision (1), submit to the Department of Public Safety on behalf of the child a request for the issuance of a personal identification certificate under Chapter 521, Transportation Code.

(b) The department shall submit a request under Subsection (a)(2) as soon as is practicable to enable the department to receive the personal identification certificate before the department releases or discharges the child and to provide the child with the personal identification certificate when the department releases or discharges the child.

(c) The department, the Department of Public Safety, and the vital statistics unit of the Department of State Health Services shall adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a child, including responsibilities related to verification of the child's identity. The memorandum of understanding must require the Department of State Health Services to electronically verify the birth record of a child whose name and any other personal information is provided by the department and to electronically report the recorded filing information to the Department of Public Safety to validate the identity of a child under this section.

(d) The department shall reimburse the Department of Public Safety or the Department of State Health Services for the actual costs incurred by those agencies in performing responsibilities established under this section. The department may charge the child's parent or guardian for the actual costs incurred under this section or the fees required by Section 521.421, Transportation Code.

(e) This section does not apply to a child who:

(1) is not legally present in the United States; or

(2) was not a resident of this state before the child was placed in the custody of the department.

Human Resources Code Section 245.0537. PROVIDING RELEASED OR DISCHARGED CHILD WITH BIRTH CERTIFICATE AND SOCIAL SECURITY CARD.

(a) In addition to complying with the requirements of Section 245.0536, before releasing a child under supervision or finally discharging a child, the department must:

(1) determine whether the child has a:

(A) certified copy of the child's birth certificate; and

(B) copy of the child's social security card; and

(2) if the child does not have a document described by Subdivision (1), submit to the appropriate entity on behalf of the child a request for the issuance of the applicable document.

(b) The department shall submit a request under Subsection (a)(2) as soon as is practicable to enable the department to receive the applicable document before the department releases or discharges the child and to provide the child with the applicable document when the department releases or discharges the child.

(c) This section does not apply to a child who:

(1) is not legally present in the United States; or

(2) was not a resident of this state before the child was placed in the custody of the department.

Transportation Code Section 521.421. DRIVER'S LICENSES AND CERTIFICATES.

(a-1) The fee for a personal identification certificate issued under Section 501.0165, Government Code, [~~or~~] Section 841.153, Health and Safety Code, or Section 245.0536, Human Resources Code, is $5.

Commentary by: Kaci Singer
Source: HB 4544
Effective Date: September 1, 2021
Applicability: Applies only to the release under supervision or final discharge of a child that occurs on or after December 1, 2021.
Summary of Changes: This new law requires TJJD to determine if a youth in its care who is being paroled or discharged has a valid driver's license or personal ID card. If not, TJJD is to submit a request for such to DPS. DPS, DSHS, and TJJD must adopt a memorandum of understanding to set out their respective responsibilities, including responsibilities to verify a child's identification. TJJD is also required to determine if the child has a certified copy of the child's birth certificate and a copy of the child's social security card. If not, TJJD must submit a request to the appropriate entity to provide the document. TJJD is to reimburse DPS and DSHS for their actual costs and may pass those costs to the parent or child. The cost for a personal identification card under this new law is $5.

Topic: Impact of Deferred Adjudication on a Professional Certification

Code of Criminal Procedure Article 42A.111. DISMISSAL AND DISCHARGE.

(c-1) Subject to Subsection (d), an offense for which the defendant received a dismissal and discharge under this article may not be used as grounds for denying issuance of a professional or occupational license or certificate to, or suspending or revoking the professional or occupational license or certificate of, an individual otherwise entitled to or qualified for the license or certificate.

(d) For any defendant who receives a dismissal and discharge under this article:

(1) on conviction of a subsequent offense, the fact that the defendant previously has received deferred adjudication community supervision is admissible before the court or jury for consideration on the issue of penalty;

(2) if the defendant is an applicant for or the holder of a license under Chapter 42, Human Resources Code, the Department of Family and Protective Services may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license under that chapter; [~~and~~]

(3) if the defendant is an applicant for or the holder of a license to provide mental health or medical services for the rehabilitation of sex offenders, the Council on Sex Offender Treatment may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license issued by that council; and

(4) if the defendant is an applicant for or the holder of a professional or occupational license or certificate, the licensing agency may consider the fact that the defendant

previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license or certificate if:

(A) the defendant was placed on deferred adjudication community supervision for an offense:

(i) listed in Article 42A.054(a);

(ii) described by Article 62.001(5) or (6);

(iii) committed under Chapter 21 or 43, Penal Code; or

(iv) related to the activity or conduct for which the person seeks or holds the license;

(B) the profession for which the defendant holds or seeks a license or certificate involves direct contact with children in the normal course of official duties or duties for which the license or certification is required; or

(C) the defendant is an applicant for or the holder of a license or certificate issued under Chapter 1701, Occupations Code.

Commentary by: Kaci Singer
Source: HB 757
Effective Date: September 1, 2021
Applicability: Applies to a defendant placed on deferred adjudication community supervision for an offense committed on or after the effective date. If the offense was committed before the effective date, the former law applies.
Summary of Changes: Section 53.021, Occupations Code, currently provides that a licensing authority may not consider a person to have been convicted of an offense for the purpose of denying, revoking, or suspending a license if the person was placed on deferred adjudication community supervision and successfully completed it, resulting in a dismissal of the charges. The exceptions are for an offense described in Article 62.001(5), Code of Criminal Procedure (registerable sex offense), any other offense if less than five years has elapsed since the completion of the deferred adjudication supervision or if a conviction would make the person ineligible for the license by operation of law. Even with those exceptions, the licensing authority is still required to consider certain statutory factors and determine the person may pose a continued threat to public safety or that their employment in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct. The limitation on considering a deferred adjudication to be a conviction for licensing purposes does not apply to license holders whose license authorizes them to provide law enforcement or public health, education, or safety services or to provide financial services in an industry regulated under Section 411.0765(b)(18), Government Code.

This new law does something similar to what is already in law. It provides that a licensing agency may not use an offense for which a person successfully completed deferred adjudication community supervision as the grounds for denying, suspending, or revoking a professional or occupational license or certificate. The exceptions related to the offenses are: 1) if the offense was listed in 42A.054(a), Code of Criminal Procedure (formerly known as 3(g) offenses); 2) an offense described in Article 62.001(5) (registerable sex offenses) or (6) (sexually violent offenses, all of which are captured by 62.001(5)), Code of Criminal Procedure; 3) Chapter 21 and Chapter 43, Penal Code offenses, and 4) an offense that relates to the activity or conduct for which a person seeks or holds the license. Additional exceptions include if the profession is one that involves direct contact with children in the normal course of official duties or duties for which the license or certification is required or if the license is issued under Chapter 1701, Occupations Code (TCOLE certifications).

Because there are now two statutes that address a licensing authority's ability to consider deferred adjudication when determining whether to deny, suspend, or revoke a license or certification, some licensing authorities may have to grapple with whether these two statutes may be harmonized. With regard to TJJD's licensing authority, that is not an issue. This is because both statutes provide an exception that applies to TJJD's licensing of certified juvenile probation officers, juvenile supervision officers, and community activities officers. The current law exception to those who

provide safety services allows TJJD to consider deferred adjudications in making its licensing decisions. The new law exception to those whose profession involves direct contact with children also allows TJJD to consider deferred adjudications in making its licensing decisions.

It bears noting that the term "license" is defined in Section 2001.003, Government Code, to include a state agency permit, certificate, approval, registration, or similar form of permission required by law and so does apply to the certifications issued by TJJD.

Topic: Qualified Facility Dog or Qualified Therapy Dog

Government Code Section 21.012. PRESENCE OF QUALIFIED FACILITY DOG OR QUALIFIED THERAPY DOG IN COURT PROCEEDING.

(a) In this section:

(1) "Qualified facility dog" means a dog that:

(A) is a graduate of a program operated by an assistance dog organization that is a member of a nationally recognized assistance dog association; or

(B) before January 1, 2021, on the approval of the court, served in a court proceeding by accompanying a witness who was testifying.

(2) "Qualified therapy dog" means a dog that successfully completes a program operated by an organization that registers, insures, or certifies a therapy dog and the dog's handler as meeting or exceeding the standards of practice in animal-assisted interventions.

(b) Any party to an action filed in a court in this state in which a proceeding related to the action will be held may petition the court for an order authorizing a qualified facility dog or qualified therapy dog to be present with a witness who is testifying before the court through:

(1) in-person testimony; or

(2) closed-circuit video teleconferencing testimony.

(c) The court may enter an order authorizing a qualified facility dog or qualified therapy dog to accompany a witness testifying at the court proceeding if:

(1) the presence of the dog will assist the witness in providing testimony; and

(2) the party petitioning for the order provides proof of liability insurance coverage in effect for the dog.

(d) A handler who is trained to manage the qualified facility dog or qualified therapy dog must accompany the dog provided for a witness at a court proceeding.

(e) A party to the action must petition the court for an order under Subsection (b) not later than the 14th day before the date of the court proceeding.

(f) A court may:

(1) impose restrictions on the presence of the qualified facility dog or qualified therapy dog during the court proceeding; and

(2) issue instructions to the jury, as applicable, regarding the presence of the dog.

Commentary by: Kaci Singer
Source: HB 1071
Effective Date: September 1, 2021
Applicability: Applies to proceedings occurring on or after the effective date.
Summary of Changes: This new law allows any party to file a petition asking the court to grant permission for a qualified facility dog or therapy dog to be present with a witness who is testifying before the court. The petition must be filed no later than 14 days before the court proceeding. The court may enter an order authorizing the dog if the court determines the dog's presence will assist the witness in providing testimony and the party petitioning for the order provides proof of liability insurance coverage in effect for the dog. A trained handler must accompany the dog. The court may impose restrictions on the dog's presence and issue instructions to the jury regarding the dog's presence.

Topic: Court Reminder Program

Government Code Chapter 75.
SUBCHAPTER J. COURT REMINDER PROGRAM.

Government Code Section 75.601.
ESTABLISHMENT OF STATE PROGRAM FOR PARTICIPATING COUNTIES.

(a) The Office of Court Administration of the Texas Judicial System shall develop and make available to each county a court reminder program that allows the county to send a text message to notify criminal defendants of scheduled court appearances. The purposes of the program must include:

(1) reducing costs associated with defendants who fail to appear for a scheduled court appearance;

(2) improving the efficiency of courts in this state;

(3) reminding criminal defendants to appear at each scheduled court appearance; and

(4) reducing the number of criminal defendants who are confined in a county jail due solely to the defendant's failure to appear for a scheduled court appearance.

(b) The program must:

(1) be available to each county at no cost;

(2) comply with applicable state and federal laws requiring the consent of an individual before sending a reminder by text message;

(3) provide text message reminders for each court appearance of a defendant who has access to a device with the technological capability of receiving text messages and provides the court administrator with an operational phone number for the device;

(4) document each occurrence of a criminal defendant receiving a text message reminder;

(5) identify criminal defendants with scheduled court appearances who lack access to devices with the technological capability of receiving text messages;

(6) document the number of criminal defendants who fail to appear at scheduled court appearances after being sent one or more text message reminders;

(7) include the technological capability, at the discretion of the local administrative judge, to provide additional information to criminal defendants concerning scheduled court appearances, such as the location of the court appearance, available transportation options, and procedures for defendants who are unable to attend court appearances;

(8) support partnerships with local law enforcement agencies, local governments, and local public defenders in accordance with the purposes described by Subsection (a); and

(9) provide one or more publicly available Internet websites through which criminal defendants may request text reminders.

Government Code Section 75.602.
ESTABLISHMENT OF COUNTY PROGRAMS.

(a) The justices of the justice courts and judges of the county courts, statutory county courts, and district courts with jurisdiction over criminal cases in each county may establish a court reminder program that allows the county to send a text message to notify criminal defendants of scheduled court appearances.

(b) In developing the court reminder program, the justices and judges may join the state program developed under Section 75.601 or develop a county program that allows the county to send text message notifications to criminal defendants and that complies with the requirements of Section 75.601(b).

Government Code Section 75.603.
MUNICIPAL PROGRAM.

(a) The Office of Court Administration of the Texas Judicial System, or the justices of the justice courts and judges of the county courts, statutory county courts, and district courts with jurisdiction over criminal cases in each county, may partner with municipalities and local law enforcement agencies to allow:

(1) individuals to whom a peace officer issues a citation and releases to receive text message reminders of scheduled court appearances; and

(2) criminal defendants in municipal court to receive text message reminders of scheduled court appearances.

(b) Any municipality that partners with the Office of Court Administration of the Texas Judicial System shall pay all costs of sending reminders to municipal criminal defendants, including the costs of linking the municipal court database with the state court administrator database.

Commentary by: Kaci Singer
Source: HB 4293
Effective Date: September 1, 2021
Applicability: Not later than September 1, 2022, the Office of Court Administrator shall develop and make available the court reminder program.
Summary of Changes: This statute does not apply to juvenile court but is included for information purposes. It requires the Office of Court Administration to develop and make available to each county a court reminder program that allows the county to send a text message to notify criminal defendants of schedule court appearances. All criminal courts in a county may establish a court reminder program and may use the state-developed program if they choose. A municipal program allowing defendants in municipal court as well as individuals to whom a peace officer has issued a citation and released may also be developed through a partnership.

Topic: Fees

Family Code Section 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.~~]

Family Code Section 54.0325. DEFERRAL OF ADJUDICATION AND DISMISSAL OF CERTAIN CASES ON COMPLETION OF TEEN DATING VIOLENCE COURT PROGRAM.

[~~(g) The court may require a child who participates in a teen dating violence court program to pay a 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.~~

~~(h) In addition to the fee authorized by Subsection (g), the court may require a child who participates in a teen dating violence court program to pay a fee of $10 to cover the cost to the teen dating violence court program for performing its duties under this section. The court shall pay the fee to the teen dating violence court program, and the teen dating violence court program must account to the court for the receipt and disbursal of the fee.~~]

Family Code Section 54.041. ORDERS AFFECTING PARENTS AND OTHERS.

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice by any reasonable method to all persons affected, may:

(1) order any person found by the juvenile court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's delinquent conduct or conduct indicating a need for supervision to do any act

that the juvenile court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the juvenile court determines to be injurious to the welfare of the child;

(2) enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision; or

(3) after notice and a hearing of all persons affected order any person living in the same household with the child to participate in social or psychological counseling to assist in the rehabilitation of the child and to strengthen the child's family environment[~~; or~~

~~(4) after notice and a hearing of all persons affected order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is required to participate during the period of probation if the court finds the child's parent or person responsible for the child's support is able to pay the costs~~].

[**~~Family Code Section 54.0411. JUVENILE PROBATION DIVERSION FUND.~~**

~~(a) If a disposition hearing is held under Section 54.04 of this code, the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a fee as costs of court of $20.~~

~~(b) Orders for the payment of fees under this section may be enforced as provided by Section 54.07 of this code.~~

~~(c) An officer collecting costs under this section shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the county treasury.~~

~~(d) Each officer collecting court costs under this section shall file the reports required under Article 103.005, Code of Criminal Procedure. If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report must state that no funds due under this section were collected.~~

~~(e) The custodian of the county treasury may deposit the funds collected under this section in interest bearing accounts. The custodian shall keep records of the amount of funds on deposit collected under this section and not later than the last day of the month following each calendar quarter shall send to the comptroller of public accounts the funds collected under this section during the preceding quarter. A county may retain 10 percent of the funds as a service fee and may retain the interest accrued on the funds if the custodian of a county treasury keeps records of the amount of funds on deposit collected under this section and remits the funds to the comptroller within the period prescribed under this subsection.~~

~~(f) Funds collected are subject to audit by the comptroller and funds expended are subject to audit by the State Auditor.~~

~~(g) The comptroller shall deposit the funds in a special fund to be known as the juvenile probation diversion fund.~~

~~(h) The legislature shall determine and appropriate the necessary amount from the juvenile probation diversion fund to the Texas Juvenile Justice Department for the purchase of services the department considers necessary for the diversion of any juvenile who is at risk of commitment to the department. The department shall develop guidelines for the use of the fund. The department may not purchase the services if a person responsible for the child's support or a local juvenile probation department is financially able to provide the services.~~]

[**~~Family Code Section 54.0461. PAYMENT OF JUVENILE DELINQUENCY PREVENTION FEES.~~**

~~(a) If a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court a $50 juvenile delinquency prevention fee as a cost of court.~~

~~(b) The court shall deposit fees received under this section to the credit of the county juvenile delinquency prevention fund provided for under Article 102.0171, Code of Criminal Procedure.~~

~~(c) If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the juvenile delinquency prevention~~

fee required under Subsection (a), the court shall enter into the child's case records a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.]

[Family Code Section 54.0462. PAYMENT OF FEES FOR OFFENSES REQUIRING DNA TESTING.

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

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

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

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

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

Family Code Section 54.047. ALCOHOL OR DRUG RELATED OFFENSE.

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

Family Code Section 54.06. JUDGMENTS FOR SUPPORT.

[(a) At any stage of the proceeding, when a child has been placed outside the child's home, the juvenile court, after giving the parent or other person responsible for the child's support a reasonable opportunity to be heard, shall order the parent or other person to pay in a manner directed by the court a reasonable sum for the support in whole or in part of the child or the court shall waive the payment by order. The court shall order that the payment for support be made to the local juvenile probation department to be used only for residential care and other support for the child unless the child has been committed to the Texas Juvenile Justice Department, in which case the court shall order that the payment be made to the Texas Juvenile Justice Department for deposit in a special account in the general revenue fund that may be appropriated only for the care of children committed to the Texas Juvenile Justice Department.]

Family Code Section 61.002. APPLICABILITY.

(a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:

(1) for payment of probation fees under Section 54.061;

(2) for restitution under Sections 54.041(b) and 54.048;

(3) [for payment of graffiti eradication fees under Section 54.0461; (4)] for community service under Section 54.044(b);

(4) [(5) for payment of costs of court under Section 54.0411 or other provisions of law; (6)] requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);

(5) [(7)] enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);

(6) [(8)] ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);

(7) [(9)] requiring a parent or other eligible person to pay reasonable attorney's fees for

representing the child under Section 51.10(e);

(8) [~~(10)~~] requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);

(9) [~~(11)~~] requiring payment of deferred prosecution supervision fees under Section 53.03(d);

(10) [~~(12)~~] requiring a parent or other eligible person to attend a court hearing under Section 51.115;

(11) [~~(13)~~] requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r);

(12) [~~(14)~~] requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title;

[~~(15) for payment of fees under Section 54.0462;~~] or

(13) [~~(16)~~] for payment of the cost of attending an educational program under Section 54.0404.

[~~Human Resources Code Section 152.0492. COLLIN COUNTY SUPPORT PAYMENT COLLECTION.~~

~~(a) The juvenile board of Collin County may appoint the district court clerk in Collin County to administer support payments for Collin County.~~

~~(b) The juvenile board may provide for the payment of a monthly support service fee in an amount set by the board not to exceed $2.50. The fee is assessed against the person ordered by a district court of Collin County to pay child or spousal support through the district clerk. The clerk shall add the fee to the first support payment each month.~~

~~(c) The district clerk shall collect the fees and shall transfer the money to the county treasurer on the last day of each month. The county treasurer shall deposit the fees to the credit of the county general fund.~~

~~(d) The service fee authorized by this section applies to child support, spousal support, and separate maintenance payments ordered before September 1, 1983, if the person ordered to make those payments defaults and is cited for contempt of court. The service fee becomes due and payable for each month after the hearing on the contempt citation.~~]

Human Resources Code Section 152.1074. HARRIS COUNTY CHILD SUPPORT DEPARTMENT.

[~~(f) To recover the costs of providing services, the commissioners court may provide by order for the collection by the district clerk of a fee set by the commissioners court at an amount that does not exceed $12. A person who files a suit for divorce, annulment, or to declare a marriage void in which the parties are parents of a child, as that term is defined by Section 101.003, Family Code, shall pay the fee at the time the suit is filed.~~

~~(g) The commissioners court may provide by order for the collection by the department of a fee not to exceed $2 for each transaction, other than the receipt of a payment of support, in connection with a suit for spousal support or a suit affecting the parent-child relationship, including services relating to the location of an absent parent, an accounting of support payments, a computer printout of payment history, and a monthly notification of the nonpayment of support.~~]

[~~Human Resources Code Section 152.1322. JOHNSON COUNTY SUPPORT PAYMENT COLLECTION.~~

~~(a) The juvenile board of Johnson County may appoint the district clerk in Johnson County to administer support payments for Johnson County.~~

~~(b) The juvenile board may provide for the payment of a monthly support service fee of $1. The fee is assessed against the person ordered by a district court of Johnson County to pay child or spousal support through the district clerk. The clerk shall add the fee to the first support payment each month.~~

~~(c) The district clerk shall collect the fees and shall transfer the money to the county treasurer on the last day of each month. The county treasurer shall deposit the fees to the credit of the county general fund.~~

(d) The service fee authorized by this section applies to child support, spousal support, and separate maintenance payments ordered before September 1, 1983, if the person ordered to make those payments defaults and is cited for contempt of court. The service fee becomes due and payable for each month after the hearing on the contempt citation.]

Human Resources Code Section 152.1752. MONTAGUE COUNTY CHILD SUPPORT DIVISION.

[(b) The person ordered by a district court of Montague County to pay child or spousal support to the district clerk shall pay a monthly service fee of $1. The district clerk shall deduct the service fee from each payment. If the payment is ordered to be made semimonthly or weekly, the district clerk shall deduct 50 cents from each payment. The service fee authorized by this subsection applies to child or spousal support payments ordered before June 14, 1973, if the person ordered to make those payments defaults and is cited for contempt of court. The service fee becomes due and payable for each month after the hearing on the contempt citation.

(c) A person found in contempt of court in Montague County for failure to pay child or spousal support shall pay $15 as attorney's fees if the contempt action is initiated by the probation department. The additional cost shall be collected in the same manner that other costs are collected.

(d) A person who files an adoption case in a district court of Montague County shall pay to the district court a filing fee of $25. The fee is in addition to other fees imposed for filing an adoption case in Montague County and is taxed, collected, and paid as other costs. Funds collected under this subsection shall be used to provide adoption investigation service.

(e) The district clerk shall transfer the money collected under this section to the county treasurer on the last day of each month. The county treasurer shall deposit the fees to the credit of the probation fund.]

[Human Resources Code Section 152.1844. CHILD SUPPORT SERVICE FEE IN NUECES COUNTY.

(a) The Commissioners Court of Nueces County by order may provide for the collection of a monthly child support service fee in an amount set by the commissioners court not to exceed $5.

(b) The fee is payable annually and in advance. The first fee payment is due on the date that the payor is ordered to begin the child support payments. Subsequent annual payments are due on the anniversary of the date of the original fee payment.

(c) The court ordering the child support payment may assess the fee in a case in which a person is ordered to pay child support through the wife and child support division of the Nueces County district clerk's office. The court may assess the fee against the payor or payee or may waive the fee as to a particular person. If the order does not waive the fee or assess the fee against a particular person, the payor shall pay the fee.

(d) A person who refuses or fails to pay the fee on the date due or in the amount ordered is subject to an action for contempt. The action may be brought by the court on its own motion or as provided by law.

(e) The commissioners court by order may provide for the collection of a fee in an amount set by the commissioners court not to exceed $10 to be assessed as costs against a person who is ordered to pay child support and defaults and is cited for contempt of court.

(f) The district clerk shall collect the fees under this section and shall transfer the money to the county treasurer. The county treasurer shall deposit the fees to the credit of the county general fund.]

[Human Resources Code Section 152.1873. DIVORCE AND CONTEMPT FEES IN ORANGE COUNTY.

(a) Each person who files a divorce case in Orange County shall pay to the clerk of the district court a filing fee of not less than $5. The fee is taxed, collected, and paid as other costs and is used to assist in maintaining the Orange County Juvenile Board as provided by Subsection (g).

(b) A person found in contempt of court for failure or refusal to pay child or spousal support or to comply with a court order relating to access to or possession of a child shall pay costs of court as determined by the district clerk. The costs are collected to provide legal services, court costs, and expenses of service in support cases.

(c) The person initiating the contempt procedure shall pay the costs to the clerk of the district court. The court may require a person found in contempt to reimburse the complainant for these costs and other expenses incurred by the complainant in prosecuting the contempt action.
(d) A receipt of all disbursements of money paid to the Orange County Juvenile Board in a matter involving contempt shall be kept on file.
(e) The costs prescribed by Subsection (b) may not be assessed against a person who files a pauper's affidavit and is found to qualify as a pauper.
(f) Fees collected under this section shall be deposited in a separate fund known as the "divorce and contempt fees fund" by the county treasurer. A record shall be kept of all fees collected and expended. The divorce and contempt fees fund is subject to regular audit by the county auditor or other authorized person. An annual report of receipts and expenditures in the account shall be made to the commissioners court by the auditor.
(g) The Orange County Juvenile Board shall administer the fees collected under this section to meet the expenses of the juvenile board, including postage, equipment, stationery, office supplies, subpoenas, salaries, and other expenses authorized by the board. The fund shall be supplemented from the general fund or other available funds of the county as necessary.]

[**Human Resources Code Section 152.1874. ORANGE COUNTY ADOPTION INVESTIGATION FUND.**
(a) A person who files an adoption case in a court in Orange County shall pay to the district clerk a filing fee of not less than $25. The fee is taxed, collected, and paid as other costs.
(b) Money collected under this section shall be placed in the adoption investigation fund. The juvenile board shall administer the fund to maintain adoption investigation services. The fund may be supplemented by money from the general fund or any other available fund of the county as necessary.]

[Human Resources Code Section 152.2183. SMITH COUNTY CHILD SUPPORT SERVICE FEE.
(a) The court may allow the child support office to assess a monthly fee of not more than $2.50 for collecting and disbursing child support payments that are required by court order to be made to the Smith County child support office.
(b) The payor of the support shall pay the fee unless the payor is a member of the armed services and the monthly child support payment exceeds the amount the court orders the person to pay, in which case the payee shall pay the service fee for as long as the payor is a member of the armed services and the support payment exceeds the amount the court orders the person to pay.
(c) The service fee is due and payable monthly if the payments are to be made monthly, annually if the payments are to be made annually, and weekly if the payments are to be made weekly, unless the court provides a different method of collection. The annual service fee is 12 times the monthly fee and the weekly service fee is 1/52 of the annual fee. If the court orders the fee paid on a different interval, the court shall provide the due date and shall fairly allocate the fee among the periods.
(d) A person who refuses or fails to pay the fee on the date due or in the amount ordered is subject to an action for contempt of court.
(e) Fees collected under this section shall be paid to the county treasurer on the last day of each calendar month. The county treasurer shall deposit the fees to the credit of the child support fund. The juvenile board shall administer the fund, with the approval of the commissioners court, to assist in paying the salaries and expenses of the child support office and the expenses and costs of other family law or juvenile court services.
(f) A record of money received under this section shall be kept. The county auditor or other authorized person shall audit the child support fund regularly. An annual report of the receipts and expenditures of the fund shall be made to the commissioners court.
(g) The service fee authorized by this section applies to child support ordered before August 31, 1981, if the person ordered to make those payments defaults and is cited for contempt of court.]

[~~Human Resources Code Section 152.2496. WICHITA COUNTY ADOPTION INVESTIGATION FUND.~~

~~(a) A person who files an adoption case in a district court in Wichita County shall pay to the district clerk a filing fee of $100. The fee is taxed, collected, and paid as other costs.~~

~~(b) The district clerk shall transfer the money collected under this section to the Wichita County Family Court Services Department for placement in the adoption investigation fund. The juvenile board shall administer the fund to maintain adoption investigation services, including the salaries and expenses of the adoption investigator and assistants and the purchase of supplies and equipment.~~

~~(c) The fund may be supplemented by money from the general fund or any other available fund of the county as necessary.~~]

Commentary by: Kaci Singer
Source: SB 41 (only portions of the bill are included)
Effective Date: January 1, 2022
Applicability: On or after the effective date.
Summary of Changes: According to the author's statement of intent accompanying this bill, this bill was designed to address 223 distinct civil court filing fees that contribute to a system that is "needlessly complex to administer and track" by consolidating civil court filing fees and establishing a "streamlined system while remaining revenue neutral to the greatest extent possible." What this bill did to accomplish that was consolidate the fees charged upon the filing of a civil, probate, guardianship, or mental health case and then set out how those fees are to allocated to various funds.

While juvenile cases are civil, they do not have filing fees. Despite that, this bill has repealed most of the currently allowed fees in juvenile court. Additionally, juvenile courts were not added to the entities that will receive a portion of the fees. There is no available information to explain why the juvenile court fees were repealed in this bill.

The following juvenile court fees have been repealed, which means only deferred prosecution fees, probation supervision fees, and reimbursement for an attorney (when allowed) remain:

1. fees for a Teen Court Program operated by juvenile court (54.032);
2. fees for a Teen Dating Violence Court Program operated by juvenile court (54.0325);
3. the Juvenile Probation Diversion Fund fee, used to divert children from TJJD commitment (54.0411);
4. the Juvenile Delinquency Prevention Fund fee, assigned when there is a graffiti offense (54.0461);
5. fees for DNA testing, used to compensate DPS for the cost of the test (54.0462);
6. fees for court-ordered drug education or alcohol awareness programs (54.047);
7. ability to order the parent to pay costs for out of home placements (54.06);
8. ability to order the parent to pay all or part of the reasonable costs of treatment programs required during probation (54.041).

In addition to the juvenile court fees, there were fees collected by specific juvenile boards that were repealed. These are fees related to non-juvenile justice services that some juvenile boards perform. The repeals are:

1. Child and Spousal Support Payment Collections
    a. Collin County (152.0492)
    b. Harris County (152.1074)
    c. Johnson County (152.1322)
    d. Montague County (152.1752)
    e. Nueces County (152.1844)
    f. Smith County (152.2183)
2. Orange County Divorce Fees (152.1873)
3. Adoption Investigation Funds
    a. Orange County (152.1874)
    b. Wichita County (152.2496)

Legislation Affecting Education

Topic: Absences

Education Code Section 25.087. EXCUSED ABSENCES.
(b) A school district shall excuse a student from attending school for:

(1) the following purposes, including travel for those purposes:

(A) observing religious holy days;

(B) attending a required court appearance;

(C) appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship;

(D) taking part in a United States naturalization oath ceremony;

(E) serving as an election clerk; or

(F) if the student is in the conservatorship of the Department of Family and Protective Services, participating, as determined and documented by the department, in an activity:

(i) ordered by a court under Chapter 262 or 263, Family Code, provided that it is not practicable to schedule the participation outside of school hours; or

(ii) required under a service plan under Subchapter B, Chapter 263, Family Code; [~~or~~]

(2) a temporary absence resulting from an appointment with health care professionals for the student or the student's child if the student commences classes or returns to school on the same day of the appointment; or

(3) an absence resulting from a serious or life-threatening illness or related treatment that makes the student's attendance infeasible, if the student or the student's parent or guardian provides a certification from a physician licensed to practice medicine in this state specifying the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

Education Code Section 25.0915. TRUANCY PREVENTION MEASURES.
(a-3) A school district shall offer additional counseling to a student and may not refer the student to truancy court under this section, Section 25.0951, or any other provision if the school determines that the student's truancy is the result of:

(1) pregnancy;

(2) being in the state foster program;

(3) homelessness; [~~or~~]

(4) severe or life-threatening illness or related treatment; or

(5) being the principal income earner for the student's family.

Education Code Section 25.092. MINIMUM ATTENDANCE FOR CLASS CREDIT OR FINAL GRADE.
(a-3) A student's excused absence under Section 25.087(b)(3) may not be considered in determining whether the student has satisfied the attendance requirement under Subsection (a) or (a-1).

Commentary by: Kaci Singer
Source: HB 699
Effective Date: June 7, 2021
Applicability: Applies with 2021-2022 school year.
Summary of Changes: Absences resulting from serious or life-threatening illnesses or related treatment are now considered excused. A student cannot be referred to truancy court for such absences. Such absences cannot be used to

determine that a student has not satisfied the attendance requirement.

Topic: Discipline, Restraints, Students with Disability

Education Code Section 29.005. STUDENT CODE OF CONDUCT.

(h) If a behavior improvement plan or a behavioral intervention plan is included as part of a student's individualized education program under Subsection (g), the committee shall review the plan at least annually and more frequently if appropriate to address:

(1) changes in a student's circumstances that may impact the student's behavior, such as:

(A) the placement of the student in a different educational setting;

(B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

(C) a pattern of unexcused absences; or

(D) an unauthorized unsupervised departure from an educational setting; or

(2) the safety of the student or others.

Education Code Section 37.0021. STUDENT CODE OF CONDUCT.

(d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:

(1) be consistent with:

(A) professionally accepted practices and standards of student discipline and techniques for behavior management; and

(B) relevant health and safety standards; [~~and~~]

(2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique; and

(3) require a school district to:

(A) provide written notification to the student's parent or person standing in parental relation to the student for each use of restraint that includes:

(i) the name of the student;

(ii) the name of the district employee or volunteer or independent contractor of the district who administered the restraint;

(iii) the date of the restraint;

(iv) the time that the restraint started and ended;

(v) the location of the restraint;

(vi) the nature of the restraint;

(vii) a description of the activity in which the student was engaged immediately preceding the use of the restraint;

(viii) the behavior of the student that prompted the restraint;

(ix) any efforts made to de-escalate the situation and any alternatives to restraint that were attempted;

(x) if the student has a behavior improvement plan or a behavioral intervention plan, whether the plan may need to be revised as a result of the behavior that led to the restraint; and

(xi) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an admission, review, and dismissal committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student;

(B) include in a student's special education eligibility school records:

(i) a copy of the written notification provided to the student's parent or person standing in parental relation to the student under Paragraph (A);

(ii) information on the method by which the written notification was sent to the parent or person; and

(iii) the contact information for the parent or person to whom the district sent the notification; and

(C) if the student has a behavior improvement plan or behavioral intervention plan, document each use of time-out prompted by a behavior of the student specified in the student's plan, including a description of the behavior that prompted the time-out.

Education Code Section 37.004. STUDENT CODE OF CONDUCT.

(b-1) If a school district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall:

(1) not later than the 10th school day after the change in placement:

(A) seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student, if a functional behavioral assessment has never been conducted on the student or the student's most recent functional behavioral assessment is more than one year old; and

(B) review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and

(2) as necessary:

(A) develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan; or

(B) if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.

Commentary by: Kaci Singer
Source: HB 785
Effective Date: June 4, 2021
Applicability: Applies beginning in the 2021-2022 school year.
Summary of Changes: If a student has an individual education plan (IEP) that includes a behavior intervention plan, the ARD committee is now required to review the plan at least annually, and more frequently if appropriate. The review is to address changes in circumstances that might impact the student's behavior, such as placement in a different educational setting, an increase or persistence in disciplinary actions regarding similar types of behavioral incidents involving the student, a pattern of unexcused absences, an unauthorized unsupervised departure from an educational setting, and the safety of the student and others.

As part of its rules regarding restraints, TEA is to adopt rules that require the provision of written notification to a student's parents any time a restraint is used on the student, including information regarding the possible need to revise a behavior improvement plan or the process to discuss the possibility of developing such a plan.

If a disciplinary action regarding a student receiving special education services constitutes a change in placement under federal law, the school district must, within 10 school days after the change in placement, take actions to conduct or review a behavioral assessment for the student and develop or revise a behavior improvement plan, as necessary.

Topic: Ban on Extracurricular Activities for Certain Behavior

Education Code Section 33.081. EXTRACURRICULAR ACTIVITIES.

(e-1) A student who is enrolled in a school district in this state or who participates in a University Interscholastic League competition shall be prohibited from participation in any future extracurricular activity sponsored or sanctioned by the school district or the University Interscholastic League if the state executive

committee of the league determines that the student intentionally, knowingly, or recklessly causes bodily injury to a person serving as referee, judge, or other official of an extracurricular activity in retaliation for or as a result of the person's actions taken in performing the duties of a referee, judge, or other official of the extracurricular activity.

(e-2) A student prohibited from participation in an extracurricular activity under Subsection (e-1) may submit to the University Interscholastic League a request that the student be permitted to participate in future extracurricular activities sponsored or sanctioned by the University Interscholastic League if:

(1) the request is submitted at least:

(A) one year after the date the student engaged in the conduct that resulted in the prohibition under Subsection (e-1) if the student was enrolled in eighth grade or below at the time of the conduct; or

(B) two years after the date the student engaged in the conduct that resulted in the prohibition under Subsection (e-1) if the student was enrolled in ninth grade or above at the time of the conduct;

(2) the student:

(A) completed a course in anger management since engaging in the conduct that resulted in the prohibition under Subsection (e-1);

(B) completed any other course, activity, or action required by the school district in which the student is enrolled as a result of the conduct that resulted in the prohibition under Subsection (e-1); and

(C) demonstrates, to the satisfaction of the school district and the University Interscholastic League, that the student has been rehabilitated and is unlikely to again engage in the conduct described by Subsection (e-1); and

(3) a previous request submitted by the student under this section has not been denied during the school year in which the request is submitted.

