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TABLE OF CONTENTS

General Counsel’s Message	20
88 th Session Legislative Appropriations to the Texas Juvenile Justice Department	23
Texas Juvenile Justice Department Appropriations and Riders for the 2024-2025 Biennium	24
Appropriation Riders to TJJD Budget	25
1. Performance Measure Targets.	25
2. Capital Budget.	25
3. Appropriation of Other Agency Funds.	25
4. Revolving Funds.	26
5. Student Employment.	26
6. Appropriation and Tracking of Title IV-E Receipts.	26
7. Federal Foster Care Claims.	26
8. Support Payment Collections.	26
9. Employee Medical Care.	26
10. Safety.	27
11. Charges to Employees and Visitors.	27
12. Juvenile Justice Alternative Education Program (JJAEP).	27
13. Funding for Additional Eligible Students in JJAEPs.	28
14. JJAEP Accountability.	28
15. Appropriation Transfers between Fiscal Years.	28
16. State-owned Housing Authorized.	29
17. Unexpended Balances - Hold Harmless Provision.	29
18. Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments.	29
19. Salaries, Education Professionals.	29
20. Training for GED and Reading Skills.	30
21. Salary Adjustment Authorized.	30
22. Appropriations Prohibited for Purposes of Payment to Certain Employees.	30
23. Managed Health Care and Mental Health Services Contract(s).	30
24. JJAEP Disaster Compensation.	30
25. Reporting Requirements to the Legislative Budget Board.	30
26. Commitment Diversion Initiatives.	31
27. Mental Health Services Grants.	32
28. Contingency for Behavioral Health Funds.	32
29. Youth Transport.	32
30. Harris County Leadership Academy.	32

31. Office of the Independent Ombudsman and Office of the Inspector General.	33
32. Single Grant Applications for Local Probation Departments.	33
33. Non-Profit Pilot Programs.	33
34. Prevention, Intervention, and Commitment Diversion.	33
35. Harris County Front-End Multisystemic Therapy Team.	33
36. Urban County Admissions.	33
37. El Paso Front-End Multisystemic Therapy Team.	34
38. Human Resources Management Plan.	34
39. Sunset Contingency.	34
40. Appropriation for Salary Increase for Local Juvenile Probation Departments.	34
41. Construction of Facilities.	34
42. Commissioned Peace Officer Salary Increase.	35
Foreword	37
Title 3, Family Code.....	39
Topic: Fees	39
Family Code Sec. 51.072. TRANSFER OF PROBATION SUPERVISION BETWEEN COUNTIES: INTERIM SUPERVISION.	39
Family Code Sec. 51.10. RIGHT TO ASSISTANCE OF ATTORNEY; COMPENSATION.	39
[Code of Criminal Procedure Art. 26.057. COST OF EMPLOYMENT OF COUNSEL FOR CERTAIN MINORS.	41
Family Code Sec. 53.03. DEFERRED PROSECUTION.	41
Family Code Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS.	42
[Family Code Sec. 54.06. JUDGMENTS FOR SUPPORT.	42
[Family Code Sec. 54.061. PAYMENT OF PROBATION FEES.	43
Family Code Sec. 56.01. RIGHT TO APPEAL.....	43
Family Code Sec. 61.002. APPLICABILITY.....	44
Topic: Remote Detention Hearings.....	45
Family Code Sec. 54.012. REMOTE CONDUCT [INTERACTIVE VIDEO RECORDING] OF DETENTION HEARING.....	45
Topic: Services for Certified Juveniles	46
Family Code Sec. 54.021. SERVICES PROVIDED TO CHILD IN DETENTION FACILITY PENDING CRIMINAL PROSECUTION.	46
Topic: Juvenile Records.....	47
Family Code Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR, AND COURT RECORDS.....	47
Government Code Section 411.052. FEDERAL FIREARM REPORTING.	47

Government Code Section 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN PERSONS' ACCESS TO FIREARMS.....	48
Family Code Sec. 58.009. DISSEMINATION OF JUVENILE JUSTICE INFORMATION BY THE TEXAS JUVENILE JUSTICE DEPARTMENT.....	50
Topic: Mental Health Proceedings, Fitness to Proceed, Lack of Responsibility.....	51
Family Code Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION.....	51
CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.....	52
SUBCHAPTER A. GENERAL PROVISIONS.....	52
Family Code Sec. 55.01. DEFINITIONS [MEANING OF "HAVING A MENTAL ILLNESS"].....	52
Family Code Sec. 55.02. MENTAL HEALTH AND INTELLECTUAL DISABILITY JURISDICTION.....	53
Family Code Sec. 55.03. STANDARDS OF CARE.....	53
Family Code Sec. 55.04. FORENSIC MENTAL EXAMINATION.....	53
Family Code Sec. 55.05. CRITERIA FOR COURT-ORDERED MENTAL HEALTH SERVICES FOR CHILD.....	53
Family Code Sec. 55.06. CRITERIA FOR COURT-ORDERED RESIDENTIAL INTELLECTUAL DISABILITY SERVICES FOR CHILD.....	54
SUBCHAPTER B. COURT-ORDERED MENTAL HEALTH SERVICES FOR CHILD WITH MENTAL ILLNESS.....	54
Family Code Sec. 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION.....	54
Family Code Sec. 55.12. INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.....	55
Family Code Sec. 55.13. Re-designated as Sec. 55.65 and included below with amendments noted...	55
Family Code Sec. 55.14. Re-designated as Sec. 55.68 and included below with amendments noted. .	55
Family Code Sec. 55.15. STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES.....	55
Family Code Sec. 55.16. ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS. ..	56
Family Code Sec. 55.17. MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY.....	56
Family Code Sec. 55.18. DISCHARGE FROM COURT-ORDERED INPATIENT OR OUTPATIENT MENTAL HEALTH SERVICES [FACILITY] BEFORE REACHING 18 YEARS OF AGE.....	56
Family Code Sec. 55.19. DISCRETIONARY TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY.....	56
SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS OR INTELLECTUAL DISABILITY.....	57
Family Code Sec. 55.31. UNFITNESS TO PROCEED DETERMINATION; EXAMINATION.....	57
Family Code Sec. 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED.....	58
Family Code Sec. 55.34. TRANSPORTATION TO AND FROM FACILITY.....	58

Family Code Sec. 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY OR ALTERNATIVE SETTING; REPORT TO COURT.....	59
Family Code Sec. 55.36. REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION.	59
Family Code Sec. 55.37. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.	59
Family Code Sec. 55.38. Re-designated as Sec. 55.66 and included below with amendments noted.	60
Family Code Sec. 55.39. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.	60
Family Code Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF INTELLECTUAL DISABILITY.	60
Family Code Sec. 55.41 redesignated as Sec. 55.67 and included below with amendments noted.	60
Family Code Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR CHILDREN WITH INTELLECTUAL DISABILITY.	60
Family Code Sec. 55.43. RESTORATION HEARING.	61
Family Code Sec. 55.44. DISCRETIONARY TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD.	61
Family Code Sec. 55.45. STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH.	61
SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF MENTAL ILLNESS OR INTELLECTUAL DISABILITY.	62
Family Code Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION; EXAMINATION.	62
Family Code Sec. 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT.	62
Family Code Sec. 55.53. TRANSPORTATION TO AND FROM FACILITY.	63
Family Code Sec. 55.54. INFORMATION REQUIRED TO BE SENT TO FACILITY OR ALTERNATIVE SETTING; REPORT TO COURT.....	63
Family Code Sec. 55.55. REPORT THAT CHILD DOES NOT HAVE MENTAL ILLNESS OR INTELLECTUAL DISABILITY; HEARING ON OBJECTION.	64
Family Code Sec. 55.56. REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.	64
Family Code Sec. 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS.	64
Family Code Sec. 55.58. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.	65
Family Code Sec. 55.59. REPORT THAT CHILD HAS INTELLECTUAL DISABILITY; INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED RESIDENTIAL INTELLECTUAL DISABILITY SERVICES.	65
Family Code Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR CHILDREN WITH INTELLECTUAL DISABILITY.	65

[Family Code Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR CHILDREN WITH INTELLECTUAL DISABILITY.].....	66
SUBCHAPTER E. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH OR RESIDENTIAL INTELLECTUAL DISABILITY SERVICES.....	66
Family Code Sec. 55.65 [55.13]. [COMMITMENT] PROCEEDINGS IN JUVENILE COURT FOR CHILD WITH MENTAL ILLNESS.....	66
Family Code Sec. 55.66 [55.38]. [COMMITMENT] PROCEEDINGS IN JUVENILE COURT FOR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO MENTAL ILLNESS.	67
Family Code Sec. 55.67 [55.41]. [COMMITMENT] PROCEEDINGS IN JUVENILE COURT FOR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO [CHILDREN WITH] INTELLECTUAL DISABILITY.	67
Family Code Sec. 55.68 [55.14]. REFERRAL FOR [COMMITMENT] PROCEEDINGS FOR CHILD WITH MENTAL ILLNESS OR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO MENTAL ILLNESS OR INTELLECTUAL DISABILITY.	68
Topic: Juvenile Curfews.....	69
Local Government Code Sec. 370.007. JUVENILE CURFEWS PROHIBITED.	69
Family Code Sec. 51.02. DEFINITIONS.	69
Code of Criminal Procedure Art. 45.045. CAPIAS PRO FINE.	70
[Code of Criminal Procedure Art. 45.059. CHILDREN TAKEN INTO CUSTODY FOR VIOLATION OF JUVENILE CURFEW OR ORDER.].....	70
Code of Criminal Procedure Art. 45.060. UNADJUDICATED CHILDREN, NOW ADULTS; NOTICE ON REACHING AGE OF MAJORITY; OFFENSE.	70
[Local Government Code Sec. 341.905. JUVENILE CURFEW IN GENERAL LAW MUNICIPALITY.].....	70
[Local Government Code Sec. 351.903. COUNTY JUVENILE CURFEW.].....	71
[Local Government Code Sec. 370.002. REVIEW OF JUVENILE CURFEW ORDER OR ORDINANCE.].....	71
Government Code Sec. 38.003. USE OF FUNDS IN ACCOUNT.	71
Government Code Sec. 71.0352. JUVENILE DATA: JUSTICE, MUNICIPAL, AND TRUANCY COURTS.....	71
Penal Code Sec. 8.07(e). AGE AFFECTING CRIMINAL RESPONSIBILITY.	72
Interagency Search Engine	73
Topic: Search Engine.....	73
HEALTH AND SAFETY CODE. TITLE 9. SUBTITLE D. INTERAGENCY SAFETY INITIATIVES	73
HEALTH AND SAFETY CODE CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE.....	73
Health and Safety Code Sec. 810.001. DEFINITIONS.....	73
Health and Safety Code Sec. 810.002. APPLICABILITY.....	73