(e-3) When determining whether to grant a request under Subsection (e-2), the University Interscholastic League:

(1) shall take into account the severity of the conduct that resulted in the prohibition under Subsection (e-1); and

(2) may set conditions for the student's future participation in extracurricular activities.

(e-4) The University Interscholastic League may prohibit a student from participating in any future extracurricular activity sponsored or sanctioned by the University Interscholastic League if the student violates a condition set by the University Interscholastic League under Subsection (e-3)(2).

(f) Except for a student prohibited from participation under Subsection (e-1), a [~~A~~] student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.

(g) An appeal to the commissioner is not a contested case under Chapter 2001, Government Code, if the issues presented relate to a student's eligibility to participate in extracurricular activities, including issues related to the student's grades, [~~or~~] the school district's grading policy as applied to the student's eligibility, or the student's eligibility based on conduct described by Subsection (e-1). The commissioner may delegate the matter for decision to a person the commissioner designates. The decision of the commissioner or the commissioner's designee in a matter governed by this subsection may not be appealed except on the grounds that the decision is arbitrary or capricious. Evidence may not be introduced on appeal other than the record of the evidence before the commissioner.

(h) A request made under Subsection (e-2) is not a contested case subject to Chapter 2001, Government Code.

Commentary by: Kaci Singer
Source: HB 2721
Effective Date: June 16, 2021
Applicability: Applies beginning in the 2021-2022 school year.
Summary of Changes: This law change prohibits a student from participating in extracurricular and UIL activities if the state executive committee of the league determines the student intentionally, knowingly, or recklessly caused bodily injury to a referee, judge, or other official in retaliation for or as a result of actions that person took in performing the duties. The

student may apply to be allowed to participate if it has been at least one year for conduct occurring while in 8th grade or below or two years for conduct occurring in 9th grade or above, the student has completed a course in anger management and any other course, activity, or action required by the district, and the student demonstrates to the satisfaction of the school district and UIL that the student has been rehabilitated and is unlikely to engage in the prohibited conduct again. If a previous request was submitted and denied during the current school year, subsequent ones cannot be granted. When determining whether to grant the request, the UIL shall take into account the severity of the conduct and may set conditions for the student's future participation. If a student violates one of those conditions, the UIL may prohibit the student from participating in any future UIL extracurricular activity. A student suspended under this law is not allowed to practice or rehearse with the other students. An appeal or request to be allowed to again participate is not considered a contested case under Chapter 2001, Government Code.

Topic: JJAEP Funding

Education Code Section 37.012. FUNDING OF JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(f) Notwithstanding any other law, for purposes of any budget reductions requested by the Legislative Budget Board or the governor, any money received by a local juvenile probation department or appropriated to the Texas Juvenile Justice Department for purposes of operating a juvenile justice alternative education program is considered to be part of the foundation school program and is not subject to those budget reductions.

Commentary by: Kaci Singer
Source: HB 3456
Effective Date: June 14, 2021
Applicability: Applies on or after the effective date.
Summary of Changes: This change provides that money received by a juvenile probation department or appropriated by TJJD for the purpose of operating a JJAEP is considered to be part of the Foundation School Program and is not subject to budget reductions requested by the LBB or the governor.

Topic: Bullying

Education Code Section 37.0832. BULLYING PREVENTION POLICIES AND PROCEDURES.

(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that:

(1) prohibits the bullying of a student;

(2) prevents and mediates bullying incidents between students that:

(A) interfere with a student's educational opportunities; or

(B) substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity;

(3) [~~(2)~~] prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;

(4) [~~(3)~~] establishes a procedure for providing notice of an incident of bullying to:

(A) a parent or guardian of the alleged victim on or before the third business day after the date the incident is reported; and

(B) a parent or guardian of the alleged bully within a reasonable amount of time after the incident;

(5) [~~(4)~~] establishes the actions a student should take to obtain assistance and intervention in response to bullying;

(6) [~~(5)~~] sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;

(7) [~~(6)~~] establishes procedures for reporting an incident of bullying, including procedures for a student to anonymously report an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred;

(8) [~~(7)~~] prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; [~~and~~]

(9) [~~(8)~~] requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); and

(10) complies with the minimum standards adopted by the agency under Subsection (c-1).

(c-1) The agency shall adopt minimum standards for a school district's policy under Subsection (c). The standards must:

(1) include an emphasis on bullying prevention by focusing on school climate and building healthy relationships between students and staff;

(2) require each district campus to establish a committee to address bullying by focusing on prevention efforts and health and wellness initiatives;

(3) require students at each grade level to meet periodically for instruction on building relationships and preventing bullying, including cyberbullying;

(4) include an emphasis on increasing student reporting of bullying incidents to school employees by:

(A) increasing awareness about district reporting procedures; and

(B) providing for anonymous reporting of bullying incidents;

(5) require districts to:

(A) collect information annually through student surveys on bullying, including cyberbullying; and

(B) use those survey results to develop action plans to address student concerns regarding bullying, including cyberbullying; and

(6) require districts to develop a rubric or checklist to assess an incident of bullying and to determine the district's response to the incident.

[~~(f) Each school district may establish a district-wide policy to assist in the prevention and mediation of bullying incidents between students that:~~

~~(1) interfere with a student's educational opportunities; or~~

~~(2) substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity.~~]

Education Code Section. 48.009. REQUIRED PEIMS REPORTINGS.

(b-4) The commissioner by rule shall require each school district and open-enrollment charter school to annually report through the Public Education Information Management System the number of reported incidents of bullying that have occurred at each campus. The commissioner's rules shall require a district or school to specify the number of incidents of bullying that included cyberbullying.

Commentary by: Kaci Singer
Source: SB 2050
Effective Date: June 18, 2021
Applicability: Applies beginning in the 2021-2022 school year.
Summary of Changes: This change in law requires school districts to adopt policies that prevent and mediate bullying incidents between students that interfere with a student's educational opportunities or substantially disrupt the orderly operation of a classroom, school, or school activity. This is in addition to the already-existing statutorily-required policies.
TEA is now required to adopt minimum standards for the school district's policy, including the items set out in the statute. They must require districts to collect information through annual student surveys and use them to address concerns. TEA must also adopt a rule requiring each school district and charter school to report bullying incidents annually through PEIMS, including specifying the number of incidents that included cyberbullying.

Topic: Immunity

Education Code Section 37.087. IMMUNITY FROM LIABILITY.

(a) In this section:

(1) "Retired peace officer" has the meaning assigned by Section 1701.3161, Occupations Code.

(2) "Security personnel" includes:

(A) a school district peace officer;

(B) a school marshal;

(C) a school resource officer; and

(D) a retired peace officer who:

(i) has been hired by a school district, open-enrollment charter school, or private school to provide security services; or

(ii) volunteers to provide security services to the school district, open-enrollment charter school, or private school.

(b) A school district, open-enrollment charter school, or private school is immune from liability for any damages resulting from any reasonable action taken by security personnel to maintain the safety of the school campus, including action relating to possession or use of a firearm.

(c) A school district, open-enrollment charter school, or private school is immune from liability as provided by Subsection (b) for any damages resulting from any reasonable action taken by a school district, open-enrollment charter school, or private school employee who has written permission from the board of trustees of the school district or the governing body of the open-enrollment charter school or the private school to carry a firearm on campus.

(d) Any security personnel employed by a school district, open-enrollment charter school, or private school is immune from liability for any damages resulting from any reasonable action taken by the security personnel to maintain the safety of the school campus, including action relating to possession or use of a firearm.

(e) The statutory immunity provided by this section is in addition to and does not preempt the common law doctrine of official and governmental immunity. To the extent that another statute provides greater immunity to a school district, open-enrollment charter school, or private school than this section, that statute prevails.

Commentary by: Kaci Singer
Source: HB 1788
Effective Date: September 1, 2021
Applicability: Applies beginning with the 2021-2022 school year.
Summary of Changes: This change provides that school districts, charter schools, and private schools are immune from liability for any damages resulting from reasonable action taken by security personnel to maintain safety on campus, including action relating to possessing or using a firearm. The security personnel are also immune. The school districts, charter schools, and private schools are also immune from the actions of an employee who has written permission to carry a firearm on campus. Those employees are not given explicit immunity. However, the immunity provisions in this statute do not preempt official or governmental immunity. The statute with greater immunity prevails.

Topic: Improper Relationship

Penal Code Section 21.01. DEFINITIONS.

(2) "Sexual contact" means, except as provided by Section 21.11 or 21.12, any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

Penal Code Section 21.12. IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND STUDENT.

(d-1) Except as otherwise provided by this subsection, a public or private primary or secondary school, or a person or entity that operates a public or private primary or secondary school, may not release externally to the general public the name of an employee of the school who is accused of committing an offense under this section until the employee is indicted for the offense. The school, or the person or entity that operates the school, may release the name of the accused employee regardless of whether the employee has been indicted for the offense as necessary for the school to:

(1) report the accusation:

(A) to the Texas Education Agency, another state agency, or local law enforcement or as otherwise required by law; or

(B) to the school's members or community in accordance with the school's policies or procedures or with the religious law observed by the school; or

(2) conduct an investigation of the accusation.

(e) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by an employee of a public or private primary or secondary school of the anus, breast, or any part of the genitals of:

(A) an enrolled person described by Subsection (a)(1) or (a)(2)(A); or

(B) a student participant described by Subsection (a)(2)(B); or

(2) any touching of any part of the body of the enrolled person or student participant with the anus, breast, or any part of the genitals of the employee.

Commentary by: Kaci Singer
Source: HB 246
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: The change in Section 21.01, Penal Code, clarifies that the definition of sexual contact is different in Section 21.12, Penal Code. In that section, it is specific to a public or private primary or secondary school employee engaging in certain conduct with an enrolled person or a student. The change in Section 21.12, Penal Code, prohibits a school from releasing to the general public the name of an employee accused of committing an offense under this section unless the person has been indicted. The school may still release the name in order to conduct an investigation or to report the accusation to TEA, a state agency, or local law enforcement or as required by law or to the school's members or community in accordance with school policy and procedure or in accordance with religious law observed by the school.

Criminal Offenses, Criminal Procedure, and Law Enforcement Legislation

Topic: Smuggling of Persons

Penal Code Section 20.01. DEFINITIONS.
(6) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.
(7) "Firearm" has the meaning assigned by Section 46.01.
(8) "Special investigator" includes an agent of the United States Department of Homeland Security.

Penal Code Section 20.05. SMUGGLING OF PERSONS.
(a) A person commits an offense if the person [~~, with the intent to obtain a pecuniary benefit,~~] knowingly:
(1) uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to:
(A) conceal the individual from a peace officer or special investigator; or
(B) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; [~~or~~]
(2) encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection; or
(3) assists, guides, or directs two or more individuals to enter or remain on agricultural land without the effective consent of the owner.
(b) An offense under this section is a felony of the third degree, except that the offense is:
(1) a felony of the second degree if:
(A) the actor commits the offense in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; [~~or~~]
(B) the smuggled individual is a child younger than 18 years of age at the time of the offense;
(C) the offense was committed with the intent to obtain a pecuniary benefit;
(D) during the commission of the offense the actor, another party to the offense, or an individual assisted, guided, or directed by the actor knowingly possessed a firearm; or
(E) the actor commits the offense under Subsection (a)(1)(B); or
(2) a felony of the first degree if:
(A) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or
(B) the smuggled individual suffered serious bodily injury or death.

Commentary by: Kaci Singer
Source: SB 576
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: The elements of the offense of Smuggling of Persons are modified to remove the requirement that the actor intend to obtain a pecuniary benefit and instead making it an enhanced offense (from third degree to second

degree) if the person acting with the intent to obtain a pecuniary benefit. It also adds that a third degree felony offense is committed when a person assists, guides, or directs two or more individuals to enter or remain on agricultural land without the effective consent of the owner. It is now a second degree felony if the actor, another party to the offense, or an individual who was assisted, guided, or directed by the actor knowingly possessed a firearm. It is also a second degree felony if the person uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to flee from a peace officer or special investigator attempting to lawfully arrest or detain the actor.

Topic: Continuous Sexual Abuse

Penal Code Section 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR DISABLED INDIVIDUAL [~~CHILDREN~~].

(a) In this section:

(1) "Child" [~~, "child"~~] has the meaning assigned by Section 22.011(c).

(2) "Disabled individual" has the meaning assigned by Section 22.021(b).

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense; or

(B) a disabled individual.

(c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws:

(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4);

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a)(3), (4), (7), [~~20A.02(a)(7)~~] or (8); and

(8) compelling prostitution under Section 43.05 [~~43.05(a)(2)~~].

(g) With respect to a prosecution under this section involving only one or more victims described by Subsection (b)(2)(A), it [~~It~~] is an affirmative defense to prosecution under this section that the actor:

(1) was not more than five years older than:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;

(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and

(3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

Commentary by: Kaci Singer
Source: HB 375
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This change in law adds disabled individuals to the victims of the offense of continuous sexual abuse. A disabled individual is a person older than 13 who, by reason of age or physical or mental disease, defect, or injury, is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self. There are many conforming amendments in the bill.

Topic: Assault Against Process Server

Penal Code Section 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;

(6) a person the actor knows is a process server while the person is performing a duty as a process server;

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

(8) [~~(7)~~] a person the actor knows is pregnant at the time of the offense.

(e) In this section:

(2) "Process server" has the meaning assigned by Section 156.001, Government Code.

Penal Code Section 22.02. AGGRAVATED ASSAULT.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) the actor uses a deadly weapon during the commission of the assault and causes serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) regardless of whether the offense is committed under Subsection (a)(1) or (a)(2), the offense is committed:

(A) by a public servant acting under color of the servant's office or employment;

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

(C) in retaliation against or on account of the service of another as a witness,

prospective witness, informant, or person who has reported the occurrence of a crime; [~~or~~]

(D) against a person the actor knows is a process server while the person is performing a duty as a process server; or

(E) against a person the actor knows is a security officer while the officer is performing a duty as a security officer; or

(3) the actor is in a motor vehicle, as defined by Section 501.002, Transportation Code, and:

(A) knowingly discharges a firearm at or in the direction of a habitation, building, or vehicle;

(B) is reckless as to whether the habitation, building, or vehicle is occupied; and

(C) in discharging the firearm, causes serious bodily injury to any person.

(d) In this section:

(1) "Process server" has the meaning assigned by Section 156.001, Government Code.

(2) "Security [~~, "security~~] officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

Commentary by: Kaci Singer
Source: HB 1306
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: Creates an enhanced penalty for assault and aggravated assault against a process server.

Topic: Sexual Assault by Coach or Caregiver

Penal Code Section 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;

(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;

(13) the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor; or

(14) the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor.

Commentary by: Kaci Singer
Source: SB 1164
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This change in law provides that a sexual assault is without consent if the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependence on the actor or if the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependence on the actor.

Topic: Injury to a Child, Elderly Individual, or Disabled Individual

Penal Code Section 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if the actor [~~he~~] has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that the actor [~~he~~] has accepted responsibility for protection, food, shelter, or [~~and~~] medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), or (3), the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, or [~~and~~] medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that the actor would no longer provide [~~any of~~] the applicable care described by Subsection (d), and notified in writing the parents or a person, other than the actor, acting in loco parentis to the child, elderly individual, or disabled individual that the actor would no longer provide [~~any of~~] the applicable care described by Subsection (d); or

(2) notified in writing the Department of Family and Protective Services that the actor would no longer provide [~~any of~~] the applicable care described by Subsection (d).

Commentary by: Kaci Singer
Source: SB 1354
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This changes the offense of injury to a child, elderly individual, or person with a disability to provide that the actor has assumed care, custody, or control over a person by accepting responsibility for protection, food, shelter, *or* medical care as opposed to protection, food, shelter, *and* medical care to ensure that a person cannot get out of charges through a technicality.

Topic: Criminal Mischief - ATM

Penal Code Section 28.03. CRIMINAL MISCHIEF.

(b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than $100; or

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

(2) a Class B misdemeanor if the amount of pecuniary loss is $100 or more but less than $750;
(3) a Class A misdemeanor if:
(A) the amount of pecuniary loss is $750 or more but less than $2,500; or
(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;
(4) a state jail felony if the amount of pecuniary loss is:
(A) $2,500 or more but less than $30,000;
(B) less than $2,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;
(C) less than $2,500, if the property was a fence used for the production or containment of:
(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or
(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code; or
(D) less than $30,000 and the actor:
(i) causes wholly or partly impairment or interruption of property used for flood control purposes or a dam or of public communications, public transportation, public gas or power supply, or other public service; or
(ii) causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas or power supply;
(5) a felony of the third degree if:
(A) the amount of the pecuniary loss is $30,000 or more but less than $150,000; [~~or~~]
(B) the actor, by discharging a firearm or other weapon or by any other means, causes the death of one or more head of cattle or bison or one or more horses; or
(C) the actor causes wholly or partly impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss;
(6) a felony of the second degree if the amount of pecuniary loss is $150,000 or more but less than $300,000; or
(7) a felony of the first degree if the amount of pecuniary loss is $300,000 or more.
(g) In this section: …
(9) "Automated teller machine" has the meaning assigned by Section 31.03.

Commentary by: Kaci Singer
Source: SB 516
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This law is designed to address the increase in ATM "smash and grab" offenses. According to the author's statement of intent, current law that provides that it is a second degree felony to steal an ATM or the contents of an ATM (with a value of less than $300,000) does not cover an instance where the theft is attempted but not successful and instead such may be prosecuted only as criminal mischief, where it would be a state jail felony. This change in law creates a third degree felony for criminal mischief if the actor causes wholly or partly impairment or interruption of access to an automated teller machine, regardless of the amount of pecuniary loss. That said, it is likely also a third degree felony under current law to attempt to steal an ATM or the contents of an ATM with a value of less than $300,000.

Topic: Financial Abuse of Elderly Individual

Penal Code Section 32.55. FINANCIAL ABUSE OF ELDERLY INDIVIDUAL.
(a) In this section:
(1) "Elderly individual" has the meaning assigned by Section 22.04.
(2) "Financial abuse" means the wrongful taking, appropriation, obtaining, retention, or

use of, or assisting in the wrongful taking, appropriation, obtaining, retention, or use of, money or other property of another person by any means, including by exerting undue influence. The term includes financial exploitation.

(3) "Financial exploitation" means the wrongful taking, appropriation, obtaining, retention, or use of money or other property of another person by a person who has a relationship of confidence or trust with the other person. Financial exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or the exerting of undue influence. The term includes:

(A) the breach of a fiduciary relationship, including the misuse of a durable power of attorney or the abuse of guardianship powers, that results in the unauthorized appropriation, sale, or transfer of another person's property;

(B) the unauthorized taking of personal assets;

(C) the misappropriation, misuse, or unauthorized transfer of another person's money from a personal or a joint account; and

(D) the knowing or intentional failure to effectively use another person's income and assets for the necessities required for the person's support and maintenance.

(b) For purposes of Subsection (a)(3), a person has a relationship of confidence or trust with another person if the person:

(1) is a parent, spouse, adult child, or other relative by blood or marriage of the other person;

(2) is a joint tenant or tenant in common with the other person;

(3) has a legal or fiduciary relationship with the other person;

(4) is a financial planner or investment professional who provides services to the other person; or

(5) is a paid or unpaid caregiver of the other person.

(c) A person commits an offense if the person knowingly engages in the financial abuse of an elderly individual.

(d) An offense under this section is:

(1) a Class B misdemeanor if the value of the property taken, appropriated, obtained, retained, or used is less than $100;

(2) a Class A misdemeanor if the value of the property taken, appropriated, obtained, retained, or used is $100 or more but less than $750;

(3) a state jail felony if the value of the property taken, appropriated, obtained, retained, or used is $750 or more but less than $2,500;

(4) a felony of the third degree if the value of the property taken, appropriated, obtained, retained, or used is $2,500 or more but less than $30,000;

(5) a felony of the second degree if the value of the property taken, appropriated, obtained, retained, or used is $30,000 or more but less than $150,000; and

(6) a felony of the first degree if the value of the property taken, appropriated, obtained, retained, or used is $150,000 or more.

(e) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either section or both sections.

Commentary by: Kaci Singer
Source: HB 1156
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This statute creates a new offense to address financial abuse of an elderly individual, as the elderly have been shown to be particularly vulnerable to financial scams. The offense itself is brief: "A person commits an offense if the person knowingly engages in financial abuse of an elderly individual." Financial abuse is defined in the state to include the wrongful taking, appropriation, obtaining, retention or use of money or other property of another person by any means, including by exerting undue influence. It is defined to include financial exploitation. Financial exploitation is financial abuse by a person with a relationship of confidence or trust with the other person. The statute sets out examples of what the term includes. The statute also sets out who has a relationship of confidence or trust with the person, to include a parent, spouse, adult child, or

any other relative by blood or marriage; a joint tenant or tenant in common; a person with a legal or fiduciary relationship with the person; a financial planner or investment professional who provides services to the person; or a paid or unpaid caregiver. The offense levels range from Class B misdemeanor to first degree felony and are consistent with the levels for the prosecution of an offense of theft with an elderly individual as the victim.

Topic: Violation of the Civil Rights of Person in Custody

Penal Code Section 39.04. VIOLATION OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a [~~state jail felony, except that an offense under Subsection (a)(2) is a~~] felony of the second degree [~~if the offense is committed against: (1) an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility; or (2) a juvenile offender detained in or committed to a correctional facility~~].

Commentary by: Kaci Singer
Source: SB 312
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: It is a violation of law for a peace officer or an official, employee, contractor, or volunteer at a correctional facility or juvenile facility 1) to deny or impede a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful or 2) to engage in sexual contact or intercourse with an individual in custody or, for a juvenile in custody, to induce the individual to engage in sexual conduct or a sexual performance. A violation of the first is a Class A misdemeanor. A violation of the second is a state jail felony except that it is a second degree felony if the victim is an individual in TJJD custody or in a juvenile facility or a juvenile offender who is detained in or committed to a correctional facility.

This bill modifies the law so that denying or impeding the exercise of a right, privilege, or immunity remains a Class A misdemeanor and the sexual activity portion of the law is a second degree felony for adult victims as well as juvenile victims. The issue is that this is not the only bill to change the levels of this particular offense. HB 3157, published immediately below, also did so. HB 3157 increased every type of offense under this statute. Denying or impeding the exercise of a right, privilege, or immunity is now a third degree felony, engaging in sexual activity with an adult is now a second degree felony, and engaging in sexual activity with a juvenile victim is not a first degree felony.

Section 312.014, Government Code, provides the law to apply when amendments to the same statute are enacted in the same legislative session without referencing one another, which occurred here. It provides that, if at all possible, the amendments should be harmonized to give effect to all of them. That appears to be possible in this instance. Because only HB 3157 amended the offense level for denying or impeding the exercise or enjoyment of any right, privilege, or immunity, there is no SB 312 amendment for it to conflict with. Both make sexual activity with an adult a second degree felony, so there is no conflict there. Thus, the only place of possible conflict is that SB 312 results in sexual activity with a juvenile remaining a second degree felony, which is current law, while HB 3157 makes it a first degree felony. Given that only HB 3157 amended the offense level, it is possible to give it effect without it conflicting with SB 312 since it did not amend that portion. Using this analysis, HB 3157 is essentially given effect over SB 312.

That said, if the amendments are deemed incapable of being harmonized, Section 312.014, Government Code provides that if the amendments are irreconcilable, the latest in date of enactment prevails. The date of enactment is the date on which the last legislative vote it taken on the bill. SB 312 was enacted on May 27, 2021. HB 3157 was enacted on May 28, 2021. Thus,

HB 3157 is given effect even if the amendments cannot be harmonized.

Penal Code Section 39.04. VIOLATION OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION.

(b) An offense under Subsection (a)(1) is a felony of the third degree [~~Class A misdemeanor~~]. An offense under Subsection (a)(2) is a [~~state jail~~] felony of the second degree, except that an offense under Subsection (a)(2) is a felony of the first [~~second~~] degree if the offense is committed against:

(1) an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility; or

(2) a juvenile offender detained in or committed to a correctional facility.

Commentary by: Kaci Singer
Source: HB 3157
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: It is a violation of law for a peace officer or an official, employee, contractor, or volunteer at a correctional facility or juvenile facility 1) to deny or impede a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful or 2) to engage in sexual contact or intercourse with an individual in custody or, for a juvenile in custody, to induce the individual to engage in sexual conduct or a sexual performance. A violation of the first is a Class A misdemeanor. A violation of the second is a state jail felony except that it is a second degree felony if the victim is an individual in TJJD custody or in a juvenile facility or a juvenile offender who is detained in or committed to a correctional facility.

This bill modifies the law so that the first is now a third degree felony, the second is now a second degree felony for adult victims, and the third is a first degree felony for juvenile victims.

This is the second of two bills that change the same law. See the discussion under SB 312 above regarding which one is effective.

Topic: Obstructing Highway or Passageway

Penal Code Section 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(c) Except as otherwise provided by Subsections (d) and (e), an [~~An~~] offense under this section is a Class B misdemeanor.

(d) Subject to Subsection (e), an offense under this section is a Class A misdemeanor if it is shown on the trial of the offense that, at the time of the offense, the person was operating a motor vehicle while engaging in a reckless driving exhibition.

(e) An offense under this section is a state jail felony if it is shown on the trial of the offense that, at the time of the offense, the person was operating a motor vehicle while engaging in a reckless driving exhibition, and:

(1) the person has previously been convicted of an offense punishable under Subsection (d);

(2) at the time of the offense, the person was operating a motor vehicle while intoxicated, as defined by Section 49.01; or

(3) a person suffered bodily injury as a result of the offense.

(f) For purposes of this section, "reckless driving exhibition" means an operator of a motor vehicle, on a highway or street and in the presence of two or more persons assembled for the purpose of spectating the conduct, intentionally:

(1) breaking the traction of the vehicle's rear tires;

(2) spinning the vehicle's rear tires continuously by pressing the accelerator and increasing the engine speed; and

(3) steering the vehicle in a manner designed to rotate the vehicle.

Transportation Code Section 545.4205. INTERFERENCE WITH PEACE OFFICER INVESTIGATION OF HIGHWAY RACING OR RECKLESS DRIVING EXHIBITION; CRIMINAL OFFENSE.

(a) A person commits an offense if the person uses the person's body, a car, or a barricade to knowingly impede or otherwise interfere with a peace officer's investigation of conduct prohibited under Section 545.420 or a reckless driving exhibition, as defined by Section 42.03, Penal Code.

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

(c) If conduct constituting 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: Kaci Singer
Source: SB 1495
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This law is designed to address street racing and drifting. It adds a definition of "reckless driving exhibition" to the Penal Code. The act is defined to mean a motor vehicle operator, while on a highway or street and in the presence of two or more people assembled for the purpose of watching the conduct, intentionally: 1) breaking the traction of the vehicle's rear tires; 2) spinning the rear tires continuously by pressing the accelerator and increasing the engine speed; and 3) steering the vehicle in a manner designed to rotate the vehicle. The offense of obstructing the highway involves the obstructing a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances. It also includes disobeying a reasonable request or order to move by a peace officer, fire fighter, or person with authority to control the use of the premises if the request or order is to prevent obstruction or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard. A violation is a Class B misdemeanor. With these changes, a violation is a Class A misdemeanor if the actor committed the offense while operating a vehicle while engaging in a reckless driving exhibition. It is a state jail felony if the person had a prior conviction under the new subsection (d), the person was intoxicated while operating the vehicle, or a person suffered bodily injury as a result of the offense. It is also now a Class B misdemeanor for a person to use their body, a car, or a barricade to knowingly impede or interfere with a peace officer's investigation of an offense under 545.420, Transportation Code (Racing on the Highway), or of a reckless driving exhibition.

Penal Code Section 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if, in committing the offense, the actor knowingly:

(1) prevents the passage of an authorized emergency vehicle, as defined by Section 541.201, Transportation Code, that is operating the vehicle's emergency audible or visual signals required by Section 546.003, Transportation Code; or

(2) obstructs access to a hospital licensed under Chapter 241, Health and Safety Code, or other health care facility that provides emergency medical care, as defined by Section 773.003, Health and Safety Code.

Commentary by: Kaci Singer
Source: HB 9
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This law change creates a new state jail felony level of obstructing the highway if the obstruction prevents the passage of an authorized emergency vehicle that is operating its emergency audible or visual signals or obstructs access to a hospital or other health care facility that provides emergency medical care. This bill was filed in response to the demonstrations that took place throughout the summer and fall of 2020.

Topic: SWATTING

Penal Code Section 42.0601. FALSE REPORT TO INDUCE EMERGENCY RESPONSE.

(a) A person commits an offense if:

(1) the person makes a report of a criminal offense or an emergency or causes a report of a criminal offense or an emergency to be made to a peace officer, law enforcement agency, 9-1-1 service as defined by Section 771.001, Health and Safety Code, official or volunteer agency organized to deal with emergencies, or any other governmental employee or contractor who is authorized to receive reports of a criminal offense or emergency;

(2) the person knows that the report is false;

(3) the report causes an emergency response from a law enforcement agency or other emergency responder; and

(4) in making the report or causing the report to be made, the person is reckless with regard to whether the emergency response by a law enforcement agency or other emergency responder may directly result in bodily injury to another person.

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of an offense under this section; or

(2) a felony of the third degree if:

(A) the false report was of a criminal offense to which a law enforcement agency or other emergency responder responded; and

(B) a person suffered serious bodily injury or death as a direct result of lawful conduct arising out of that response.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

(d) This section may not be construed in any manner to conflict with 47 U.S.C. Section 230 or 42 U.S.C. Section 1983.

Code of Criminal Procedure Article 13.40. FALSE REPORT TO INDUCE EMERGENCY RESPONSE.

An offense under Section 42.0601, Penal Code, may be prosecuted in any county in which:

(1) the defendant resides;

(2) the false report was made; or

(3) a law enforcement agency or other emergency responder responded to the false report.

Code of Criminal Procedure Article 42.014. FINDING THAT OFFENSE WAS COMMITTED BECAUSE OF BIAS OR PREJUDICE.

(a) In the trial of an offense under Title 5, Penal Code, or Section 28.02, 28.03, [~~or~~] 28.08, or 42.0601, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed, or intentionally selected the person's property that was damaged or affected as a result of the offense, because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference or by status as a peace officer or judge.

Code of Criminal Procedure Article 42.037. RESTITUTION.

(w) If a defendant is convicted of an offense under Section 42.0601, Penal Code, the court may order the defendant to make restitution to an entity for the reasonable costs of the emergency response by that entity resulting from the false report.

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

(b) Conduct indicating a need for supervision is:

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

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

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

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

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

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

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

(6) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code; or

(7) notwithstanding Subsection (a)(1), conduct that violates Section 42.0601, Penal Code, if the child has not previously been adjudicated as having engaged in conduct violating that section.

Commentary by: Kaci Singer
Source: SB 1056
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This statute creates a new offense for the crime of SWATTING, which involves calling in a false report of a crime or emergency for the purpose of getting law enforcement or other emergency response agencies to arrive. An offense is a Class A misdemeanor except it is a state jail felony if a person has two prior convictions of the offense and is a third degree felony if law enforcement or another emergency responder actually responded and a person suffered serious bodily injury or death as a direct result of lawful conducting arising from that response. However, for juveniles, regardless of the offense level, it is considered conduct indicating a need for supervision if the child has not previously been adjudicated for this particular offense. This is important to know because only felony delinquent conduct may result in a commitment to TJJD; thus, if a child commits the felony level offense and it is their first adjudication under this statute, the child cannot be committed to TJJD. It also bears noting that this offense is not a status offense and so status offense provisions do not apply.

This offense may be prosecuted in the county where the defendant resides, the county where the false report was made, or the county where the law enforcement agency or emergency responder responded to the false report. This offense requires the court to make an affirmative finding if the judge or jury determines beyond a reasonable doubt that the victim was selected because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual orientation or because of the victim's status as a peace officer or judge. The court is authorized to order restitution.

Topic: Online Harassment

Penal Code Section 42.07. HARASSMENT.

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;

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

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

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

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

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

(8) publishes on an Internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person, unless the communications are made in connection with a matter of public concern.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) the actor has previously been convicted under this section; or

(2) the offense was committed under Subsection (a)(7) or (8) and:

(A) the offense was committed against a child under 18 years of age with the intent that the child:

(i) commit suicide; or

(ii) engage in conduct causing serious bodily injury to the child; or

(B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

(d) In this section, "matter of public concern" has the meaning assigned by Section 27.001, Civil Practice and Remedies Code.

Commentary by: Kaci Singer
Source: SB 530
Effective Date: September 1, 2021
Applicability: Applies to conduct committed on or after the effective date.
Summary of Changes: This change creates a new way to commit the offense of harassment that involves publishing online repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person. It does not apply if the communications are made in connection with a matter of public concern. A matter of public concern means a statement or activity regarding a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety or celebrity; a matter of political, social, or other interest to the community; or a subject of concern to the public.

The offense is a Class B misdemeanor, generally. It can be a class A misdemeanor for an adult if the adult was previously convicted under the statute. It can be a class A misdemeanor for an adult or a juvenile if the offense was committed against a child under 18 with the intent that the child commit suicide or engage in conduct causing serious bodily injury to the child. It is also a Class A misdemeanor if the actor had previously violated a temporary restraining order or injunction.

Topic: Laser Pointers

Penal Code Section 42.13. USE OF LASER POINTERS.

(c) An offense under this section is a Class C misdemeanor, except that the offense is:

(1) a felony of the third degree if the conduct causes bodily injury to the officer; or

(2) a felony of the first degree if the conduct causes serious bodily injury to the officer.

(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, but not both.

Commentary by: Kaci Singer
Source: HB 2366
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: It is currently a class C misdemeanor to knowingly direct light from a laser pointer at a uniformed safety officer, which includes peace officers, security guards, firefighters, EMS workers, and other uniformed sate, municipal, and federal officers. This change increases it to a third degree felony if the conduct causes bodily injury to the officer and a first degree felony if it causes serious bodily injury to the officer.

Topic: Fireworks

Penal Code CHAPTER 50. FIREWORKS

Penal Code Section 50.01. DEFINITIONS.
In this chapter:

(1) "Consumer firework" and "fireworks" have the meanings assigned by 49 C.F.R. Section 173.59.

(2) "Law enforcement officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure, or a person who is a federal law enforcement officer, as defined by 5 U.S.C. Section 8331(20).

Penal Code Section 50.02. UNLAWFUL USE OF FIREWORKS.
(a) A person commits an offense if the person explodes or ignites fireworks with the intent to:

(1) interfere with the lawful performance of an official duty by a law enforcement officer; or

(2) flee from a person the actor knows is a law enforcement officer attempting to lawfully arrest or detain the actor.

(b) Except as provided by Subsections (c) and (d), an offense under this section is a state jail felony.
(c) An offense under this section that involves any firework that is not a consumer firework is a second degree felony.
(d) Notwithstanding Subsection (c), an offense under this section is a felony of the first degree if the offense causes serious bodily injury to a person the actor knows is a law enforcement officer while the law enforcement officer 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 law enforcement officer.
(e) If conduct constituting 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: Kaci Singer
Source: HB 2366
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This creates a new Penal Code offense for exploding or igniting firework with the intent to interfere with the official duties of a law enforcement officer or to flee from a law enforcement officer attempting to lawfully arrest or detain the actor. It is a state jail felony, generally. If the fireworks used are not consumer fireworks, as defined by federal law, it is a second degree felony. If the offense causes serious bodily injury to a law enforcement officer, it is a first degree felony.

Topic: Animal Crop Facilities

AGRICULTURE CODE CHAPTER 252. ANIMAL AND CROP FACILITIES

Agriculture Code Section 252.001. DEFINITIONS.
In this chapter:

(1) "Animal" means poultry, livestock, and other domestic and wild animals. The term does not include an animal used for illegal gaming.

(2) "Animal or crop facility" means a facility that is used in the agricultural production of animals or crops. The term includes:

(A) a tractor, trailer, farm implement of husbandry, building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or

premises where animals or crops are located;

(B) a managed bee colony; and

(C) a livestock market.

(3) "Crop" includes a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

Agriculture Code Section 252.002. CRIMINAL OFFENSE.

(a) Except as provided by Subsection (b), a person commits an offense if the person:

(1) intentionally releases, steals, destroys, or otherwise causes the loss of an animal or crop from an animal or crop facility without the consent of the owner or operator of the animal or crop facility;

(2) damages, vandalizes, or steals any property on or from an animal or crop facility;

(3) breaks and enters into an animal or crop facility with the intent to destroy or alter records, data, materials, equipment, animals, or crops; or

(4) enters or remains on an animal or crop facility with the intent to commit an act prohibited under this section.