Health and Safety Code Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER CREDENTIALS.	73
Health and Safety Code Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH ENGINE; ADDITIONAL INFORMATION SHARING.	74
Health and Safety Code Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH ENGINE RESULTS.	75
Health and Safety Code Sec. 810.007. NOTICE AND HEARING.	75
Health and Safety Code Sec. 810.008. OFFICE OF INTERAGENCY COORDINATION ON REPORTABLE CONDUCT.	75
Health and Safety Code Sec. 810.009. MEMORANDUM OF UNDERSTANDING.	76
Health and Safety Code Sec. 810.010. CONFIDENTIALITY.	76
Topic: Texas Education Agency	76
Education Code Sec. 22.094. NOTICE OF ALLEGED MISCONDUCT; INVESTIGATION; HEARING.	76
Health and Safety Code Sec. 253.010. REMOVAL FROM REGISTRY.	76
Human Resources Code Sec. 42.056. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS; CRIMINAL PENALTIES.	77
Topic: Department of Family and Protective Services	77
Human Resources Code Sec. 42.159(c). BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED.	77
Human Resources Code Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED.	77
Topic: Texas Juvenile Justice Department	77
Human Resources Code Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR PROVISIONAL CERTIFICATION.	77
Human Resources Code Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION INELIGIBILITY.	77
Texas Juvenile Justice Department	79
Topic: Administrative Provisions	79
Human Resources Code Sec. 202.001. COMPOSITION OF BOARD; PRESIDING OFFICER.	79
Human Resources Code Sec. 202.005. BOARD MEMBER RECUSAL.	79
Human Resources Code Sec. 202.006. TRAINING FOR BOARD MEMBERS.	80
Human Resources Code Sec. 202.010. SUNSET PROVISION.	80
Human Resources Code Sec. 203.001. CONTROL OVER DEPARTMENT; DEPARTMENT MISSION.	81
Human Resources Code Sec. 203.002. EXECUTIVE DIRECTOR.	81
Human Resources Code Sec. 203.0081. ADVISORY COUNCIL ON JUVENILE SERVICES.	82
Human Resources Code Sec. 203.0083. AUTHORITY TO ESTABLISH ADVISORY COMMITTEES.	83

Human Resources Code Sec. 246.002. ADVISORY COMMITTEE.	84
Human Resources Code Sec. 203.0084. RISK FACTORS AND RISK ASSESSMENT TOOLS.	84
Human Resources Code Sec. 203.0085. RISK-BASED INSPECTIONS.	85
Family Code Sec. 51.12. PLACE AND CONDITIONS OF DETENTION.	85
Family Code Sec. 51.125. POST-ADJUDICATION CORRECTIONAL FACILITIES.	85
Family Code Sec. 51.126. NONSECURE CORRECTIONAL FACILITIES.	85
Human Resources Code Sec. 203.010. COMPLAINTS.	86
Human Resources Code Sec. 203.0101. STATISTICAL ANALYSIS OF COMPLAINTS.	86
Human Resources Code Sec. 203.013. INTERNAL AUDIT; REPORT.	87
Human Resources Code Sec. 203.014. TOLL-FREE NUMBER.	87
Human Resources Code Sec. 203.017. REGIONALIZATION PLAN.	88
Human Resources Code Sec. 203.018. SPECIALIZED PROGRAMS AND SPECIAL PROJECTS.	89
Human Resources Code Sec. 203.0185. RESOURCE MAPPING.	90
Topic: Administrative Rules and Standards	90
Human Resources Code Sec. 221.002. GENERAL RULES GOVERNING JUVENILE BOARDS, PROBATION DEPARTMENTS, PROBATION OFFICERS, PROGRAMS, AND FACILITIES.	90
Topic: Certification of Officers	91
Human Resources Code Sec. 222.001. MINIMUM STANDARDS FOR PROBATION OFFICERS.	91
Human Resources Code Sec. 222.002. MINIMUM STANDARDS FOR DETENTION OFFICERS.	92
Human Resources Code Sec. 222.0521. APPLICATION OF CERTAIN LAW.	92
Human Resources Code Sec. 222.0522. PROVISIONAL CERTIFICATION.	93
Human Resources Code Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR PROVISIONAL CERTIFICATION.	93
Human Resources Code Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION INELIGIBILITY.	93
Occupations Code. CHAPTER 60. DIGITAL LICENSES.	94
Occupations Code Sec. 60.001. DEFINITIONS.	94
Occupations Code Sec. 60.002. REQUIREMENTS FOR DIGITAL LICENSES.	94
Topic: State Aid	95
Human Resources Code Sec. 223.001. DETERMINATION OF AMOUNT OF STATE AID.	95
Topic: Reports and Information	95
Human Resources Code Sec. 241.009. COMMITMENT INFORMATION.	95
Human Resources Code Sec. 242.002. [EVALUATION OF] TREATMENT PROGRAMS; AVAILABILITY.	96
Human Resources Code Sec. 245.0535. COMPREHENSIVE REENTRY AND REINTEGRATION PLAN FOR CHILDREN; STUDY AND REPORT.	96
Topic: Actions Regarding Youth	96

Human Resources Code Sec. 243.001. PLACEMENT IN DEPARTMENT FACILITIES.	97
Human Resources Code Sec. 244.014. REFERRAL OF DETERMINATE SENTENCE OFFENDERS FOR TRANSFER.	97
Topic: Office of Inspector General	98
Human Resources Code Sec. 242.102. OFFICE OF INSPECTOR GENERAL.....	98
[Human Resources Code Sec. 221.011. INVESTIGATORS.	99
[Human Resources Code Sec. 221.055. QUARTERLY REPORT ON ABUSE, NEGLECT, AND EXPLOITATION.	99
[Human Resources Code Sec. 243.052. APPREHENSION SPECIALISTS.	99
Code of Criminal Procedure Art. 2A.001 [2.12]. WHO ARE PEACE OFFICERS.	99
Government Code Sec. 662.005. ENTITLEMENT TO PAID DAY OFF.	100
Code of Criminal Procedure Art. 18B.001. DEFINITIONS.	101
Code of Criminal Procedure Art. 18B.252. PEACE OFFICERS AUTHORIZED TO POSSESS, INSTALL, OPERATE, OR MONITOR EQUIPMENT.	101
Code of Criminal Procedure Art. 18B.302. REPORT OF EXPENDITURES.....	101
Code of Criminal Procedure Art. 18B.451. SUBPOENA AUTHORITY.	101
Code of Criminal Procedure Art. 18B.452. REPORT OF ISSUANCE OF SUBPOENA.	102
Topic: Paid Parental Leave	102
Government Code Sec. 661.912. FAMILY AND MEDICAL LEAVE ACT.....	102
Government Code Sec. 661.9125. PAID PARENTAL LEAVE FOR CERTAIN EMPLOYEES.	102
Topic: Confidentiality of Health Care Provider Information.....	103
Tax Code Sec. 25.025. CONFIDENTIALITY OF CERTAIN HOME ADDRESS INFORMATION.....	103
Topic: TJJD Employee Reports to Law Enforcement	104
Human Resources Code Sec. 203.020. REPORT OF CRIMINAL CONDUCT; PENALTY.....	104
Human Resources Code Sec. 203.021. EMPLOYER RETALIATION PROHIBITED.	104
Office of the Independent Ombudsman.....	107
Topic: Oversight of Post-Adjudication Facilities.....	107
Human Resources Code Sec. 261.002. ESTABLISHMENT; PURPOSE.	107
Human Resources Code Sec. 261.101. DUTIES AND POWERS.	107
Human Resources Code Sec. 261.056. COMMUNICATION AND CONFIDENTIALITY.....	108
Human Resources Code Sec. 261.057. PROMOTION OF AWARENESS OF OFFICE.	108
Human Resources Code Sec. 261.102. TREATMENT OF [DEPARTMENT] EMPLOYEES WHO COOPERATE WITH INDEPENDENT OMBUDSMAN.	108
Human Resources Code Sec. 261.151. ACCESS TO INFORMATION OF GOVERNMENTAL ENTITIES.	108
Human Resources Code Sec. 261.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.	108

Human Resources Code Sec. 261.153. ACCESS TO INFORMATION OF JUVENILE PROBATION DEPARTMENTS.	108
Topic: Complaints	109
Human Resources Code Sec. 261.061. COMPLAINTS.....	109
Topic: Inspections	109
Human Resources Code Sec. 261.105. RISK FACTORS AND RISK ASSESSMENT TOOLS.	109
Human Resources Code Sec. 261.106. RISK-BASED INSPECTIONS.	109
Education Code.....	111
Topic: School Removal (DAEP and JJAEP)	111
Education Code Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT.	111
Education Code Sec. 37.007. EXPULSION FOR SERIOUS OFFENSES.	111
Education Code Sec. 37.008. DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM.	112
Education Code Sec. 37.009. CONFERENCE; HEARING; REVIEW.	112
Topic: Restraints, Tasers, and Pepper Spray at Schools	114
Education Code Sec. 37.0021. USE OF CONFINEMENT, RESTRAINT, SECLUSION, AND TIME-OUT.	114
Topic: Population Thresholds.....	115
Education Code Sec. 37.011. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.	116
Education Code Sec. 25.093. PARENT CONTRIBUTING TO NON-ATTENDANCE.....	116
Family Code Sec. 65.004. TRUANCY COURTS; JURISDICTION.....	116
Topic: Hazing.....	117
Education Code Sec. 37.152. PERSONAL HAZING OFFENSE.	117
Education Code Sec. 37.155. IMMUNITY FROM PROSECUTION OR CIVIL LIABILITY AVAILABLE.	117
Courts and Juvenile Boards	119
Topic: Brazos County	119
Judicial District	119
Government Code Sec. 24.60095. 472 nd JUDICIAL DISTRICT (BRAZOS COUNTY).	119
Topic: Jurisdiction of County Court of Stephens County	119
Government Code Sec. 26.315. STEPHENS COUNTY.....	119
Human Resources Code Sec. 152.0901. GALVESTON COUNTY.....	119
Human Resources Code Sec. 152.1181. NAVARRO COUNTY.	119
Human Resources Code Section 152.0671. DENTON COUNTY.	120
Topic: Denton County Criminal Law Magistrate Court	120
SUBCHAPTER SS. DENTON COUNTY CRIMINAL LAW MAGISTRATE COURT	120
Government Code Sec. 54.2801. CREATION.....	120

Government Code Sec. 54.2802. APPOINTMENT; OVERSIGHT.	120
Government Code Sec. 54.2803. JURISDICTION.	120
Government Code Sec. 54.2804. POWERS AND DUTIES.	121
Government Code Sec. 54.2805. CRIMINAL LAW MAGISTRATE COURT ASSOCIATE JUDGE.	121
Government Code Sec. 54.2806. JAIL MAGISTRATE.	121
Government Code Sec. 54.2807. QUALIFICATIONS.	122
Government Code Sec. 54.2808. COMPENSATION.	122
Government Code Sec. 54.2809. JUDICIAL IMMUNITY.	122
Government Code Sec. 54.2811. PROCEEDING THAT MAY BE REFERRED.	122
Government Code Sec. 54.2812. ORDER OF REFERRAL.	123
Government Code Sec. 54.2813. FORFEITURES.	124
Government Code Sec. 54.2814. PAPERS TRANSMITTED TO JUDGE.	124
Government Code Sec. 54.2815. JUDICIAL ACTION.	124
Government Code Sec. 54.2816. EXCHANGE OF BENCHES.	124
Government Code Sec. 54.2817. COURT REPORTER.	124
Government Code Sec. 54.2818. WITNESS.	124
Government Code Sec. 54.2819. CLERK.	124
Government Code Sec. 54.2820. COSTS.	124
Topic: Interpreter Costs.	125
Government Code Sec. 57.002. APPOINTMENT OF INTERPRETER OR CART PROVIDER; CART PROVIDER LIST; PAYMENT OF INTERPRETER COSTS.	125
Topic: Statistics and Monthly Reports.	126
Government Code Sec. 71.035. STATISTICS; ENFORCEMENT BY MANDAMUS.	126
Governmental Entities.	128
Topic: Employer Requirements.	128
LABOR CODE CHAPTER 104A. REPORTING WORKPLACE VIOLENCE.	128
Labor Code Sec. 104A.001. DEFINITIONS.	128
Labor Code Sec. 104A.002. NOTICE BY EMPLOYER.	128
Labor Code Sec. 104A.003. RULES.	128
Topic: Public Information Act.	128
Government Code Sec. 552.0031. BUSINESS DAYS.	128
Government Code Sec. 552.012. OPEN RECORDS TRAINING.	129
Government Code Sec. 552.103. LITIGATION OR SETTLEMENT NEGOTIATIONS INVOLVING THE STATE OR A POLITICAL SUBDIVISION.	129
Government Code Sec. 552.108. EXCEPTION: CERTAIN LAW ENFORCEMENT, CORRECTIONS, AND PROSECUTORIAL INFORMATION.	130

Government Code Sec. 552.271. INSPECTION OF PUBLIC INFORMATION IN PAPER RECORD IF COPY NOT REQUESTED.	131
Government Code Sec. 552.272. INSPECTION OF ELECTRONIC RECORD IF COPY NOT REQUESTED.	131
Government Code Sec. 552.275, REQUESTS THAT REQUIRE LARGE AMOUNTS OF EMPLOYEE OR PERSONNEL TIME.	131
Government Code Sec. 552.3031. ELECTRONIC SUBMISSION OF REQUEST FOR ATTORNEY GENERAL DECISION.	133
Government Code Sec. 552.308. TIMELINESS OF ACTION BY UNITED STATES MAIL, INTERAGENCY MAIL, OR COMMON OR CONTRACT CARRIER.	134
Government Code Sec. 552.306. RENDITION OF ATTORNEY GENERAL DECISION; ISSUANCE OF WRITTEN OPINION.	134
Government Code Sec. 552.310. SEARCHABLE DATABASE.	135
Procedure and Evidence.....	137
Topic: Admissibility of Evidence	137
Code of Criminal Procedure Art. 38.072. HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS.	137
Code of Criminal Procedure Art. 38.24. STATEMENTS OBTAINED BY INVESTIGATIVE HYPNOSIS.....	137
Code of Criminal Procedure Art. 38.37. EVIDENCE OF EXTRANEIOUS OFFENSES OR ACTS.	138
Topic: Statute of Limitations - Trafficking and Child Pornography.....	139
Code of Criminal Procedure. Art. 12.01. FELONIES.....	139
Code of Criminal Procedure. Art. 12.01. FELONIES.....	140
Code of Criminal Procedure. Art. 12.01. FELONIES.....	140
Topic: Statute of Limitations - Family Violence Assault.....	141
Code of Criminal Procedure. Art. 12.01. FELONIES.....	141
Code of Criminal Procedure Art. 12.02. MISDEMEANORS.....	141
Topic: Statute of Limitations - Tampering with Evidence	141
Code of Criminal Procedure. Art. 12.01. FELONIES.....	141
Topic: Statute of Limitations - Abandoning or Endangering a Child.....	142
Code of Criminal Procedure. Art. 12.01. FELONIES.....	142
Topic: Statute of Limitations - Burglary	143
Code of Criminal Procedure. Art. 12.01. FELONIES.....	143
Non-Substantive Revisions	144
Topic: Person-First Respectful Language	144
Family Code Sec. 56.01. RIGHT TO APPEAL.....	144
Human Resources Code Sec. 242.002. [EVALUATION OF] TREATMENT PROGRAMS; AVAILABILITY.....	144

Human Resources Code Sec. 242.056. ADVOCACY AND SUPPORT GROUPS.	144
Human Resources Code Sec. 221.056. RESIDENTIAL TREATMENT FACILITY.	144
Human Resources Code Sec. 244.011. CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITIES [MENTAL RETARDATION].	145
Human Resources Code Sec. 244.012. EXAMINATION BEFORE DISCHARGE.	145
Family Code Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION.	146
Family Code Sec. 54.0408. REFERRAL OF CHILD EXITING PROBATION TO MENTAL HEALTH AUTHORITY OR INTELLECTUAL AND DEVELOPMENTAL DISABILITY [MENTAL RETARDATION] AUTHORITY.	146
Family Code Sec. 58.0051. INTERAGENCY SHARING OF EDUCATIONAL RECORDS.	146
Human Resources Code Sec. 221.056. RESIDENTIAL TREATMENT FACILITY.	147
Human Resources Code Sec. 244.011. CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION].	147
Human Resources Code Sec. 244.012. EXAMINATION BEFORE DISCHARGE.	148
Topic: Health and Human Services Revisions.....	148
Family Code Sec. 53.011. SERVICES PROVIDED TO CERTAIN CHILDREN AND FAMILIES.	148
Family Code Sec. 58.0051. INTERAGENCY SHARING OF EDUCATIONAL RECORDS.	148
Family Code Sec. 261.401. AGENCY INVESTIGATION.	148
SUBCHAPTER D. COORDINATION OF MULTIAGENCY SERVICES.....	148
Government Code Sec. 522.0151. DEFINITION.	148
Government Code Sec. 552.0152. APPLICABILITY OF SUBCHAPTER TO CERTAIN STATE ENTITIES.	149
Government Code Sec. 522.0153. MEMORANDUM OF UNDERSTANDING REQUIRED.	149
Government Code Sec. 522.0154. DEVELOPMENT AND IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING.	149
Government Code Sec. 522.0155. CONTENTS OF MEMORANDUM OF UNDERSTANDING.	149
Government Code Sec. 522.0156. ADOPTION OF MEMORANDUM OF UNDERSTANDING; REVISIONS.	150
Government Code Sec. 522.0157. STATE-LEVEL INTERAGENCY STAFFING GROUP DUTIES; BIENNIAL REPORT.	150
Topic: Alcohol and Substance Misuse Awareness Programs.....	151
Alcoholic Beverage Code Sec. 106.115. ALCOHOL AWARENESS PROGRAM.	151
Code of Criminal Procedure Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION.	151
Family Code Sec. 53.03(h-1). DEFERRED PROSECUTION.	152
Family Code Sec. 54.047. ALCOHOL OR DRUG RELATED OFFENSE.....	152
Penal Code Offenses	153
Topic: Criminal Responsibility for Conduct of Another	153

Penal Code Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER.	153
Topic: Preparatory Offenses	153
Penal Code Sec. 15.032. CHILD GROOMING.	153
Topic: Criminal Homicide	154
Penal Code Sec. 19.03. CAPITAL MURDER.	154
Topic: Trafficking	154
Penal Code Sec. 20A.01. DEFINITIONS.	154
Penal Code Sec. 20A.02. TRAFFICKING OF PERSONS.	154
Topic: Sexual Offenses	155
Penal Code Sec. 21.08. INDECENT EXPOSURE.	155
Penal Code Sec. 21.165. UNLAWFUL PRODUCTION OR DISTRIBUTION OF CERTAIN SEXUALLY EXPLICIT VIDEOS.	156
Penal Code Sec. 21.17. VOYEURISM.	156
Topic: Assaultive Offenses	156
Penal Code Sec. 22.01. ASSAULT.	156
Penal Code Sec. 22.012. INDECENT ASSAULT.	157
Penal Code Sec. 22.02. AGGRAVATED ASSAULT.	158
Penal Code Sec. 22.02. ASSAULT.	158
Penal Code Sec. 1.07. DEFINITIONS.	159
Penal Code Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF THE SAME CRIMINAL EPISODE.	159
Penal Code Sec. 3.04. SEVERANCE.	159
Penal Code Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL.	159
Code of Criminal Procedure. Art. 12.01. FELONIES.	160
Topic: Offenses Against the Family	160
Penal Code Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY.	161
Code of Criminal Procedure. Art. 12.01. FELONIES.	161
Topic: Arson, Criminal Mischief, and Other Property Damage or Destruction	163
Penal Code Sec. 28.03. CRIMINAL MISCHIEF.	163
Penal Code Sec. 28.09. DAMAGING CRITICAL INFRASTRUCTURE FACILITY.	163
Penal Code Sec. 19.04. MANSLAUGHTER.	164
Topic: Theft	164
Penal Code Sec. 31.04. THEFT OF SERVICE.	164
Topic: Catalytic Converters	164
Penal Code Sec. 28.03. CRIMINAL MISCHIEF.	164