(b) An actor's conduct described by Subsection (a) does not constitute an offense under this section if the actor causes a loss to the animal or crop facility in an amount less than $500.

(c) An offense under this section is:

(1) a Class B misdemeanor if the actor causes a loss to the animal or crop facility in an amount of at least $500 but not more than $2,500; or

(2) a Class A misdemeanor if the actor causes a loss to the animal or crop facility in an amount more than $2,500.

(d) Except as provided by Subsection (e), if conduct constituting an offense under this section also constitutes an offense under another provision of law, the person may be prosecuted under either this section or the other provision.

(e) If conduct that constitutes an offense under this section also constitutes a felony under Section 28.03 or 31.03, Penal Code, the actor may be prosecuted only under Section 28.03 or 31.03, Penal Code.

Agriculture Code Section 252.003. MANDATORY RESTITUTION.

(a) The court shall order a defendant convicted of an offense under Section 252.002 to pay restitution to the owner or operator of the animal or crop facility in an amount equal to the amount of the loss caused by the actor, including the value of any animal or crop damaged, destroyed, or lost.

(b) The court shall, after considering the financial circumstances of the defendant, specify in a restitution order issued under Subsection (a) the manner in which the defendant must pay the restitution.

(c) A restitution order issued under Subsection (a) may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action. A victim may recover court costs and reasonable attorney's fees incurred in enforcing a restitution order as provided by this subsection.

(d) The court may hold a hearing, make findings of fact, and amend a restitution order issued under Subsection (a) if the defendant fails to pay the victim named in the order in the manner specified by the court.

Agriculture Code Section 252.004. INJUNCTIVE RELIEF.

(a) The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages or threatens to engage in conduct that constitutes an offense under Section 252.002.

(b) The action may be brought in a district court in a county in which any part of the conduct or threatened conduct occurs.

(c) The court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, temporary injunction, or permanent injunction.

Commentary by: Kaci Singer
Source: HB 1480
Effective Date: September 1, 2021
Applicability: Conduct occurring on or after the effective date.
Summary of Changes: This new law creates a new offense specific to animal and crop facilities. It is an offense to intentionally release, steal,

destroy, or otherwise cause the loss of an animal or crop from an animal or crop facility. It is an offense to damage, vandalize, or steal any property from an animal or crop facility. It is an offense to break and enter with the intent to destroy or alter records, data, materials, equipment, animals, or crops. It is an offense to enter or remain on an animal or crop facility with the intent to commit an act prohibited under Section 252.001, Agriculture Code. There is no offense under this section if the actor causes a loss of less than $500. It is a Class B misdemeanor if the loss is at least $500 but not more than $2,500, and it is a Class A misdemeanor if the loss is more than $2,500. If the conduct that constitutes an offense under this section also constitutes a felony offense under Section 28.03 (Criminal Mischief) or Section 31.03 (Theft), Penal Code, the actor may only be prosecuted under the Penal Code offense. The court is mandated to order restitution. The owner may bring an action for injunctive relief against a person who engages or threatens to engage in conduct that constitutes an offense under Section 252.002.

Topic: Fentanyl

Health and Safety Code Section 481.002. 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, 1-B, 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.

(6) "Controlled substance analogue" means:

(A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or 2-A; or

(B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or 2-A.

Health and Safety Code Section 481.102. PENALTY GROUP 1.

Penalty Group 1 consists of:

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

…

[~~Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;~~]

…

Health and Safety Code Section 481.1022. PENALTY GROUP 1-B.

Penalty Group 1-B consists of fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl.

Health and Safety Code Section 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE.

For the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, 1-B, 2, and 2-A include a controlled substance analogue that:

(1) has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or

(2) is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

Health and Safety Code Section 481.1123. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-B.

(a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $200,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 20 years, and a fine not to exceed $500,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Health and Safety Code Section 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1 OR 1-B.

(a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1 or 1-B, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

Health and Safety Code Section 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO CHILD.

(a) A person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 1-B, 2, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person:

(1) who is a child;

(2) who is enrolled in a public or private primary or secondary school; or

(3) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person described by Subdivision (1) or (2).

Health and Safety Code Section 481.124. OFFENSE: POSSESSION OR TRANSPORT OF CERTAIN CHEMICALS WITH INTENT TO MANUFACTURE CONTROLLED SUBSTANCE.

(d) An offense under this section is:

(1) a felony of the second degree if the controlled substance is listed in Penalty Group 1, [~~or~~] 1-A, or 1-B;

(2) a felony of the third degree if the controlled substance is listed in Penalty Group 2;

(3) a state jail felony if the controlled substance is listed in Penalty Group 3 or 4; or

(4) a Class A misdemeanor if the controlled substance is listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group.

Health and Safety Code Section 481.134. DRUG-FREE ZONES.

(b) An offense otherwise punishable as a state jail felony under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.120 is punishable as a felony of the third degree, an offense otherwise punishable as a felony of the third degree under any of those sections is punishable as a felony of the second degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning, the premises of a public or private youth center, or a playground; or

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.1123(c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

Health and Safety Code Section 481.140. USE OF CHILD IN COMMISSION OF OFFENSE.

(a) If it is shown at the punishment phase of the trial of an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, 481.120, or 481.122 that the defendant used or attempted to use a child younger than 18 years of age to commit or assist in the commission of the offense, the punishment is increased by one degree, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which event the punishment for the offense is a felony of the first degree.

Health and Safety Code Section 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY.

(b) This section applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.122.

Code of Criminal Procedure Article 42A.054. LIMITATION ON JUDGE-ORDERED COMMUNITY SUPERVISION.

(a) Article 42A.053 does not apply to a defendant adjudged guilty of an offense under:

(1) Section 15.03, Penal Code, if the offense is punishable as a felony of the first degree;

(2) Section 19.02, Penal Code (Murder);

(3) Section 19.03, Penal Code (Capital Murder);

(4) Section 20.04, Penal Code (Aggravated Kidnapping);

(5) Section 20A.02, Penal Code (Trafficking of Persons);

(6) Section 20A.03, Penal Code (Continuous Trafficking of Persons);

(7) Section 21.11, Penal Code (Indecency with a Child);

(8) Section 22.011, Penal Code (Sexual Assault);

(9) Section 22.021, Penal Code (Aggravated Sexual Assault);

(10) Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(A) the offense is punishable as a felony of the first degree; and

(B) the victim of the offense is a child;

(11) Section 29.03, Penal Code (Aggravated Robbery);

(12) Section 30.02, Penal Code (Burglary), if:

(A) the offense is punishable under Subsection (d) of that section; and

(B) the actor committed the offense with the intent to commit a felony under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(13) Section 43.04, Penal Code (Aggravated Promotion of Prostitution);

(14) Section 43.05, Penal Code (Compelling Prostitution);

(15) Section 43.25, Penal Code (Sexual Performance by a Child); [~~or~~]

(16) Chapter 481, Health and Safety Code, for which punishment is increased under:

(A) Section 481.140 of that code (Use of Child in Commission of Offense); or

(B) Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which

punishment was increased under any of those subsections; or

(17) Section 481.1123, Health and Safety Code (Manufacture or Delivery of Substance in Penalty Group 1-B), if the offense is punishable under Subsection (d), (e), or (f) of that section.

Code of Criminal Procedure Article. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION.

A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years;

(2) is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3) is adjudged guilty of an offense under Section 19.02, Penal Code;

(4) is convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(5) is convicted of an offense under Section 20.04, Penal Code, if:

(A) the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B) the actor committed the offense with the intent to violate or abuse the victim sexually;

(6) is convicted of an offense under Section 20A.02, 20A.03, 43.04, 43.05, or 43.25, Penal Code; [~~or~~]

(7) is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections; or

(8) is convicted of an offense under Section 481.1123, Health and Safety Code, if the offense is punishable under Subsection (d), (e), or (f) of that section.

Code of Criminal Procedure Article 42A.102. ELIGIBILITY FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION.

(b) In all other cases, the judge may grant deferred adjudication community supervision unless:

(1) the defendant is charged with an offense:

(A) under Section 20A.02, [~~or~~] 20A.03, [~~or~~] 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

(B) under Section 49.04 or 49.06, Penal Code, and, at the time of the offense:

(i) the defendant held a commercial driver's license or a commercial learner's permit; or

(ii) the defendant's alcohol concentration, as defined by Section 49.01, Penal Code, was 0.15 or more;

(C) for which punishment may be increased under Section 49.09, Penal Code; [~~or~~]

(D) for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; or

(E) under Section 481.1123, Health and Safety Code, that is punishable under Subsection (d), (e), or (f) of that section;

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(B) of this subsection; and

(B) has previously been placed on community supervision for an offense under Paragraph (A);

(3) the defendant is charged with an offense under:

(A) Section 21.02, Penal Code; or

(B) Section 22.021, Penal Code, that is punishable under Subsection (f) of that section or under Section 12.42(c)(3) or (4), Penal Code; or

(4) the defendant is charged with an offense under Section 19.02, Penal Code, except that the judge may grant deferred adjudication community supervision on determining that the defendant did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

Government Code Section 508.149. INMATES INELIGIBLE FOR MANDATORY SUPERVSION.

(a) An inmate may not be released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of:

(1) an offense for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure;

(2) a first degree felony or a second degree felony under Section 19.02, Penal Code;

(3) a capital felony under Section 19.03, Penal Code;

(4) a first degree felony or a second degree felony under Section 20.04, Penal Code;

(5) an offense under Section 21.11, Penal Code;

(6) a felony under Section 22.011, Penal Code;

(7) a first degree felony or a second degree felony under Section 22.02, Penal Code;

(8) a first degree felony under Section 22.021, Penal Code;

(9) a first degree felony under Section 22.04, Penal Code;

(10) a first degree felony under Section 28.02, Penal Code;

(11) a second degree felony under Section 29.02, Penal Code;

(12) a first degree felony under Section 29.03, Penal Code;

(13) a first degree felony under Section 30.02, Penal Code;

(14) a felony for which the punishment is increased under Section 481.134 or Section 481.140, Health and Safety Code;

(15) an offense under Section 43.25, Penal Code;

(16) an offense under Section 21.02, Penal Code;

(17) a first degree felony under Section 15.03, Penal Code;

(18) an offense under Section 43.05, Penal Code;

(19) an offense under Section 20A.02, Penal Code;

(20) an offense under Section 20A.03, Penal Code; [~~or~~]

(21) a first degree felony under Section 71.02 or 71.023, Penal Code; or

(22) an offense under Section 481.1123, Health and Safety Code, punished under Subsection (d), (e), or (f) of that section.

Health and Safety Code Section 161.042. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES.

(a) A physician who attends or treats, or who is requested to attend or treat, an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022 is attended or treated or in which the attention or treatment is requested, shall report the case at once to the department.

Occupations Code Section 551.003. DEFINITIONS.

(11) "Controlled substance" means a substance, including a drug:

(A) listed in Schedule I, II, III, IV, or V, as established by the commissioner of public health under Chapter 481, Health and Safety Code, or in Penalty Group 1, 1-A, 1-B, 2, 3, or 4, Chapter 481; or

(B) included in Schedule I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(12) "Dangerous drug" means a drug or device that:

(A) is not included in Penalty Group 1, 1-B, 2, 3, or 4, Chapter 481, Health and

Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

Penal Code Section 22.041. ABANDONING OR ENDANGERING CHILD.

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if:

(1) the person manufactured, possessed, or in any way introduced into the body of any person the controlled substance methamphetamine in the presence of the child;

(2) the person's conduct related to the proximity or accessibility of the controlled substance methamphetamine to the child and an analysis of a specimen of the child's blood, urine, or other bodily substance indicates the presence of methamphetamine in the child's body; or

(3) the person injected, ingested, inhaled, or otherwise introduced a controlled substance listed in Penalty Group 1, Section 481.102, Health and Safety Code, or Penalty Group 1-B, Section 481.1022, Health and Safety Code, into the human body when the person was not in lawful possession of the substance as defined by Section 481.002(24) of that code.

Penal Code Section 71.023. DIRECTING ACTIVITIES OF CRIMINAL STREET GANGS.

(a) A person commits an offense if the person, as part of the identifiable leadership of a criminal street gang, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit, one or more of the following offenses by members of a criminal street gang:

(1) a felony offense that is listed in Article 42A.054(a), Code of Criminal Procedure;

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

(3) an offense that is punishable under Section 481.112(e) or (f)[~~, 481.112(f)~~)], 481.1121(b)(4), 481.1123(d), (e), or (f), 481.115(f), or 481.120(b)(6), Health and Safety Code.

Commentary by: Kaci Singer
Source: SB 768
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: Under current law, fentanyl is a Penalty Group 1 substance. This new law creates a Penalty Group 1-B, that is specific to fentanyl. According to the author's statement of intent, current law provides that penalties for manufacturing Penalty Group 1 substances range from as few as 180 days in a state jail facility for less than one gram to up to live in prison for 200 grams or more while these changes "create a more stringent punishment system that is appropriately weighted" for the lethalness of fentanyl. "These steps would better deter the manufacturing and distribution of fentanyl in the State of Texas."

Current law provides that Manufacture or Delivery of a Penalty Group 1 substance is a state jail felony if less than one gram. There is no third degree felony. It is a second degree felony if one gram or more but less than four grams. It is a first degree felony if four grams or more but less than 200 grams. If 200 grams or more but less than 400 grams, the punishment is imprisonment in TDCJ for life or for a term of 10 to 99 years and a fine of up to $100,000. If 400 grams or more, the fine is up to $250,000 and the term is life or 15 to 99 years.

With this change, Manufacture or Deliver of a Penalty Group 1-B substance (fentanyl) is a state jail felony if less than one gram. There is no third degree felony. It is a second degree felony if one gram or more but less than four grams. There is no first degree felony. It is punishable with life in prison or a term of 10 to 99 years and a fine of up

to $20,000 if the amount is four or more but less than 200 grams. If 200 grams or more but less than 400 grams, the punishment is life or 15 to 99 years and fine of up to $200,000. If more than 400 grams, the punishment is life or 20 to 99 years and a fine of up to $500,000.

The other changes insert Penalty Group 1-B to all the places in law where Penalty Group 1 is found, so that all enhancements and other charges related to the fentanyl remain the same as under current law. Most are non-substantive changes. However, the enhancement provision in Section 481.134, Health and Safety Code, related to drug-free zones was modified to include a provision that a third degree felony under any of the listed sections is punishable as a second degree felony. Under the current law, however, none of the listed offenses has a third degree felony level, so for practical purposes, this is a non-substantive change. It appears that when the bill was first filed, there was a third degree felony for the new Section 481.1123, which explains the change to Section 481.134. That was amended throughout the legislative process to remove the third degree felony but no corresponding change was made to Section 481.134 in the bill.

Topic: Defense to Prosecution for Certain Drug Offenses

Health and Safety Code Section 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1.

(g) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) The defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(i) The defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

Health and Safety Code Section 481.1151. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Health and Safety Code Section 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.1161(c), 481.117(f), 481.118(f),

481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Health and Safety Code Section 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Health and Safety Code Section 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Health and Safety Code Section 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Health and Safety Code Section 481.119. OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION OF MISCELLANEOUS SUBSTANCES.

(c) It is a defense to prosecution for an offense under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Health and Safety Code Section 481.121. OFFENSE: POSSESSION OF MARIJUANA.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or 481.118(b), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication

community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Health and Safety Code Section 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA.

(g) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) The defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(i) The defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

Health and Safety Code Section 483.041. POSSESSION OF DANGEROUS DRUG.

(e) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(f) The defense to prosecution provided by Subsection (e) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(g) The defense to prosecution provided by Subsection (e) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (e) is not available.

Health and Safety Code Section 485.031. POSSESSION AND USE.

(c) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 483.041(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 483;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), or 483.041(e); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense

for which the defense described by Subsection (c) is not available.

Commentary by: Kaci Singer
Source: HB 1694
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This law is named the Jessica Sosa Act after a 16-year-old girl who died of a drug overdose. This law is known as a "Good Samaritan" law that allows for a defense for certain persons who call the police when another person is experiencing an overdose. The Texas legislature passed a similar measure in 2015 via HB 225, but the governor vetoed it, saying that it protected habitual drug abusers and drug dealers. As a result, this version provides more limitations on the defense. The defense is available for possession of each type of illegal substance, including marijuana, controlled substances, dangerous drugs, abusable volatile chemicals, and drug paraphernalia, but only at the lowest level of possession. The defense is available only to the first person to request emergency medical assistance in response to the possible overdose of another person as long as the person made the request for assistance during an ongoing medical emergency, remained on the scene until medical assistance arrived, and cooperated with medical assistance and law enforcement personnel. It also applies to a person who was the victim of a possible overdose for which medical assistance was requested.

The defense is not available if, at the time the request for emergency medical assistance was made, the police were in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made, the actor was committing another offense that the defense is not applicable to, the actor has been previously convicted or placed on deferred adjudication supervision for a drug offense, the actor was previously acquitted by establishing this defense, or the actor requested emergency medical assistance in response to a possible overdose in the prior 18 months, which appears to preclude the defense if the actor was not in possession of a substance during that prior call.

Topic: Transfer of Controlled Substances to Crime Lab

Health and Safety Code Section 481.151. DEFINITIONS.
(2-a) "Crime laboratory" has the meaning assigned by Article 38.35, Code of Criminal Procedure.
(2-b) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code, and includes a local government corporation described by Section 411.0011 of that code.

Health and Safety Code Section 481.152. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PLANTS.
(d) If a controlled substance plant is seized and forfeited under this section, a court may order the disposition of the plant under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

Health and Safety Code Section 481.153. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY.
(b) If an item of controlled substance property is seized and forfeited under this section, a court may order the disposition of the property under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

Health and Safety Code Section 481.159. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT.
(a) If a district court orders the forfeiture of a controlled substance property or plant under Chapter 59, Code of Criminal Procedure, or under this code, the court shall also order a law enforcement agency or a criminal justice agency

to which the law enforcement agency transferred the property or plant for analysis and storage to:

(1) retain the property or plant for [~~its~~] official law enforcement purposes, including use in the investigation of offenses under this code;

(2) deliver the property or plant to a government agency for official purposes;

(3) deliver the property or plant to a person authorized by the court to receive it;

(4) deliver the property or plant to a person authorized by the director to receive it; or

(5) destroy the property or plant that is not otherwise disposed of in the manner prescribed by this subchapter.

(i) If a controlled substance property or plant seized under this chapter was forfeited to an agency for the purpose of destruction or disposition under Section 481.161 in lieu of destruction or for any purpose other than investigation, the property or plant may not be used in an investigation unless a district court orders disposition under this section and permits the use of the property or plant in the investigation.

Health and Safety Code Section 481.160. DISPOSITION [~~DESTRUCTION~~] OF EXCESS QUANTITIES.

(a) If a controlled substance property or plant is forfeited under this code or under Chapter 59, Code of Criminal Procedure, the law enforcement agency that seized the property or plant or to which the property or plant is forfeited or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage may summarily destroy the property or plant without a court order, or otherwise dispose of the property or plant in lieu of destruction in accordance with Section 481.161, before the disposition of a case arising out of the forfeiture if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of the property or plant and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably depict the total amount of the property or plant; and

(3) the gross weight or liquid measure of the property or plant is determined, either by actually weighing or measuring the property or plant or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(c) A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance property or plant was offered in evidence, regardless of whether the remainder of the property or plant has been destroyed or otherwise disposed of. An inference or presumption of spoliation does not apply to a property or plant destroyed or otherwise disposed of under this section.

(d) If hazardous waste, residuals, contaminated glassware, associated equipment, or by-products from illicit chemical laboratories or similar operations that create a health or environmental hazard or are not capable of being safely stored are forfeited, those items may be disposed of under Subsection (a) or may be seized by and summarily forfeited to a law enforcement agency and destroyed by the [~~a~~] law enforcement agency or by a criminal justice agency to which the law enforcement agency transferred the items for analysis and storage without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed.

Health and Safety Code Section 481.161. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT IN LIEU OF DESTRUCTION.

(a) Controlled substance property or plants subject to summary destruction or ordered destroyed by a court may be disposed of in accordance with this section.

(b) A law enforcement agency or criminal justice agency may transfer the controlled substance property or plants to a crime laboratory to be used for the purposes of laboratory research, testing results validation, and training of analysts.

(c) The crime laboratory to which the controlled substance property or plants are transferred under Subsection (b) shall destroy or otherwise properly dispose of any unused quantities of the controlled substance property or plants.

(d) This section does not apply to evidence described by Section 481.160(d).
(e) The director may adopt rules to implement this section.

Commentary by: Kaci Singer
Source: SB 1125
Effective Date: September 1, 2021
Applicability: Applies to the disposition of evidence on or after the effective date, regardless of when it was seized.
Summary of Changes: This change in law allows law enforcement agencies or criminal justice agencies in possession of controlled substance or plant material that is slated for destruction to transfer that to crime labs so that the crime labs can use the items for laboratory research, testing results validation, and training of analysts.

Topic: Compassionate-Use of THC

Health and Safety Code Chapter 487. TEXAS COMPASSIONATE-USE ACT. SUBCHAPTER F. COMPASSIONATE-USE RESEARCH AND REPORTING.

Health and Safety Code Section 487.251. DEFINITIONS.
In this subchapter:
(1) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
(2) "Institutional review board" means a compassionate-use institutional review board established under Section 487.253.

Health and Safety Code Section 487.252. RULES.
(a) Except as otherwise provided by Subsection (b), the executive commissioner shall adopt all necessary rules to implement this subchapter, including rules designating the medical conditions for which a patient may be treated with low-THC cannabis as part of an approved research program conducted under this subchapter.
(b) The Texas Medical Board may adopt rules regarding the certification of a physician by an institutional review board.

Health and Safety Code Section 487.253. COMPASSIONATE-USE INSTITUTIONAL REVIEW BOARDS.
(a) One or more compassionate-use institutional review boards may be established to:
(1) evaluate and approve proposed research programs to study the medical use of low-THC cannabis in treating a medical condition designated by rule of the executive commissioner under Section 487.252(a); and
(2) oversee patient treatment undertaken as part of an approved research program, including the certification of treating physicians.
(b) An institutional review board must be affiliated with a dispensing organization and meet one of the following conditions:
(1) be affiliated with a medical school, as defined by Section 61.501, Education Code;
(2) be affiliated with a hospital licensed under Chapter 241 that has at least 150 beds;
(3) be accredited by the Association for the Accreditation of Human Research Protection Programs;
(4) be registered by the United States Department of Health and Human Services, Office for Human Research Protections, in accordance with 21 C.F.R. Part 56; or
(5) be accredited by a national accreditation organization acceptable to the Texas Medical Board.

Health and Safety Code Section 487.254. REPORTS BY INSTITUTIONAL REVIEW BOARDS.
Each institutional review board shall submit written reports that describe and assess the research findings of each approved research program to:
(1) the Health and Human Services Commission, not later than October 1 of each year; and
(2) the legislature, not later than October 1 of each even-numbered year.

Health and Safety Code Section 487.255. PATIENT TREATMENT.

(a) Patient treatment provided as part of an approved research program under this subchapter may be administered only by a physician certified by an institutional review board to participate in the program.

(b) A patient participating in a research program under this subchapter must be a permanent resident of this state.

Health and Safety Code Section 487.256. INFORMED CONSENT.

(a) Before receiving treatment under an approved research program, each patient must sign a written informed consent form.

(b) If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(c) An institutional review board overseeing a research program under this subchapter may adopt a form to be used for the informed consent required by this section.

Occupations Code Section 169.001. DEFINITIONS.

(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 not more than one [~~0.5~~] percent by weight of tetrahydrocannabinols.

[~~(6) "Terminal cancer" means cancer that meets the criteria for a terminal illness, as defined by Section 1003.051, Health and Safety Code.~~]

Occupations Code Section 169.002. PHYSICIAN QUALIFIED TO PRESCRIBE LOW-THC CANNABIS TO PATIENTS WITH CERTAIN MEDICAL CONDITIONS.

(c) A physician is qualified to prescribe low-THC cannabis for the treatment of a patient with a medical condition approved by rule of the executive commissioner of the Health and Human Services Commission for treatment in an approved research program conducted under Subchapter F, Chapter 487, Health and Safety Code, if the physician is:

(1) licensed under this subtitle; and

(2) certified by a compassionate-use institutional review board created under Section 487.253, Health and Safety Code, that oversees patient treatment undertaken as part of that approved research program.

Occupations Code Section 169.003. PRESCRIPTION OF LOW-THC CANNABIS.

A physician described by Section 169.002 may prescribe low-THC cannabis to a patient 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) epilepsy;

(ii) a seizure disorder;

(iii) multiple sclerosis;

(iv) spasticity;

(v) amyotrophic lateral sclerosis;

(vi) autism;

(vii) [~~terminal~~] cancer; [~~or~~]

(viii) an incurable neurodegenerative disease;

(ix) post-traumatic stress disorder; or

(x) a medical condition that is approved for a research program under Subchapter F, Chapter 487, Health and Safety Code, and for which the patient is receiving treatment under that program; 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.

Commentary by: Kaci Singer
Source: HB 1535
Effective Date: September 1, 2021
Applicability: The HHSC executive commissioner shall adopt rules as necessary under Section 487.252, Health and Safety Code, no later than December 1, 2021. The DPS public safety director shall adopt or amend department rules regarding the cultivation, processing, and dispensing of low-THC cannabis by a licensed dispensing organization under Chapter 487,

Health and Safety Code, no later than December 1, 2021.

Summary of Changes: Under current law, low-THC cannabis may be prescribed to patients with epilepsy, a seizure disorder, multiple sclerosis, spasticity, amyotrophic lateral sclerosis, autism, an incurable neurodegenerative disease, or terminal cancer. That has now been modified to include all cancer patients, not just those with terminal cancer, as well as patients diagnosed with post-traumatic stress disorder or a medical condition approved for a research program under newly created Subchapter F, Chapter 487, Health and Safety Code, which creates a compassionate-use institutional review board at HHSC.

Low-THC cannabis means Cannabis sativa L. and any part of the plant, compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than one percent by weight of tetrahydrocannabinols. Medical use means the ingestion by a means of administration other than by smoking of a prescribed amount of low-THC cannabis by a person for whom it was prescribed. Only physicians qualified with respect to a patient's particular medical condition may prescribe the low-THC cannabis. A physician is qualified if licensed in Texas, board certified in a medical specialty relevant to the patient's medical condition by a specialty board approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists, and dedicates a significant portion of clinical practice to the evaluation and treatment of the patient's particular medical condition. The physician must also be registered in the compassionate-use registry maintained by HHSC as the prescriber for the particular patient.

Topic: Michael Morton Act

Code of Criminal Procedure Article 2.1397. DUTIES OF LAW ENFORCEMENT AGENCY FILING CASE.

(a) In this article:

(1) "Attorney representing the state" means an attorney authorized by law to represent the state in a criminal case, including a district attorney, criminal district attorney, or county attorney with criminal jurisdiction. The term does not include an attorney representing the state in a justice or municipal court under Chapter 45.

(2) "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(b) A law enforcement agency filing a case with the attorney representing the state shall submit to the attorney representing the state a written statement by an agency employee with knowledge of the case acknowledging that all documents, items, and information in the possession of the agency that are required to be disclosed to the defendant in the case under Article 39.14 have been disclosed to the attorney representing the state.

(c) If at any time after the case is filed with the attorney representing the state the law enforcement agency discovers or acquires any additional document, item, or information required to be disclosed to the defendant under Article 39.14, an agency employee shall promptly disclose the document, item, or information to the attorney representing the state.

Commentary by: Kaci Singer
Source: SB 111
Effective Date: September 1, 2021
Applicability: Applies to disclosures required on or after the effective date.

Summary of Changes: Under this new provision, law enforcement agencies are required to provide the prosecutor with a written statement acknowledging that all documents, items, and information in the law enforcement agency's possession that are required to be disclosed to the defendant under Article 39.14 have been disclosed to the prosecutor. This statement must be by a law enforcement agency employee with knowledge of the case. Additionally, if the law enforcement agency later discovers or acquires additional information that is required to be disclosed, an agency employee shall promptly disclose to the prosecutor. This does not apply in justice or municipal court cases under Chapter 45, Code of Criminal Procedure.

Topic: Law Enforcement Use of Force, Body Worn Camera, Duty to Render Aid, Training

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Code of Criminal Procedure Article 2.1387. INTERVENTION REQUIRED FOR EXCESSIVE FORCE; REPORT REQUIRED.

(a) A peace officer has a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(1) the amount of force exceeds that which is reasonable under the circumstances; and

(2) the officer knows or should know that the other officer's use of force:

(A) violates state or federal law;

(B) puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(C) is not required to apprehend the person suspected of committing an offense.

(b) A peace officer who witnesses the use of excessive force by another peace officer shall promptly make a detailed report of the incident and deliver the report to the supervisor of the peace officer making the report.

Code of Criminal Procedure Article 2.33. USE OF NECK RESTRAINTS DURING SEARCH OR ARREST PROHIBITED.

A peace officer may not intentionally use a choke hold, carotid artery hold, or similar neck restraint in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person.

Commentary by: Kaci Singer
Source: SB 69
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: Article 2.1387, Code of Criminal Procedure, imposes upon peace officers a duty to intervene to stop or prevent another peace officer from using more force than is reasonable under the circumstances if the officers knows or should know that the other officer's use of force violates state or federal law, puts a person at risk of bodily injury and the force is not immediately necessary to avoid imminent bodily injury to a peace officer or other person, and is not required to apprehend the person suspected of committing an offense. The peace officer who witnesses the use of excessive force is required to promptly make a detailed report and deliver it to the witnessing officer's supervisor.

Article 2.33 explicitly prohibits peace officer from using choke holds, carotid artery holds, or similar neck restraints in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person.

Code of Criminal Procedure Article 2.33. DUTY TO REQUEST AND RENDER AID.

(a) Except as provided by Subsection (b), a peace officer who encounters an injured person while discharging the officer's official duties shall immediately and as necessary:

(1) request emergency medical services personnel to provide the person with emergency medical services; and

(2) while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training.

(b) The peace officer is not required to request emergency medical services or provide first aid or treatment under Subsection (a) if:

(1) making the request or providing the treatment would expose the officer or another person to a risk of bodily injury; or

(2) the officer is injured and physically unable to make the request or provide the treatment.

Commentary by: Kaci Singer
Source: SB 2212
Effective Date: September 1, 2021
Applicability: Applies to encounters occurring on or after the effective date.
Summary of Changes: This bill codifies practices already in place in many law

enforcement agencies. It requires a peace officer who encounters an injured person while on duty to immediately, if necessary, request emergency medical services personnel to provide services and to provide first aid or treatment while waiting for the emergency medical services personnel to arrive. There are exceptions if making the request or providing the treatment would expose the officer or another to risk of bodily injury or if the officer is injured and physically unable to make the request or provide the treatment.

OCCUPATIONS CODE SUBCHAPTER F. TRAINING PROGRAMS, [~~AND~~] SCHOOLS, AND POLICIES.

Occupations Code Section 1701.2551. BASIC PEACE OFFICER TRAINING COURSE.

(a) The basic peace officer training course required as part of a peace officer training program under Section 1701.251(a) may be no less than 720 hours.

(b) The basic peace officer training course must include training on:

(1) the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person, unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person;

(2) the duty of a peace officer to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(A) the amount of force exceeds that which is reasonable under the circumstances; and

(B) the officer knows or should know that the other officer's use of force:

(i) violates state or federal law;

(ii) puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(iii) is not required to apprehend the person suspected of committing an offense; and

(3) the duty of a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and, while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment.

Occupations Code Section 1701.269. TRAINING PROGRAM AND POLICIES FOR PEACE OFFICERS.

(a) The commission, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas and other interested parties chosen by the commission, shall develop and maintain a model training curriculum and model policies for law enforcement agencies and peace officers.

(b) The model training curriculum and model policies developed under Subsection (a) must include:

(1) curriculum and policies for banning the use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person, unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person;

(2) curriculum and policies regarding the duty of a peace officer to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(A) the amount of force exceeds that which is reasonable under the circumstances; and

(B) the officer knows or should know that the other officer's use of force:

(i) violates state or federal law;

(ii) puts a person at risk of bodily injury, as that term is defined by

Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(iii) is not required to apprehend the person suspected of committing an offense; and

(3) curriculum and policies regarding the duty of a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and, while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment.

Occupations Code Section 1701.270. REQUIRED POLICIES FOR LAW ENFORCEMENT AGENCIES.

Not later than the 180th day after the date the commission provides the model policies described by Section 1701.269(b), each law enforcement agency in this state shall adopt a policy on the topics described by that subsection. A law enforcement agency may adopt the model policies developed by the commission under that subsection.

Occupations Code Section 1701.351. CONTINUING EDUCATION REQUIRED FOR PEACE OFFICERS.

(a-2) Before the first day of each 24-month training unit during which peace officers are required to complete 40 hours of continuing education programs under Subsection (a), the commission shall specify the mandated topics to be covered in up to 16 of the required hours.

Commentary by: Kaci Singer
Source: HB 3712
Effective Date: September 1, 2021
Applicability: TCOLE must modify the curriculum of the basic peace officer training course to comply with Section 107.2551 no later than January 1, 2022. The minimum hour and content requirements under that section apply to a person who first begins the course on or after July 1, 2022. TCOLE must develop and make available the model training curriculum and model policies required by Section 1701.269 no later than January 1, 2022. Section 1701.351(a-2) applies to a training unit that begins on or after the effective date.
Summary of Changes: The changes from this bill are related to SB 69 and SB 2202, described above. These new statutes provide that the basic peace officer training program must be at least 720 hours and must include training related to the provisions of those new laws. That means the course must include training on the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint as well as the duty of peace officer to intervene when another officer is using excessive force or prohibited force. The course also must include training on the requirement to call for emergency medical assistance when encountering an injured person.

The new law requires TCOLE to work with the Bill Blackwood Law Enforcement Management Institute of Texas and others to develop and maintain a model training curriculum and model policies for law enforcement agencies that must include the information described above. No later than 180 days after the date the commission provides those policies, each law enforcement agency in the state shall adopt a policy on the topics. The agency may adopt the model policies.

Current law requires each peace officer to complete at least 40 hours of continuing education every 24 months. Now TCOLE must specify that the mandated topics be covered in up to 16 of the required hours.

Occupations Code Section 1701.655. BODY WORN CAMERA POLICY.

(b) A policy described by Subsection (a) must ensure that a body worn camera is activated only for a law enforcement purpose and must include:

(1) guidelines for when a peace officer should activate a camera or discontinue a recording currently in progress, considering the need for privacy in certain situations and at certain locations;

(2) provisions relating to data retention, including a provision requiring the retention of video for a minimum period of 90 days;

(3) provisions relating to storage of video and audio, creation of backup copies of the video and audio, and maintenance of data security;

(4) provisions relating to the collection of a body worn camera, including the applicable video and audio recorded by the camera, as evidence;

(5) guidelines for public access, through open records requests, to recordings that are public information;

(6) [~~(5)~~] provisions entitling an officer to access any recording of an incident involving the officer before the officer is required to make a statement about the incident;

(7) [~~(6)~~] procedures for supervisory or internal review; and

(8) [~~(7)~~] the handling and documenting of equipment and malfunctions of equipment.

(c-1) A policy described by Subsection (a) must require a peace officer who is equipped with a body worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with that policy.

Occupations Code Section 1701.657. RECORDING INTERACTION WITH THE PUBLIC.

(b) A peace officer equipped with a body worn camera may choose not to activate a camera or may choose to discontinue a recording currently in progress for any [~~nonconfrontational~~] encounter with a person that is not related to an investigation [~~, including an interview of a witness or victim~~].

Commentary by: Kaci Singer
Source: HB 929
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: This bill, known as the Botham Jean Act, requires law enforcement agencies to have a policy on body warn cameras that provides for collecting the camera and recorded video and audio as evidence and for a peace officer to keep the camera activated when actively participating in an investigation. Officers may choose to turn the camera off only in encounters not related to an investigation.

Topic: Search Warrants

Code of Criminal Procedure Article 18.01. SEARCH WARRANT.

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as otherwise provided by this code [~~provided by Article 18.011~~], the affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Code of Criminal Procedure Article 18.06. EXECUTION OF WARRANTS.

(a) A peace officer to whom a search warrant is delivered shall execute the warrant without delay and shall [~~forthwith~~] return the warrant to the proper magistrate. [~~A search warrant issued under Article 18B.354 must be executed in the manner provided by Article 18B.355 not later than the 11th day after the date of issuance. In all other cases, a search warrant must be executed within three days from the time of its issuance. A warrant issued under this chapter, Chapter 18A, or Chapter 18B shall be executed within a shorter period if so directed in the warrant by the magistrate.~~]

Code of Criminal Procedure Article 18.07. DAYS ALLOWED FOR WARRANT TO RUN.