Penal Code Sec. 31.03. THEFT.....	165
Penal Code Sec. 31.21. UNAUTHORIZED POSSESSION OF CATALYTIC CONVERTER.	165
Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.....	166
Topic: Fraud.....	166
Penal Code Sec. 32.21. FORGERY.....	166
Topic: Obstructing Governmental Operation.....	167
Penal Code Sec. 38.02. FAILURE TO IDENTIFY.	167
Penal Code Sec. 38.112. TAMPERING WITH ELECTRONIC MONITORING DEVICE.....	167
Code of Criminal Procedure Art. 42.08. CUMULATIVE OR CONCURRENT SENTENCE.	168
Penal Code Sec. 38.115. OPERATION OF UNMANNED AIRCRAFT OVER CORRECTIONAL FACILITY OR DETENTION FACILITY.....	168
Government Code Sec. 423.0045. OFFENSE: OPERATION OF UNMANNED AIRCRAFT OVER [CORRECTIONAL FACILITY, DETENTION FACILITY, OR] CRITICAL INFRASTRUCTURE FACILITY.....	169
Topic: Disorderly Conduct and Related Offenses.....	170
Code of Criminal Procedure Art. 59.01. DEFINITIONS.	170
Penal Code Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.....	170
Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.....	170
Transportation Code Sec. 545.420. RACING ON HIGHWAY; IMPOUNDMENT OF A VEHICLE. ..	171
Penal Code Sec. 42.07. HARASSMENT.....	171
Penal Code Sec. 42.072. STALKING.....	171
Code of Criminal Procedure Art. 38.46. EVIDENCE IN PROSECUTIONS FOR STALKING.	172
Penal Code Sec. 42.074. UNLAWFUL DISCLOSURE OF RESIDENCE ADDRESS OR TELEPHONE NUMBER.	172
Penal Code Sec. 42.107. POSSESSION OF ANIMAL BY PERSON CONVICTED OF ANIMAL CRUELTY.....	173
Topic: Public Indecency.....	173
Penal Code Sec. 43.02. PROSTITUTION.	173
Penal Code Sec. 43.021. SOLICITATION OF PROSTITUTION.....	173
Penal Code Sec. 43.03. PROMOTION OF PROSTITUTION.....	174
Penal Code Sec. 43.05. COMPELLING PROSTITUTION.	174
Penal Code Sec. 43.25. SEXUAL PERFORMANCE BY A CHILD.	175
Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.....	175
Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.....	176
Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.....	177
Penal Code Sec. 43.262. POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING A CHILD.	177

Topic: Weapons	177
Penal Code Sec. 46.03. PLACES WEAPONS PROHIBITED.	177
Alcohol and Other Substances	179
Topic: Alcohol.....	179
Alcoholic Beverage Code Sec. 106.06(a). PURCHASE OF ALCOHOL FOR A MINOR; FURNISHING ALCOHOL TO A MINOR.....	179
Alcoholic Beverage Code Sec. 106.12. EXPUNCTION OF CONVICTION OR ARREST RECORDS OF A MINOR.	179
Topic: Fentanyl.....	180
Health and Safety Code Sec. 193.005. PERSONAL INFORMATION.	180
Health and Safety Code Sec. 481.102. PENALTY GROUP 1.	180
Health and Safety Code Sec. 481.1022. PENALTY GROUP 1-B.	181
Health and Safety Code Sec. 481.1123. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-B.....	181
Health and Safety Code Sec. 481.134. DRUG-FREE ZONES.	182
Penal Code Sec. 19.02. MURDER.	182
Health and Safety Code Sec. 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY.	182
Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.....	182
Topic: Designation as First Degree Felony	183
Health and Safety Code Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1.....	183
Health and Safety Code Sec. 481.1121. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-A.....	183
Health and Safety Code Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2 OR 2-A.....	183
Health and Safety Code Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4.....	183
Health and Safety Code Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCES IN PENALTY GROUP 1 OR 1-B.	184
Health and Safety Code Sec. 481.1151. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A.	184
Health and Safety Code Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A.	184
Health and Safety Code Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A.....	184
Health and Safety Code Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3.....	184

Health and Safety Code Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4.	185
Health and Safety Code Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA.....	185
Health and Safety Code Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA.	185
Health and Safety Code Sec. 481.126. OFFENSE: ILLEGAL BARTER, EXPENDITURE, OR INVESTMENT.	185
Topic: Kratom.....	186
Health and Safety Code Chapter 444. MANUFACTURE, DISTRIBUTION, AND SALE OF KRATOM PRODUCTS.....	186
Health and Safety Code Sec. 444.001 DEFINITIONS.	186
Health and Safety Code Sec. 444.002. LABEL REQUIRED.....	186
Health and Safety Code Sec. 444.003. ADULTERATED, CONTAMINATED, AND PROHIBITED KRATOM PRODUCTS.	186
Health and Safety Code Sec. 444.004. OFFENSE FOR DISTRIBUTION OR SALE OF KRATOM PRODUCT TO MINOR.	186
Health and Safety Code Sec. 444.005. CIVIL PENALTY.....	186
Health and Safety Code Sec. 444.006. PENALTIES UNDER OTHER LAW.....	187
Health and Safety Code Sec. 444.007. RULES.....	187
Other Offenses	188
Topic: Transportation Code.....	188
Transportation Code Sec. 545.157. PASSING CERTAIN VEHICLES.	188
Topic: Human Resources Code	189
Human Resources Code Sec. 121.006. [PENALTIES FOR] IMPROPER USE OF ASSISTANCE AND SERVICE ANIMALS; OFFENSE.	189
Civil Practice and Remedies Code	190
Topic: Theft Education Program	190
Civil Practice and Remedies Code Sec. 124.001. SUSPECTED THEFT OF PROPERTY OR ATTEMPTED THEFT OF PROPERTY [DETENTION]	190
Civil Practice and Remedies Code Sec. 124.002. THEFT EDUCATION PROGRAM.....	190
Civil Practice and Remedies Code Sec. 124.003. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY.	191
Law Enforcement.....	192
Topic: Missing Children and Missing Persons.....	192
Government Code Sec. 411.355. ACTIVATION.	192
Government Code Sec. 411.3555. LOCAL AREA ACTIVATION FOR CERTAIN MISSING CHILDREN.....	192
Government Code Sec. 411.356. LOCAL LAW ENFORCEMENT AGENCIES.	192
Code of Criminal Procedure Art. 2.13. DUTIES AND POWERS.	193

Code of Criminal Procedure Art. 63.009. LAW ENFORCEMENT REQUIREMENTS GENERALLY.	193
Code of Criminal Procedure Art. 63.00905. LAW ENFORCEMENT REQUIREMENTS FOR REPORT OF MISSING CHILD.....	194
Code of Criminal Procedure Art. 63.0091. LAW ENFORCEMENT REQUIREMENTS REGARDING REPORTS OF CERTAIN MISSING CHILDREN.	195
[Code of Criminal Procedure Art. 63.0092. OPTION TO DESIGNATE MISSING CHILD AS HIGH RISK.	196
Occupations Code Sec. 1701.253. SCHOOL CURRICULUM.	196
Occupations Code Sec. 1701.2581. VOLUNTARY ADVANCED EDUCATION AND TRAINING PROGRAM ON MISSING CHILDREN AND PERSONS.	196
Topic: Incident-Based Crime Statistics.....	199
Government Code Sec. 411.0541. TEXAS CRIME INFORMATION SYSTEM.	199
Topic: Notifications to Victims of Sexual Assault.....	199
Code of Criminal Procedure. SUBCHAPTER I. PEACE OFFICER AND [REQUIRED NOTIFICATIONS BY] LAW ENFORCEMENT AGENCY DUTIES; VICTIM NOTIFICATIONS.	200
Code of Criminal Procedure Art. 56A.403. DUTIES OF PEACE OFFICERS REGARDING VICTIMS OF SEXUAL ASSAULT.	200
[Art. 56A.402. REFERRAL TO SEXUAL ASSAULT PROGRAM.	201
Justice and Municipal Courts	202
Code of Criminal Procedure Chapter 45. SUBCHAPTER E. YOUTH DIVERSION	202
Code of Criminal Procedure Art. 45.301. DEFINITIONS.	202
Code of Criminal Procedure Art. 45.302. APPLICABILITY.	203
Code of Criminal Procedure Art. 45.303. TRANSFER TO JUVENILE COURT NOT AFFECTED. ..	203
Code of Criminal Procedure Art. 45.304. DIVERSION ELIGIBILITY.	203
Code of Criminal Procedure Art. 45.305. DIVERSION STRATEGIES.	203
Code of Criminal Procedure Art. 45.306. YOUTH DIVERSION PLAN.	204
Code of Criminal Procedure Art. 45.307. YOUTH DIVERSION COORDINATOR.	204
Code of Criminal Procedure Art. 45.308. DIVERSION AGREEMENT.	204
Code of Criminal Procedure Art. 45.309. INTERMEDIATE DIVERSION.	205
Code of Criminal Procedure Art. 45.310. DIVERSION BY JUSTICE OR JUDGE.	205
Code of Criminal Procedure Art. 45.311. REFERRAL TO COURT.....	206
Code of Criminal Procedure Art. 45.312. LOCAL YOUTH DIVERSION ADMINISTRATIVE FEE. .	206
Code of Criminal Procedure Art. 45.313. DIVERSION RECORDS.	206
Code of Criminal Procedure Art. 45.041. JUDGMENT.	212
Code of Criminal Procedure Art. 45.049. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS.	212

Code of Criminal Procedure Art. 45.056. JUVENILE CASE MANAGERS.	212
Code of Criminal Procedure Art. 102.014. FINES FOR CHILD SAFETY FUND [IN MUNICIPALITIES].	215
Code of Criminal Procedure Art. 102.0171. FINES: JUVENILE DELINQUENCY PREVENTION FUNDS.	216
Local Government Code Sec. 133.102. CONSOLIDATED FEES ON CONVICTION.	216
Local Government Code Sec. 133.125. ALLOCATION OF FEES TO YOUTH [TRUANCY PREVENTION AND] DIVERSION ACCOUNT.	217
Local Government Code Sec. 134.103. LOCAL CONSOLIDATED FEE ON CONVICTION OF NONJAILABLE MISDEMEANOR.	217
Local Government Code Sec. 134.156. LOCAL YOUTH [TRUANCY PREVENTION AND] DIVERSION FUND.	217
Family Code Sec. 264.302. EARLY YOUTH INTERVENTION SERVICES.	219
Government Code Sec. 22.1105. JUDICIAL INSTRUCTION RELATED TO CERTAIN ALLEGED CHILD OFFENDERS.	219

General Counsel's Message

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Over 2,500 years ago the Greek philosopher Heraclitus wrote "Everything changes and nothing is still; and you cannot step into the same creek twice." Put another way, the only constant is change. That certainly has been the case since the last newsletter, which followed 2021's 87th Texas Legislature. To start, the Texas Juvenile Justice Department (TJJD) has a new Executive Director, Shandra Carter, and a new Chief Inspector General, Daniel Guajardo. Both are experienced leaders who bring vision and stability to their role.