(a) Unless the magistrate directs in the warrant a shorter period for the execution of any search warrant issued under this chapter, Chapter 18A, or Chapter 18B, the [~~The~~] period allowed for the execution of the [~~a search~~] warrant, exclusive of the day of its issuance and of the day of its execution, is:

(1) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples;

(2) 10 whole days if the warrant is issued under Article 18B.354 or Subchapter G-1, Chapter 18B; or

(3) three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).

Code of Criminal Procedure Article 18B.001. DEFINITIONS.

(7) "Electronic customer data" means data or records that:

(A) are in the possession, care, custody, or control of a provider of an electronic communications service or provider of a remote computing service; and

(B) contain:

(i) information revealing the identity of customers of the applicable service;

(ii) information about a customer's use of the applicable service;

(iii) information that identifies the recipient or destination of a wire or electronic communication sent to or by a customer;

(iv) the content of a wire or electronic communication sent to or by a customer; [~~and~~]

(v) any data stored with the applicable service provider by or on behalf of a customer; or

(vi) location information.

(9-a) "Immediate life-threatening situation" has the meaning assigned by Article 18A.201.

(9-b) "Location information" means data, records, or other information that is created by or accessible to a provider of an electronic communications service or a provider of a remote computing service and may be used to identify the geographic physical location of a communication device, including the current, real-time, or prospective geographic physical location of a communication device.

Code of Criminal Procedure Chapter 18B. SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

Code of Criminal Procedure Article 18B.321. APPLICABILITY.

(a) This subchapter applies only to a warrant described by Article 18B.322 for the required disclosure of location information that is:

(1) held in electronic storage in the possession, care, custody, or control of a provider of an electronic communications service or a provider of a remote computing service; and

(2) created after the issuance of the warrant.

(b) Articles 18B.355, 18B.356, and 18B.357 apply to a warrant issued under this subchapter in the same manner as those articles apply to a warrant issued under Article 18B.354.

Code of Criminal Procedure Article 18B.322. WARRANT REQUIRED FOR CERTAIN LOCATION INFORMATION HELD IN ELECTRONIC STORAGE.

(a) A warrant is required to obtain the disclosure of location information described by Article 18B.321(a) by a provider of an electronic communications service or a provider of a remote computing service.

(b) Only a prosecutor or a prosecutor's assistant with jurisdiction in a county within a judicial district described by Article 18B.052(4) may file an application for a warrant under this subchapter. The application must be supported by the sworn affidavit required by Article 18.01(b).

(c) The application must be filed with a district judge in the applicable judicial district on:

(1) the prosecutor's or assistant's own motion; or

(2) the request of an authorized peace officer of a designated law enforcement office or

agency or an authorized peace officer commissioned by the department.

Code of Criminal Procedure Article 18B.323. ISSUANCE OF WARRANT.

(a) On the filing of an application for a warrant under this subchapter, a district judge may issue the warrant to obtain the disclosure of location information by a provider described by Article 18B.355(b), regardless of whether the location information is held at a location in this state or another state.

(b) A warrant may not be issued under this article unless the sworn affidavit required by Article 18.01(b) provides sufficient and substantial facts to establish probable cause that:

(1) the disclosure of the location information sought will:

(A) produce evidence of an offense under investigation; or

(B) result in the apprehension of a fugitive from justice; and

(2) the location information sought is held in electronic storage in the possession, care, custody, or control of the service provider on which the warrant is served.

Code of Criminal Procedure Article 18B.324. DURATION; SEALING.

(a) A warrant issued under this subchapter is valid for a period not to exceed 60 days after the date the warrant is issued, unless the prosecutor or prosecutor's assistant applies for and obtains an extension of that period from the court before the warrant expires.

(b) Each extension granted under Subsection (a) may not exceed a period of 60 days.

(c) A district court that issues a warrant under this subchapter shall order the warrant and the application for the warrant sealed and may not unseal the warrant and application until after the warrant expires.

Code of Criminal Procedure Article 18B.325. EMERGENCY DISCLOSURE.

(a) An authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the department may, without a warrant, require the disclosure of location information described by Article 18B.321(a) if:

(1) the officer reasonably believes an immediate life-threatening situation exists that:

(A) is within the officer's territorial jurisdiction; and

(B) requires the disclosure of the location information before a warrant can, with due diligence, be obtained under this subchapter; and

(2) there are sufficient grounds under this subchapter on which to obtain a warrant requiring the disclosure of the location information.

(b) Not later than 48 hours after requiring disclosure of location information without a warrant under Subsection (a), the authorized peace officer shall obtain a warrant for that purpose in accordance with this subchapter.

Code of Criminal Procedure Article 18B.326. CERTAIN EVIDENCE NOT ADMISSIBLE.

The state may not use as evidence in a criminal proceeding any information obtained through the required disclosure of location information described by Article 18B.321(a), unless:

(1) a warrant is obtained before requiring the disclosure; or

(2) if the disclosure is required under Article 18B.325 before a warrant can be obtained, the authorized peace officer who required the disclosure obtains a warrant as required by Subsection (b) of that article.

Code of Criminal Procedure Article 18B.151. EMERGENCY INSTALLATION AND USE OF PEN REGISTER OR TRAP AND TRACE DEVICE.

[~~(a) In this article, "immediate life-threatening situation" has the meaning assigned by Article 18A.201.~~]

Commentary by: Kaci Singer
Source: HB 3363
Effective Date: September 1, 2021
Applicability: Applies to the disclosure of information by a provider of electronic communications service or a provider of a remote computing service under a warrant, order, or other legal process on or after the effective date.
Summary of Changes: The intent of this act is to address getting evidence from electronic

communications service providers. A new Subchapter G-1 was added to Article 18B, Code of Criminal Procedure. This subchapter applies to a warrant to obtain the disclosure of location information by a provider of electronical communications service or of a remote computing service as long as the information is created after the issuance of the warrant. Location information is defined to mean data, records, or other information created by or accessible to a provider of an electronic communications service or of a remote commuting service that may be used to identify the geographic physical location of a communication device, including the current, real-time, or prospective location of the device. A warrant is required to obtain this location information.

Only a prosecutor or prosecutor's assistant with jurisdiction in a county within a judicial district with jurisdiction as described by Article 18B.052, Code of Criminal Procedure, may apply for the warrant. That section is related to applications for the installation of a pen register, ESN reader, trap and trace device, or similar equipment that combines the functions of a pen register and trap and trace device. The warrant may not be issued unless the sworn affidavit provides sufficient and substantial facts to establish probable cause that the disclosure of the location information sought is in the possession of the service provider on which the warrant is served and will produce evidence of an offense under investigation or result in the apprehension of a fugitive from justice. The warrant must be executed within 10 days unless the magistrate directs a short period of time and is valid for a period not to exceed 60 days. The prosecutor can apply for an extension. Each extension may not exceed 60 days. The district court issuing the warrant must order the warrant and application to be sealed and may not unseal them until after the warrant expires.

There are instances in which an authorized peace officer of a designated law enforcement office or agency or a DPS-commissioned authorized officer may require the disclosure of location information without a warrant. This is if the officer reasonably believes an immediate life-threatening situation exists that is within the officer's territorial jurisdiction and requires the disclosure of the location information before a warrant can be obtained using due diligence. In those instances, the peace officer must obtain a warrant no later than 48 hours after requiring the disclosure of the information. The definition of immediate-life threatening situation was moved to the beginning of Chapter 18B and so was deleted from Article 18B.151.

The state is prohibited from using evidence in a criminal proceeding that was obtained through the required disclosure of location information unless the warrant provisions were complied with.

The provision that allows for a magistrate to direct a shorter period of time for the execution of a search warrant applies to any search warrant issued under Chapter 18, Chapter 18A, or Chapter 18B, not just the new search warrant. Articles 18B.355, 18B.356, and 18B.357 apply to a warrant issued under this new provision.

Code of Criminal Procedure Article 18B.202. ORDER AUTHORIZING INSTALLATION AND USE OF MOBILE TRACKING DEVICE.

(c) The affidavit must:

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

(2) identify the vehicle, container, or item to which, in which, or on which the mobile tracking device is to be attached, placed, or otherwise installed;

(3) state the name of the owner or possessor of the vehicle, container, or item identified under Subdivision (2);

(4) state the judicial jurisdictional area in which the vehicle, container, or item identified under Subdivision (2) is expected to be found; and

(5) state the facts and circumstances that provide the applicant with <u>probable cause to believe</u> [~~a reasonable suspicion~~] that:

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

(B) the installation and use of a mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity.

Commentary by: Kaci Singer
Source: SB 112
Effective Date: September 1, 2021
Applicability: Applies to the disclosure of information under a warrant, order, or other legal process on or after the effective date.
Summary of Changes: This bill is identical to HB 3363, described above, with the exception of the change to Article 18B.202. As such, the other portions of the bill were not republished here and will not be discussed. Article 18B.202 applies to an order for the installation and use of a tracking device on the application of an authorized peace officer. Under current law, the peace officer must file an affidavit with sufficient facts and circumstances to establish reasonable suspicion that criminal activity has been, is, or will be committed and the tracking device is likely to produce information material to an ongoing criminal investigation of that criminal activity. Now, the standard is probable cause to believe.

Code of Criminal Procedure Article 18.067. EXECUTION OF WARRANT FOR BLOOD SPECIMEN IN INTOXICATION OFFENSE.
Notwithstanding any other law, a warrant issued under Article 18.02(a)(10) to collect a blood specimen from a person suspected of committing an intoxication offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code, may be executed:

(1) in any county adjacent to the county in which the warrant was issued; and

(2) by any law enforcement officer authorized to make an arrest in the county of execution.

Code of Criminal Procedure Article 18.10. HOW RETURN MADE.
(a) Not later than three whole days after executing a search warrant, the officer shall return the search warrant. Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which the warrant has been executed. The officer shall also deliver to the magistrate a copy of the inventory of the property taken into his possession under the warrant. The failure of an officer to make a timely return of an executed search warrant or to submit an inventory of the property taken into the officer's possession under the warrant does not bar the admission of evidence under Article 38.23. The officer who seized the property shall retain custody of it until the magistrate issues an order directing the manner of safekeeping the property. Except as otherwise provided by Subsection (b), the [~~The~~] property may not be removed from the county in which it was seized without an order approving the removal, issued by a magistrate in the county in which the warrant was issued; provided, however, nothing herein shall prevent the officer, or his department, from forwarding any item or items seized to a laboratory for scientific analysis.
(b) For the purposes of complying with this article, property seized pursuant to a warrant executed under Article 18.067 may be removed from the county in which it was seized and returned to the county in which the warrant was issued without a court order.

Commentary by: Kaci Singer
Source: SB 1047
Effective Date: September 1, 2021
Applicability: Applies to a search warrant issued on or after the effective date.
Summary of Changes: These changes allow a warrant to collect a blood specimen for a person suspected of committing an intoxication offense to be executed in any county adjacent to the county in which the warrant was issued and by any law enforcement officer authorized to make an arrest in the county where the warrant is executed. The specimen seized under such a warrant may be removed from the county where it was seized and returned to the county in which the warrant was issued without getting a court order to do so.

Topic: Evidence Retention

Code of Criminal Procedure Article 38.50. RETENTION AND PRESERVATION OF TOXICOLOGICAL EVIDENCE OF CERTAIN INTOXICATION OFFENSES.
(c) An entity or individual described by Subsection (b) shall ensure that toxicological evidence collected pursuant to an investigation or

prosecution of an offense under Chapter 49, Penal Code, is retained and preserved, as applicable:

(1) for the greater of two years or the period of the statute of limitations for the offense, if the indictment or information charging the defendant, or the petition in a juvenile proceeding, has not been presented or has been dismissed without prejudice;

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

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

(d) A person from whom toxicology evidence was collected and, if the person is a minor, the person's parent or guardian, shall be notified [~~For each offense subject to this article, the court shall determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence under Subsection (c) and notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence~~] of the periods [~~period~~] for which [~~the~~] evidence may [~~is to~~] be retained and preserved under this article. The notice must be given by:

(1) an entity or individual described by Subsection (b) that collects the evidence, if the entity or individual collected the evidence directly from the person or collected it from a third party; or

(2) the court, if the records of the court show that the person was not given the notice described by Subdivision (1) and the toxicological evidence is subject to the retention period under Subsection (c)(2) or (3) [~~If an action of the prosecutor or the court changes the applicable period under Subsection (c), the court shall notify the persons described by this subsection about the change~~].

(e) The entity or individual charged with storing toxicological evidence may destroy the evidence on expiration of the applicable retention period:

(1) described by Subsection (c)(1); or

(2) described by Subsection (c)(2) or (c)(3), provided that:

(A) notice was given in accordance with this article; and

(B) if applicable, the prosecutor's office gives written approval for the destruction under Subsection (h) [~~provided by the notice most recently issued by the court under Subsection (d)~~].

(g) Notice given under this article must be given:

(1) in writing, as soon as practicable, by hand delivery, e-mail, or first class mail to the person's last known e-mail or mailing address; or

(2) if applicable, orally and in writing on requesting the specimen under Section 724.015, Transportation Code.

(h) A prosecutor's office may require that an entity or individual charged with storing toxicological evidence seek written approval from the prosecutor's office before destroying toxicological evidence subject to the retention period under Subsection (c)(2) or (c)(3) for cases in which the prosecutor's office presented the indictment, information, or petition.

Transportation Code Section 724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT.

(a) Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1) if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;

(2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;

(3) if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;

(4) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;

(5) if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;

(6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; [~~and~~]

(7) the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing; and

(8) if the person submits to the taking of a blood specimen, the specimen will be retained and preserved in accordance with Article 38.50, Code of Criminal Procedure.

(b) If a person consents to the request of an officer to submit to the taking of a specimen, the officer shall request the person to sign a statement that:

(1) the officer requested that the person submit to the taking of a specimen;

(2) the person was informed of the consequences of not submitting to the taking of a specimen; and

(3) the person voluntarily consented to the taking of a specimen.

Commentary by: Kaci Singer
Source: SB 335
Effective Date: September 1, 2021
Applicability: Article 38.50, Code of Criminal Procedure, applies to evidence for which the appropriate retention and preservation period expires on or after the effective date. If the period expired before the effective date, the prior law applies. If the applicable retention and preservation period under Article 38.50(c)(1), Code of Criminal Procedure, has expired with respect to toxicological evidence held in storage on the effective date and notice regarding that evidence has not yet been given under Article 38.50(d), Code of Criminal Procedure, as that subsection existed immediately before the effective, the entity or individual charged with storing the evidence may destroy the evidence pursuant to Article 38.50(e), Code of Criminal Procedure, as amended by this Act. If the appropriate retention and preservation period under Article 38.50(c)(2) or (3), Code of Criminal Procedure, as applicable, has expired with respect to evidence held in storage on the effective date and notice regarding that evidence has not yet been given under Article 38.50(d), Code of Criminal Procedure, as that subsection existed immediately before the effective date of this Act, the court shall provide the notice required by Article 38.50(d), Code of Criminal Procedure, as amended by this Act, not later than September 1, 2022. Changes in Section 724.015, Transportation Code apply only to a request for the taking of a breath or blood specimen that occurs on or after the effective date.
Summary of Changes: The purpose of this change was to eliminate ambiguity regarding the disposal of toxicological evidence with no evidentiary value. It did so by modifying the notice and disposal procedure by allowing

toxicological evidence to be destroyed without providing notice in cases in which the statute of limitations has expired or the case has been dismissed.

Under current law, the evidence must be maintained for the greater of two years or the period of the statute of limitations if the indictment, information, or juvenile petition has not been presented. Now that includes if the indictment, information, or juvenile petition has been dismissed without prejudice.

The law now requires an entity or individual that collects the toxicology evidence to give notice to the person from whom the evidence was collected, or the person's parent or guardian if the person is a minor, of the periods for which evidence may be retained and preserved. The notice must be given by an entity or individual that collects the evidence, which may be a governmental or public entity or individual, including a law enforcement agency, prosecutor's office, or crime lab that is charged with doing so. However, the court must give the notice the collecting entity did not and the evidence will remain for the duration of the sentence or commitment to TJJD or term of probation supervision or if there is an acquittal or not true finding or a dismissal with prejudice (i.e., subject to the retention period in (c)(2) or (c)(3)). The notice must be in wiring, as soon as practicable, by hand delivery, email, or first class mail, or orally and in writing if the specimen is requested under Section 724.015, Transportation Code, relating to an officer taking a blood or breath specimen. The change in that law provides that if the person submits to the taking of a blood specimen, it will be retained in accordance with Article 38.50, Code of Criminal Procedure.

The entity charged with storing the evidence may destroy it on expiration of the applicable retention period as long as notice was given and, if applicable, the prosecutor's office gives written approval. That approval is applicable if the prosecutor's office has chosen to require the entity or individual storing the evidence to seek written approval before destroying evidence subject to the retention period in (c)(2) or (c)(3).

Section 724.015, Transportation Code, was also changed to provide that the officer shall request the person to sign a statement that the officer requested them to submit to the taking of the specimen, the person was informed of the consequence of not submitting, and the person voluntarily consent to the taking of the specimen.

Topic: Missing Persons

Code of Criminal Procedure Article 49.04. DEATHS REQUIRING AN INQUEST.

(e) A justice of the peace investigating a death described by Subsection (a)(3)(B), or the justice's designee, shall, not later than the 10th working day after the date that one or more identifying features of the unidentified body are determined or the 60th day after the date the investigation began, whichever is earlier, enter all available identifying features of the unidentified body (fingerprints, dental records, any unusual physical characteristics, and a description of the clothing found on the body) into the National Missing and Unidentified Persons System.

Code of Criminal Procedure Article 49.25. MEDICAL EXAMINERS.

(d) A person investigating a death described by Section 6(a)(3)(B), or the person's designee, shall, not later than the 10th working day after the date that one or more identifying features of the unidentified body are determined or the 60th day after the date the investigation began, whichever is earlier, enter all available identifying features of the unidentified body (fingerprints, dental records, any unusual physical characteristics, and a description of the clothing found on the body) into the National Missing and Unidentified Persons System.

Code of Criminal Procedure Article 63.009. LAW ENFORCEMENT REQUIREMENTS.

(a) A [~~Local~~] law enforcement agency [~~agencies~~], on receiving a report of a missing child or [~~a~~] missing person, shall:

(1) if the subject of the report is a child and the child is at a high risk of harm or is otherwise in danger or if the subject of the report is a person who is known by the

agency to have or is reported to have chronic dementia, including Alzheimer's dementia, whether caused by illness, brain defect, or brain injury, immediately start an investigation in order to determine the present location of the child or person;

(2) if the subject of the report is a child or person other than a child or person described by Subdivision (1), start an investigation with due diligence in order to determine the present location of the child or person;

(3) immediately, but not later than two hours after receiving the report, enter the name of the child or person into the clearinghouse and[~~,~~] the national crime information center missing person file if the child or person meets the center's criteria, and report that name to the Alzheimer's Association Safe Return emergency response center [~~crisis number,~~] if applicable, with all available identifying features such as dental records, fingerprints, other physical characteristics, and a description of the clothing worn when last seen, and all available information describing any person reasonably believed to have taken or retained the missing child or missing person; [~~and~~]

(4) not later than the 60th day after the date the agency receives the report, enter the name of the child or person into the National Missing and Unidentified Persons System, with all available identifying features such as dental records, fingerprints, other physical characteristics, and a description of the clothing worn when last seen, and all available information describing any person reasonably believed to have taken or retained the missing child or missing person; and

(5) inform the person who filed the report of the missing child or missing person that the information will be:

(A) entered into the clearinghouse, the national crime information center missing person file, and the National Missing and Unidentified Persons System; and

(B) reported to the Alzheimer's Association Safe Return emergency response center [~~crisis number,~~] if applicable.

(b) Information not immediately available when the original entry is made shall be [~~obtained by the agency and~~] entered into the clearinghouse, [~~and~~] the national crime information center file, and the National Missing and Unidentified Persons System as a supplement to the original entry as soon as possible.

(f) Immediately after the return of a missing child or missing person or the identification of an unidentified body, the local law enforcement agency having jurisdiction of the investigation shall:

(1) clear [~~cancel~~] the entry in the national crime information center database; and

(2) notify the National Missing and Unidentified Persons System.

Commentary by: Kaci Singer
Source: HB 1419
Effective Date: September 1, 2021
Applicability: Articles 49.04 and 49.25, Code of Criminal Procedure, as amended by this Act, apply only to the investigation of a death of an unidentified person that commences on or after the effective date of this Act. An investigation that commences before the effective date of this Act is governed by the law in effect when the investigation commenced, and the former law is continued in effect for that purpose. Article 63.009, Code of Criminal Procedure, as amended by this Act, applies only to the report of a missing child or missing person that is made to a law enforcement agency on or after the effective date of this Act. The report of a missing child or missing person that is made to a law enforcement agency before the effective date of this Act is governed by the law in effect when the report was made, and the former law is continued in effect for that purpose.
Summary of Changes: This law is called John and Joseph's Law after John Almendarez and Joseph Fritts, both of whom were adults who went missing and whose families spent years looking for them. Joseph's father was notified two years later that the body had been found two days after the first missing person report. John's daughter spent 12 years looking for him before learning his remains were found near his home just weeks after his disappearance. This happened because current law allows but does not require information relating to missing persons or

unidentified remains to be entered into the National Missing and Unidentified Persons System (NAMUS).

NAMUS, which is managed in Texas through the UNT Health Science Center in Fort Worth, is a system designed to help law enforcement solve cases involving missing and unidentified persons by matching up found remains with reported missing persons. If a person is reported missing and entered in the system and the unidentified remains of that person are also reported to that the system, NAMUS matches them. This match helps give families of missing people closure. In the case of John and Joseph, their families reported them missing but the information about the unidentified remains was not entered.

This new law places requirements on both the justice of the peace or other person responsible for investigating a death to enter identifying features of the unidentified body into NAMUS. This entry is to be made no later than the 10th working day after the date one or more identifying features are determined or the 60th day after the investigation, whichever is earlier. In addition, a law enforcement agency that receives a report of a missing child or missing person must enter the person's name and identifying features into the system no later than the 60th day after the agency receives the report of the missing person. If the missing child or person returns or an unidentified body is identified, the law enforcement agency with jurisdiction must immediately notify NAMUS.

Gun Legislation – Juvenile Impact

Topic: Expunction, Possession, Unlawful Carry, Places Prohibited

Code of Criminal Procedure Article 55.01. RIGHT TO EXPUNCTION.

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c); [~~or~~]

(B) convicted and subsequently:

(i) pardoned for a reason other than that described by Subparagraph (ii); or

(ii) pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or

(C) convicted of an offense committed before September 1, 2021, under Section 46.02(a), Penal Code, as that section existed before that date; or…

Code of Criminal Procedure Article 55.02. PROCEDURE FOR EXPUNCTION.

(a) A person who is entitled to expunction of records and files under Article 55.01(a)(1)(A), 55.01(a)(1)(B)(i), 55.01(a)(1)(C), or 55.01(a)(2) or a person who is eligible for expunction of records and files under Article 55.01(b) may file an ex parte petition for expunction in a district court for the county in which:

(1) the petitioner was arrested; or

(2) the offense was alleged to have occurred.

Penal Code Section 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; [~~and~~]

(2) at the time of the offense:

(A) is younger than 21 years of age; or

(B) has been convicted of an offense under Section 22.01(a)(1), 22.05, 22.07, or 42.01(a)(7) or (8) committed in the five-year period preceding the date the instant offense was committed; and

(3) 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.

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

(1) the handgun is in plain view, unless the person is 21 years of age or older or is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a [shoulder or belt] holster; or

(2) the person is:

(A) engaged in criminal activity, other than a Class C misdemeanor that is a

violation of a law or ordinance regulating traffic or boating; or

(B) prohibited by law from possessing a firearm[~~; or~~

[~~(C) a member of a criminal street gang, as defined by Section 71.01~~].

(a-5) A person commits an offense if the person carries a handgun and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a holster.

(a-6) A person commits an offense if the person:

(1) carries a handgun while the person is intoxicated; and

(2) is not:

(A) on the person's own property or property under the person's control or on private property with the consent of the owner of the property; or

(B) inside of or directly en route to a motor vehicle or watercraft:

(i) that is owned by the person or under the person's control; or

(ii) with the consent of the owner or operator of the vehicle or watercraft.

(a-7) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun;

(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; and

(3) at the time of the offense, was prohibited from possessing a firearm under Section 46.04(a), (b), or (c).

(a-8) If conduct constituting an offense under Subsection (a-7) constitutes an offense under another provision of law, the actor may be prosecuted under Subsection (a-7) or under both provisions.

(b) Except as provided by Subsection [~~(c) or~~] (d) or (e), an offense under this section is a Class A misdemeanor.

[~~(c) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.~~]

(e) An offense under Subsection (a-7) is:

(1) a felony of the second degree with a minimum term of imprisonment of five years, if the actor was prohibited from possessing a firearm under Section 46.04(a); or

(2) a felony of the third degree, if the actor was prohibited from possessing a firearm under Section 46.04(b) or (c).

Penal Code Section 46.03. PLACES WEAPONS PROHIBITED.

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; [~~or~~]

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited;

(7) 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;

(8) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) is used in the event;

(9) on the premises of a correctional facility;

(10) on the premises of a civil commitment facility;

(11) 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 person has written authorization of the hospital or nursing facility administration, as appropriate;

(12) on the premises of a mental hospital, as defined by Section 571.003, Health and Safety Code, unless the person has written authorization of the mental hospital administration;

(13) in an amusement park; or

(14) in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551, Government Code, and if the entity provided notice as required by that chapter.

[~~(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a location-restricted knife:~~

~~(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 person is a participant in the event and a location-restricted knife 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 person has written authorization of the hospital or nursing facility administration, as appropriate;~~

~~(5) on the premises of a mental hospital, as defined by Section 571.003, Health and Safety Code, unless the person has written authorization of the mental hospital administration;~~

~~(6) in an amusement park; or~~

~~(7) on the premises of a church, synagogue, or other established place of religious worship.~~]

(a-2) Notwithstanding Section 46.02(a-5), a license holder commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally or knowingly displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

(a-3) Notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns pursuant to Section 411.2031(e), Government Code, or on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06.

(a-4) Notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(c) In this section:

(1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(2) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(3) "License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(4) "Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(5) [~~(2) "Amusement park" and "premises" have the meanings assigned by Section 46.035.~~]

[~~(3)~~] "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

(e-1) It is a defense to prosecution under Subsection (a)(5) that the actor:

(1) possessed, at the screening checkpoint for the secured area, a [~~concealed~~] handgun that the actor was licensed to carry under Subchapter H, Chapter 411, Government Code; and

(2) exited the screening checkpoint for the secured area immediately upon completion of the required screening processes and notification that the actor possessed the handgun.

(e-2) A peace officer investigating conduct that may constitute an offense under Subsection (a)(5) and that consists only of an actor's possession of a [~~concealed~~] handgun that the actor is licensed to carry under Subchapter H, Chapter 411, Government Code, may not arrest the actor for the offense unless:

(1) the officer advises the actor of the defense available under Subsection (e-1) and gives the actor an opportunity to exit the screening checkpoint for the secured area; and

(2) the actor does not immediately exit the checkpoint upon completion of the required screening processes.

(g) Except as provided by Subsections [~~Subsection~~] (g-1) and (g-2), an offense under this section is a felony of the third degree.

(g-2) An offense committed under Subsection (a)(8), (a)(10), (a)(11), (a)(13), (a-2), (a-3), or (a-4) is a Class A misdemeanor.

Penal Code Section 46.04. UNLAWFUL POSSESSION OF A FIREARM.

(a-1) A person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (a-1), (b), or (c) is a Class A misdemeanor.

Penal Code Section 46.15.
NONAPPLICABILITY.

(b) Sections [~~Section~~] 46.02, 46.03(a)(14), and 46.04(a-1) do [~~does~~] not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 437.001, Government Code, or as a guard employed by a penal institution;

(2) is traveling;

(3) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type commonly used in the activity;

(4) holds a security officer commission issued by the Texas Private Security Board, if the person is engaged in the performance of the person's duties as an officer commissioned under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment and is wearing the officer's uniform and carrying the officer's weapon in plain view;

(5) acts as a personal protection officer and carries the person's security officer commission and personal protection officer authorization, if the person:

(A) is engaged in the performance of the person's duties as a personal protection officer under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment; and

(B) is either:

(i) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's weapon in plain view; or

(ii) not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner;

(6) is carrying:

(A) a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and

(B) a handgun:

(i) in a concealed manner; or

(ii) in a [~~shoulder or belt~~] holster;

(7) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises; or

(8) is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is:

(A) on the immediate premises where the activity is conducted; or

(B) en route between those premises and the person's residence and is carrying the weapon unloaded.

(j) The provisions of Sections [~~Section~~] 46.02 and 46.03(a)(7), (a-2), (a-3), and (a-4) [~~prohibiting the carrying of a handgun~~] do not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

(l) Sections 46.02 and[~~;~~] 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.

(m) It is a defense to prosecution under Section 46.03 that the actor:

(1) carries a handgun on a premises or other property on which the carrying of a weapon is prohibited under that section;

(2) personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property, as applicable, was prohibited; and

(3) promptly departed from the premises or other property.

(n) The defense provided by Subsection (m) does not apply if:

(1) a sign described by Subsection (o) was posted prominently at each entrance to the premises or other property, as applicable; or

(2) at the time of the offense, the actor knew that carrying a firearm or other weapon on the premises or other property was prohibited.

(o) A person may provide notice that firearms and other weapons are prohibited under Section 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that:

(1) includes language that is identical to or substantially similar to the following: "Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property";

(2) includes the language described by Subdivision (1) in both English and Spanish;

(3) appears in contrasting colors with block letters at least one inch in height; and

(4) is displayed in a conspicuous manner clearly visible to the public.

(p) Sections 46.03(a)(7), (11), and (13) do not apply if the actor:

(1) carries a handgun on the premises or other property, as applicable;

(2) holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3) was not given effective notice under Section 30.06 or 30.07 of this code or Section 411.204, Government Code, as applicable.

(q) Section 46.03(a)(8) does not apply if the actor:

(1) carries a handgun on a premises where a collegiate sporting event is taking place;

(2) holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3) was not given effective notice under Section 30.06 or 30.07 of this code, as applicable.

Commentary by: Kaci Singer
Source: HB 1927 (only portions of the bill are included)
Effective Date: September 1, 2021
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: The general purpose of this bill was to decriminalize possession of a firearm without a license to carry. Only portions of the law that seem likely to be relevant to juveniles have been included in this newsletter.

It is a Class A misdemeanor to carry a handgun on or about your person if you are younger than 21 or if you were convicted of certain offenses in the preceding five years (assault with bodily injury, deadly conduct, terroristic threat, discharging firearm in public place, displaying firearm/other deadly weapon in public place in manner calculated to alarm) and you are not on your own premises or premises under your control or directly en route to a motor vehicle or watercraft that you own or that is under your control. Penal Code Section 46.02(a).

It is a Class A misdemeanor to carry a handgun or about your person in a vehicle or watercraft you own or that is under your control if you are otherwise engaged in criminal activity (other than a Class C misdemeanor traffic or boating offense); are prohibited by law from possessing a firearm; or the gun is in plain view (except it is not an offense to have the gun in plain view if you are over 21 and the gun is in a holster or you have a license to carry and the gun is in a holster). Penal Code Section 46.02(a-1).

It is a Class A misdemeanor to carry a handgun on or about your person and intentionally display it in plain view of another person in a public place, unless the handgun is carried in a holster. Penal Code Section 46.02(a-5).

It is a Class A misdemeanor to carry a handgun on or about your person while intoxicated unless you are on your own property or property under your control; you are on private property with the consent of the owner; you are inside of or directly en route to a motor vehicle or watercraft you own or that is under your control; or you are inside of or directly en route to a motor vehicle with the consent of the owner or operator. Penal Code Section 46.02(a-6).

It is a Class A misdemeanor to carry a handgun on or about your person while in a vehicle or watercraft you own if you are a member of a criminal street gang. Penal Code Section 46.04(a-1). It does not, however, appear to be unlawful to generally carry if you are a member of a criminal street gang.

It is a third degree felony to carry a handgun or about your person if you are prohibited from possessing a firearm under Penal Code Section 46.04(b) (convicted of Class A misdemeanor assault involving member of your family or household and it has been less than five years since you were released from confinement or community supervision following conviction) and you are not on your own premises or premises under your control or directly en route to a motor vehicle or watercraft that you own or that is under your control. Penal Code 46.02(a-7). It is also a Class A misdemeanor to possess a firearm under Section 46.04(b), without regard to where that possession occurs.

It is a third degree felony with a minimum term of imprisonment of five years to carry a handgun on or about your person if you are prohibited from possessing a firearm under Penal Code Section 46.04(c) (you are subject to a protective order and are not a peace officer engaged in law enforcement duties) and you are not on your own premises or premises under your control or directly en route to a motor vehicle or watercraft that you own or that is under your control. Penal Code Section 46.02(a-7). It is also a Class A misdemeanor to possess a firearm under Section 46.04(b), without regard to where that possession occurs.

It is a second degree felony to carry a handgun on or about your person if you are prohibited from possessing a firearm under Penal Code Section 46.04(a) (convicted of a felony) and you are not on your own premises or premises under your control or directly en route to a motor vehicle or watercraft that you own or that is under your control. Penal Code 46.02(a-7). It is also a third degree felony under Section 46.04(a) to possess a firearm within the first five years after the latest date of release from confinement, community supervision, parole, or mandatory supervision, without regard to where that possession occurs. After that time period, it is a third degree felony to possess the firearm at any location other than the premises where you live.

There are instances in which none of the above are applicable, such as when you are traveling; engaged in hunting, fishing, or another sporting activity (if the weapon is a type commonly used in that activity); are a juvenile probation officer authorized to carry as provided by law; or have a license to carry and the firearm is concealed.

Section 46.03, Penal Code, sets out the places that firearms, location-restricted knives, clubs, or prohibited weapons under Section 46.05 are prohibited. One such place is in a room where a governmental entity is holding an open meeting. There is no longer a requirement that notice under Section 30.06 or 30.07 be given to make this unlawful. Section 46.03(a)(14). Section 46.03 is also inapplicable to many of the same people to whom Section 46.02 is inapplicable.

It is a defense to prosecution under Section 46.03, Penal Code, if you carry a handgun on a premises or other property on which the carrying of a weapon is prohibited, you personally receive notice from the owner or a person with apparent authority that such is prohibited, and you promptly depart. That defense does not apply if a sign with specific language is posted at the entrance of the property or if you knew that carrying a firearm or other weapon was prohibited. Sections of 46.03 prohibiting carrying on the premises of business with an alcohol permit that derives 51% or more of its income from the sale or services of alcohol for in-person consumption, on the premises of a hospital or

nursing facility, or in an amusement park do not apply if you carry a handgun, have a license to carry a handgun, and were not given effective notices under Sections 30.06 or 30.07, Penal Code, or Section 411.204, Government Code, as applicable. The section of 46.03 prohibiting carrying on the premises where a collegiate sporting event is taking place does not apply if you carry a handgun, have a license to carry, and were not given effective notice under Section 30.06 or 30.07, Penal Code.

With regard to juveniles, it is important to note that there is no age-based general prohibition of possession of a firearm. While it is a violation of law for a person who is under 21 to carry a weapon on or about their person, this does not apply when the person on their own premises or premises under their control or in a vehicle owned by them or under their control. The sum impact is that the law on possessing a firearm did not change for juveniles.

With the change to decriminalize most instances of carrying a firearm, a provision was added to provide for expunction for those who were convicted under the prior version of Section 46.02(a), Penal Code. This does not apply to juveniles as they are not convicted of offenses and as Section 58.265 provides that juveniles records are not subject to expunction. Given that the change in law did not actually modify the law for juveniles, it makes sense that they cannot get an expunction. That said, those who were 17-20 at the time of a prior offense likely can get an expunction despite the law not changing for them, either.

Topic: False Statement on Form

Penal Code Section 46.06. UNLAWFUL TRANSFER OF CERTAIN WEAPONS.

(a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years of age any firearm, club, or location-restricted knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; [~~or~~]

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor; or

(7) while prohibited from possessing a firearm under state or federal law, knowingly makes a material false statement on a form that is:

(A) required by state or federal law for the purchase, sale, or other transfer of a firearm; and

(B) submitted to a licensed firearms dealer, as defined by 18 U.S.C. Section 923.

(d) An offense under this section is a Class A misdemeanor, except that:

(1) an offense under Subsection (a)(2) is a state jail felony if the weapon that is the subject of the offense is a handgun; and

(2) an offense under Subsection (a)(7) is a state jail felony.