Another change is the significant shift in TJJD's youth population over the last several years. Admissions in the first ten months of Fiscal Year 2023 for youth adjudicated for capital murder have increased 425 percent compared to all of FY 2019 (4 in FY19 and 17 in partial FY23). Admissions for murder are up 287 percent in the same period (8 in FY19 and 23 in partial FY23). Aggravated assault, violence against the family and deadly conduct make up the rest of the top five most increased classifying offense admissions. Not surprisingly, TJJD has also seen an increase in the number of youths admitted as determinate sentence offenders (DSOs). The following is the profile of the youth currently in TJJD secure facilities:

- 9 in 10 youth are boys;
- 60 percent of youth are age 16 or younger at admission;
- 41.5 percent are Black or African American, and 39.7 percent are Hispanic;
- 60 percent have an incarcerated family member;
- 59 percent have a history of abuse, neglect or family violence;
- On average, they are seven grades behind and 28 percent are special education eligible;

- 32.6 percent were adjudicated for a 1st Degree Felony and 33.1 percent for a 2nd Degree Felony; and
- 97.5 percent have a high or medium need for Capital & Serious Violent Offender Treatment.

Turning to TJJD more broadly, during the recently concluded 88th Regular Legislative Session, it underwent Sunset review per the State's requirement that all agencies be regularly reviewed to assure they're needed and fulfilling their mission. While the Legislature ultimately continued TJJD for four years, this outcome was far from guaranteed. Policymakers strongly considered transferring TJJD's functions to the Texas Department of Criminal Justice (TDCJ), effectively abolishing the state's standalone juvenile justice agency. The initial version of the Sunset bill continued TJJD for only two years and required a limited-scope review next biennium on various topics, including improved coordination with TDCJ. Finally, a legislative committee debated abolishing TJJD, creating a new juvenile justice office within the Health and Human Services Commission, and shuttering state secure facilities by September 2030. In the end, the TJJD Sunset bill signed by the Governor contains these notable provisions:

- TJJD will undergo another Sunset review in 2027.
- The TJJD Board composition will change from 13 members to 9 members. The new composition will comprise one public member, one juvenile court prosecutor, one juvenile court district judge, one county commissioner, three probation chiefs, one mental health expert, and one educator with juvenile justice experience or a juvenile justice professional with facility management experience.

- The regionalization task force will be evergreen and TJJD will update the regionalization plan every two years.
- Moves the monitoring and inspections of juvenile justice facilities to a risk-based model to better target gaps and identify needed improvements.
- Requires TJJD to partner with one or more public or private institutions of higher education to inventory and map resources available for children in the juvenile justice system.

The legislature also passed several laws affecting juveniles, including:

- **SB 1585**, which modernizes and streamlines Ch. 55 of the Family Code so processes are more clear with regard to youth being evaluated for “fitness to proceed” or lack of responsibility. This bill grew out of changes recommended by the Advisory Council on Juvenile Services and mental health stakeholders from across the state of Texas that convened in December of 2021 to evaluate Chapter 55 of the Texas Family Code and propose legislative changes.
- **HB 114** clarifies when a youth possessing, selling, or being under the influence of marijuana, THC, and e-cigarettes may be sent to a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP), while ensuring school districts are aware of the already-existing flexibility to control those assigned to these programs.
- **HB 422** modifies the already existing ability for juvenile courts to conduct detention hearings remotely.
- **HB 1819** repeals the authority of political subdivisions to impose juvenile curfews.
- **SB 1612** eliminates the remainder of juvenile court fees and has the potential impact of making counties more responsible for appointed attorney costs,

regardless of the financial status of the youth or their family.

- **SB 1849** creates a search engine between the abuse/neglect/exploitation and misconduct registries of HHSC, DFPS, TJJD, and TEA to deter prospective employees with a record of harming vulnerable people from hiding their mistreatment of those vulnerable people before hiring.

The 88th Regular Legislative Session also saw the biggest investment in juvenile justice in decades. Highlights of the budget improvements that relate to TJJD and county Juvenile Probation Departments include:

- \$60 million for basic probation services funding for youth referrals, an increase based on more accurate funding formulas designed to better capture the work local departments conduct with youth shallow in the system versus those under formal department supervision.
- \$51 million to fund salary increases for staff at county Juvenile Probation Departments to help alleviate staffing shortages and improve retention as well as make it easier for counties to use their own funds to increase salaries.
- \$31.9 million in targeted salary increases for TJJD direct-care and non-direct care nursing staff and OIG positions. (This is in addition to the two 5 percent annual raises for all state employees in the budget for the next biennium.).
- \$30.7 million for placement funding and additional probation grants for diversion and community-based programming that divert youth away from justice involvement.
- \$15.2 million in supplemental funding for detention reimbursements to localities holding TJJD-bound youth await transfer to state.

Additionally, \$200 million for 200 new beds was adopted as part of recommendations by the Sunset Advisory Commission. As passed, this

Provision provides that newly constructed facilities may include services and appropriate physical features to serve youth with acute mental health needs, youth exhibiting highly aggressive or violent behavior, and/or female youth. Though likely not enough for 200 beds, this investment reflects the State of Texas' commitment to improve the care of justice-involved youth with mental health issues and other specialized needs. Building new facilities is a long-term process, i.e., it will take years. TJJD is working with its state partners, such as the Texas Facilities Commission, on a feasibility study on locations for these needed new facilities. The Department's

goal is to have the real estate secured by the next Session.

While change can be scary, it is also exciting and presents opportunities. As TJJD moves into the new biennium, we are grateful for the State's investment in the juvenile justice system and are confident that we are more than up to the task. We are similarly appreciative for the hard work and dedication of our County juvenile justice partners. Their commitment to keeping youth as shallow in the system as possible and close to home enables TJJD to provide treatment and rehabilitation to those youth who have exhausted the counties efforts. Thank you.

88th Session Legislative Appropriations to the Texas Juvenile Justice Department

Emily Anderson

Deputy Executive Director – Finance and Support Operations
Texas Juvenile Justice Department

TJJD’s baseline appropriation request of \$638.9 million included \$599.4 million in General Revenue. The agency also presented a list of additional funding requests totaling \$315.9 million and 24 fulltime equivalent positions. TJJD provided the legislature with a “one system” approach to address the crisis and strain the system is experiencing and to continue reforming the juvenile justice system in Texas.

The initial versions of the House and Senate budgets were identical and increased TJJD’s total baseline request by \$291.9 million. The increase in baseline funding were a result of formula funding changes for basic probation supervision to account for referrals to probation, increased funding for regionalization, salary increases for juvenile probation departments as well as TJJD direct care staff and one time funding for new secure facility builds.

Through the committee process, the House and Senate considered how to best address juvenile justice needs. Each chamber made its own decisions on the budget and budget riders that

guide how TJJD is funded and how TJJD expends appropriated funds. During the final stages of the process, the House and Senate resolved their differences generally to the agency’s favor. TJJD received an appropriation of just over \$1 billion in the final version of the appropriations bill for fiscal years 2024 and 2025.

In addition to the funding included in the initial versions of the House and Senate budgets, TJJD received appropriations for increased costs for pre/post adjudication and regionalization placements, a validated risk and needs assessment tool for probation, targeted grants for community based programming, nurse and medical staff salary increases, staff wellness counselors, targeted non direct care salary adjustments, additional regionalization coordinators, information technology enhancements, and Schedule C pay parity for the Office of Inspector General. The following table shows FY2024-2025 appropriations to TJJD across all methods of finance by functional area.

Probation, Reentry and Parole	FY2024		FY2025		Biennium
<i>Grants</i>	\$	222,104,779	\$	239,739,381	\$ 461,844,160
<i>Reentry, Parole, and Administration</i>	\$	8,782,596	\$	6,591,771	\$ 15,374,367
State Residential Programs					
<i>State Residential</i>	\$	339,833,443	\$	135,790,258	\$ 475,623,701
System Administration/Oversight					
<i>Training/Monitoring</i>	\$	3,996,946	\$	3,996,946	\$ 7,993,892
<i>Indirect Administration</i>	\$	14,911,005	\$	13,398,682	\$ 28,309,687
<i>Statewide Salary Increase Appropriation</i>	\$	6,282,471	\$	12,526,500	\$ 18,808,971
Inspector General					
<i>Inspector General</i>	\$	7,995,407	\$	8,001,138	\$ 15,996,545
TJJD Total Appropriation	\$	603,906,647	\$	420,044,676	\$ 1,023,951,323

The 88th Legislative Session provided unprecedented support to TJJD and the Juvenile Justice System. The appropriations received will allow for the system to become truly unified and operate as one single system. Considerable staff

time has already and will continue to be expended so that the juvenile justice system fully utilizes the resources provided and to transform TJJD into an agency that is unrecognizable.