Commentary by: Kaci Singer
Source: SB 162
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring on or after the effective date.
Summary of Changes: This change creates a state jail felony if a person, while prohibited from possessing a firearm under state or federal law,

knowingly makes a materially false statement on a form that is required by state or federal law for the purchase, sale, or transfer of a firearm and is submitted to a licensed firearms dealer. Because there is no law prohibiting a juvenile from possessing a firearm, this would not be applicable to a juvenile.

Legislation Related to Human Trafficking and Victims

Topic: Recommendations from Sexual Assault Survivors Task Force

Code of Criminal Procedure Article 56A.052. ADDITIONAL RIGHTS OF VICTIM OF SEXUAL ASSAULT, INDECENT ASSAULT, STALKING, OR TRAFFICKING.

(a) If the offense is a sexual assault, a victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) if requested, the right to a disclosure of information regarding:

(A) 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; and

(B) the status of any analysis being performed of any evidence described by Paragraph (A);

(2) 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;

(3) if requested, the right to counseling regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection; and

(4) for the victim, the right to:

(A) 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

(B) a forensic medical examination to the extent provided by Subchapters F and G if, within 120 [~~96~~] hours of the offense:

(i) the offense is reported to a law enforcement agency; or

(ii) a forensic medical examination is otherwise conducted at a health care provider [~~facility~~].

Code of Criminal Procedure
Article 56A.2505. APPLICABILITY.

This subchapter applies to health care providers described by Article 56A.302.

Code of Criminal Procedure
Article 56A.2506. DEFINITION.

In this subchapter, "reported sexual assault" means a sexual assault that has been reported to a law enforcement agency.

Code of Criminal Procedure Article 56A.251. REQUEST FOR FORENSIC MEDICAL EXAMINATION.

(a) If [~~Except as provided by Subsection (b), if~~] a sexual assault is reported to a law enforcement agency within 120 [~~96~~] hours after the assault, the law enforcement agency, with the consent of the victim of the reported [~~alleged~~] assault, 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 for use in the investigation or prosecution of the offense.

(b) If a sexual assault is not reported within the period described by Subsection (a) and the victim is a minor as defined by Section 101.003, Family Code, on receiving the consent described by Subsection (a) or the consent described by Section 32.003 or 32.005, Family Code, a law enforcement agency shall request a forensic medical examination of the victim for use in the investigation or prosecution of the offense [~~A law enforcement agency may decline to request a forensic medical examination under Subsection (a) only if:~~

~~(1) the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency; and~~

~~(2) there is no other evidence to corroborate the current allegations of sexual assault~~].

(c) If a sexual assault is not reported within the period described by Subsection (a) and the victim is not a minor as defined by Section 101.003, Family Code, on receiving the consent described by Subsection (a), [~~that subsection~~] a law enforcement agency may request a forensic medical examination of a victim of a reported [~~an alleged~~] sexual assault for use in the investigation or prosecution of the offense if:

(1) based on the circumstances of the reported assault, the agency believes a forensic medical examination would further that investigation or prosecution; or

(2) after a medical evaluation by a physician, sexual assault examiner, or sexual assault nurse examiner, the physician or examiner notifies the agency that a forensic medical examination should be conducted [~~as considered appropriate by the agency~~].

(d) If a sexual assault is reported to a law enforcement agency as provided by Subsection (a), (b), or (c), 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 provider and the physician, 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.

Code of Criminal Procedure Article 56A.252. PAYMENT OF COSTS OF EXAMINATION.

(a) [~~A law enforcement agency that requests a forensic medical examination under Article 56A.251 shall pay all costs of the examination.~~] On application to the attorney general, a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with this subchapter, or the [~~law enforcement agency is entitled to be reimbursed for the reasonable costs of the examination if the examination was performed by a physician or by a~~] 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 [~~defined by Section 420.003, Government Code~~].

(b) The application under Subsection (a) 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 Article 56A.251(d); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(c) A health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) shall accept reimbursement from the attorney general as payment for the costs unless:

(1) the health care provider or the 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.

(d) A health care provider is not entitled to reimbursement under this article unless the forensic medical examination was conducted by a physician, sexual assault examiner, or sexual assault nurse examiner.

(e) On request, the attorney general may provide training to a health care provider regarding the process for applying for reimbursement under this article.

Code of Criminal Procedure
Article 56A.302. APPLICABILITY.

This subchapter applies to the following health care providers [~~facilities~~] that provide diagnosis or treatment services to victims of sexual assault:

(1) a general or special hospital licensed under Chapter 241, Health and Safety Code;

(2) a general or special hospital owned by this state;

(3) an outpatient clinic; and

(4) a private physician's office.

Code of Criminal Procedure Article 56A.303. FORENSIC MEDICAL EXAMINATION.

(a) In accordance with Subchapter B, Chapter 420, Government Code, and except as provided by Subsection (b), a health care provider [~~facility~~] shall conduct a forensic medical examination of a victim of a [~~an alleged~~] sexual assault if:

(1) the victim arrives at the provider [~~facility~~] within 120 [~~96~~] hours after the assault occurred;

(2) the victim consents to the examination; and

(3) at the time of the examination the victim has not reported the assault to a law enforcement agency.

(b) If a health care provider [~~facility~~] does not provide diagnosis or treatment services to victims of sexual assault, the provider [~~facility~~] shall refer a victim of a [~~an alleged~~] sexual assault who seeks a forensic medical examination under Subsection (a) to a health care provider [~~facility~~] that provides services to those victims.

(c) A victim of a [~~an alleged~~] sexual assault may not be required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination under this article.

Code of Criminal Procedure Article 56A.304. PAYMENT OF FEES RELATED TO EXAMINATION.

(a) On application to the [~~The department shall pay the appropriate fees, as set by~~] attorney general [~~rule~~], a health care provider that provides [~~for the forensic portion of~~] a forensic medical examination to a sexual assault survivor in accordance with this subchapter, or the [~~conducted under Article 56A.303(a) and for the evidence collection kit if a physician,~~] sexual assault examiner [~~,~~] or sexual assault nurse examiner who conducts that [~~the forensic portion of the~~] examination, as applicable, within 120 [~~96~~] hours after the [~~alleged~~] sexual assault occurred 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) The application under Subsection (a) must be in the form and manner prescribed by the attorney general and must include:

(1) certification that the examination was conducted in accordance with the requirements of Article 56A.303(a); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination [~~attorney general shall~~

~~reimburse the department for fees paid under Subsection (a)~~].

(c) A health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) shall accept reimbursement from the attorney general as payment for the costs unless:

(1) the health care provider 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.

(d) A health care provider is not entitled to reimbursement under this article unless the forensic medical examination was conducted at the provider by a physician, sexual assault examiner, or sexual assault nurse examiner.

(e) On request, the attorney general may provide training to a health care provider regarding the process for applying for reimbursement under this article.

(f) A victim of a [~~an alleged~~] sexual assault may not be required to pay for:

(1) the forensic portion of the forensic medical examination; or

(2) the evidence collection kit.

Code of Criminal Procedure Article 56A.307. PROCEDURES FOR SUBMISSION OR COLLECTION OF ADDITIONAL EVIDENCE.

The department, consistent with Chapter 420, Government Code, may develop procedures regarding the submission or collection of additional evidence of a [~~an alleged~~] sexual assault other than through a forensic medical examination as described by Article 56A.303(a).

Code of Criminal Procedure Article 56B.453. USE OF MONEY.

(d) The attorney general may use the fund to:

(1) reimburse a health care provider or a sexual assault examiner or sexual assault nurse examiner for certain costs of a forensic medical examination that are incurred by the provider or the examiner [~~law enforcement agency for the reasonable costs of a forensic medical examination that are incurred by the agency~~] under Subchapter F or G, Chapter 56A, as provided by those subchapters; and

(2) make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided under Subchapter F or G, Chapter 56A, in accordance with Section 323.004, Health and Safety Code.

Government Code Section 420.003. 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 has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(iii) the agency documents that an offense has been committed and reported; and

(B) for which:

(i) the statute of limitations has not run with respect to the prosecution of the offense; 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.

Government Code Section 420.034. STATEWIDE ELECTRONIC TRACKING SYSTEM.

(a) For purposes of this section, "evidence" means evidence collected during the investigation of a [~~an alleged~~] sexual assault or other sex offense, including:

(1) evidence from an evidence collection kit used to collect and preserve evidence of a sexual assault or other sex offense; and

(2) other biological evidence of a sexual assault or other sex offense.

(c) The tracking system must:

(1) include the evidence collection kit and any other items collected during the forensic medical examination in relation to a sexual assault or other sex offense and submitted for a laboratory analysis that is necessary to identify the offender or offenders, regardless of whether the evidence is collected in relation to an individual who is alive or deceased;

(2) track the location and status of each item of evidence through the criminal justice process, including the initial collection of the item of evidence in a forensic medical examination, receipt and storage of the item of evidence at a law enforcement agency, receipt and analysis of the item of evidence at an accredited crime laboratory, and storage and destruction of the item of evidence after the item is analyzed;

(3) [~~(2)~~] allow a facility or entity performing a forensic medical examination of a survivor, law enforcement agency, accredited crime laboratory, prosecutor, or other entity providing a chain of custody for an item of evidence to update and track the status and location of the item; and

(4) [~~(3)~~] allow a survivor to anonymously track or receive updates regarding the status and location of each item of evidence collected in relation to the offense.

(h) Not later than December 1 of each year, the department [~~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 governor, lieutenant governor, speaker of the house of representatives, and members of the legislature [~~department~~] identifying the number of evidence collection kits that have [~~the law enforcement agency has~~] not yet been submitted for laboratory analysis or for which the [~~crime~~] laboratory analysis has not yet been completed [~~an analysis~~], as applicable. The annual report must be titled "Statewide Electronic Tracking System Report" and must be posted on the department's publicly accessible Internet website.

Government Code Section 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:

(1) promptly notify any law enforcement agency investigating the [~~alleged~~] offense; and

(2) not later than two business days after the date the examination is performed, enter the identification number of the evidence collection kit into the statewide electronic tracking system under Section 420.034.

Government Code Section 420.042.
ANALYSIS OF EVIDENCE.

[~~(b) A person who submits 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."~~]

(g) A law enforcement agency that fails to submit evidence of a sexual assault or other sex offense to a public accredited crime laboratory within the period required by this section shall provide to the department written documentation of the failure, including a detailed explanation for the failure. The agency shall submit the documentation required by this subsection on or before the 30th day after the date on which the agency discovers that the evidence was not submitted within the period required by this section.

Government Code Section 420.046. NONCOMPLIANCE.
Failure to comply with the requirements of Subchapter B or 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 2462
Effective Date: September 1, 2021
Applicability: Changes to Chapters 56A and 56B, Code of Criminal Procedure, apply to a sexual assault report on or after the effective date. The changes made to Sections 420.034(c) and 420.035(a), Government Code, apply to sexual assault evidence and evidence of other sex offenses collected on or after the effective date. Changes to Section 420.042(g), Government Code, apply to evidence of a sexual assault or other sex offense in possession of a law enforcement agency on or after the effective date.
Summary of Changes: These are changes to the Lavinia Masters Act from 2019 (HB 8), which was an omnibus bill relating to the statute of limitations for certain sex offenses that also addressed the collection and analysis of sexual assault evidence and the backlog of untested rape kits. These changes were recommended by the governor's Sexual Assault Survivor's Task Force.

Prior law provided that if a sexual assault was reported within 96 hours, law enforcement had to request a forensic medical exam of the victim unless the victim had previously made a false report and there was no other evidence to corroborate the current allegations. Now if the report is made within 120 hours, law enforcement has to request the forensic medical exam and there is no exception. Additionally, if the victim is a minor, law enforcement must request the forensic medical exam even if the report is made later than 120 hours after the assault. If the victim is not a minor and the report is made later than 120 hours after the assault, law enforcement may request a forensic medical exam based if law enforcement believes the exam would further the investigation or prosecution or if, after a medical evaluation, the doctor or examiner notifies law enforcement that a forensic medical exam should be conducted. The agency must document whether or not the exam was requested and provide documentation to listed entities and individuals. Reimbursement for the costs of the exam was modified. Changes were made to the tracking system for evidence. Law enforcement agencies are required to timely submit evidence to the lab and must document failures to do so. Failures to comply with certain portions of the law may be used to determine eligibility for receiving grants.

Code of Criminal Procedure Article 38.435. PROHIBITED USE OF EVIDENCE FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT.
Evidence collected during a forensic medical examination conducted under Subchapter F or G, Chapter 56A, may not be used to investigate or prosecute a misdemeanor offense, or an offense under Subchapter D, Chapter 481, Health and Safety Code, alleged to have been committed by the victim from whom the evidence was collected.

Code of Criminal Procedure Article 56A.254. PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE.
The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with Sections [~~Section~~] 323.004, 323.053, and 323.054, Health and Safety Code.

Code of Criminal Procedure Article 56A.302. APPLICABILITY.
This subchapter applies to the following health care providers [~~facilities~~] that provide diagnosis or treatment services to victims of sexual assault:

(1) a general or special hospital licensed under Chapter 241, Health and Safety Code;

(2) a general or special hospital owned by this state;

(3) an outpatient clinic; [~~and~~]

(4) a private physician's office; and

(5) a SAFE program as defined by Section 323.051, Health and Safety Code.

Code of Criminal Procedure Article 56A.305. PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE.

The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with Sections [~~Section~~] 323.004, 323.053, and 323.054, Health and Safety Code.

Health and Safety Code CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT

SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT

Health and Safety Code Section 323.001. DEFINITIONS.

In this subchapter [~~chapter~~]:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Health care facility" means a general or special hospital licensed under Chapter 241, a general or special hospital owned by this state, or a freestanding emergency medical care facility licensed under Chapter 254.

(3-a) "SAFE-ready facility" means a health care facility designated as a sexual assault forensic exam-ready facility under Section 323.0015. The term includes a SAFE program designated as a SAFE-ready facility under Section 323.052.

(3-b) "SAFE program" has the meaning assigned by Section 323.051.

(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(4-a) "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician with specialized training on conducting a forensic medical examination.

(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

Health and Safety Code Section 323.002. PLAN FOR EMERGENCY SERVICES.

(a) Each health care facility that has an emergency department shall comply with Sections [~~Section~~] 323.004 and 323.0044. At the request of the department, a health care facility that has an emergency department shall submit to the department for approval a plan for providing the services required by Section 323.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

Health and Safety Code Section 323.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES.

(a) Except as otherwise provided by Subsection (a-2), after a sexual assault survivor arrives at a health care facility following a [~~an alleged~~] sexual assault, the facility shall provide care to the survivor in accordance with Subsection (b).

(a-1) A facility that is not a SAFE-ready facility shall inform the sexual assault survivor that:

(1) the facility is not a SAFE-ready facility and provide to the survivor the name and location of nearby [~~the closest~~] SAFE-ready facilities [~~facility~~] and the information form required by Section 323.0051; and

(2) the survivor is entitled, at the survivor's option:

(A) to receive the care described by Subsection (b) at that facility, subject to Subsection (b-1); or

(B) to be stabilized and to be referred or transferred to and receive the care described by Subsection (b) at a SAFE-ready facility.

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1) subject to Subsection (b-1), a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or is conducted under Subchapter G, Chapter 56A, Code of Criminal Procedure;

(2) a private area, if available, to wait or speak with the appropriate medical, legal, or

sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3) access to a sexual assault program advocate, if available, as provided by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(4) the information form required by Section 323.005;

(5) a private treatment room, if available;

(6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; [~~and~~]

(7) the name and telephone number of the nearest sexual assault crisis center; and

(8) if the health care facility has shower facilities, access to a shower at no cost to the survivor after the examination described by Subdivision (1).

Health and Safety Code Section 323.005. INFORMATION FORM.

(a) The commission [~~department~~] shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications; and

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation, including:

(A) a statement that public agencies are responsible for paying for the forensic portion of an examination conducted under Subchapter F or G, Chapter 56A [~~Article 56.06 or 56.065~~], Code of Criminal Procedure, and for the evidence collection kit used in connection with the examination and that the health care facility or provider, as applicable, is responsible for seeking reimbursement for those costs; and

(B) 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;

(8) information regarding the period for which biological evidence collected from the forensic medical examination will be retained and preserved under Article 38.43, Code of Criminal Procedure; and

(9) a statement that the survivor has the right to access a shower for free after the forensic medical examination, if shower facilities are available at the health care facility.

Health and Safety Code Section 323.0051. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS AT CERTAIN FACILITIES.

(a) The commission [~~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 commission's [~~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 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.

Health and Safety Code Section 323.0052. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS WHO HAVE NOT REPORTED ASSAULT.

(a) The commission [~~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 Subchapter G, Chapter 56A [~~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.

Health and Safety Code Section 323.008. DATA PUBLICATION.

The commission [~~department~~] shall post on the commission's [~~department's~~] Internet website a list of all hospitals and other health facilities that are designated as SAFE-ready facilities under this chapter and the facilities' physical addresses. The commission [~~department~~] shall update the list quarterly [~~annually~~]. To the extent possible, the commission [~~department~~] shall collect the data required by this section as part of a survey required by the commission [~~department~~] under other law.

SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

Health and Safety Code Section 323.051. DEFINITIONS.

In this subchapter:

(1) "SAFE program" means a program that meets the requirements prescribed by Section 323.052. The term does not include a program operated by a health care facility, as defined by Section 323.001.

(2) "Sexual assault examiner," "sexual assault nurse examiner," and "sexual assault program" have the meanings assigned by Section 420.003, Government Code.

(3) "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician licensed under Subtitle B, Title 3, Occupations Code, with specialized training on conducting a forensic medical examination.

Health and Safety Code Section 323.052. OPERATION OF SAFE PROGRAM; DESIGNATION OF SAFE PROGRAM AS SAFE-READY FACILITY.

(a) A person may operate a SAFE program only if:

(1) the program meets the minimum standards established under Section 323.053; and

(2) the program provides forensic medical examinations to sexual assault survivors in accordance with Section 323.054.

(b) The Health and Human Services Commission shall designate a SAFE program described by Subsection (a) as a SAFE-ready facility under

Section 323.0015 if the program notifies the commission that the program employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation during a sexual assault forensic medical examination to a nurse or physician licensed to practice in this state.

Health and Safety Code Section 323.053. MINIMUM STANDARDS FOR SAFE PROGRAMS.

A SAFE program must:

(1) operate under the active oversight of a medical director who is a physician licensed by and in good standing with the Texas Medical Board;

(2) provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by Texas Medical Board rules;

(3) employ or contract with a sexual assault examiner or a sexual assault nurse examiner;

(4) provide access to a sexual assault program advocate, as required by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(5) ensure a sexual assault survivor has access to a private treatment room;

(6) if indicated by a survivor's history or on a survivor's request, provide:

(A) HIV testing and prophylactic medication to the survivor or a referral for the testing and medication; and

(B) counseling and prophylactic medications for exposure to sexually transmitted infections and pregnancy;

(7) provide to survivors the name and telephone number of a nearby sexual assault program that provides to survivors the minimum services described by Subchapter A, Chapter 420, Government Code;

(8) provide to survivors the information form required by Section 323.005, 323.0051, or 323.0052, as applicable, and orally communicate the information regarding crime victims compensation under Section 323.005(a)(4);

(9) collaborate with any sexual assault program, as defined by Section 420.003, Government Code, that provides services to survivors in the county;

(10) engage in efforts to improve the quality of the program;

(11) maintain capacity for appropriate triage or have agreements with other health facilities to assure that a survivor receives the appropriate level of care indicated for the survivor's medical and mental health needs;

(12) prioritize the safety and well-being of survivors;

(13) provide a trauma-informed approach in the forensic medical care provided to survivors; and

(14) collaborate with:

(A) law enforcement agencies and attorneys representing the state with jurisdiction in the county;

(B) any available local sexual assault response team; and

(C) other interested persons in the community.

Health and Safety Code Section 323.054. FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM; INFORMED CONSENT.

(a) A SAFE program shall provide to a sexual assault survivor under the care of the program a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or if the examination is performed in accordance with Subchapter G, Chapter 56A, Code of Criminal Procedure.

(b) Only a sexual assault examiner or a sexual assault nurse examiner may perform a forensic medical examination under a SAFE program.

(c) A sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program must obtain a sexual assault survivor's informed, written consent before performing a forensic medical examination or providing medical treatment to the survivor.

(d) A sexual assault survivor who receives a forensic medical examination from a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program may not be required to:

(1) participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or

(2) pay for the costs of the forensic portion of the forensic medical examination or for the evidence collection kit.

Commentary by: Kaci Singer
Source: HB 2706
Effective Date: September 1, 2021.
Applicability: Changes to Article 38.435, Code of Criminal Procedure, and Section 323.004(b)(8), Health and Safety Code, apply to a forensic medical examination that occurs on or after the effective date.
Summary of Changes: This bill enacts recommendations of the Sexual Assault Survivors' Task Force, designed to examine solutions to address the challenges for those affected by sexual violence. Portions of the bill that were included in HB 2462 were not included here.

Changes include a prohibition on using evidence collected during a forensic medical examination conducted at the request of law enforcement to investigate or prosecute a misdemeanor offense or an under Subchapter D, Chapter 481, Health and Safety Code (drug offenses) alleged to have been committed by the victim and a requirement that health care facilities with shower facilities allow survivors to shower at no cost after a forensic medical exam. Additionally, statutes create rules for operating a "SAFE program," which is a Sexual Assault Forensic Examination Program.

Topic: Interviews of Sexual Assault Victims

Code of Criminal Procedure Article 15.051. [~~REQUIRING~~] POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED.

(a) A peace officer or an attorney representing the state may not require, request, or take a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code.

~~(b) If a peace officer or an attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a), the officer or attorney must inform the complainant that the examination is not required and that a complaint may not be dismissed solely:~~

~~(1) because a complainant did not take a polygraph examination; or~~

~~(2) on the basis of the results of a polygraph examination taken by the complainant.~~

~~(c) A peace officer or an attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) unless the officer or attorney provides the information in Subsection (b) to the person and the person signs a statement indicating the person understands the information.~~

Code of Criminal Procedure Chapter 56A. SUBCHAPTER H. PRESENCE OF ADVOCATE OR REPRESENTATIVE DURING FORENSIC MEDICAL EXAMINATION OR LAW ENFORCEMENT INTERVIEW

Code of Criminal Procedure Article 56A.3515. PRESENCE OF SEXUAL ASSAULT PROGRAM ADVOCATE OR OTHER VICTIM'S REPRESENTATIVE DURING LAW ENFORCEMENT INTERVIEW.

(a) Before conducting an investigative interview with a victim reporting a sexual assault, other than a victim who is a minor as defined by Section 101.003, Family Code, the peace officer conducting the interview shall offer the victim the opportunity to have an advocate from a sexual assault program, as defined by Section 420.003, Government Code, be present with the victim during the interview, if the advocate is available at the time of the interview. The advocate must have completed a sexual assault training program described by Section 420.011(b), Government Code.

(b) If an advocate described by Subsection (a) is not available at the time of the interview, the

peace officer conducting the interview shall offer the victim the opportunity to have a crime victim liaison from the law enforcement agency, a peace officer who has completed a sexual assault training program described by Section 420.011(b), Government Code, or a victim's assistance counselor from a state or local agency or other entity be present with the victim during the interview.

(b-1) The peace officer conducting an investigative interview described by Subsection (a) shall make a good faith effort to comply with Subsections (a) and (b), except that the officer's compliance with those subsections may not unreasonably delay or otherwise impede the interview process.

(c) An advocate, liaison, officer, or counselor authorized to be present during an interview under this article may only provide the victim reporting the sexual assault with:

(1) counseling and other support services; and

(2) information regarding the rights of crime victims under Subchapter B.

(d) The advocate, liaison, officer, or counselor and the sexual assault program or other entity providing the advocate, liaison, officer, or counselor may not delay or otherwise impede the interview process.

(e) A sexual assault program providing an advocate under Subsection (a) shall pay all costs associated with providing the advocate. An entity providing a victim's assistance counselor under Subsection (b) shall pay all costs associated with providing the counselor.

(f) A peace officer or law enforcement agency that provides an advocate, liaison, officer, or counselor with access to a victim reporting a sexual assault is not subject to civil or criminal liability for providing that access.

Code of Criminal Procedure Article 56A.352. REPRESENTATIVE PROVIDED BY PENAL INSTITUTION.

(b) If a victim alleging to have sustained injuries as the victim of a sexual assault was confined in a penal institution at the time of the alleged assault, the penal institution shall provide, at the victim's request, a representative to be present with the victim:

(1) at any forensic medical examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the alleged assault; and

(2) during an investigative interview conducted by a peace officer in relation to the investigation of the alleged assault.

(b-1) The representative provided by the penal institution under Subsection (b) must:

(1) be approved by the penal institution; and

(2) be a:

(A) psychologist;

(B) sociologist;

(C) chaplain;

(D) social worker;

(E) case manager; or

(F) volunteer who has completed a sexual assault training program described by Section 420.011(b), Government Code.

(d) A representative may not delay or otherwise impede:

(1) the screening or stabilization of an emergency medical condition; or

(2) the interview process.

Commentary by: Kaci Singer
Source: HB 1172
Effective Date: September 1, 2021
Applicability: Applies on or after the effective date.
Summary of Changes: Portions of the bill that were included in HB 2462 were not included here. Current law prohibits a peace officer or attorney representing the state from requiring a polygraph of a person seeking to charge another with certain sexual offenses. With this change, the peace officer or state's attorney is also prohibited from requesting or taking a polygraph of such person.

This change also requires a peace officer who is interviewing a victim of sexual assault to have an advocate or victim's liaison present for the interview. This does not apply to a minor victim, who is defined as a person under 18. If the victim was confined in a penal institution at the time of the assault, the penal institution must provide a representative to be present, at the victim's request. Penal institution is defined as a place designated by law for confinement of persons

arrested for, charged with, or convicted of an offense. Based on that definition, it does not seem to apply to a juvenile facility as juveniles are not arrested or convicted of offenses; they are detained for and adjudicated for delinquent conduct or conduct indicating a need for supervision. As most children in a juvenile facility are minors, victims of sexual assault in a facility should be interviewed in the same way as other minors.

Topic: Confidentiality and Privilege

Government Code SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS AND RECORDS

Government Code Section 420.071. CONFIDENTIAL COMMUNICATIONS AND RECORDS; PRIVILEGE.

(a) Any [~~A~~] communication, including an oral or written communication, between an advocate and a survivor[~~, or a person claiming to be a survivor,~~] that is made in the course of advising, counseling, or assisting [~~providing sexual assault advocacy services to~~] the survivor is confidential [~~and may not be disclosed except as provided by this subchapter~~].

(b) Any [~~A~~] record created by, provided to, or maintained by an advocate is confidential if the record relates to the services provided to a survivor or contains [~~of~~] the identity, personal history, or background information of the [~~a~~] survivor or information concerning the victimization of the [~~a~~] survivor [~~that is created by or provided to an advocate or maintained by a sexual assault program is confidential and may not be disclosed except as provided by this subchapter~~].

(c) In any civil, criminal, administrative, or legislative proceeding, subject to Section 420.072, a survivor has a privilege to refuse to disclose and to prevent another from disclosing, for any purpose, a communication or record that is confidential under this section.

(c-1) Except as provided by this subsection, the unauthorized disclosure of a portion of a confidential communication or record does not constitute a waiver of the privilege provided by Subsection (c). If a portion of a confidential communication or record is disclosed, a party to the relevant court or administrative proceeding may make a motion requesting that the privilege be waived with respect to the disclosed portion. The court or administrative hearing officer, as applicable, may determine that the privilege has been waived only if:

(1) the disclosed portion is relevant to a disputed matter at the proceeding; and

(2) waiver is necessary for a witness to be able to respond to questioning concerning the disclosed portion. [~~A person who receives information from a confidential communication or record as described by this subchapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.~~]

Government Code Section 420.072. DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR RECORD [~~EXCEPTIONS~~].

(a) A communication or[~~, a~~] record[~~, or evidence~~] that is confidential under Section 420.071 [~~this subchapter~~] may only be disclosed [~~in court or in an administrative proceeding~~] if:

(1) the communication or record [~~proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure~~] is relevant to the claims or defense of an [~~the~~] advocate or sexual assault program in a proceeding brought by the survivor against the advocate or program; [~~or~~]

(2) the survivor has waived the privilege established under Section 420.071(c) with respect to the communication or record;

(3) the survivor or other appropriate person consents in writing to the disclosure as provided by Section 420.073;

(4) an [~~or 420.0735, as applicable. (b) A communication, a record, or evidence that is confidential under this subchapter may be disclosed only to: (1) medical or law enforcement personnel if the~~] advocate determines that, unless the disclosure is made, there is a probability of:

(A) imminent physical danger to any person; or

(B) [~~for whom the communication, record, or evidence is relevant or if there is a probability of~~] immediate mental or emotional injury to the survivor;

(5) [~~(2) a governmental agency if~~] the disclosure is necessary:

(A) to comply with:

(i) Chapter 261, Family Code; or

(ii) Chapter 48, Human Resources Code; or

(B) [~~required or authorized by law; (3) a qualified person to the extent necessary~~] for a management audit, a financial audit, a program evaluation, or research, except that a report of the [~~research,~~] audit, [~~or~~] evaluation, or research may not directly or indirectly identify a survivor;

(6) the disclosure is made to an employee or volunteer of the sexual assault program after [~~(4) a person authorized to receive the disclosure as a result of written consent obtained under Section 420.073 or 420.0735; or (5)~~] an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or the provision of services to [~~advocacy for~~] the survivor determines that the disclosure is necessary to facilitate the provision of services to the survivor; or

(7) the communication or record is in the possession, custody, or control of the state and a court, after conducting an in camera review of the communication or record, determines the communication or record is exculpatory, provided that the disclosure is limited to the specific portion of the communication or record that was determined to be exculpatory in relation to a defendant in a criminal case.

(b) Regardless of whether written consent has been given by a parent or legal guardian under Section 420.073(a), a person may not disclose a [~~(c) A~~] communication or[~~, a~~] record[~~, or evidence~~] that is confidential under Section 420.071 [~~this subchapter may not be disclosed~~] to a parent or legal guardian of a survivor who is a minor or to a guardian appointed under Title 3, Estates Code, of an adult survivor, if applicable, if the person [~~an advocate or a sexual assault program~~] knows or has reason to believe that the parent or guardian of the survivor is a suspect or accomplice in the sexual assault of the survivor.

(c) Notwithstanding Subsections (a) and (b), the Texas Rules of Evidence govern the disclosure of a communication or record that is confidential under Section 420.071 in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication or record to form the basis of the expert's opinion.

Government Code Section 420.074. DISCLOSURE OF PRIVILEGED COMMUNICATIONS OR OTHER INFORMATION IN CRIMINAL PROCEEDING [~~SUBPOENA~~].

(a) Subject to the provisions [~~Notwithstanding any other provision~~] of this chapter, not later than the 30th day before the date of the trial, a defendant in a criminal proceeding may make a motion for disclosure of a communication or record that is privileged under this chapter. The motion must include a supporting affidavit showing reasonable grounds to believe the privileged communication or record contains exculpatory evidence.

(b) The defendant shall serve the motion on the attorney representing the state and the person who holds the privilege with regard to the communication or record at issue.

(c) The court shall order the privileged communication or record to be produced for the court under seal and shall examine the communication or record in camera if the court finds by a preponderance of the evidence that:

(1) there is a good-faith, specific, and reasonable basis for believing that the privileged communication or record is relevant, material, and exculpatory upon the issue of guilt for the offense charged; and

(2) the privileged communication or record would not be duplicative of other evidence or information available or already obtained by the defendant.

(d) The court [~~a person~~] shall disclose to the defendant and to the state only the evidence that the court finds to be exculpatory on the issue of guilt for the offense charged [~~a communication, a record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law~~].

Commentary by: Kaci Singer
Source: SB 295
Effective Date: September 1, 2021
Applicability: Applies to any community or record described by Section 420.071, regardless of the date the communication is made or the record is created.
Summary of Changes: Under current law, the communications between a sexual assault survivor and an advocate at a crisis center can be subject to disclosure. This change provides that any communication or record made during the course of survivor seeking assistance from an advocate shall be kept confidential and allows the survivor to assert privilege to prevent disclosure.

Topic: Texas Military Department Prevention and Response to Sexual Assault

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Government Code SUBCHAPTER J-1. SEXUAL OFFENSE PREVENTION AND RESPONSE

Government Code Section 432.171. DEFINITIONS.
In this subchapter:

(1) "Coordinator" means the state sexual offense response coordinator employed as provided by this subchapter.

(2) "Department" means the Texas Military Department.

(3) "Program" means the state sexual offense prevention and response program established as provided by this subchapter.

(4) "Restricted report" means a reporting option that allows a person who is a victim of an offense to confidentially disclose the offense to the coordinator and obtain medical treatment, including emergency care and counseling, without initiating an investigation. The report may not be referred to law enforcement officers or to command officials of the Texas military forces to initiate an official investigation unless the person who reported the offense consents.

(5) "Texas military forces" means the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard.

(6) "Unrestricted report" means a reporting option that allows a person who is a victim of an offense to report the offense to the coordinator if the person does not request confidentiality in reporting the offense or request a restricted report.

Government Code Section 432.172. SEXUAL ASSAULT AND INDECENT ASSAULT.
A person subject to this chapter who commits an offense under Section 22.011, 22.012, or 22.021, Penal Code, is subject to investigation under this subchapter and punishment under this chapter.

Government Code Section 432.173. STATE SEXUAL OFFENSE PREVENTION AND RESPONSE PROGRAM; COORDINATOR.
(a) To the extent state funds are available for this purpose, the department shall establish a state sexual offense prevention and response program and employ or designate a state sexual offense response coordinator to perform victim advocacy services, including ensuring that persons who are victims of sexual assault or indecent assault receive appropriate responsive care and understand the options available for reporting the assault.
(b) The coordinator shall accept reports for alleged offenses under Sections 22.011, 22.012, and 22.021, Penal Code, made by a person who is a member of the Texas military forces against an accused person who is a member of the Texas military forces.
(c) The coordinator shall notify each person who is a victim of a sexual assault reported under Subsection (b) of their eligibility for crime victims' compensation under Chapter 56B, Code of Criminal Procedure.
(d) The program and coordinator are within the department but shall exercise the authority granted under this subchapter independently from the chain of command within the department.
(e) The coordinator must allow a member of the Texas military forces who is the victim of an alleged offense under Section 22.011, 22.012, or 22.021, Penal Code, to:

(1) file with the coordinator a restricted or unrestricted report or file a restricted report and later convert that report to an unrestricted report;

(2) participate in the United States Department of Defense Catch a Serial Offender program; and

(3) receive notice when the coordinator is made aware that the accused person has been subsequently accused of an offense under Section 22.011, 22.012, or 22.021, Penal Code, by a service member or any other person.

Government Code Section 432.174. INVESTIGATION.

(a) On the filing of an unrestricted report alleging an offense under Section 22.011 or 22.021, Penal Code, the coordinator:

(1) shall refer the unrestricted report to the Texas Rangers division of the Department of Public Safety for investigation; and

(2) may refer the unrestricted report to the appropriate local law enforcement agency for the initial collection of evidence.

(b) A local law enforcement agency that initially collects evidence for an unrestricted report under Subsection (a) shall transfer all relevant evidence and information to the Texas Rangers division of the Department of Public Safety on request of the division.

(c) On the filing of an unrestricted report alleging an offense under Section 22.012, Penal Code, the coordinator shall refer the unrestricted report to the appropriate local law enforcement agency for investigation.

(d) The Texas Rangers division of the Department of Public Safety shall assign an officer of the Texas Rangers to investigate reports referred to the division under this section. If the investigation demonstrates probable cause that an offense under Section 22.011 or 22.021, Penal Code, was committed by a person subject to this chapter, the investigator shall refer the matter to the appropriate local district attorney, criminal district attorney, or county attorney with criminal jurisdiction.

Government Code Section 432.175. PROTECTIVE ORDER.

In accordance with Article 7B.001(a-1), Code of Criminal Procedure, and with the consent of the person who is the victim of an offense under Section 22.011, 22.012, or 22.021, Penal Code, alleged to have been committed by a person subject to this chapter, the coordinator may file an application for a protective order under Subchapter A, Chapter 7B, Code of Criminal Procedure, on behalf of the victim.

Government Code Section 432.176. REPORT TO LEGISLATURE; LEGISLATIVE OVERSIGHT.

(a) The adjutant general or coordinator shall annually submit a report on the activities under the program and the activities of the department relating to sexual offense prevention and response to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives; and

(4) the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over the department.