Texas Juvenile Justice Department Appropriations and Riders for the 2024-2025 Biennium

Appropriation Strategy	FY 2024	FY 2025
A. Goal: Community Juvenile Justice		
A.1.1. Strategy: Prevention and Intervention	\$3,012,177	\$3,012,177
A.1.2. Strategy: Basic Probation Supervision	\$83,742,964	\$101,377,566
A.1.3. Strategy: Community Programs	\$43,679,896	\$43,679,896
A.1.4. Strategy: Pre and Post Adjudication Facilities	\$30,032,157	\$30,032,157
A.1.5. Strategy: Commitment Diversion Initiatives	\$19,492,500	\$19,492,500
A.1.6. Strategy: Juvenile Justice Alternative Ed Programs	\$5,937,500	\$5,937,500
A.1.7. Strategy: Mental Health Services Grants	\$14,178,353	\$14,178,353
A.1.8. Strategy: Regional Diversion Alternatives	\$22,029,232	\$22,029,232
A.1.9. Strategy: Probation System Support	\$5,042,653	\$2,542,653
Total, Goal A:	\$227,147,432	\$242,282,034
B. Goal: State Services and Facilities		
B.1.1. Strategy: Assessment, Orientation, Placement	\$1,791,460	\$1,791,460
B.1.2. Strategy: Facility Operations and Overhead	\$22,487,879	\$22,487,879
B.1.3. Strategy: Facility Supervision and Food Service	\$51,172,461	\$51,551,390
B.1.4. Strategy: Education	\$14,701,408	\$14,701,408
B.1.5. Strategy: Halfway House Operations	\$6,567,670	\$6,554,115
B.1.6. Strategy: Health Care	\$11,290,289	\$11,419,981
B.1.7. Strategy: Psychiatric Care	\$929,274	\$929,274
B.1.8. Strategy: Integrated Rehabilitation Treatment	\$15,992,098	\$14,992,698
B.1.9. Strategy: Contract Residential Placements	\$6,336,980	\$6,336,980
B.1.10. Strategy: Residential System Support	\$4,609,731	\$4,609,730
B.2.1. Strategy: Construct and Renovate Facilities	\$203,954,193	\$415,343
Total, Goal B:	\$339,833,443	\$135,790,258
C. Goal: Parole Services		
C. C.1.1. Strategy: Parole Direct Supervision	\$2,422,816	\$2,731,991

C. C.1.2. Strategy: Parole Programs and Services	\$1,317,127	\$1,317,127
Total, Goal C:	\$3,739,943	\$4,049,118
D. Goal: Office of Independent Ombudsman		
D.1.1. Strategy: Office of Independent Ombudsman	\$1,049,311	\$1,034,610
E. Goal: Juvenile Justice System		
E.1.1. Strategy: Training and Certification	\$1,721,774	\$1,721,774
E.1.2. Strategy: Monitoring and Inspections	\$2,041,240	\$2,041,240
E.1.3. Strategy: Interstate Agreement	\$233,932	\$233,932
Total, Goal E:	\$3,996,946	\$3,996,946
F. Goal: Indirect Administration		
F.1.1. Strategy: Central Administration	\$8,102,090	\$8,112,629
F.1.2. Strategy: Information Resources	\$6,808,915	\$5,286,053
Total, Goal F:	\$14,911,005	\$13,398,682
G. Goal: Office of the Inspector General		
G.1.1. Strategy: Office of the Inspector General	\$7,995,407	\$8,001,138
H. Goal: Salary Adjustments		
H.1.1. Strategy: Salary Adjustments	\$6,282,471	\$12,526,500
Total Appropriation	\$604,955,958	\$421,079,286

Appropriation Riders to TJJD Budget

1. Performance Measure Targets.

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

2. Capital Budget.

None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below shall be expended only for the purposes shown and are not available for expenditure for other purposes. Amounts appropriated above and identified in

this provision as appropriations either for “Lease payments to the Master Lease Purchase Program” or for items with an “(MLPP)” notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance Authority pursuant to the provisions of Government Code §1232.103. [Modified due to length.]

3. Appropriation of Other Agency Funds.

Included in the amounts appropriated above in Strategies B.1.3, Facility Supervision and Food Service, and B.1.4, Education, are Appropriated Receipts from unexpended balances remaining in Independent School District Funds (not to exceed \$155,000), the Student Benefit Fund (not to exceed \$140,000), and the Canteen Revolving Funds (not to exceed \$7,500). Any gifts, grants, and donations as of August 31, 2023, and August 31, 2024, (estimated to be \$0), and any revenues accruing to those funds are appropriated to those funds for the succeeding fiscal years. Funds

collected by vocational training shops at Juvenile Justice Department facilities, including unexpended balances as of August 31, 2023, (not to exceed \$21,000), are appropriated for the purpose of purchasing and maintaining parts, tools, and other supplies necessary for the operation of those shops.

4. Revolving Funds.

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

5. Student Employment.

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

6. Appropriation and Tracking of Title IV-E Receipts.

The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The Juvenile Justice Department (JJD) shall certify to the Texas Department of Family and Protective Services that federal financial participation can be claimed for Title IV-E services provided by counties. JJD shall direct necessary general revenue funding to ensure that the federal match for the Title IV-E Social Security Act is maximized for use by participating counties. Such federal receipts are appropriated to JJD for the purpose of reimbursing counties for services provided to eligible children. In accordance with Article IX, Part 13 of this Act, when reporting Federal Funds to the Legislative Budget Board, JJD must report funds expended in the fiscal year that funds are disbursed to counties, regardless of the year in

which the claim was made by the county, received by JJD, or certified by JJD.

7. Federal Foster Care Claims.

Out of appropriations made above, the Texas Department of Family and Protective Services and the Juvenile Justice Department shall document possible foster care claims for children in juvenile justice programs and maintain an interagency agreement to implement strategies and responsibilities necessary to claim additional federal foster care funding; and consult with juvenile officials from other states and national experts in designing better foster care funding initiatives.

8. Support Payment Collections.

The Juvenile Justice Department shall report to the Governor and to the Legislative Budget Board the number of active accounts, including the amounts owed to the state pursuant to the Texas Family Code, Section 54.06 (a) court orders, and the total amount of funds collected by December 1 of each fiscal year.

9. Employee Medical Care.

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

10. Safety.

In instances in which regular employees of facilities operated by the Juvenile Justice Department are assigned extra duties on special tactics and response teams, supplementary payments, not to exceed \$200 per month for team leaders and \$150 per month for team members, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classifications and assigned salary ranges.

11. Charges to Employees and Visitors.

- a. Collections for services rendered to Juvenile Justice Department (JJD) employees and visitors shall be made by a deduction from the recipient's salary or by cash payment in advance. Such deductions and other receipts for these services from employees and visitors are appropriated to the facility. Refunds of excess collections shall be made from the appropriation to which the collection was deposited.
- b. As compensation for services rendered and notwithstanding any other provision in this Act, any facility under the jurisdiction of JJD may provide free meals for food service personnel and volunteer workers and may furnish housing facilities, meals, and laundry service in exchange for services rendered by interns, chaplains in training, student nurses, and juvenile correctional officers.

12. Juvenile Justice Alternative Education Program (JJAEP).

Funds transferred to the Juvenile Justice Department (JJD) pursuant to Texas Education Agency (TEA) Rider 26 and appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, shall be allocated as follows: Fifteen percent at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the mandated counties identified in Chapter 37, Education Code.

The remaining funds shall be allocated for distribution to the counties mandated by Section 37.011(a) Education Code, at the rate of \$96 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under Section 37.007, Education Code. Counties are not eligible to receive these funds until the funds initially allocated at the beginning of each fiscal year have been expended at the rate of \$96 per student per day of attendance. Counties in which populations exceed 72,000 but are 125,000 or less, may participate in the JJAEP and are eligible for state reimbursement at the rate of \$96 per student per day.

JJD may expend any remaining funds for summer school programs. Funds may be used for any student assigned to a JJAEP. Summer school expenditures may not exceed ten percent of appropriation.

Unexpended balances in fiscal year 2024 shall be appropriated to fiscal year 2025 for the same purposes in Strategy A.1.6, Juvenile Justice Alternative Education Programs.

The amount of \$96 per student per day for the JJAEP is an estimated amount and not intended to be an entitlement. Appropriations for JJAEP are limited to the amounts transferred from the Foundation School Program pursuant to TEA Rider 26. The amount of \$96 per student per day may vary depending on the total number of students actually attending the JJAEPs. Any unexpended or unobligated appropriations shall lapse at the end of fiscal year 2025 to the Foundation School Fund No. 193.

If the daily mandatory attendance reimbursement rate falls below \$86 per day due to increased days of attendance (the rate established for the 2014-15 school year), TEA will increase appropriated funds to JJD to provide a minimum reimbursement of \$86 per attendance day.

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

13. Funding for Additional Eligible Students in JJAEPs.

Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, a maximum of \$500,000 in each fiscal year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Juvenile Justice Department at the rate of \$96 per day per student for students who are required to be expelled under Section 37.007, Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.

14. JJAEP Accountability.

Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Justice Department (JJD) shall ensure that JJAEPs are held accountable for student academic and behavioral success. JJD shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2024. The report shall include the following:

- a. an assessment of the degree to which each JJAEP enhanced the academic performance and behavioral improvement of attending students;
- b. a detailed discussion on the use of standard measures used to compare program formats and to identify those JJAEPs most successful with attending students;
- c. student passage rates on the State of Texas Assessments of Academic Readiness (STAAR) in the areas of reading and math for students enrolled in the JJAEP for a period of 75 days or longer;
- d. standardized cost reports from each JJAEP and their contracting independent school district(s) to determine differing cost factors and actual costs per each JJAEP program by school year;

- e. average cost per student attendance day for JJAEP students. The cost per day information shall include an itemization of the costs of providing educational services mandated in the Education Code, Section 37.011. This itemization shall separate the costs of mandated educational services from the cost of all other services provided in JJAEPs. Mandated educational services include facilities, staff, and instructional materials specifically related to the services mandated in Education Code, Section 37.011. All other services include, but are not limited to, programs such as family, group, and individual counseling, military-style training, substance abuse counseling, and parenting programs for parents of program youth; and
- f. inclusion of a comprehensive five-year strategic plan for the continuing evaluation of JJAEPs which shall include oversight guidelines to improve: school district compliance with minimum program and accountability standards, attendance reporting, consistent collection of costs and program data, training, and technical assistance needs.

15. Appropriation Transfers between Fiscal Years.

In addition to the transfer authority provided elsewhere in this Act, the Juvenile Justice Department may transfer appropriations in an amount not to exceed \$10,000,000 in General Revenue made for fiscal year 2025 to fiscal year 2024 subject to the following conditions provided by this section:

- a. transfers under this section may be made only if (1) juvenile correctional populations exceed appropriated areas of daily population targets or (2) for any other emergency expenditure, including expenditures necessitated by public calamity;
- b. a transfer authorized by this section must receive prior approval from the Governor and the Legislative Budget Board; and

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

16. State-owned Housing Authorized.

The chief superintendent and the assistant superintendent are authorized to live in state-owned housing at a rate determined by the department. Other Juvenile Justice Department employees may live in state-owned housing as set forth in Article IX, Section 11.02, Reporting Related to State Owned Housing, of this Act. Fees for employee housing are appropriated to be used for maintaining employee housing and shall at least cover the agency cost of maintenance and utilities for the housing provided.

17. Unexpended Balances - Hold Harmless Provision.

Any unexpended balances as of August 31, 2024, in Strategy A.1.2, Basic Probation Supervision (estimated to be \$400,000), above are appropriated to the Juvenile Justice Department in fiscal year 2025 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise be affected as a result of reallocations related to population shifts.

18. Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments.

The Juvenile Justice Department (JJD) shall ensure that the agency is refunded all unexpended and unencumbered balances of state funds held as of the close of each fiscal year by local juvenile probation departments. Any unexpended balances of probation department refunds as of August 31, 2023, are appropriated to JJD for the purpose of providing grants to local probation departments in the fiscal year beginning September 1, 2023. All fiscal year 2024 and fiscal year 2025 refunds received from local juvenile probation departments by JJD (Appropriated Receipts, estimated to be \$0) are appropriated above in A.1.1, Prevention and Intervention, A.1.2, Basic Probation Services,

A.1.3, Community Programs, A.1.4, Pre and Post Adjudication Facilities, Strategy A.1.5, Commitment Diversion Initiatives, A.1.6, Juvenile Justice Alternative Education Programs, A.1.7, Mental Health Services Grants, or A.1.8, Regional Diversion Alternatives. Any unexpended balances of probation department refunds as of August 31, 2024, are appropriated to JJD for the purpose of providing grants to local juvenile probation departments in the fiscal year beginning September 1, 2024.

19. Salaries, Education Professionals.

- a. Each principal, supervisor, and classroom teacher employed in a facility operated by the Juvenile Justice Department (JJD) shall receive a monthly salary to be computed as follows: The applicable monthly salary rate specified in Section 21.402, Education Code, as amended, shall be multiplied by ten to arrive at a ten month salary rate. Such rate shall be divided by the number of days required in Section 21.401, Education Code, for 10-month employees, and the resulting daily rate shall be multiplied by the number of on-duty days required of JJD educators, resulting in the adjusted annual salary. The adjusted annual salary is to be divided by 12 to arrive at the monthly rate. Salary rates for educational aides commencing employment before September 1, 1999, shall be calculated in the same manner, using 60 percent of the salary rate specified in Section 21.402, Education Code.
- b. JJD may authorize a salary rate above the adjusted annual salary determined in the formula provided by Section a.
- c. There is appropriated to JJD from any unexpended balances on hand as of August 31, 2024, funds necessary to meet the requirements of this section in fiscal year 2025 in the event adjustments are made in the salary rates specified in the Education Code.

20. Training for GED and Reading Skills.

Out of funds appropriated above in Strategy B.1.4, Education, the Juvenile Justice Department shall prioritize teaching students to read at grade level and preparation for the GED in its educational program. A report containing statistical information regarding student performance on the Test of Adult Basic Education (TABE) shall be submitted to the Legislative Budget Board and the Governor on or before December 1, 2024.

21. Salary Adjustment Authorized.

Notwithstanding other provisions of this Act, the Juvenile Justice Department may adjust salaries and pay an additional shift differential so long as the resulting salary rate does not exceed the rate designated as the maximum rate for the applicable salary group of Juvenile Correctional Officers I, Juvenile Correctional Officers II, Juvenile Correctional Officers III, Juvenile Correctional Officers IV, Juvenile Correctional Officers V, and Juvenile Correctional Officers VI to rates within the designated salary group for the purpose of recruiting, employing, and retaining career juvenile correctional personnel. A shift differential may be provided based off facility geographic location, facility classification, and for evening, night, or weekend shifts. Merit raises are permitted for all Juvenile Correctional Officers who are not receiving or are no longer eligible to receive step adjustments in the career ladder system.

22. Appropriations Prohibited for Purposes of Payment to Certain Employees.

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

23. Managed Health Care and Mental Health Services Contract(s).

Out of funds appropriated above, the Juvenile Justice Department (JJD) shall develop and manage a provider contract, or contracts, to deliver the most effective managed health care and mental health (psychiatric) services for the best value. Potential service providers shall not be entitled to pass-through funding from JJD appropriations.

24. JJAEP Disaster Compensation.

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

25. Reporting Requirements to the Legislative Budget Board.

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

- a. The report shall include detailed monitoring, tracking, utilization, and effectiveness information on all funds appropriated in Goal A, Community Juvenile Justice. The report shall include information on the impact of any new initiatives and all programs tracked by JJD. Required elements include, but are not limited to, prevention and intervention programs, residential placements, enhanced community-based services for serious and chronic felons such as sex

offender treatment, intensive supervision, and specialized supervision, community-based services for misdemeanants no longer eligible for commitment to the Juvenile Justice Department, Commitment Diversion Initiatives, and Regional Diversion Alternatives.

- b. The report shall include information on all training, inspection, monitoring, investigation, and technical assistance activities conducted using funds appropriated in Goals A and E. Required elements include training conferences held, practitioners trained, facilities inspected, and investigations conducted.
- c. The annual report submitted to the Legislative Budget Board pursuant to this provision must be accompanied by supporting documentation detailing the sources and methodologies utilized to assess program effectiveness and any other supporting material specified by the Legislative Budget Board.
- d. The annual report submitted to the Legislative Budget Board pursuant to this provision must contain a certification by the person submitting the report that the information provided is true and correct based upon information and belief together with supporting documentation.
- e. The annual report submitted to the Legislative Budget Board pursuant to this provision must contain information on each program receiving funds from Strategy A.1.1, Prevention and Intervention, including all outcome measures reported by each program and information on how funds were expended by each program.

In addition to the annual report described above, the Juvenile Justice Department shall report juvenile probation population data as requested by the Legislative Budget Board on a monthly basis for the most recent month available. JJD shall report to the Legislative Budget Board on all populations specified by the Legislative Budget Board, including additions, releases, and end-of

month populations. End of fiscal year data shall be submitted indicating each reporting county to the Legislative Budget Board no later than two months after the close of each fiscal year. JJD will use Legislative Budget Board population projections for probation supervision and state correctional populations when developing its legislative appropriations request for the 2026-27 biennium.

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

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

26. Commitment Diversion Initiatives.

Out of the funds appropriated above in Strategy A.1.5, Commitment Diversion Initiatives, \$19,492,500 in General Revenue Funds in fiscal year 2024 and \$19,492,500 in General Revenue Funds in fiscal year 2025, may be expended only for the purposes of providing programs for the diversion of youth from the Juvenile Justice Department (JJD). The programs may include residential, community-based, family, and aftercare programs. The allocation of State funding for the program is not to exceed a daily rate based on the level of care the juvenile receives. JJD shall ensure that the State is refunded all unexpended and unencumbered balances of State funds at the end of each fiscal year.

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

JJD shall require juvenile probation departments participating in the diversion program to report to JJD regarding the use of funds within thirty days after the end of each quarter. JJD shall

report to the Legislative Budget Board regarding the use of the funds within thirty days after receipt of each county's quarterly report. Items to be included in the report include, but are not limited to, the amount of funds expended, the number of youth served by the program, the percent of youth successfully completing the program, the types of programming for which the funds were used, the types of services provided to youth served by the program, the average actual cost per youth participating in the program, the rates of recidivism of program participants, the number of youth committed to JJD, any consecutive length of time over six months a juvenile served by the diversion program resides in a secure corrections facility, and the number of juveniles transferred to criminal court under Family Code, Section 54.02.

JJD shall maintain a mechanism for tracking youth served by the diversion program to determine the long-term success for diverting youth from state juvenile correctional incarceration and the adult criminal justice system. A report on the program's results shall be included in the report that is required under JJD Rider 25, Reporting Requirements to the Legislative Budget Board, to be submitted to the Legislative Budget Board by December 1st of each year. In the report, JJD shall report the cost per day and average daily population of all programs funded by Strategy A.1.5, Commitment Diversion Initiatives, for the previous fiscal year.

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

27. Mental Health Services Grants.

Included in the amounts appropriated above in Strategy A.1.7, Mental Health Services Grants, is \$14,178,353 in fiscal year 2024 and \$14,178,353 in fiscal year 2025 to fund mental health services provided by local juvenile probation departments. Funds subject to this provision shall be used by local juvenile probation

departments only for providing mental health services to juvenile offenders. Funds subject to this provision may not be utilized for administrative expenses of local juvenile probation departments nor may they be used to supplant local funding.

28. Contingency for Behavioral Health Funds.

Notwithstanding appropriation authority granted above, the Comptroller of Public Accounts shall not allow the expenditure of General Revenue- Related behavioral health funds for the Juvenile Justice Department in Strategies A.1.1, Prevention and Intervention; A.1.3, Community Programs; A.1.4, Pre and Post Adjudication Facilities; A.1.5, Commitment Diversion Initiatives; A.1.7, Mental Health Services Grants; B.1.1, Assessment, Orientation, and Placement; B.1.6, Health Care; B.1.7, Mental Health (Psychiatric) Care; B.1.8, Integrated Rehabilitation Treatment; and C.1.2, Parole Programs and Services, in fiscal year 2024 or fiscal year 2025, as identified in Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures, if the Legislative Budget Board provides notification to the Comptroller of Public Accounts that the agency's planned expenditure of those funds in fiscal year 2024 or fiscal year 2025 does not satisfy the requirements of Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.

29. Youth Transport.

In instances in which Juvenile Correctional Officers of facilities operated by the Juvenile Justice Department are assigned duties to transport youth between locations, supplementary payments, not to exceed \$30 per day during which the employee performs such duties, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classification and assigned salary ranges.

30. Harris County Leadership Academy.

Out of funds appropriated above in Strategy A.1.4, Pre and Post-Adjudication Facilities, the

amount of \$1,000,000 in General Revenue Funds in each fiscal year shall be expended for the Harris County Leadership Academy.