(b) Using state data collected by the coordinator, the report must include for the preceding state fiscal year:

(1) the policies and procedures implemented by the coordinator and adjutant general in response to incidents of sexual assault and indecent assault;

(2) an assessment of the implementation and effectiveness of the program and the policies and procedures on the prevention and oversight of and the state's response to reports of sexual assault and indecent assault within the department;

(3) an analysis of the number of incidents of sexual assault and indecent assault involving members of the Texas military forces; and

(4) deficiencies in the department's training of the coordinator.

(c) Information provided in the report required under Subsection (b)(3) for restricted cases is limited to aggregated statistical data to protect victim privacy and for unrestricted cases is limited to aggregated statistical data that at a minimum includes:

(1) statistics relating to the types of offenses investigated under this subchapter;

(2) statistics relating to victims and accused persons;

(3) the status of investigations under this subchapter and prosecutions under this chapter; and

(4) the status of administrative actions taken by the department against members of the Texas military forces who are on state active duty.

Code of Criminal Procedure Article 7B.001. APPLICATION FOR PROTECTIVE ORDER.

(a-1) In addition to the persons having standing to file the application under Subsection (a), the state sexual offense response coordinator described by Subchapter J-1, Chapter 432, Government Code, with the consent of a person who is the victim of an offense under Section 22.011, 22.012, or 22.021, Penal Code, alleged to have been committed by a person subject to Chapter 432, Government Code, may file an application for a protective order under this subchapter on behalf of the victim.

Code of Criminal Procedure Article 7B.002. TEMPORARY EX PARTE ORDER.

(a) 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 issue a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

(b) For purposes of this article, a military protective order issued to a person because the person was a reported victim of an offense under Section 22.011, 22.012, or 22.021, Penal Code, constitutes sufficient information for a court to find there is a clear and present danger of sexual assault or abuse or other harm to the applicant.

Commentary by: Kaci Singer
Source: SB 623
Effective Date: September 1, 2021
Applicability: The Texas Military Department is required to implement provisions of the Act only if the legislature appropriates money specifically for the purposes. If it does not do so, the Texas Military Department may, but is not required to, implement provisions of the Act using other available appropriations.

Summary of Changes: These changes are designed to support victims of sexual assault in the Texas Military Forces. It establishes a Sexual Assault Response Center outside of the chain of command to receive reports of sexual assault and to provide victim advocacy services. A Texas Ranger under DPS is designated as an independent criminal investigator for allegations of sexual assault in the Texas Military Forces. Military protective orders are sufficient grounds to grant a civilian ex parte protective order for victims of military sexual assault. Victims have certain notifications of rights and resources. An annual report to the legislature is required.

Topic: Recommendations from Human Trafficking Prevention Task Force

Code of Criminal Procedure Article 42A.453. CHILD SAFETY ZONE.

(a) In this article, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code, and "general residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(c) If a judge grants community supervision to a defendant described by Subsection (b) and the judge determines that a child as defined by Section 22.011(c), Penal Code, was the victim of the offense, the judge shall establish a child safety zone applicable to the defendant by requiring as a condition of community supervision that the defendant:

(1) not:

(A) supervise or participate in any program that:

(i) includes as participants or recipients persons who are 17 years of age or younger; and

(ii) regularly provides athletic, civic, or cultural activities; or

(B) go in, on, or within 1,000 feet of a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, [~~or~~] video arcade facility, or general

residential operation operating as a residential treatment center; and

(2) attend psychological counseling sessions for sex offenders with an individual or organization that provides sex offender treatment or counseling as specified or approved by the judge or the defendant's supervision officer.

Code of Criminal Procedure Article 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 43.021 (Solicitation of Prostitution) [~~43.02 (Prostitution)~~], Penal Code, if the offense is punishable as a felony of the second degree [~~under Subsection (c-1)(2) 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.

Government Code Section 301.0221. USE OF PSEUDONYM BY VICTIMS OF HUMAN TRAFFICKING.

(a) Each legislative committee shall allow a witness who is the victim of an offense under Section 20A.02 or 20A.03, Penal Code, to give testimony to the committee relating to the witness's experience as a victim of trafficking of persons using a pseudonym instead of the witness's name.

(b) The name of a witness who uses a pseudonym authorized by Subsection (a) is confidential and may not be included in any public records of the committee.

Health and Safety Code Section 481.134. DRUG-FREE ZONES.

(a)(8) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(b) An offense otherwise punishable as a state jail felony under Section 481.112, 481.1121, 481.113, 481.114, or 481.120 is punishable as a felony of the third degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning, the premises of a public or private youth center, or a playground; [~~or~~]

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground; [~~or~~]

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(d) An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; [~~or~~]

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; [~~or~~]

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; [~~or~~]

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

Human Resources Code Section 42.002. DEFINITIONS.

(25) "Grounds" means, with regard to property, the real property, whether fenced or unfenced, of the parcel of land on which is located any appurtenant building, structure, or other improvement, including a public or private driveway, street, sidewalk or walkway, parking lot, and parking garage on the property.

Human Resources Code Section 42.042. RULES AND STANDARDS.

(e) The executive commissioner shall promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility or registered family home;

(2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities and registered family homes;

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs;

(7) prevent the breakdown of foster care and adoptive placement; [~~and~~]

(8) ensure that a child-care facility or registered family home:

(A) follows the directions of a child's physician or other health care provider in providing specialized medical assistance required by the child; and

(B) maintains for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home; and

(9) ensure that a child's health, safety, and welfare are adequately protected on the grounds of a child-care facility or registered family home.

(g) In promulgating minimum standards the executive commissioner may recognize and treat differently the types of services provided by and the grounds appurtenant to the following:

(1) listed family homes;

(2) registered family homes;

(3) child-care facilities, including general residential operations, cottage home operations, specialized child-care homes, group day-care homes, and day-care centers;

(4) child-placing agencies;

(5) agency foster homes;

(6) continuum-of-care residential operations;

(7) before-school or after-school programs; and

(8) school-age programs.

(g-2) The executive commissioner by rule shall adopt minimum standards that apply to general residential operations that provide comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code. In adopting the minimum standards under this subsection, the executive commissioner shall consider:

(1) the special circumstances, [~~and~~] needs, and precautions required of victims of trafficking of persons; [~~and~~]

(2) the role of the general residential operations in assisting, [~~and~~] supporting, and protecting victims of trafficking of persons; and

(3) the vulnerability of victims of trafficking of persons on the grounds of a general residential operation operating as a residential treatment center.

Human Resources Code Section 42.068. REQUIRED POSTING OF NO TRESPASSING NOTICE; CRIMINAL PENALTY.

(a) Each general residential operation operating as a residential treatment center shall post "No Trespassing" notices on the grounds of the general residential operation in the following locations:

(1) parallel to and along the exterior boundaries of the general residential operation's grounds;

(2) at each roadway or other way of access to the grounds;

(3) for grounds not fenced, at least every five hundred feet along the exterior boundaries of the grounds;

(4) at each entrance to the grounds; and

(5) at conspicuous places reasonably likely to be viewed by intruders.

(b) Each "No Trespassing" notice posted on the grounds of a general residential operation operating as a residential treatment center must:

(1) state that entry to the property is forbidden;

(2) include a description of the provisions of Section 30.05, Penal Code, including the penalties for violating Section 30.05, Penal Code;

(3) include the name and address of the person under whose authority the notice is posted;

(4) be written in English and Spanish; and

(5) be at least 8-1/2 by 11 inches in size.

(c) The executive commissioner by rule shall determine and prescribe the requirements regarding the placement, installation, design, size, wording, and maintenance procedures for the "No Trespassing" notices.

(d) The commission shall provide without charge to each general residential operation operating as a residential treatment center the number of "No Trespassing" notices required to comply with this section and rules adopted under this section.

(e) A person who operates a general residential operation operating as a residential treatment center commits an offense if the commission provides "No Trespassing" notices to the facility and the person fails to display the "No Trespassing" notices on the operation's grounds as required by this section before the end of the 30th business day after the date the operation receives the notices. An offense under this subsection is a Class C misdemeanor.

Penal Code Section 15.031. CRIMINAL SOLICITATION OF A MINOR.

(b) A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, 43.02, 43.021, 43.05(a)(2), or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

Penal Code Section 20A.01. DEFINITIONS.

(1-a) "Coercion" as defined by Section 1.07 includes:

(A) destroying, concealing, confiscating, or withholding from a trafficked person, or threatening to destroy, conceal, confiscate, or withhold from a trafficked person, the person's actual or purported:

(i) government records; or

(ii) identifying information or documents;

(B) 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 or resist engaging in any conduct, including performing or providing labor or services; or

(C) 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 or resist engaging in any conduct, including performing or providing labor or services.

(2-a) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2-b) "School" means a public or private primary or secondary school.

Penal Code Section 20A.02. TRAFFICKING OF PERSONS.

(a) A person commits an offense if the person knowingly:

(1) traffics another person with the intent that the trafficked person engage in forced labor or services;

(2) receives a benefit from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;

(3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:

(A) Section 43.02 (Prostitution);

(B) Section 43.03 (Promotion of Prostitution);

(B-1) Section 43.031 (Online Promotion of Prostitution);

(C) Section 43.04 (Aggravated Promotion of Prostitution);

(C-1) Section 43.041 (Aggravated Online Promotion of Prostitution); or

(D) Section 43.05 (Compelling Prostitution);

(4) receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);

(5) traffics a child with the intent that the trafficked child engage in forced labor or services;

(6) receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;

(7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

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

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(E-1) Section 43.021 (Solicitation of Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(F-1) Section 43.031 (Online Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

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

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

[~~(a-1) For purposes of Subsection (a)(3), "coercion" as defined by Section 1.07 includes:~~

~~(1) destroying, concealing, confiscating, or withholding from a trafficked person, or threatening to destroy, conceal, confiscate, or withhold from a trafficked person, the person's actual or purported:~~

~~(A) government records; or~~

~~(B) 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.~~]

(b) Except as otherwise provided by this subsection and Subsection (b-1), an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense;

(2) the commission of the offense results in the death of the person who is trafficked; [~~or~~]

(3) the commission of the offense results in the death of an unborn child of the person who is trafficked; or

(4) the actor recruited, enticed, or obtained the victim of the offense from a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, the homeless, or persons subjected to human trafficking, domestic violence, or sexual assault.

(b-1) An offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of a school; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League was taking place.

Penal Code Section 25.08. SALE OR PURCHASE OF A CHILD.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 20A.02, 43.021 [~~43.02~~], 43.05, or 43.25.

Penal Code Section 25.081. UNREGULATED CUSTODY TRANSFER OF ADOPTED CHILD.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 20A.02, 43.021 [~~43.02~~], 43.05, 43.25, 43.251, or 43.26.

Penal Code Section 30.05. CRIMINAL TRESPASS.

(a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, a general residential operation operating as a residential treatment center, or an aircraft or other vehicle, without effective consent and the person:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b)(13) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(d) An offense under this section is:

(1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);

(2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is committed:

(A) on agricultural land and within 100 feet of the boundary of the land; or

(B) on residential land and within 100 feet of a protected freshwater area; and

(3) a Class A misdemeanor if:

(A) the offense is committed:

(i) in a habitation or a shelter center;

(ii) on a Superfund site; or

(iii) on or in a critical infrastructure facility;

(B) the offense is committed on or in property of an institution of higher education and it is shown on the trial of the offense that the person has previously been convicted of:

(i) an offense under this section relating to entering or remaining on or in property of an institution of higher education; or

(ii) an offense under Section 51.204(b)(1), Education Code, relating to trespassing on the grounds of an institution of higher education; [~~or~~]

(C) the person carries a deadly weapon during the commission of the offense; or

(D) the offense is committed on the property of or within a general residential operation operating as a residential treatment center.

Penal Code Section 33.021. ONLINE SOLICITATION OF A MINOR.

(f-1) The punishment for an offense under this section is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor committed the offense during regular public or private primary or secondary school hours; and

(2) the actor knew or reasonably should have known that the minor was enrolled in a public or private primary or secondary school at the time of the offense.

Penal Code Section 43.01. DEFINITIONS.

(1-f) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2-a) "School" means a public or private primary or secondary school.

(6) "Solicitation of prostitution" means the offense defined in Section 43.021.

Penal Code Section 43.02. PROSTITUTION.

(c-2) The punishment prescribed for an offense under Subsection (b) is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of a school; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League was taking place.

Penal Code Section 43.021. SOLICITATION OF PROSTITUTION.

(Sections 43.02(b) and (c-1), Penal Code, are transferred to Section 43.021, Penal Code, as added by this Act, redesignated as Sections 43.021(a) and (b), Penal Code, respectively, and amended to read as follows and (c) is added.)

(a) [~~(b)~~] A person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another.

(b) [~~(c-1)~~] An offense under Subsection (a) [~~(b)~~] is a state jail felony [~~Class A misdemeanor~~], except that the offense is:

(1) a [~~state jail~~] felony of the third degree if the actor has previously been convicted of an offense under Subsection (a) or under Section 43.02(b), as that law existed before September 1, 2021 [~~(b)~~]; or

(2) 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 being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

(c) 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 that subchapter. For purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is considered to have been previously convicted of an offense under this section or under Section 43.02(b), as that law existed before September 1, 2021, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

Penal Code Section 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 or solicitation of prostitution.

Penal Code Section 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 or solicitation of prostitution.

Penal Code Section 71.028. GANG-FREE ZONES.

(a) In this section:

(1) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Institution of higher education," "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(3) [~~(2)~~] "Shopping mall" means an enclosed public walkway or hall area that connects retail, service, or professional establishments.

(c) Except as provided by Subsection (d), the punishment prescribed for an offense described by Subsection (b) is increased to the punishment prescribed for the next highest category of offense if the actor is 17 years of age or older and it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense at a location that was:

(1) in, on, or within 1,000 feet of any:

(A) real property that is owned, rented, or leased by a school or school board;

(B) premises owned, rented, or leased by an institution of higher education;

(C) premises of a public or private youth center; [~~or~~]

(D) playground; or

(E) general residential operation operating as a residential treatment center;

(2) in, on, or within 300 feet of any:

(A) shopping mall;

(B) movie theater;

(C) premises of a public swimming pool; or

(D) premises of a video arcade facility; or

(3) on a school bus.

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

(b) Conduct indicating a need for supervision is:

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

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

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

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

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

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

(5) notwithstanding Subsection (a)(1), conduct described by Section 43.02 or 43.021 [~~43.02(a) or (b)~~], Penal Code; or

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

Family Code Section 261.001. DEFINITIONS.

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of

substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;
(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, solicitation of prostitution under Section 43.021 [~~43.02(b)~~], Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;
(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;
(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;
(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or
(M) forcing or coercing a child to enter into a marriage.

Government Code Section 71.0353. TRAFFICKING OF PERSONS INFORMATION.
As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System, a district court or county court at law shall report the number of cases filed for the following offenses:
(1) trafficking of persons under Section 20A.02, Penal Code;
(2) prostitution under Section 43.02, Penal Code;
(3) solicitation of prostitution under Section 43.021, Penal Code; and
(4) [~~(3)~~] compelling prostitution under Section 43.05, Penal Code.

Education Code Section 37.086. REQUIRED POSTING OF WARNING SIGNS OF INCREASED TRAFFICKING PENALTIES.
(a) In this section:
(1) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.
(2) "School" means a public or private primary or secondary school.
(b) Each school shall post warning signs of the increased penalties for trafficking of persons under Section 20A.02(b-1)(2), Penal Code, at the following locations:
(1) parallel to and along the exterior boundaries of the school's premises;
(2) at each roadway or other way of access to the premises;
(3) for premises not fenced, at least every five hundred feet along the exterior boundaries of the premises;
(4) at each entrance to the premises; and

(5) at conspicuous places reasonably likely to be viewed by all persons entering the premises.

(c) The agency, in consultation with the human trafficking prevention task force created under Section 402.035, Government Code, shall adopt rules regarding the placement, installation, design, size, wording, and maintenance procedures for the warning signs required under this section. The rules must require that each warning sign:

(1) include a description of the provisions of Section 20A.02(b-1), Penal Code, including the penalties for violating that section;

(2) be written in English and Spanish; and

(3) be at least 8-1/2 by 11 inches in size.

(d) The agency shall provide each school without charge the number of warning signs required to comply with this section and rules adopted under this section. If the agency is unable to provide each school with the number of signs necessary to comply with Subsection (b), the agency may:

(1) provide to a school fewer signs than the number necessary to comply with that section; and

(2) prioritize distribution of signs to schools based on reports of criminal activity in the areas near that school.

Commentary by: Kaci Singer
Source: HB 1540
Effective Date: September 1, 2021
Applicability: Applies to conduct occurring or causes of action accruing or filed on or after the effective date.
Summary of Changes: Only portions of the bill are included. The bill is the recommendations from the Texas Human Trafficking Prevention Task Force. Solicitation of Prostitution is now separated from Prostitution in newly created Section 43.021, Penal Code. Prostitution remains a Class B misdemeanor for the first offense, a Class A misdemeanor for the second or third offense, and a state jail felony for the fourth and subsequent. However, the punishment is increased to the next highest category if the actor committed the offense in a location that was on or within 1,000 feet of the premises of a school or place where an official school or UIL function was taking place. A first offense of solicitation of prostitution is now a state jail felony rather than a Class A misdemeanor. A second or subsequent offense is now a third degree felony rather than a state jail felony. Solicitation of a person younger than 18, represented to be younger than 18, or believed to be younger than 18 remains a second degree felony. The definition of Conduct Indicating a Need for Supervision was modified to include all of Sections 43.02 and 43.021 as opposed to only the lowest level of each of those offenses, like it used to. That means there are felonies that are CINS. Because these are not delinquent conduct, they do not get reported to JJIS nor can they be the basis for a TJJD commitment.

General residential operations, as defined in Human Resources Code Chapter 42, are now drug free zones with increased punishments when offenses are committed by unauthorized persons who are 18 or older who commit the offense in, on, or within 1000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center. They are also child-safety zones and gang-free zones. The executive commissioner of HHSC is required to create standards for licensed child-care facilities and registered family homes. In doing so, the executive commissioner must consider certain things, such as the needs of victims of trafficking.

A new class A misdemeanor of criminal trespass is created for a person who enters or remains on or in a general residential operation operating as a residential treatment center after receiving notice. General residential operations operating as residential treatment centers must post no trespassing notices that meet certain criteria.

Coercion is defined for the purposes of trafficking of persons. Trafficking of persons is now a first degree felony if it meets certain criteria, such as the actor recruiting, enticing, or obtaining the victim from a shelter or facility operating as a residential treatment center that serves youth who have run away, children in foster care, people experiencing homelessness, or persons who have been trafficked, subjected to domestic violence, or sexually assaulted.

Victims of human trafficking are now allowed to provide testimony to a legislative committee using a pseudonym.

Topic: Use of Forfeited Property Funds to Provide Services to Trafficking Victims

Code of Criminal Procedure Article 59.06. DISPOSITION OF FORFEITED PROPERTY.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(u) As a specific exception to Subsection (c) that the funds described by that subsection be used only for the official purposes of the attorney representing the state or for law enforcement purposes, to cover the costs of a contract with a municipal or county program to provide services to domestic victims of trafficking, the attorney representing the state or the head of a law enforcement agency, as applicable, may use any portion of the gross amount credited to the attorney's or agency's special fund under Subsection (c) from the forfeiture of contraband that:

(1) is used in the commission of, or used to facilitate or intended to be used to facilitate the commission of, an offense under Chapter 20A, Penal Code; or

(2) consists of proceeds gained from the commission of, or property acquired with proceeds gained from the commission of, an offense under Chapter 20A, Penal Code.

Commentary by: Kaci Singer
Source: HB 402
Effective Date: September 1, 2021
Applicability: Applies to the disposition or use, on or after the effective date, of proceeds or property received by a law enforcement agency or attorney representing the state under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the proceeds or property occurred before, on, or after the effective the date.
Summary of Changes: This change allows for funds received through criminal asset forfeiture from those found guilty of trafficking offenses to be used to provide services to victims of human trafficking.

Topic: Trafficking of Students

Education Code Section 37.086. REQUIRED POSTING OF WARNING SIGNS OF INCREASED TRAFFICKING PENALTIES.

(a) In this section:

(1) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2) "School" means a public or private primary or secondary school.

(b) Each school shall post warning signs of the increased penalties for trafficking of persons under Section 20A.02(b-1)(2), Penal Code, at the following locations:

(1) parallel to and along the exterior boundaries of the school's premises;

(2) at each roadway or other way of access to the premises;

(3) for premises not fenced, at least every five hundred feet along the exterior boundaries of the premises;

(4) at each entrance to the premises; and

(5) at conspicuous places reasonably likely to be viewed by all persons entering the premises.

(c) The agency, in consultation with the human trafficking prevention task force created under Section 402.035, Government Code, shall adopt rules regarding the placement, installation, design, size, wording, and maintenance procedures for the warning signs required under this section. The rules must require that each warning sign:

(1) include a description of the provisions of Section 20A.02(b-1), Penal Code, including the penalties for violating that section;

(2) be written in English and Spanish; and

(3) be at least 8-1/2 by 11 inches in size.

(d) The agency shall provide each school without charge the number of warning signs required to comply with this section and rules adopted under this section. If the agency is unable to provide each school with the number of signs necessary to comply with Subsection (b), the agency may:

(1) provide to a school fewer signs than the number necessary to comply with that section; and

(2) prioritize distribution of signs to schools based on reports of criminal activity in the areas near that school.

Education Code Section 1001.1021. HUMAN TRAFFICKING PREVENTION INFORMATION.

(a) The commission by rule shall require that information relating to human trafficking prevention be included in the curriculum of any driver education course or driving safety course.

(b) In developing rules under this section, the commission shall consult with the human trafficking prevention coordinating council established under Section 402.034, Government Code.

(c) Not later than May 1, 2022, the Texas Commission of Licensing and Regulation shall adopt the rules required by Section 1001.1021, Education Code, as added by this section.

(d) Each driver education course or driving safety course held on or after September 1, 2022, must include in the course curriculum the information required by Section 1001.1021, Education Code, as added by this section.

Government Code Section 402.0351. REQUIRED POSTING OF HUMAN TRAFFICKING SIGNS BY [~~AT~~] CERTAIN ENTITIES; CIVIL PENALTY [~~TRANSPORTATION HUBS~~].

(a) In this section:

(1) "Cosmetology facility" means a person who holds a license to operate a facility or school under Chapter 1602, Occupations Code.

(2) "Council" means the human trafficking prevention coordinating council established under Section 402.034.

(3) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(4) "Massage establishment" and "massage school" have the meanings assigned by Section 455.001, Occupations Code.

(5) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(6) "Tattoo studio" has the meaning assigned by Section 146.001, Health and Safety Code.

(7) "Transportation[~~, "transportation~~] hub" means a bus, bus stop, train, train station, rest area, gas station with adjacent convenience store, or airport.

(a-1) Except as provided by Subsection (a-3), a person who operates any of the following entities shall post at the entity the sign prescribed under Subsection (b), or, if applicable, a similar sign or notice as prescribed by other state law:

(1) an entity permitted or licensed under Chapter 25, 26, 28, 32, 69, or 71, Alcoholic Beverage Code, other than an entity holding a food and beverage certificate;

(2) a cosmetology facility;

(3) a hospital;

(4) a massage establishment;

(5) a massage school;

(6) a sexually oriented business;

(7) a tattoo studio; or

(8) a transportation hub.

(a-2) The Parks and Wildlife Department shall post the sign prescribed under Subsection (b), or a substantially similar sign, in the manner prescribed by Subsection (d) at each state park and other recreational site under the department's jurisdiction.

(a-3) Notwithstanding any other law, a state agency that enforces another state law that

requires a person described by Subsection (a-1) to post a sign or notice relating to human trafficking may by rule authorize the person to use the sign prescribed by the attorney general under Subsection (b) in lieu of the sign or notice required by the other law.

(b) The attorney general by rule shall prescribe the design and content of a sign required to be posted under this section. The sign must:

(1) contain information regarding services and assistance available to victims of human trafficking;

(2) [~~to be displayed at transportation hubs. The sign must~~] be in [~~both~~] English, [~~and~~] Spanish, and any other language determined appropriate by the attorney general in consultation with the council; and

(3) include:

(A) a toll-free [~~(1) the~~] telephone number and Internet website for accessing human trafficking resources;

(B) the contact information for reporting suspicious activity to the Department of Public Safety [~~of the National Human Trafficking Resource Center~~]; and

(C) [~~(2)~~] the key indicators that a person is a victim of human trafficking.

(c) The attorney general shall develop the sign that complies with the requirements of Subsection (b) and make the sign available on the attorney general's Internet website to persons [~~by rule shall prescribe the transportation hubs that are~~] required to post a sign under this section and to the public [~~described by Subsection (b)~~].

(d) [~~A person who operates a transportation hub that is required to post a sign under Subsection (c) shall post a sign described by Subsection (b) at the transportation hub.~~] The attorney general [~~:(1)~~] by rule shall prescribe the best practices for the manner in which the sign must be displayed [~~at the transportation hub~~] and any exceptions to the sign posting requirement. The rules:

(1) must require that at a minimum the sign be posted in a conspicuous place that is either:

(A) near the public entrance of the entity; or

(B) in clear view of the public and employees and near the location similar notices are customarily posted [~~under this section~~]; and

(2) may require that the sign be a certain size and that the notice be displayed in a certain font and type size [~~shall enforce this section~~].

(e) In adopting the rules under this section [~~Subsection (b)~~], the attorney general shall consult with the council [~~Texas Department of Transportation~~].

(f) If the attorney general becomes aware that a person is in violation or may be in violation of a law enforced by another state agency that requires the posting of a sign or notice relating to human trafficking, the attorney general may notify the appropriate state agency of the violation or potential violation.

(g) The attorney general shall issue a warning to a person described by Subsection (a-1) for a first violation of a rule adopted under this section. After receiving a warning for the first violation, a person who violates a rule adopted under this section is subject to a civil penalty in the amount of $200 for each subsequent violation. Each day a violation continues is a separate violation.

Penal Code Section 20A.01. DEFINITIONS.

(2-a) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2-b) "School" means a public or private primary or secondary school.

Penal Code Section 20A.02. TRAFFICKING OF PERSONS.

(b) Except as otherwise provided by this subsection and Subsection (b-1), an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense;

(2) the commission of the offense results in the death of the person who is trafficked; or

(3) the commission of the offense results in the death of an unborn child of the person who is trafficked.

(b-1) An offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense

that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of a school; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League was taking place.

Penal Code Section 33.021. ONLINE SOLICITATION OF A MINOR.

(f-1) The punishment for an offense under this section is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor committed the offense during regular public or private primary or secondary school hours; and

(2) the actor knew or reasonably should have known that the minor was enrolled in a public or private primary or secondary school at the time of the offense.

Penal Code Section 43.01. DEFINITIONS.

(1-f) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2-a) "School" means a public or private primary or secondary school.

Penal Code Section 43.02. PROSTITUTION.

(c-2) The punishment prescribed for an offense under Subsection (b) is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of a school; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League was taking place.

Commentary by: Kaci Singer
Source: SB 1831
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: This bill addresses human trafficking among students. It creates a no-trafficking zone around schools and increases the penalties for prostitution under what was 43.02(b) (solicitation of prostitution), which no longer exists, if the conduct occurs on or within 1000 feet of the premises of a school or where a school function or UIL event is taking place. Because subsection (b) no longer exists, it would seem this section cannot be given effect. It creates a first degree felony offense for trafficking on or within 100 feet of the premises of a school or where a school function or UIL event is taking place. It increases the penalty of online solicitation of a minor if it occurs during the school day and the actor knew or reasonably should have known the minor was enrolled in school at the time of the offense. Schools are required to post warning signs of the increased trafficking penalties under Section 20A.02, Penal Code. Information about trafficking prevention is to be included in driver education and driver safety courses.

Topic: Sexually-Oriented Business and Minors

Alcoholic Beverage Code Section 106.17. PRESENCE OF CERTAIN MINORS ON PERMITTED OR LICENSED PREMISES OPERATING AS SEXUALLY ORIENTED BUSINESS.

(a) An individual younger than 18 years of age may not be on premises covered by a permit or license issued under this code if a sexually oriented business, as defined by Section 243.002, Local Government Code, operates on the premises.

(b) The holder of a permit or license covering a premises described by Subsection (a) may not knowingly or recklessly allow an individual younger than 18 years of age to be on the premises.

(c) Notwithstanding any other provision of this code, if it is found, after notice and hearing, that a permittee or licensee has violated Subsection (b) the commission or administrator shall:

(1) suspend the permit or license for 30 days for the first violation;
(2) suspend the permit or license for 60 days for the second violation; and
(3) cancel the permit or license for the third violation.

Business & Commerce Code
Section 102.0031. PROHIBITION ON CERTAIN ACTIVITIES BY BUSINESS IN RELATION TO A CHILD.
A sexually oriented business may not allow an individual younger than 18 years of age to enter the premises of the business.

Business & Commerce Code Section 102.004. INJUNCTION OR OTHER RELIEF.
(a) The attorney general or appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a person who violates or threatens to violate Section 102.002, [~~or~~] 102.003, or 102.0031.

Business & Commerce Code Section 102.005. CRIMINAL PENALTIES.
(b) A sexually oriented business commits an offense if the business violates Section 102.003 or 102.0031.

Penal Code Section 43.251. EMPLOYMENT HARMFUL TO CHILDREN.
(a)(1) "Child" means a person younger than 21 [~~18~~] years of age.

Commentary by: Kaci Singer
Source: SB 315
Effective Date: May 24, 2021
Applicability: Applies to offenses committed on or after the effective date.
Summary of Changes: This change in law creates an offense for a sexually oriented business that allows individuals younger than 18 to enter the premises. It also changes the definition of child for the purposes of employment harmful to children from 18 to 21. This includes any sexually-oriented commercial activity and any place of business permitting, requesting, or requiring a child to work nude or topless. This bill is included in the newsletter not because it creates a juvenile offense but because it does not. This is an offense for the business, not for the child involved.

Labor Code Section 51.016. SEXUALLY ORIENTED BUSINESS.
(a) In this section:
(1) "E-verify program" has the meaning assigned by Section 673.001, Government Code.
(2) "Sexually[~~, "sexually~~] oriented business" has the meaning assigned by Section 243.002, Local Government Code.
(b) A sexually oriented business may not employ or enter into a contract, other than a contract described by Subsection (g), for the performance of work or the provision of a service with an individual younger than 21 [~~18~~] years of age.
(c) A sexually oriented business shall:
(1) maintain at the business a record that contains a copy of a valid proof of identification of each employee and [~~or~~] independent contractor working at the premises of the business; and
(2) register and participate in the E-verify program to verify information of all employees and independent contractors.
(d) A proof of identification satisfies the requirements of Subsection (c)(1) [~~(c)~~] if the identification:
(1) contains a physical description and photograph consistent with the person's appearance;
(2) contains the date of birth of the person; and
(3) was issued by a government agency.
(e) The form of identification under Subsection (c)(1) [~~(c)~~] may include:
(1) a driver's license issued by this state or another state;
(2) a passport; or
(3) an identification card issued by this or another state or the federal government.
(h) The commission, the attorney general, or a [~~local~~] law enforcement agency may inspect a record maintained under this section and request proof of E-verify program information verification if there is good reason to believe that an individual younger than 21 [~~18~~] years of age is employed or has been employed by, or has entered into a contract, other than a contract described by Subsection (g), for the performance

of work or the provision of a service with, the sexually oriented business within the five [~~two~~] years preceding the date of the inspection.

(i) A person commits an offense if the person:

(1) fails to maintain a record as required by this section; [~~or~~]

(2) knowingly or intentionally hinders an inspection authorized under Subsection (h); or

(3) violates Subsection (b).

(j) A person commits an offense if the person fails to register and participate in the E-verify program as required by Subsection (c)(2).

Labor Code Section 51.031. OFFENSE; PENALTY.

(b) An offense under Section 51.014(d), [~~or Section~~] 51.0145, or 51.016(i)(3) is a Class A misdemeanor.

Alcoholic Beverage Code Section 106.17. PRESENCE OR EMPLOYMENT OF CERTAIN PERSONS AT PERMITTED OR LICENSED PREMISES OPERATING AS SEXUALLY ORIENTED BUSINESS.

(a) An individual younger than 18 years of age may not be on premises covered by a permit or license issued under this code if a sexually oriented business, as defined by Section 243.002, Local Government Code, operates on the premises.

(b) The holder of a permit or license covering a premises described by Subsection (a) may not:

(1) knowingly or recklessly allow an individual younger than 18 years of age to be on the premises; or

(2) enter into a contract, other than a contract described by Section 51.016(g), Labor Code, with an individual younger than 21 years of age for the performance of work or the provision of a service on the premises.

(c) Notwithstanding any other provision of this code, if it is found, after notice and hearing, that a permittee or licensee has violated Subsection (b) the commission or administrator shall:

(1) suspend the permit or license for 30 days for the first violation;

(2) suspend the permit or license for 60 days for the second violation; and

(3) cancel the permit or license for the third violation.

Business & Commerce Code Section 102.0031. PROHIBITION ON CERTAIN ACTIVITIES BY BUSINESS IN RELATION TO A CHILD.

A sexually oriented business may not allow an individual younger than 18 years of age to enter the premises of the business.

Business & Commerce Code Section 102.004. INJUNCTION OR OTHER RELIEF.

(a) The attorney general or appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a person who violates or threatens to violate Section 102.002, [~~or~~] 102.003, or 102.0031.

Business & Commerce Code Section 102.005. CRIMINAL PENALTIES.

(b) A sexually oriented business commits an offense if the business violates Section 102.003 or 102.0031.

Civil Practice and Remedies Code Section 125.0015. COMMON NUISANCE.

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

(1) discharge of a firearm in a public place as prohibited by the Penal Code;

(2) reckless discharge of a firearm as prohibited by the Penal Code;

(3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;

(4) delivery, possession, manufacture, or use of a substance or other item in violation of Chapter 481, Health and Safety Code;

(5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) compelling prostitution as prohibited by the Penal Code;

(8) commercial manufacture, commercial distribution, or commercial exhibition of

obscene material as prohibited by the Penal Code;
(9) aggravated assault as described by Section 22.02, Penal Code;
(10) sexual assault as described by Section 22.011, Penal Code;
(11) aggravated sexual assault as described by Section 22.021, Penal Code;
(12) robbery as described by Section 29.02, Penal Code;
(13) aggravated robbery as described by Section 29.03, Penal Code;
(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;
(15) murder as described by Section 19.02, Penal Code;
(16) capital murder as described by Section 19.03, Penal Code;
(17) continuous sexual abuse of young child or children as described by Section 21.02, Penal Code;
(18) massage therapy or other massage services in violation of Chapter 455, Occupations Code;
(19) employing or entering into a contract for the performance of work or the provision of a service with an individual younger than 21 years of age for work or services performed [~~a minor~~] at a sexually oriented business as defined by Section 243.002, Local Government Code;
(20) trafficking of persons as described by Section 20A.02, Penal Code;
(21) sexual conduct or performance by a child as described by Section 43.25, Penal Code;
(22) employment harmful to a child as described by Section 43.251, Penal Code;
(23) criminal trespass as described by Section 30.05, Penal Code;
(24) disorderly conduct as described by Section 42.01, Penal Code;
(25) arson as described by Section 28.02, Penal Code;
(26) criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of $500 or more; [~~or~~]
(27) a graffiti offense in violation of Section 28.08, Penal Code; or
(28) permitting an individual younger than 18 years of age to enter the premises of a sexually oriented business as defined by Section 243.002, Local Government Code.

Penal Code Section 43.251. EMPLOYMENT HARMFUL TO CHILDREN.
(1) "Child" means a person younger than 21 [~~18~~] years of age.

Commentary by: Kaci Singer
Source: SB 766
Effective Date: September 1, 2021
Applicability: Applies to offenses committed on or after the effective date. Section 51.016 Labor Code applies only to an employee of a sexually oriented business who begins employment on or after the effective date.
Summary of Changes: This bill is very similar to SB 315, above. In addition to the changes made there, it makes changes to the Labor Code to ensure a person under 21, rather than 18, cannot work at a sexually-oriented business. It also expands the nuisance statute to include sexually-oriented businesses that allow persons under 18 on their premises or that employ persons under 21.

Government Code Section 411.177. ISSUANCE OR DENIAL OF LICENSE.
(b) Except as otherwise provided by Subsection (b-1), the [~~The~~] department shall, not later than the 60th day after the date of the receipt by the director's designee of the completed application materials:
(1) issue the license;
(2) notify the applicant in writing that the application was denied:
(A) on the grounds that the applicant failed to qualify under the criteria listed in Section 411.172;
(B) based on the affidavit of the director's designee submitted to the department under Section 411.176(c); or
(C) based on the affidavit of the qualified handgun instructor submitted to the department under Section 411.188(k); or
(3) notify the applicant in writing that the department is unable to make a determination regarding the issuance or denial of a license to the applicant within the 60-day period prescribed by this subsection and include in that notification an explanation of the reason

for the inability and an estimation of the additional period [~~amount of time~~] the department will need to make the determination.

(b-1) If the applicant submits with the completed application materials an application for a designation under Section 411.184, the department shall, without charging an additional fee, expedite the application. Not later than the 10th day after the receipt of the materials under this subsection, the department shall:

(1) issue the license with the designation; or

(2) notify the applicant in writing that the applicant is not eligible for the designation under Section 411.184 and the application for the license will be processed in the regular course of business.

(b-2) Notwithstanding Subsection (b-1), if the department determines that the applicant is eligible for the designation under Section 411.184 but is unable to quickly make a determination regarding the issuance or denial of a license to the applicant, the department shall provide written notice of that fact to the applicant and shall include in that notice an explanation of the reason for the inability and an estimation of the additional period the department will need to make the determination.

(b-3) The director shall adopt policies for expedited processing under Subsection (b-1).

(c) Failure of the department to issue or deny a license for a period of more than 30 days after the department is required to act under Subsection (b) constitutes denial, regardless of whether the applicant was eligible for expedited processing of the application under Subsection (b-1).

Government Code Section 411.179. FORM OF LICENSE.

(a) The department by rule shall adopt the form of the license. A license must include:

(1) a number assigned to the license holder by the department;

(2) a statement of the period for which the license is effective;

(3) a photograph of the license holder;

(4) the license holder's full name, date of birth, hair and eye color, height, weight, and signature;

(5) the license holder's residence address or, as provided by Subsection (d), the street address of the courthouse in which the license holder or license holder's spouse serves as a federal judge or the license holder serves as a state judge;

(6) the number of a driver's license or an identification certificate issued to the license holder by the department; [~~and~~]

(7) the designation "VETERAN" if required under Subsection (e); and

(8) any at-risk designation for which the license holder has established eligibility under Section 411.184.

Government Code Section 411.184. AT-RISK DESIGNATION.

(a) The department shall develop a procedure for persons who are at increased risk of becoming a victim of violence to:

(1) obtain a handgun license on an expedited basis, if the person is not already a license holder; and

(2) qualify for an at-risk designation on the license.

(b) A person is eligible for an at-risk designation under this section if:

(1) the person is protected under, or a member of the person's household or family is protected under:

(A) a temporary restraining order or temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(B) a temporary ex parte order issued under Chapter 83, Family Code;

(C) a protective order issued under Chapter 85, Family Code;

(D) a protective order issued under Chapter 7B, Code of Criminal Procedure; or

(E) a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(2) the person participates in the address confidentiality program under Subchapter B, Chapter 58, Code of Criminal Procedure.

(c) The director may adopt rules to accept alternative documentation not described by Subsection (b) that shows that the person is at increased risk of becoming a victim of violence.

(d) A person may receive an at-risk designation under this section if the person submits to the

department, in the form and manner provided by the department:

(1) an application for the designation;

(2) evidence of the increased risk of becoming a victim of violence, as provided by Subsection (b) or rules adopted under Subsection (c); and

(3) any other information that the department may require.

(e) A license holder may apply for the designation under this section by making an application for a duplicate license. A person who is not a license holder may apply for the designation with the person's application for an original license to carry a handgun.

(f) A person with a designation granted under this section shall annually certify that the person continues to qualify for the designation and shall submit to the department any information the department requires to verify the person's continuing eligibility. A person who no longer qualifies for the designation under this section shall immediately notify the department.

(g) If based on the information received under Subsection (f) the department determines that the person is no longer eligible for a designation under this section, the department shall notify the person and issue to the person a duplicate license without a designation.

(h) On receipt of a duplicate license without a designation under Subsection (g), the license holder shall return the license with the designation to the department.

(i) The department may not charge a fee for issuing a duplicate license with a designation under this section or for issuing a duplicate license without a designation if the person no longer qualifies for the designation. If a person applies for a designation at the same time the person applies for an original license under this subchapter, the department may charge only the licensing fee.

Commentary by: Kaci Singer
Source: HB 2675
Effective Date: September 1, 2021
Applicability: DPS must adopt rules to implement no later than December 1, 2021. Applies to applications submitted on or after January 1, 2022.

Summary of Changes: This bill creates an expedited process for a person at increased risk of becoming a victim of violence to obtain a license to carry a handgun.

Topic: Protective Orders

Family Code Section 85.005. AGREED ORDER.

(a) To facilitate settlement, the parties to a proceeding may agree in writing to [~~the terms of~~] a protective order as provided by Sections [~~Section~~] 85.021 and 85.022. An agreement under this subsection is subject to the approval of the court. The court may not approve an agreement that requires the applicant for the protective order to do or refrain from doing an act under Section 85.022.

(b) An [~~To facilitate settlement, a respondent may agree in writing to the terms of a protective order as provided by Section 85.022, subject to the approval of the court. The court may not approve an agreement that requires the applicant to do or refrain from doing an act under Section 85.022. The~~] agreed protective order is enforceable civilly or criminally, regardless of whether the court makes the findings required by Section 85.001.

Family Code Section 85.006. DEFAULT ORDER.

(a) Notwithstanding Rule 107, Texas Rules of Civil Procedure, a [~~A~~] court may render a protective order that is binding on a respondent who does not attend a hearing if:

(1) the respondent received service of the application and notice of the hearing; and

(2) proof of service was filed with the court before the hearing.

Family Code Section 85.026. WARNING OR PROTECTIVE ORDER.

(a) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS

MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"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."

"IT IS UNLAWFUL FOR ANY 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 A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."

"IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:

"(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR

"(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

"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 BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

Family Code Section 86.0011. DUTY TO ENTER INFORMATION INTO STATEWIDE LAW ENFORCEMENT INFORMATION SYSTEM.

(a) On receipt of an original or modified protective order from the clerk of the issuing court, or on receipt of information pertaining to the date of confinement or imprisonment or date of release of a person subject to the protective order, a law enforcement agency shall immediately, but not later than the third business day after the date the order or information is received, enter the information required by Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

Code of Criminal Procedure Article 7B.001. APPLICATION FOR PROTECTIVE ORDER.

(a) The following persons may file an application for a protective order under this subchapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, [~~or~~] 42.072, or 43.05, Penal Code;

(2) any adult, including a parent or guardian, who is acting on behalf of a victim described by Subdivision (1), if the victim is younger than 18 years of age or an adult ward [~~a person who is the victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code~~]; or

(3) [~~a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1); (4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or (5)~~] a prosecuting attorney acting on behalf of a person

described by Subdivision (1) or [,] (2)[, ~~(3), or (4)~~].

(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) 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 if the victim requests that the attorney representing the state not file the application. This subsection does not apply to a victim who is younger than 18 years of age or who is an adult ward.

Code of Criminal Procedure Article 7B.003. 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 7B.001(a)(1) constitutes reasonable grounds under Subsection (a).

Code of Criminal Procedure Article 7B.007. DURATION OF PROTECTIVE ORDER; RESCISSION.

(a-1) The court shall issue a protective order effective for the duration of the lives of the offender and victim if the offender is:

(1) convicted of or placed on deferred adjudication community supervision for an offense listed in Article 7B.001(a)(1); and

(2) required under Chapter 62 to register for life as a sex offender.

(b) The following persons may file at any time an application with the court to rescind the protective order:

(1) a victim of an offense listed in Article 7B.001(a)(1) who is 18 [~~17~~] years of age or older;

(2) subject to Subsection (b-1), [~~or~~] a parent or guardian acting on behalf of a victim of an offense listed in Article 7B.001(a)(1) who is younger than 18 [~~17~~] years of age or an adult ward; or

(3) a person not otherwise described by Subdivision (1) or (2) who filed the application for the protective order.

(b-1) A [~~(2) a victim of an offense listed in Article 7B.001(a)(2) or a~~] parent or guardian may not file an application to rescind the protective order under Subsection (b)(2) if the parent or guardian is the alleged offender subject to the protective order [~~acting on behalf of a victim who is younger than 18 years of age~~].

Code of Criminal Procedure Article 56A.052. ADDITIONAL RIGHTS OF VICTIMS OF SEXUAL ASSAULT, 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, 22.021, 42.072, or 43.05, Penal Code. A victim described by this subsection or a parent or guardian of the victim, if the victim is younger than 18 years of age or an adult ward, is entitled to the following rights within the criminal justice system:

(1) the right to be informed:

(A) that the victim or, if the victim is younger than 18 years of age or an adult ward, the victim's parent or guardian or another adult acting on the victim's behalf[, ~~as applicable,~~] may file an application for a protective order under Article 7B.001;

(B) of the court in which the application for a protective order may be filed; [~~and~~]

(C) that, on request of the victim or, if the victim is younger than 18 years of age or an adult ward, on request of the victim's parent or guardian or another adult acting on the victim's behalf, [~~as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct,~~] the attorney representing the state may, subject to the Texas Disciplinary Rules of Professional Conduct, file the application for a protective order on behalf of the requestor [~~victim~~]; and

(D) that, subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state generally is required to file the application for a protective order with

respect to the victim if the defendant is convicted of or placed on deferred adjudication community supervision for the offense;

(2) the right to:

(A) request that the attorney representing the state, subject to the Texas Disciplinary Rules of Professional Conduct, file an application for a protective order described by Subdivision (1); and

(B) be notified when the attorney representing the state files an application for a protective order under Article 7B.001;

(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:

(A) be given by the court the information described by Subdivision (1); and

(B) file an application for a protective order under Article 7B.001 immediately following the defendant's conviction or placement on deferred adjudication community supervision if the court has jurisdiction over the application; 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 (1).

Penal Code Section 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.

(g) An offense under this section is a Class A misdemeanor, except the offense is:

(1) subject to Subdivision (2), a state jail felony if it is shown at the trial of the offense that the defendant violated an order issued under Subchapter A, Chapter 7B [~~as a result of an application filed under Article 7A.01(a-1)~~], Code of Criminal Procedure, following the defendant's conviction of or placement on deferred adjudication community supervision for an offense, if the order was issued with respect to a victim of that offense; or

(2) a felony of the third degree if it is shown on the trial of the offense that the defendant:

(A) has previously been convicted two or more times of an offense under this section or two or more times of an offense under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; or

(B) has violated the order or condition of bond by committing an assault or the offense of stalking.

(h) For purposes of Subsection (g), a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense under this section or Section 25.072 is considered to be a conviction under this section or Section 25.072, as applicable.

Commentary by: Kaci Singer
Source: HB 39
Effective Date: September 1, 2021
Applicability: Section 85.005, Family Code, applies only to a protective order approved by the court on or after the effective date. Section 85.006, Family Code, applies only to a protective order for which the respondent receives service on or after the effective date. Sections 85.026 and 86.0011, Family Code, apply only to a protective order issued on or after the effective date. Subchapter A, Chapter 7B, Code of Criminal Procedure, applies only to a protective order for which an application is filed on or after the effective date. Article 56A.052(d), Code of Criminal Procedure, applies to a victim of criminally injurious conduct for which a judgment of conviction is entered or a grant of deferred adjudication community supervision is made on or after the effective date, regardless of whether the criminally injurious conduct occurred before, on, or after the effective date.
Summary of Changes: These changes allow all parties to a proceeding regarding a protective order that apply to a person who committed

family violence to agree in writing to a protective order for the purpose of facilitating settlement. The changes clarify that a protective order is enforceable civilly or criminally regardless of whether the court has made the required finding that family violence has occurred and is likely to occur in the future.

Under current law, only the parent or guardian of a child victim or adult ward victim of certain sexual, trafficking, or prostitution-related offenses may file for a protective order on behalf of the child or adult ward. These changes allow any adult to make such application on behalf of the child or adult ward victim.

A protective order is effective for the duration of the lives of the offender and victim if the offender is placed on deferred adjudication for an offense listed in Article 7B.001(a)(1) and required to register for life as a sex offender. Under current law, a victim who is 17 or older can apply to have a protective order rescinded. That has been changed to 18. For those younger than 19 and adult wards, a parent or guardian or other person who filed the protective order application may file for rescission. However, a parent or guardian who is the subject of a protective order may not file for rescission of the protective order.

The notice rights of a victim are expanded to include notice that the attorney representing the state is required, under certain circumstances, to file the application for protective order with respect to the victim as well as the right to be notified when the attorney has filed the application.

Upon receipt of information regarding the date of confinement or imprisonment or date of release of a person who is subject to a protective order, law enforcement must immediately, and not later than three business days after receipt of the information, enter that information in a statewide database.

Topic: License to Carry Firearm for Certain 18 to 21 Year Old Persons

Government Code Section 411.172. ELIGIBILITY.

(i) Notwithstanding Subsection (a)(2), a person who is at least 18 years of age but not yet 21 years of age is eligible for a license to carry a handgun if the person:

(1) is protected under:

(A) an active protective order issued under:

(i) Title 4, Family Code; or

(ii) Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(B) an active magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure; and

(2) meets the other eligibility requirements of Subsection (a) except for the minimum age required by federal law to purchase a handgun.

Government Code Section. 411.1735. PROTECTIVE ORDER DESIGNATION.

(a) Notwithstanding any other provision of this subchapter, a person who establishes eligibility for a license to carry a handgun under Section 411.172(i) may only hold a license under this subchapter that bears a protective order designation on the face of the license.

(b) A person described by this section must submit a copy of the applicable court order described by Section 411.172(i)(1) with the application materials described by Section 411.174. The person's application is not considered complete for purposes of this subchapter unless the application includes the documentation and materials required by this section.

(c) Notwithstanding Section 411.183, a license that bears a protective order designation under this section expires on the earlier of:

(1) the date on which the applicable court order described by Section 411.172(i)(1) is rescinded or expires; or

(2) the 22nd birthday of the license holder.

(d) A holder of a license with a protective order designation under this section who becomes 21

years of age may apply for a license under this subchapter that does not bear the designation by using the renewal procedure under Section 411.185, regardless of whether the license that bears the designation has expired or is about to expire.

(e) The director shall adopt rules establishing a process by which the department periodically verifies a license holder's eligibility for a license to carry a handgun under Section 411.172(i) if the license holder's license bears a protective order designation under this section. The rules may specify different intervals at which the department must verify the license holder's eligibility based on the court order used to satisfy the eligibility requirement described by Section 411.172(i)(1).

Government Code Section 411.179. FORM OF LICENSE.

(a) The department by rule shall adopt the form of the license. A license must include:

(1) a number assigned to the license holder by the department;

(2) a statement of the period for which the license is effective;

(3) a photograph of the license holder;

(4) the license holder's full name, date of birth, hair and eye color, height, weight, and signature;

(5) the license holder's residence address or, as provided by Subsection (d), the street address of the courthouse in which the license holder or license holder's spouse serves as a federal judge or the license holder serves as a state judge;

(6) the number of a driver's license or an identification certificate issued to the license holder by the department; [~~and~~]

(7) the designation "VETERAN" if required under Subsection (e); and

(8) if applicable, a protective order designation under Section 411.1735.

Government Code Section 411.205. REQUIREMENT TO DISPLAY LICENSE.

If a license holder is carrying a handgun on or about the license holder's person when a magistrate or a peace officer demands that the license holder display identification, the license holder shall display:

(1) both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license; and

(2) if the license holder's handgun license bears a protective order designation, a copy of the applicable court order under which the license holder is protected.

Commentary by: Kaci Singer
Source: HB 918
Effective Date: September 1, 2021
Applicability: Applies to a license to carry a handgun received on or after the effective date.
Summary of Changes: These changes create a mechanism for a person who is at least 18 but not yet 21 to obtain a license to carry a handgun if the person is the protected under certain court protective orders and meets other criteria.

Topic: Birth Certificates and Personal Identification Cards for Certain Victims and Children of Victims

Health and Safety Code Section 191.00491. BIRTH RECORD ISSUED TO VICTIMS AND CHILDREN OF VICTIMS OF DATING OR FAMILY VIOLENCE.

On request of an individual described by this section, the state registrar, a local registrar, or a county clerk shall issue, without payment of a fee, a certified copy of the individual's birth record to:

(1) a victim of dating violence as defined by Section 71.0021, Family Code;

(2) a victim of family violence as defined by Section 51.002, Human Resources Code; or

(3) a child of a victim described by Subdivision (1) or (2).

Transportation Code Section 521.1016. PERSONAL IDENTIFICATION CERTIFICATE ISSUED TO VICTIMS AND CHILDREN OF VICTIMS OF DATING OR FAMILY VIOLENCE.

(a) In this section:

(1) "Advocate" has the meaning assigned by Section 93.001, Family Code.

(2) "Victim of dating violence" means the victim of violence described by Section 71.0021, Family Code.

(3) "Victim of family violence" has the meaning assigned by Section 51.002, Human Resources Code.

(b) This section applies to the application for a personal identification certificate only for a victim of dating violence, a victim of family violence, or the child of a victim of dating or family violence.

(c) Notwithstanding Section 521.101, Section 521.1426, or any other provision of this chapter, an individual described by Subsection (b) may, in applying for a personal identification certificate:

(1) provide a copy of the individual's birth certificate as proof of the individual's identity and United States citizenship, as applicable; and

(2) if the individual does not have a residence or domicile, provide a letter certifying the individual is homeless issued by:

(A) an advocate;

(B) a licensed mental health services provider who examined and evaluated the individual; or

(C) the director of an emergency shelter or transitional housing program funded by the United States Department of Housing and Urban Development or through the Victims of Crime Act of 1984 (Title II, Pub. L. No. 98-473).

(d) The department shall exempt an individual 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.

Transportation Code Section 521.1811. WAIVER OF FEES FOR FOSTER CHILD OR YOUTH, [~~OR~~] HOMELESS CHILD OR YOUTH, OR VICTIM OR CHILD OF VICTIM OF DATING OR FAMILY VIOLENCE.

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) 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;

(4) a victim of dating violence as defined by Section 71.0021, Family Code;

(5) a victim of family violence as defined by Section 51.002, Human Resources Code; or

(6) a child of a victim described by Subdivision (4) or (5).

Transportation Code Section 521.4265. IDENTIFICATION FEE EXEMPTION ACCOUNT.

(b) For each exemption granted under Section 521.1015, 521.1016, or 521.1811, the department shall deposit to the credit of the Texas mobility fund an amount from the identification fee exemption account under Subsection (a) that is equal to the amount of the waived fee that would otherwise be deposited to the mobility fund.

(c) The department may not grant an exemption under Section 521.1015, 521.1016, or 521.1811 if money is not available in the identification fee exemption account to meet the requirements of Subsection (b).

Commentary by: Kaci Singer
Source: SB 798
Effective Date: September 1, 2021
Applicability: Applies to an application submitted on or after the effective date.
Summary of Changes: These changes provide for the issuance of a personal identification certificate or a certified copy of a birth record on request, without the payment of a fee, to victims of dating violence or family violence or to the child of such victim.

Topic: Crime Victims Compensation Fund

Code of Criminal Procedure Article 56B.107. DENIAL OR REDUCTION OF AWARD.

(a) Except as otherwise provided by this article, the [~~The~~] attorney general may deny or reduce an award otherwise payable:

(1) if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency;

(2) if, as a result of the claimant's or victim's behavior, the claimant or victim bears a share of the responsibility for the act or omission giving rise to the claim;

(3) to the extent that pecuniary loss is recouped from a collateral source; or

(4) if the claimant or victim was engaging in an activity that at the time of the criminally injurious conduct was prohibited by law, including a rule.

(c) The attorney general may not deny or reduce an award under Subsection (a)(1) based on the interactions of the claimant or victim with a law enforcement agency at the crime scene or hospital unless the attorney general finds that the claimant or victim, subsequent to the claimant's or victim's interactions at the crime scene or hospital, failed or refused to substantially cooperate with the law enforcement agency.

Commentary by: Kaci Singer
Source: SB 957
Effective Date: September 1, 2021
Applicability: Applies to compensation for conduct occurring on or after the effective date.
Summary of Changes: This change prevents the Office of the Attorney General from denying or reducing an award under the crime victims' compensation program based on the interactions of the claimant or victim with a law enforcement agency at the scene of the crime or hospital unless the attorney general finds that the claimant or victim later failed or refused to substantially cooperate with the law enforcement agency.

Legislation Affecting Government

Topic: Open Meetings and Public Information

Government Code Section 551.091. COMMISSIONERS COURTS: DELIBERATION REGARDING DISASTER OR EMERGENCY.

(a) This section applies only to the commissioners court of a county:

(1) for which the governor has issued an executive order or proclamation declaring a state of disaster or a state of emergency; and

(2) in which transportation to the meeting location is dangerous or difficult as a result of the disaster or emergency.

(b) Notwithstanding any other provision of this chapter and subject to Subsection (c), a commissioners court to which this section applies may hold an open or closed meeting, including a telephone conference call, solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response without complying with the requirements of this chapter, including the requirement to provide notice before the meeting or to first convene in an open meeting.

(c) To the extent practicable under the circumstances, the commissioners court shall provide reasonable public notice of a meeting under this section and if the meeting is an open meeting allow members of the public and the press to observe the meeting.

(d) The commissioners court:

(1) may not vote or take final action on a matter during a meeting under this section; and

(2) shall prepare and keep minutes or a recording of a meeting under this section and make the minutes or recording available to the public as soon as practicable.

(e) This section expires September 1, 2027.

Commentary by: Kaci Singer
Source: SB 1343
Effective Date: September 1, 2021
Applicability: Applies to meetings occurring on or after the effective date.
Summary of Changes: This change is designed to address commissioners courts' actions during a disaster by allowing them to hold an open or closed meeting, including a telephone conference call, solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response. They are not required to comply with the Open Meetings Act, including the requirements to provide notice before the meeting or to first convent in an open meeting. They are required, to the extent practicable, to provide reasonable public notice and, if the meeting is open, to allow members of the public and press to observe. They are not allowed to vote or take final action on a matter during a meeting under this section and they are to prepare and keep minutes or a recording and to make them available as soon as possible. The section expires September 1, 2027.

Government Code Section 552.003. DEFINITIONS.

(1-b) "Honorably retired" means, with respect to a position, an individual who:

(A) previously served but is not currently serving in the position;

(B) did not retire in lieu of any disciplinary action;

(C) was eligible to retire from the position or was ineligible to retire only as a result of an

injury received in the course of the individual's employment in the position; and (D) is eligible to receive a pension or annuity for service in the position or is ineligible to receive a pension or annuity only because the entity that employed the individual does not offer a pension or annuity to its employees.

Government Code Section 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 current or honorably retired peace officer as defined by Article 2.12, Code of Criminal Procedure, or a current or honorably retired 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;

(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;

(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) 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) a current or former federal judge or state judge, as those terms are defined by Section 1.005, Election Code, or a spouse of a current or former federal judge or state judge;

(16) a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services, regardless of whether the caseworker or investigator complies with Section 552.024 or 552.1175, or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department; [~~or~~]

(17) [~~(16)~~] a state officer elected statewide or a member of the legislature, regardless of whether the officer or member complies with Section 552.024 or 552.1175;

(18) [~~(16)~~] a current or former United States attorney or assistant United States attorney and the spouse or child of the attorney; or

(19) [~~(16)~~] a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code, regardless of whether the firefighter or volunteer firefighter or emergency medical services personnel comply with Section 552.024 or 552.1175, as applicable.

Government Code Section 552.1175. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONAL IDENTIFYING INFORMATION OF PEACE OFFICERS AND OTHER OFFICIALS PERFORMING SENSITIVE GOVERNMENTAL FUNCTIONS.

(a) This section applies only to:

(1) current or honorably retired 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) current or honorably retired 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) current or honorably retired 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, Election Code;

(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; [~~and~~]

(15) 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;

(16) [~~(15)~~] a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department; [and]

(17) [~~(15)~~] state officers elected statewide and members of the legislature; and

(18) [~~(15)~~] a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code.

Commentary by: Kaci Singer
Source: SB 841
Effective Date: June 14, 2021
Applicability: Applies to a request for information received on or after the effective date.
Summary of Changes: This change adds honorably retired peace officers to the list of individuals whose personal information is excepted from release under the Public Information Act. This includes information related to home address, home phone number, emergency contact information, and social security number or information that reveals whether the person has family members.

Government Code Section 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;

(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;

(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) 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) a current or former federal judge or state judge, as those terms are defined by Section 1.005, Election Code, or a spouse of a current or former federal judge or state judge;

(16) a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services, regardless of whether the caseworker or investigator complies with Section 552.024 or 552.1175, or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department; [~~or~~]

(17) an elected public [~~(16) a state~~] officer [~~elected statewide or a member of the legislature~~], regardless of whether the officer [~~or member~~] complies with Section 552.024 or 552.1175;

(18) [~~(16)~~] a current or former United States attorney or assistant United States attorney and the spouse or child of the attorney; or

(19) [~~(16)~~] a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code, regardless of whether the firefighter or volunteer firefighter or emergency medical services personnel comply with Section 552.024 or 552.1175, as applicable.

Government Code Section 552.1175. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONAL IDENTIFYING INFORMATION OF PEACE OFFICERS AND OTHER OFFICIALS PERFORMING SENSITIVE GOVERNMENTAL FUNCTIONS.

(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, Election Code;
(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; [~~and~~]
(15) 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;
(16) [~~(15)~~] a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department;
(17) an elected public officer; and
[~~(15) state officers elected statewide and members of the legislature~~]
(18) [~~(15)~~] a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code.

Commentary by: Kaci Singer
Source: HB 1082
Effective Date: May 19, 2021
Applicability: Applies to a request for information made on or after the effective date.
Summary of Changes: Current law allows only statewide elected officials and members of the legislature to have certain information excepted from disclosure under the Public Information Act. This change modifies that to apply to all elected officials so that local officials have the same protection. This includes information related to home address, home phone number, emergency contact information, and social security number or information that reveals whether the person has family members.

Government Code Section 552.233.*
TEMPORARY SUSPENSION OF REQUIREMENTS FOR GOVERNMENTAL BODY IMPACTED BY CATASTROPHE.
(a) In this section:
(1) "Catastrophe" means a condition or occurrence that directly 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) "Catastrophe" does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically, but the physical office of the governmental body is closed.
(3) "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 significantly impacted by a catastrophe such that the catastrophe directly causes the inability of a governmental body to comply with the requirements of this chapter; 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 governmental body may suspend the applicability of the requirements of this chapter under this subsection only once for each catastrophe. 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 (l) [~~(j)~~].

(f) A governmental body that initiates a suspension period under Subsection (d) may not initiate another suspension period related to the same catastrophe, except for a single extension period as prescribed in Subsection (e).

(g) The combined suspension period for a governmental body filing under Subsections (d) and (e) may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe.

(h) 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.

(i) [~~(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.

(j) [~~(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.

(k) [~~(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.

(l) [~~(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.

(m) Upon conclusion of any suspension period initiated pursuant to Subsections (d) or (e), the governmental body shall immediately resume compliance with all requirements of this chapter.

Government Code Section 552.2211. PRODUCTION OF PUBLIC INFORMATION WHEN ADMINISTRATIVE OFFICES CLOSED.

(a) Except as provided by Section 552.233, if a governmental body closes its physical offices, but requires staff to work, including remotely, then the governmental body shall make a good faith effort to continue responding to applications for public information, to the extent staff have access to public information responsive to an application, pursuant to this chapter while its administrative offices are closed.

(b) Failure to respond to requests in accordance with Subsection (a) may constitute a refusal to request an attorney general's decision as provided by Subchapter G or a refusal to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C as described by Section 552.321(a).

Commentary by: Kaci Singer
Source: SB 1225
Effective Date: September 1, 2021
Applicability: Applies on or after the effective date.
Summary of Changes: It used to be that wen state agencies were closed due to a catastrophe, staff was not equipped to work remotely. With COVID-19, things changed and agency staff were able to work remotely. Current law provides that the period for responding to requests for public information could be extended due to a catastrophe. This has been modified in several ways. First, catastrophe is now defined to mean a condition or occurrence that *directly* interferes with the ability of a governmental body to comply with the requirements of the Public Information Act. Second, catastrophe explicitly does not mean a period when the physical office is closed but staff are required to work remotely and are able to remotely access information that is responsive to the request. Third, the Act is now inapplicable only if the governmental body is significantly impacted by a catastrophe that directly causes the body to be unable to comply. Fourth, the body may suspend the applicability provisions only once for each catastrophe and may extend that suspension only once. This total period of suspension may not exceed 14 consecutive calendar days.

Section 552.2211 was added. It provides that, except as provided by Section 552.233, if a governmental body closes its physical location but requires staff to work, including remotely, the body must make a good faith effort to respond to requests for public information, to the extent staff have access to the information. Failure to do so may constitute a refusal to request an attorney general's opinion or refusal to supply information that the attorney general has determined is not excepted from disclosure.

*It is important to note that the bill amended Section 552.233, which is why Section 552.2211 refers to that section. However, HB 3607, a nonsubstantive cleanup bill, re-designated this particular version of 552.233 as 552.2325. No corresponding change was made to 552.2211, so a person reading it will refer to the current version of 552.233, which is not actually applicable to the statute.

Government Code Section 552.1315. EXCEPTION: CONFIDENTIALITY OF CERTAIN CRIME VICTIM RECORDS.

(a) Information is confidential and excepted from the requirements of Section 552.021 if the information identifies an individual as:

(1) a victim of:

(A) an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by Section 3.01, Penal Code, as an offense described by Paragraph (A); or

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

(b) Notwithstanding Subsection (a), information under this section may be disclosed:

(1) to any victim identified by the information, or to the parent or guardian of a victim described by Subsection (a)(2) who is identified by the information;

(2) to a law enforcement agency for investigative purposes; or

(3) in accordance with a court order requiring the disclosure.

Commentary by: Kaci Singer
Source: HB 2357
Effective Date: June 15, 2021
Applicability: Applies to a request for information received on or after the effective date.
Summary of Changes: Under current law, certain crime victim information is confidential and excepted from disclosure under the Public Information Act. This change adds that any information that identifies an individual as a victim of certain offenses is confidential and excepted from disclosure. It also provides that information that identifies any victim of a criminal offense if the victim was under 18 when the offense was committed is confidential and excepted from disclosure under the Public Information Act. Exceptions are that it is disclosable to the victim or parent/guardian, to a law enforcement agency for investigative purpose, or in accordance with a court order.

Topic: State Agency Publication of Information

Government Code Section 659.0201. GIFTS, GRANTS, AND DONATIONS FOR SALARY SUPPLEMENT; REPORTING.

(b) A state agency that accepts a gift, grant, donation, or other consideration from a person that the person designates to be used as a salary supplement for an employee of the agency shall post on the agency's Internet website [~~, in addition to the information required by Section 659.026,~~] the amount of each gift, grant, donation, or other consideration provided by the person that is designated to be used as a salary supplement for an employee of the agency. The agency may not post the name of the person.

[~~Government Code Section 659.026. INFORMATION REGARDING STAFF COMPENSATION.~~]

~~(a) In this section:~~

~~(1) "Compensation" includes an emolument provided in lieu of base salary or wages or a supplement to base salary or wages.~~

~~(2) "Executive staff" means:~~

~~(A) the director, executive director, commissioner, administrator, or other individual who is appointed by the governing body of a state agency or by another state officer to act as the chief executive officer or administrative head of the agency and who is not an appointed officer; and~~

~~(B) other management or senior level staff members of a state agency who directly report to the individual listed in Paragraph (A).~~

~~(3) "State agency" means a board, commission, department, institute, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by Section 61.003, Education Code.~~

~~(b) A state agency shall make available to the public by posting on the agency's Internet website:~~

~~(1) the number of full-time equivalent employees employed by the agency;~~
~~(2) the amount of legislative appropriations to the agency for each fiscal year of the current state fiscal biennium;~~
~~(3) the agency's methodology, including any employment market analysis, for determining the compensation of executive staff employed by the agency, along with the name and position of the person who selected the methodology;~~
~~(4) whether executive staff are eligible for a salary supplement;~~
~~(5) the market average for compensation of similar executive staff in the private and public sectors;~~
~~(6) the average compensation paid to employees employed by the agency who are not executive staff; and~~
~~(7) the percentage increase in compensation of executive staff for each fiscal year of the five preceding fiscal years and the percentage increase in legislative appropriations to the agency each fiscal year of the five preceding fiscal years.~~]

Commentary by: Kaci Singer
Source: SB 1677 (only portions of the bill are included)
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: State agencies are no longer required to post information regarding executive staff compensation on the agency's website.

Topic: Employee Leave

Government Code Section 437.202. LEAVE OF ABSENCE FOR PUBLIC OFFICERS AND EMPLOYEES.
(a-1) In addition to the leave provided under Subsection (a), a person described by Subsection (a) called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence under this subsection, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. For purposes of this subsection, "disaster" has the meaning assigned by Section 418.004.

Commentary by: Kaci Singer
Source: HB 1589
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: This change allows public officers and employees who are called to state active duty by the governor or another authority in response to a disaster is entitled to a paid leave of absence, not to exceed seven workdays in a fiscal year. The person may not be subjected to loss of time, efficiency rater, or leave.

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY DETENTION OFFICERS, CUSTODIAL OFFICERS, FIREFIGHTERS, PEACE OFFICERS, AND EMERGENCY MEDICAL TECHNICIANS

Government Code Section 607.051. DEFINITIONS.
(1) "Custodial officer" means a person who is employed by the Board of Pardons and Paroles or the Texas Department of Criminal Justice as a parole officer or caseworker or who is employed by the correctional institutions division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates or defendants of the correctional institutions division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the department.
(1-a) "Detention officer" means an individual employed by a state agency or political subdivision of the state to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution in this state.

(1-b) "Disability" means partial or total disability.

Government Code Section 607.052. APPLICABILITY.

(a) Notwithstanding any other law, this subchapter applies only to a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who:

(1) on becoming employed or during employment as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician, received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter;

(2) is employed for five or more years as a firefighter, peace officer, or emergency medical technician, except for the presumption under Section 607.0545; and

(3) seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician.

(b) A presumption under this subchapter does not apply:

(1) to a determination of a survivor's eligibility for benefits under Chapter 615;

(2) in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation;

(3) to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the detention officer, custodial officer, firefighter, peace officer, or emergency medical technician that provides coverage in addition to any benefits or compensation required by law; or

(4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and:

(A) the firefighter, peace officer, or emergency medical technician is or has been a user of tobacco; or

(B) the firefighter's, peace officer's, or emergency medical technician's spouse has, during the marriage, been a user of tobacco that is consumed through smoking.

(e) A detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who uses a presumption established under this subchapter is entitled only to the benefits or compensation to which the detention officer, custodial officer, firefighter, peace officer, or emergency medical technician would otherwise be entitled to receive at the time the claim for benefits or compensation is filed.

(g) This subchapter applies to a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who provides services as an employee of an entity created by an interlocal agreement.

Government Code Section 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS.

(a) A firefighter, peace officer, or emergency medical technician who suffers from tuberculosis, or any other disease or illness of the lungs or respiratory tract that has a statistically positive correlation with service as a firefighter, peace officer, or emergency medical technician, that results in death or total or partial disability is presumed to have contracted the disease or illness during the course and scope of employment as a firefighter, peace officer, or emergency medical technician.

(b) This section does not apply to a claim that a firefighter, peace officer, or emergency medical technician suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19).

Government Code Section 607.0545. SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 (SARS-CoV-2) OR CORONAVIRUS DISEASE 2019 (COVID-19).

(a) A detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that results in death or total or partial disability is

presumed to have contracted the virus or disease during the course and scope of employment as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician if the detention officer, custodial officer, firefighter, peace officer, or emergency medical technician:

(1) is employed in the area designated in a disaster declaration by the governor under Section 418.014 or another law and the disaster is related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); and

(2) contracts the disease during the disaster declared by the governor described by Subdivision (1).

(b) The presumption under this section applies only to a person who:

(1) is employed as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician on a full-time basis;

(2) is diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19):

(A) using a test authorized, approved, or licensed by the United States Food and Drug Administration; or

(B) if the person is deceased:

(i) using a test described by Paragraph (A); or

(ii) by another means, including by a physician; and

(3) was last on duty:

(A) not more than 15 days before the date the person is diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) using a test described by Subdivision (2)(A); or

(B) if the person is deceased, not more than 15 days before the date the person:

(i) was diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) using a test described by Subdivision (2)(A);

(ii) began to show symptoms of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) as determined by a licensed physician;

(iii) was hospitalized for symptoms related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); or

(iv) died if severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) was a contributing factor in the person's death.

(c) This section does not affect the right of a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician to provide proof, without the use of the presumption under this section, that an injury or illness occurred during the course and scope of employment.

(d) Sections 409.009 and 409.0091, Labor Code, do not apply to a claim for compensation determined to be compensable or accepted by an insurance carrier as compensable using the presumption under this section. Notwithstanding this subsection, an injured employee may request reimbursement for health care paid by the employee as provided by Section 409.0092, Labor Code.

(e) This section expires September 1, 2023.

Government Code Section 607.057. EFFECT OF PRESUMPTION.

Except as provided by Section 607.052(b), a presumption established under this subchapter applies to a determination of whether a detention officer's, custodial officer's, firefighter's, peace officer's, or emergency medical technician's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

Government Code Section 607.058. PRESUMPTION REBUTTABLE.

(a) A presumption under Section 607.053, 607.054, 607.0545, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a detention officer, custodial officer,

firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.
(b) A rebuttal offered under this section must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.
(c) In addressing an argument based on a rebuttal offered under this section, an administrative law judge shall make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's service as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.
(d) A rebuttal offered under this section to a presumption under Section 607.0545 may not be based solely on evidence relating to the risk of exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) of a person with whom a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician resides. This subsection expires September 1, 2023.

Labor Code Sec. 409.0092. HEALTH CARE REIMBURSEMENT PROCEDURES FOR CERTAIN INJURED EMPLOYEES.
(a) An injured employee who is subject to Section 607.0545, Government Code, and whose claim for benefits is determined to be compensable by an insurance carrier or the division, may request reimbursement for health care paid by the employee, including copayments and partial payments, by submitting to the carrier a legible written request and documentation showing the amounts paid to the health care provider.
(b) Not later than the 45th day after the date an injured employee submits a request for reimbursement for health care to an insurance carrier under Subsection (a), the carrier shall provide reimbursement or deny the request.
(c) If an insurance carrier denies an injured employee's request for reimbursement for health care, the employee may seek medical dispute resolution as provided by Chapter 413 and division rules. Notwithstanding any other law, an employee's request for medical dispute resolution is considered timely if the employee submits the request not later than the 120th day after the date the carrier denies the employee's request for reimbursement.
(d) This section expires September 1, 2023.

Labor Code Section 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION.
(d) In this subsection, the terms "custodial officer," "detention officer," "emergency medical technician," "firefighter," and "peace officer" have the meanings assigned by Section 607.051, Government Code. In addition to the other requirements of this section, if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from a custodial officer's, a detention officer's, an emergency medical technician's, a firefighter's, or a peace officer's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, the notice must include a statement by the carrier that:
(1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and
(2) describes the evidence that the carrier reviewed in making the determination described by Subdivision (1).

Commentary by: Kaci Singer
Source: SB 22
Effective Date: June 14, 2021
Applicability: See bill.
Summary of Changes: These changes are designed to set out the conditions under which detention officers, custodial officers, firefighters,

and emergency medical technicians who suffer from COVID-19 infection that results in death or total or partial disability are presumed to have contracted the virus during the course and scope of employment for the purpose of benefits or compensation the person or spouse may be entitled to receive. The presumption is rebuttable but may not be rebutted based solely on evidence relating to the risk of exposure of a person with whom the individual lives.

Government Code Chapter 661.
SUBCHAPTER A-1. STATE EMPLOYEE FAMILY LEAVE POOL

Government Code Section 661.021. PURPOSE.
The purpose of the state employee family leave program is to:

(1) provide eligible state employees more flexibility in:

(A) bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and

(B) caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic; and

(2) allow employees to apply for leave time under the family leave pool.

Government Code Section 661.022. GUIDELINES.
(a) The governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool.
(b) The executive head of the state agency or another individual appointed by the governing body shall administer the family leave pool.
(c) The governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency family leave pool.

Government Code Section 661.023. CONTRIBUTION TO FAMILY LEAVE POOL.
(a) A state employee may contribute to the family leave pool one or more days of the employee's accrued sick or vacation leave.
(b) The pool administrator shall credit the family leave pool with the amount of time contributed by a state employee and deduct a corresponding amount of time from the employee's earned sick or vacation leave as if the employee had used the time for personal purposes.
(c) A retiring state employee may designate the number of the retiring employee's accrued sick or vacation leave hours to be used for retirement credit and the number of the retiring employee's accrued sick or vacation leave hours to be donated on retirement to the sick or family leave pool.

Government Code Section 661.024. USE OF TIME IN POOL.
(a) A state employee is eligible to use time contributed to the family leave pool of the state agency that employs the employee if the employee has exhausted the employee's eligible compensatory, discretionary, sick, and vacation leave because of:

(1) the birth of a child;

(2) the placement of a foster child or adoption of a child under 18 years of age;

(3) the placement of any person 18 years of age or older requiring guardianship;

(4) a serious illness to an immediate family member or the employee, including a pandemic-related illness;

(5) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or

(6) a previous donation of time to the pool.

(b) A state employee who applies to use time under Subsection (a) to care for another person must submit and be listed on the other person's birth certificate, birth facts, or adoption or foster paperwork for a child under 18 years of age, including being listed as the mother, father, adoptive parent, foster parent, or partner of the child's mother, adoptive parent, or foster parent, or provide documentation that the employee is the guardian of a person who is 18 years of age or older and requiring guardianship.

Government Code Section 661.025. WITHDRAWAL OF TIME FROM POOL.
(a) A state employee may apply to the pool administrator for permission to withdraw time from the family leave pool.

(b) If the state employee is seeking permission to withdraw time because of a serious illness, including a pandemic-related illness, of an immediate family member or the employee and does not qualify for or has exhausted time available in the sick leave pool, the employee must provide the pool administrator with a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member.

(c) If the state employee is seeking permission to withdraw time because of an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member, the employee must provide any applicable documentation, including an essential caregiver designation, proof of closure of a school or daycare, or other appropriate documentation.

(d) If the pool administrator determines the state employee is eligible, the administrator shall:

(1) approve the transfer of time from the pool to the employee; and

(2) credit the time to the employee.

Government Code Section 661.026. LIMITATION ON WITHDRAWALS.

(a) A state employee may not withdraw time from the family leave pool in an amount that exceeds the lesser of:

(1) one-third of the total time in the pool; or

(2) 90 days.

(b) Subject to Subsection (a), the pool administrator shall determine the amount of time that an employee may withdraw from the pool.

Government Code Section 661.027. EQUAL TREATMENT.

A state employee absent while using time withdrawn from the family leave pool may use the time as sick leave earned by the employee. The employee shall be treated for all purposes as if the employee is absent on earned sick leave.

Government Code Section 661.028. NO ENTITLEMENT TO ESTATE.

The estate of a deceased state employee is not entitled to payment for unused time withdrawn by the employee from the family leave pool.

Commentary by: Kaci Singer
Source: HB 2063
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: This bill requires state agencies to adopt rules creating a family leave pool to allow people to donate to and withdraw from a family leave pool for use for the birth of a child, placement of a foster child or adoption of a child under 18, serious illness to an immediate family member, extenuating circumstance created by an ongoing pandemic. After this law passed, the Comptroller's Office provided guidance that a donation to the pool may result in tax liability to the donor. Therefore, any person considering donating may wish to confer with a tax specialist for advice.

Government Code Sec. 661.9075. VOLUNTEERS OF TEXAS VOLUNTARY ORGANIZATIONS ACTIVE IN DISASTER.

(a) A state employee who is a volunteer of an organization that is a member of the Texas Voluntary Organizations Active in Disaster may be granted leave to participate in disaster relief services without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time if:

(1) the employee's supervisor authorizes the leave;

(2) the services in which the employee participates are provided for a state of disaster declared by the governor under Chapter 418; and

(3) the executive director of the employee's state agency approves the leave.

(b) Leave granted to a state employee under Subsection (a) may not exceed 10 days each fiscal year.

[~~Government Code Section 661.907. RED CROSS DISASTER SERVICE VOLUNTEER.~~

~~(a) A state employee who is a certified disaster service volunteer of the American Red Cross or who is in training to become such a volunteer may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services for the American Red Cross without a deduction in salary or loss of vacation time, sick~~

~~leave, earned overtime credit, or state compensatory time if the leave is taken:~~
~~(1) on the request of the American Red Cross;~~
~~(2) with the authorization of the employee's supervisor; and~~
~~(3) with the approval of the governor.~~
~~(b) The number of certified disaster service volunteers who are eligible for leave under this section may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management shall coordinate the establishment and maintenance of the list of eligible employees.~~
~~(c) Not later than the 60th day after the date the American Red Cross makes a request under Subsection (a)(1), the American Red Cross shall prepare a report for the Legislative Budget Board stating the reasons for the request.~~]

Commentary by: Kaci Singer
Source: SB 44
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: This change provides, for state employees who are volunteers of an organization that is a member of the Texas Voluntary Organizations Active in Disaster, up to 10 days of leave each fiscal year without using leave or having a deduction in pay. The Red Cross is a member of the Texas Voluntary Organizations Active in Disaster, so the repeal of Section 661.907 does not impact the ability of Red Cross volunteers to be provided leave to volunteer.

Local Government Code Section 157.072. AUTHORITY TO ESTABLISH PROGRAM FOR SICK LEAVE POOL.
(b) The commissioners court of a county with a population of 800,000 [~~one million~~] or more may allow an employee to voluntarily transfer vacation leave time earned by the employee to a county sick leave pool.

Commentary by: Kaci Singer
Source: HB 180
Effective Date: June 4, 2021
Applicability: On or after the effective date.
Summary of Changes: Under prior law, a county of over one million was allowed to operate a county sick leave pool. With this change, a county of over 800,000 may do so.

Local Government Code CHAPTER 180. MISCELLANEOUS PROVISIONS AFFECTING OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF [~~MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER~~] LOCAL GOVERNMENT [~~GOVERNMENTS~~].

Local Government Code Section 180.008. PAID QUARANTINE LEAVE FOR FIRE FIGHTERS, PEACE OFFICERS, DETENTION OFFICERS, AND EMERGENCY MEDICAL TECHNICIANS.
(a) In this section:
(1) "Detention officer" means an individual appointed or employed by a political subdivision as a county jailer or other individual responsible for the care and custody of individuals incarcerated in a county or municipal jail.
(2) "Emergency medical technician" means an individual who is:
(A) certified as an emergency medical technician under Chapter 773, Health and Safety Code; and
(B) employed by a political subdivision.
(3) "Fire fighter" means a paid employee of a municipal fire department or emergency services district who:
(A) holds a position that requires substantial knowledge of fire fighting;
(B) has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code; and
(C) performs a function listed in Section 143.003(4)(A).
(4) "Health authority" has the meaning assigned by Section 121.021, Health and Safety Code.
(5) "Peace officer" means an individual described by Article 2.12, Code of Criminal Procedure, who is elected for, employed by, or appointed by a political subdivision.
(b) The governing body of a political subdivision shall develop and implement a paid quarantine leave policy for fire fighters, peace officers, detention officers, and emergency medical

technicians who are employed by, appointed by, or elected for the political subdivision and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

(c) A paid quarantine leave policy must:

(1) provide that a fire fighter, peace officer, detention officer, or emergency medical technician on paid quarantine leave receive:

(A) all employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and

(B) reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and

(2) require that the leave be ordered by the person's supervisor or the political subdivision's health authority.

(d) A political subdivision may not reduce a fire fighter's, peace officer's, detention officer's, or emergency medical technician's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with a policy adopted under this section.

Commentary by: Kaci Singer
Source: HB 2073
Effective Date: June 15, 2021
Applicability: On or after the effective date.
Summary of Changes: This change in law requires the governing body of a political subdivision to develop and implement a paid quarantine leave policy for fire fighters, peace officers, detention officers, and emergency medical technicians who are ordered to quarantine or isolate due to possible or known exposure to a communicable disease while on duty.

Topic: Cybersecurity Training

Government Code Section 772.012. COMPLIANCE WITH CYBERSECURITY TRAINING REQUIREMENTS.

(a) In this section, "local government" has the meaning assigned by Section 2054.003.

(b) To apply for a grant under this chapter, a local government must submit with the grant application a written certification of the local government's compliance with the cybersecurity training required by Section 2054.5191.

(c) On a determination by the criminal justice division established under Section 772.006 that a local government awarded a grant under this chapter has not complied with the cybersecurity training required by Section 2054.5191, the local government shall pay to this state an amount equal to the amount of the grant award. A local government that is the subject of a determination described by this subsection is ineligible for another grant under this chapter until the second anniversary of the date the local government is determined ineligible.

Government Code Section 2054.5191. CYBERSECURITY TRAINING REQUIRED: CERTAIN EMPLOYEES AND OFFICIALS.

(a-1) At least once each year, a local government shall:

(1) identify local government employees and elected and appointed officials who have access to a local government computer system or database and use a computer to perform at least 25 percent of the employee's or official's required duties; and

(2) require the [~~those~~] employees and [~~elected~~] officials identified under Subdivision (1) [~~of the local government~~] to complete a cybersecurity training program certified under Section 2054.519 [~~or offered under Section 2054.519(f)~~].

(a-2) The governing body of a local government or the governing body's designee may deny access to the local government's computer system or database to an individual described by Subsection (a-1)(1) who the governing body or the governing body's designee determines is noncompliant with the requirements of Subsection (a-1)(2).

(b) The governing body of a local government may select the most appropriate cybersecurity training program certified under Section 2054.519 [~~or offered under Section 2054.519(f)~~] for employees and officials of the local government to complete. The governing body shall:

(1) verify and report on the completion of a cybersecurity training program by employees and officials of the local government to the department; and

(2) require periodic audits to ensure compliance with this section.

(e) The department shall develop a form for use by state agencies and local governments in verifying completion of cybersecurity training program requirements under this section. The form must allow the state agency and local government to indicate the percentage of employee completion.

(f) The requirements of Subsections (a) and (a-1) do not apply to employees and officials who have been:

(1) granted military leave;

(2) granted leave under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.);

(3) granted leave related to a sickness or disability covered by workers' compensation benefits, if that employee no longer has access to the state agency's or local government's database and systems;

(4) granted any other type of extended leave or authorization to work from an alternative work site if that employee no longer has access to the state agency's or local government's database and systems; or

(5) denied access to a local government's computer system or database by the governing body of the local government or the governing body's designee under Subsection (a-2) for noncompliance with the requirements of Subsection (a-1)(2).

Government Code Section 2056.002.
STRATEGIC PLANS OF OPERATION.

(b) The Legislative Budget Board and the governor's office shall determine the elements required to be included in each agency's strategic plan. Unless modified by the Legislative Budget Board and the governor's office, and except as provided by Subsection (c), a plan must include:

(1) a statement of the mission and goals of the state agency;

(2) a description of the indicators developed under this chapter and used to measure the output and outcome of the agency;

(3) identification of the groups of people served by the agency, including those having service priorities, or other service measures established by law, and estimates of changes in those groups expected during the term of the plan;

(4) an analysis of the use of the agency's resources to meet the agency's needs, including future needs, and an estimate of additional resources that may be necessary to meet future needs;

(5) an analysis of expected changes in the services provided by the agency because of changes in state or federal law;

(6) a description of the means and strategies for meeting the agency's needs, including future needs, and achieving the goals established under Section 2056.006 for each area of state government for which the agency provides services;

(7) a description of the capital improvement needs of the agency during the term of the plan and a statement, if appropriate, of the priority of those needs;

(8) identification of each geographic region of this state, including the Texas-Louisiana border region and the Texas-Mexico border region, served by the agency, and if appropriate the agency's means and strategies for serving each region;

(9) a description of the training of the agency's contract managers under Section 656.052;

(10) an analysis of the agency's expected expenditures that relate to federally owned or operated military installations or facilities, or communities where a federally owned or operated military installation or facility is located;

(11) an analysis of the strategic use of information resources as provided by the instructions prepared under Section 2054.095; [~~and~~]

(12) a written certification of the agency's compliance with the cybersecurity training required under Sections 2054.5191 and 2054.5192; and

(13) other information that may be required.

Government Code Section 2054.519. STATE CERTIFIED CYBERSECURITY TRAINING PROGRAM.

[~~(f) Notwithstanding Subsection (a), a local government that employs a dedicated information resources cybersecurity officer may offer to its employees a cybersecurity training program that satisfies the requirements described by Subsection (b).~~]

Commentary by: Kaci Singer
Source: HB 1118
Effective Date: May 18, 2021
Applicability: Section 772.012, Government Code, applies to a grant application submitted by a local government on or after September 1, 2021. Section 2056.002, applies to a strategic plan submitted on or after January 1, 2022.
Summary of Changes: These changes impact the laws relating to state agency and local government compliance with cybersecurity training. It provides that only local government employees who use a computer to perform at least 25% of their required duties must take the training. It also requires elected and appointed local officials who perform at least 25% of their required duties on a computer to take the training. It repeals the authority of local government to offer its own cybersecurity training program, which means all cybersecurity training is provide through the Department of Information Resources. It authorizes a local government to deny access to computer systems and databases to those who do not comply with the cybersecurity training requirements. Local governments are required to submit a written certification of compliance with cybersecurity training requirements when applying for an applicable governmental planning grant; if awarded a grant and determined to not be incompliance, the local government is barred from receiving another grant for two years. State agencies to which the law applies must include a written certification of the agency's compliance in the strategic plan.

Topic: Falsely Implying Governmental Affiliation

Civil Practice and Remedies Code CHAPTER 150C. ENTITY NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION.

Civil Practice and Remedies Code Section 150C.001. DEFINITION.

In this chapter, "governmental unit" has the meaning assigned by Section 101.001.

Civil Practice and Remedies Code Section 150C.002. FALSELY IMPLYING GOVERNMENTAL AFFILIATION.

(a) A governmental unit is entitled to enjoin another person's use of an entity name that falsely implies governmental affiliation with the governmental unit.
(b) In an action brought under this section, the governmental unit is entitled to injunctive relief throughout the state.
(c) If the court finds that the person against whom the injunctive relief is sought wilfully intended to imply governmental affiliation with the governmental unit, the court, in the court's discretion, may award reasonable attorney's fees and court costs to the governmental unit.

Business Organizations Code Section 5.064. NAME FALSELY IMPLYING GOVERNMENTAL AFFILIATION PROHIBITED.

(a) A filing entity or a foreign filing entity may not use a name in this state that falsely implies an affiliation with a governmental entity.
(b) The submission of a filing instrument is an affirmation by the organizer or by a managerial official named in the filing instrument that the name provided as the name of the filing entity does not falsely imply an affiliation with a governmental entity.
(c) The addition of a word, phrase, or abbreviation that is required to be included in the name of a domestic or foreign filing entity under the provisions of this chapter is not a factor when determining whether a name violates Subsection (a).

(d) For purposes of this section, an entity name means:

(1) the name of a domestic filing entity, as evidenced by its certificate of formation, as amended or restated; or

(2) in the case of a foreign filing entity, the name of the foreign filing entity or the fictitious name of a foreign filing entity, as evidenced by its application for registration or its most recent amended registration.

(e) The secretary of state shall adopt rules and prescribe procedures to implement this section.

Business Organizations Code Section 5.065. FALSE IMPLICATION OF GOVERNMENTAL AFFILIATION; AUTHORITY OF SECRETARY OF STATE AND ATTORNEY GENERAL.

(a) On the written request of a governmental entity specifying the basis on which a filing entity's or foreign filing entity's name falsely implies affiliation with the governmental entity, the secretary of state may, in the secretary's reasonable discretion and after consultation with the attorney general, determine not later than the 30th day after the date of the secretary's acceptance of a filing instrument that a filing entity's or a foreign filing entity's name falsely implies an affiliation with a governmental entity in violation of Section 5.064.

(b) If the secretary of state determines under Subsection (a) that a filing entity's or foreign filing entity's name falsely implies an affiliation with a governmental entity, the secretary of state shall notify the entity in writing of the determination. The secretary of state shall provide the filing entity or foreign filing entity an opportunity to respond to the notice not later than the 60th day after the date of the notice, including through the submission of documentation verifying that the entity is affiliated with the governmental entity or by demonstrating that the entity's name does not falsely imply affiliation with the governmental entity. The secretary of state shall make a final determination, based on the filing entity's or foreign filing entity's response, as to whether or not the entity's name falsely implies an affiliation with a governmental entity.

(c) After making a final determination based on the filing entity's or foreign filing entity's response under Subsection (b), the secretary of state shall notify the filing entity or foreign filing entity of the secretary's final determination. If the entity does not timely respond to notice provided to the entity under Subsection (b), the secretary's initial determination becomes final. If the secretary of state finally determines that the filing entity's or foreign filing entity's name falsely implies an affiliation with a governmental entity, not later than the 90th day after the date the secretary of state sends the notification required by Subsection (b), the entity shall:

(1) cease transacting business or operating under that name in this state; and

(2) file with the secretary of state the applicable instrument to amend the entity's name as shown in the records of the secretary of state.

(d) If a filing entity or a foreign filing entity fails to take the action required by Subsection (c)(2), the secretary of state shall notify the attorney general of the entity's failure to file the applicable filing instrument.

(e) The attorney general may bring an action in the name of the state for injunctive relief to require compliance with this section.

(f) An action under this section may be brought in a district court in Travis County.

(g) The attorney general may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, and investigatory costs.

(h) The secretary of state shall adopt rules and prescribe procedures to implement this section.

(i) Notwithstanding Subsection (a), on the written request of a governmental entity specifying the basis on which a filing entity's or foreign filing entity's name falsely implies affiliation with the governmental entity, the secretary of state may, in the secretary's reasonable discretion and after consultation with the attorney general, determine within eight years after the secretary's acceptance of a filing instrument that a filing entity's or a foreign filing entity's name falsely implies an affiliation with a governmental entity in violation of Section 5.064. A determination made under this subsection is subject to Subsections (b)-(g) to the same extent as a determination made under Subsection (a). This subsection expires December 31, 2021.

Commentary by: Kaci Singer
Source: HB 1493
Effective Date: September 1, 2021
Applicability: The secretary of state shall adopt rules and prescribe procedures under Section 5.065(h), Business Organizations Code no later than December 1, 2021. The secretary of state and attorney general retain the authority to act on a written request by a governmental entity under Section 5.065(i), Business Organizations Code, that is made before December 31, 2021.
Summary of Changes: This change prohibits a filing entity or foreign filing entity from using a name that falsely implies affiliation with a governmental entity. It creates a process for the secretary of state, on request of the governmental entity, to determine if a name violates this prohibition. An entity in violation must stop transacting business and operating under the name in Texas and must file documents to amend the name. The attorney general may bring injunctive relief if the entity fails to take the required actions. The governmental entity may seek an injunction and may be awarded costs and attorney's fees.

Topic: Disputed Amount with Vendor

Government Code Section 2251.042. EXCEPTION.
(a) A governmental entity shall notify a vendor of an error or disputed amount in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice, and shall include in such notice a detailed statement of the amount of the invoice which is disputed.
(d) The governmental entity may withhold from payments required no more than 110 percent of the disputed amount.

Commentary by: Kaci Singer
Source: HB 1476
Effective Date: September 1, 2021
Applicability: Applies to contracts entered into on or after the effective date.
Summary of Changes: Current law requires a governmental entity to notify a vendor of an error within a certain time period. This change requires the entity to notify a vendor of a disputed amount within that same time period and to include in the notice a detailed statement of the amount in dispute. The entity may withhold no more than 110% of the disputed amount.

Topic: Contracting and Purchasing

Government Code Section 2054.003. DEFINITIONS.
(10) "Major information resources project" means:
(A) any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed $5 million and that:
(i) requires one year or longer to reach operations status;
(ii) involves more than one state agency; or
(iii) substantially alters work methods of state agency personnel or the delivery of services to clients; [~~and~~]
(B) any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project; and
(C) any information resources technology project of a state agency designated for additional monitoring under Section 2261.258(a)(1) if the development costs for the project exceed $5 million.

Government Code Section 2054.008. CONTRACT NOTIFICATION.
(b) A state agency shall provide written notice to the Legislative Budget Board of a contract for a major information system. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 30th [~~10th~~] day after the date the agency enters into the contract.

Government Code Section 2054.1181. OVERSIGHT OF MAJOR INFORMATION RESOURCES PROJECTS.
(a) The [~~At the direction of the governor, lieutenant governor, or speaker of the house of representatives, the~~] department shall provide additional oversight services [~~for major information resources projects~~], including risk

management, quality assurance services, independent project monitoring, and project management, for major information resources projects described by Section 2054.003(10)(C) and for other major information resources projects selected for oversight by the governor, lieutenant governor, or speaker of the house of representatives. A state agency with a project subject to [~~selected for~~] oversight shall pay for oversight by the department and quality assurance team based on a funding model developed by the department. The department may contract with a vendor to provide the necessary oversight at the department's direction.

Government Code Section 2155.074. BEST VALUE STANDARD FOR PURCHASE OF GOODS OR SERVICES.

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are principal considerations that must be balanced with other relevant factors [~~the most important considerations~~].

(b-1) The [~~However, the~~] comptroller or other state agency may, subject to Subsection (c) and Section 2155.075, consider the following [~~other~~] relevant factors under Subsection (b), including:

(1) installation costs;

(2) life cycle costs;

(3) the quality and reliability of the goods and services;

(4) the delivery terms;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;

(6) the cost of any employee training associated with a purchase;

(7) the effect of a purchase on agency productivity;

(8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; [~~and~~]

(9) the impact of a purchase on the agency's administrative resources; and

(10) other factors relevant to determining the best value for the state in the context of a particular purchase.

Government Code Section 2155.075. REQUIREMENT TO SPECIFY VALUE FACTORS IN REQUEST FOR BIDS OR PROPOSALS.

(a) For a purchase made through competitive bidding, the comptroller or other state agency making the purchase must specify in the request for bids:

(1) the factors other than price that the comptroller or agency will consider in determining which bid offers the best value for the state; and

(2) the proposal criteria the comptroller or agency will use when considering the factors described by Subdivision (1).

Government Code Section 2155.089. REPORTING VENDOR PERFORMANCE.

(c) This section does not apply to:

(1) an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015;

(2) a contract of the Employees Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code; or

(3) a contract entered into by:

(A) the comptroller under Section 2155.061; [~~or~~]

(B) the Department of Information Resources under Section 2157.068; or

(C) a university system or an institution of higher education, as those terms are defined by Section 61.003, Education Code.

Government Code Section 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT.

(a) A state agency is delegated the authority to purchase goods and services if the purchase does not exceed $50,000 [~~$15,000~~]. If the comptroller determines that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases, the comptroller shall report its determination to the members of the state agency's governing body and to the governor,

lieutenant governor, speaker of the house of representatives, and Legislative Budget Board.

(b) The comptroller by rule may delegate to a state agency the authority to purchase goods and services if the purchase exceeds $50,000 [~~$15,000~~]. In delegating purchasing authority under this subsection or Section 2155.131, the comptroller shall consider factors relevant to a state agency's ability to perform purchasing functions, including:

(1) the capabilities of the agency's purchasing staff and the existence of automated purchasing tools at the agency;

(2) the certification levels held by the agency's purchasing personnel;

(3) the results of the comptroller's procurement review audits of an agency's purchasing practices; and

(4) whether the agency has adopted and published protest procedures consistent with those of the comptroller as part of its purchasing rules.

(e) Competitive bidding, whether formal or informal, is required for a purchase by a state agency if the purchase:

(1) exceeds $10,000 [~~$5,000~~]; and

(2) is made under a written contract.

Government Code Section 2155.264. AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR ACQUISITION OVER $25,000 [~~$15,000~~].

A state agency that proposes to make a purchase or other acquisition that will cost more than $25,000 [~~$15,000~~] shall solicit bids or proposals from each eligible vendor on the master bidders list that serves the agency's geographic region. A state agency may also solicit bids or proposals through the use of on-line electronic transmission.

Government Code Section 2157.068. PURCHASE OF INFORMATION TECHNOLOGY COMMODITY ITEMS.

(e-1) Except as provided by Subsection (e-4), a [~~A~~] state agency contracting to purchase a commodity item shall use the list maintained as required by Subsection (e) as follows:

(1) for a contract with a value of $50,000 or less, the agency may directly award the contract to a vendor included on the list without submission of a request for pricing to other vendors on the list;

(2) for a contract with a value of more than $50,000 but not more than $1 million, the agency must submit a request for pricing to at least three vendors included on the list in the category to which the contract relates; and

(3) for a contract with a value of more than $1 million but not more than $10 [~~$5~~] million, the agency must submit a request for pricing to at least six vendors included on the list in the category to which the contract relates or all vendors on the schedule if the category has fewer than six vendors.

(e-2) A state agency may not enter into a contract to purchase a commodity item if the value of the contract exceeds $10 [~~$5~~] million.

(e-4) For a contract with a value of more than $5 million but not more than $10 million, a state agency may purchase a commodity item using a purchasing method designated by the comptroller under Section 2157.006(a)(2).

Government Code Section 2166.2551. CONTRACT NOTIFICATION.

The commission or an agency whose project is exempted from all or part of this chapter under Section 2166.003 shall provide written notice to the Legislative Budget Board of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds $50,000 [~~$14,000~~]. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 30th [~~10th~~] day after the date the agency enters into the contract.

Government Code Section 2254.006. CONTRACT NOTIFICATION.

A state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds $50,000 [~~$14,000~~]. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 30th

[~~10th~~] day after the date the agency enters into the contract.

Government Code Section 2254.008. CONTRACT FOR PROFESSIONAL SERVICES OF PHYSICIANS, OPTOMETRISTS, AND REGISTERED NURSES.

(a) Notwithstanding Section 2254.003, if a governmental entity is procuring services provided in connection with the professional employment or practice of a professional described by Section 2254.002(2)(B)(v), (vi), or (ix) and the number of contracts to be awarded under this section is not otherwise limited, the governmental entity may make the selection and award on the basis of:

(1) the provider's agreement to payment of a set fee, as a range or lump-sum amount; and

(2) the provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.

(b) Notwithstanding Sections 2155.083 and 2261.051, a contract awarded under this section is not subject to competitive advertising and proposal evaluation requirements.

Government Code Section 2254.0301. CONTRACT NOTIFICATION.

(a) A state agency shall provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds $50,000 [~~$14,000~~]. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 30th [~~10th~~] day after the date the entity enters into the contract.

Government Code Section 2262.051. CONTRACT MANAGEMENT GUIDE; RULES.

(i) The guide must include:

(1) instructions to assist a state agency in identifying the agency procurements that require an additional or secondary agency employee to serve as a contact for the procurement and establishing procedures for notifying vendors when to contact the additional or secondary agency employee;

(2) a general outline for the training a state agency must provide to the agency's procurement evaluators related to the goods and services the evaluator reviews for purchase by the agency, including training on the implementation of best value standards under Section 2155.074;

(3) for a procurement in an amount that exceeds $20 million, the information a state agency must include in a contract file on the evaluator for that procurement, including the reasons the person was selected and the person's relevant qualifications; and

(4) a model communications procedure for vendors and agency employees, developed in collaboration with representatives from vendors and state agencies.

(j) For a procurement in an amount that exceeds $20 million other than a contract entered into by the comptroller under Section 2155.061, the guide must require a state agency to notify interested parties at least two months before the date the agency issues the solicitation for the procurement.

Commentary by: Kaci Singer
Source: SB 799 (portions relevant to specific agencies only are not included)
Effective Date: September 1, 2021
Applicability: Changes apply only to a contract for which a state agency first advertises or otherwise solicits offers, bids, proposals, qualifications, or other applicable expressions of interest on or after the effective date. As soon as practicable after the effective date of this Act, the Department of Information Resources shall adopt rules necessary to implement the changes in law. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.
Summary of Changes: These changes revise contracting procedures and requirements for governmental entities. The definition of major information resources project now includes any information resources technology project of a state agency that is designated by the state auditor

for additional monitoring under Section 2261.258(a)(1), Government Code, if the development costs exceed $5 million. DIR provides additional oversight services to these projects but not to all major information resources projects. A state agency must now give notice to the LBB of a contract for a major information system no later than 30 days after entering the contract, as opposed to 10 days.

When determining best value for the state, the purchase price and whether the goods and services meet specifications are no longer the most important consideration; they are now principal considerations that must be balanced with the other relevant factors, which now also include the impact of the purchase on an agency's administrative resources. Agencies and the comptroller must now include in their bid not only the factors other than price that will be considered but also the criteria that will be used when considering those factors.

An agency is now delegated the authority to purchase goods and services that do not exceed $50,000 as opposed to $15,000; the Comptroller can, by rule, delegate purchases exceeding $50,000. Competitive bidding is now required if a purchase under a written contract exceeds $10,000 as opposed to $5,000. Solicitation of bids from eligible vendors on the master bidders is now required for purchases or acquisitions that will cost more than $25,000 as opposed to $15,000.

For contracts with a value of more than $5 million but less than $10 million, a stay agency may purchase a commodity item using a purchasing method designated by the Comptroller under Section 2157.006(a)(2).
Agencies exempted from part of chapter 2166, Government Code, must provide notice to the LBB of construction contract projects that exceed $50,000 as opposed to $14,000. The notice must be provided no later than the 30th day after entering the contract, as opposed to the 10th day. The same amount changes and notice changes apply to a contract for consulting services and a contract for professional services other than physician or optometric services.

For contracts for physicians, optometrists, and registered nurses, the governmental entity may make the selection and award the contract on the basis of the provider's agreement to payment of a set fee and the provider's affirmation, and governmental entity's verification; that the provider has the necessary license and experience. The contract is not subject to competitive advertising and proposal evaluation requirements.

The contract management guide created by the Comptroller must now include instructions to assist state agency's in identifying the agency procurements that require an additional or secondary agency employee to serve as a contact for the procurement and establishing procedures for notifying vendors when to contact the additional employee; a general outline for the training the agency must provide to its procurement evaluators related to the goods and services the evaluator reviews, including implementation of best value standards; the information about the evaluator that the agency must include in its file on contracts that exceed $20 million, including the reasons the evaluator was selected and the evaluator's qualifications; and a model communications procedure for vendors and agency employees. For contracts exceeding $20 million, the guide must require a state agency to notify interested parties at least two months before the date the agency issues the solicitation.

Topic: Sexual Harassment

Labor Code Section 21.201. FILING OF COMPLAINT; FORM AND CONTENT; SERVICE.
(g) If a perfected complaint is not received by the commission within 180 days of the alleged unlawful employment practice or, for a complaint alleging sexual harassment, within 300 days of the alleged sexual harassment, the commission shall notify the respondent that a complaint has been filed and that the process of perfecting the complaint is in progress.

Labor Code Section 21.202. STATUTE OF LIMITATIONS.
(a) Except as provided by Subsection (a-1), a [~~A~~] complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred.
(a-1) A complaint under this subchapter alleging sexual harassment must be filed not later than the 300th day after the date the alleged sexual harassment occurred.

Commentary by: Kaci Singer
Source: HB 21
Effective Date: September 1, 2021
Applicability: Applies to a complaint based on conduct occurring on or after the effective date.
Summary of Changes: This change gives 300 days, rather than 180 days, to file a complaint with the Texas Workforce Commission regarding sexual harassment.

Government Code CHAPTER 576. PROHIBITION ON APPROPRIATION OF MONEY TO SETTLE OR PAY SEXUAL HARASSMENT CLAIMS.

Government Code Section. 576.0001. PROHIBITION ON APPROPRIATION OF MONEY TO SETTLE OR PAY SEXUAL HARASSMENT CLAIMS.
The legislature may not appropriate money and a state agency may not use appropriated money to settle or otherwise pay a sexual harassment claim made against a person who:
(1) is an elected member of the executive, legislative, or judicial branch of state government;
(2) is appointed by the governor to serve as a member of a department, commission, board, or other public office within the executive, legislative, or judicial branch of state government; or
(3) serves as staff for a person described by Subdivision (1) or (2).

Government Code Section 180.008. PROHIBITION ON USE OF PUBLIC MONEY TO SETTLE OR PAY SEXUAL HARASSMENT CLAIMS.
(a) In this section, "political subdivision" means a county, municipality, school district, other special district, or other subdivision of state government.
(b) A political subdivision may not use public money to settle or otherwise pay a sexual harassment claim made against a person who is:
(1) an elected or appointed member of the governing body of the political subdivision; or
(2) an officer or employee of the political subdivision.

Education Code Section 12.1058. APPLICABILITY OF OTHER LAWS.
(a) An open-enrollment charter school is considered to be:
(1) a local government for purposes of Chapter 791, Government Code;
(2) a local government for purposes of Chapter 2259, Government Code, except that an open-enrollment charter school may not issue public securities as provided by Section 2259.031(b), Government Code;
(3) a political subdivision for purposes of Chapter 172, Local Government Code; [~~and~~]
(4) a local governmental entity for purposes of Subchapter I, Chapter 271, Local Government Code; and
(5) a political subdivision for purposes of Section 180.008, Local Government Code.

Commentary by: Kaci Singer
Source: SB 282
Effective Date: September 1, 2021
Applicability: On or after the effective date.
Summary of Changes: These changes prohibit the use of public money to settle or otherwise pay a sexual harassment claim made against an elected or appointed member of state or local government or an employee of state of local government.