31. Office of the Independent Ombudsman and Office of the Inspector General.

From funds appropriated above, the Juvenile Justice Department (JJD) shall not transfer appropriations from Strategy D.1.1, Office of the Independent Ombudsman (OIO), and Strategy G.1.1, Office of the Inspector General (OIG), without prior written approval from the Governor and the Legislative Budget Board. JJD shall not reduce the number of full-time equivalent positions (FTEs) allocated to the OIO (13.0 FTEs) and OIG (116.4 FTEs) without prior written approval from the Governor and the Legislative Budget Board.

JJD shall provide indirect support and administrative resources as necessary to enable OIO and OIG to fulfill statutory responsibilities, and the manner in which they are provided shall not infringe on the independence of those offices.

Budget requests or other requests related to the General Appropriations Act provisions shall be submitted by JJD in a manner that maintains the independence of the OIO and OIG.

32. Single Grant Applications for Local Probation Departments.

The Juvenile Justice Department (JJD) shall create a single grant application for local probation departments wishing to apply for discretionary grant funding. The application will require the local probation department to specify the amount of funding it seeks from each strategy. As a condition of funding, local probation departments shall agree to meet research-based performance measures developed by JJD pursuant to Health and Human Services Code Section 223.001(c).

33. Non-Profit Pilot Programs.

From funds appropriated above in Strategy A.1.3, Community Programs, is \$250,000 in General Revenue in each fiscal year of the 2024-25

biennium to establish and operate pilot programs in Harris, Hidalgo, and Cameron counties administered by non-profits that provide trauma-informed counseling and life-skills and hands-on vocational training for youth, including those who were previously committed to state correctional custody in the Juvenile Justice Department. The non-profit must be supported by the counties.

34. Prevention, Intervention, and Commitment Diversion.

- a. Amounts appropriated above in Strategy A.1.1, Prevention and Intervention, are to continue programs and services designated to keep youth from having formal contact with the juvenile system.
- b. Amounts appropriated above in Strategy A.1.5, Commitment Diversion, are to continue providing juvenile probation departments the ability to operate basic supervision, community and health programs, and place youth within their communities.

35. Harris County Front-End Multisystemic Therapy Team.

Out of the funds appropriated above in Strategy A.1.3, Community Programs, \$500,000 in General Revenue for fiscal year 2024 and \$500,000 in General Revenue for fiscal year 2025 shall be used to continue a front-end Multisystemic Therapy (MST) team in Harris County to prevent youth and adolescents from entering the juvenile justice and child welfare systems.

Not later than November 30, 2024, JJD shall submit a performance report to the Legislative Budget Board that includes standard measures to assess the success of the program, including the number of youth and adolescents who have been diverted from the juvenile justice and child welfare systems.

36. Urban County Admissions.

The Juvenile Justice Department (JJD) shall collaborate with urban counties with a juvenile

population of 100,000 or greater regarding the possibility of housing some or all of its own JJD admissions, including provision of funds, treatment, services, and monitoring. The agency may use funds appropriated above to contract with urban counties to provide these services.

37. El Paso Front-End Multisystemic Therapy Team.

Out of the funds appropriated above in Strategy A.1.3, Community Programs, \$500,000 in General Revenue for fiscal year 2024 and \$500,000 in General Revenue for fiscal year 2025 shall be used to continue a front-end Multisystemic Therapy (MST) team in El Paso County to prevent youth and adolescents from entering the juvenile justice and child welfare systems.

Not later than November 30, 2024, JJD shall submit a performance report to the Legislative Budget Board that includes standard measures to assess the success of the program, including the number of youth and adolescents who have been diverted from the juvenile justice and child welfare systems.

38. Human Resources Management Plan.

From funds appropriated above, the Texas Juvenile Justice Department (TJJD) shall develop a Human Resources Management Plan designed to improve employee morale and retention. The plan must focus on reducing employee turnover through better management. TJJD shall report by October 1 of each year to the Senate Finance Committee, the House Committee on Appropriations, the Legislative Budget Board, and the Governor. Each report shall include, at a minimum and for at least the preceding twelve months, the following information by job category: employee turnover rate, percent workers retained six months after completion of training, and employee tenure. The effectiveness of TJJD's plan shall be measured by whether there is a reduction in employee turnover rates at the agency, specifically by the reduction in the turnover rates for juvenile correctional officers.

39. Sunset Contingency.

Funds appropriated above for fiscal year 2025 for the Texas Juvenile Justice Department (TJJD) are made contingent on the continuation of TJJD by the Eighty-eighth Legislature, Regular Session, 2023. In the event that the agency is not continued, the funds appropriated for fiscal year 2024, or as much thereof as may be necessary, are to be used to provide for the phase out of agency operations.

40. Appropriation for Salary Increase for Local Juvenile Probation Departments.

Included in the amounts appropriated above in Strategy A.1.2, Basic Probation Services, the Juvenile Justice Department is appropriated \$17,058,982 in fiscal year 2024 and \$34,302,034 in fiscal year 2025 in General Revenue Funds in order to provide a pay increase for Juvenile Probation Officers, Juvenile Supervision Officers, Supervisory Administrators, and Chiefs at local juvenile probation departments. Salary increases shall be allocated to provide a 5.0 percent increase in annual salary with a minimum of \$3,000 per annum increase in salary, to begin on September 1, 2023, and another increase in annual salary to occur on September 1, 2024, consisting of an additional 5.0 percent increase with a minimum of \$3,000 per annum increase in salary. Appropriations include amounts needed for payroll-based benefits.

41. Construction of Facilities.

Included in the amounts appropriated above is \$200,000,000 in General Revenue in fiscal year 2024 in Strategy B.3.1, Construct and Renovate Facilities, for the Texas Juvenile Justice Department (TJJD) to construct a minimum of 200 beds in new state facility capacity. Newly constructed facilities may include services and appropriate physical features to serve youth with acute mental health needs, youth exhibiting highly aggressive or violent behavior, and female youth.

It is the intent of the legislature that these new facilities be located as close as practical to population centers which have existing workforce

capacity to hire Juvenile Correctional Officers (JCOs) and provide necessary mental health, counseling, therapy and other services to rehabilitate youth and to provide appropriate workforce development training for youth as appropriate. The selection of sites for the new facilities shall be contingent on approval from the Legislative Budget Board. TJJD shall coordinate with the Texas Facilities Commission for the construction of the facilities.

Out of funds appropriated above, TJJD shall develop a plan for the ongoing operations of the current and new state-operated juvenile correctional facilities and submit the plan in writing, not later than August 31, 2024, to the Offices of the Lt. Governor, Speaker, Sunset Advisory Commission, Senate Finance Committee and House Appropriations Committee. The plan shall:

- a. Indicate a long-term plan for youth residential placements in each facility

based on youth needs and available community and TJJD facility resources;

- b. Assess available regional workforce in the context of each residential facility's designated use; and
- c. Provide facility condition assessments and deferred maintenance reports for each residential facility.

42. Commissioned Peace Officer Salary Increase.

Out of funds appropriated above is \$1,308,320 in fiscal year 2024 and \$1,308,320 in fiscal year 2025 in General Revenue in Strategy G.1.I, Office of the Inspector General, to be used only for salary increases for commissioned peace officers appointed by the inspector general.

Foreword

All available records indicate this is the 30th anniversary of the first Juvenile Law Section post-legislative newsletter, published in 1993. Despite the changes to juvenile justice over the years, the publication of this newsletter remains. For many of us, those old issues are always at the ready, helping us quickly learn or recall the modern-era of juvenile justice history in this state. For others, each publication helps us to update forms, policies, and even legal arguments. Although this is a publication of the Juvenile Law Section, the Section is grateful to the work of the Texas Juvenile Justice Department and its predecessor agencies for the last three decades in continuing to provide this service to the juvenile justice community in Texas.

Although the fact of the newsletter's publication remains unchanged, there have been some modifications to its layout. As was started with the last publication, the legislation is no longer organized by statutory code number. Instead, the publication is sorted topically, frequently keeping bills intact and including one analysis for the entire bill. However, for Christmas tree and other lengthy bills, the keen-eyed reader will notice that a bill has been split apart, with portions of it located where it makes most sense topically. The table of contents is clickable and will help readers locate the topics that interest them. Additionally, in an effort to make it easier for readers to visualize the changes made by certain bills, frequently unchanged subsections are included so that a section may be read in its entirety, with underlines and mark throughs. Further, when bills repeal entire sections or subsections, they do so by simply stating the repeal. Efforts have been made to include the repealed language here, in mark through format, so that the language can be easily accessed for years to come.

Every effort has been made to include legislation that is of the most interest to juvenile justice practitioners, including Family Code and Education Code changes as well as changes related to the Code of Criminal Procedure, the

Penal Code, and the Health and Safety Code. TJJD's enabling legislation in the Human Resources Code is included, as are changes related to juvenile board and probation departments. 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 Juvenile Law Section offers a special note of thanks 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. A special note of thanks also to Ryan Turner, for providing his skilled analysis of HB 3689, which provides greater diversion opportunities in justice and municipal courts. The interpretations of legislation provided in this publication are solely the legal interpretations of the authors. As always, those with questions regarding legislation or other juvenile justice matters may reach out to the TJJD Legal Help line at legalhelp@tjjd.texas.gov. Although TJJD attorneys cannot provide legal advice, they can and do provide technical assistance to juvenile justice practitioners throughout the state.

Disclaimer: The statutory excerpts provided in this issue are intended as a general reference of selected statutes and should be considered a secondary source. While we have strived 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.

Finally, the Juvenile Law Council members are looking forward to seeing many of you at the 37th Annual Juvenile Law Conference in Galveston, February 24-28, 2024. Registration is not yet open, but when it is, it will be available at www.juvenilelawconference.com.

Title 3, Family Code

Topic: Fees

Family Code Sec. 51.072. TRANSFER OF PROBATION SUPERVISION BETWEEN COUNTIES: INTERIM SUPERVISION.

(l) The sending county is financially responsible for any special treatment program or placement that the juvenile court of the sending county requires as a condition of probation [~~if the child's family is financially unable to pay for the program or placement~~].

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: Last session, most of the fees and costs for juvenile court were repealed via SB 41. This bill removes the rest of the fees and costs.

In 2021, the ability to charge parents for services for their children was generally removed. The amendment in Section 51.072(l) removes the ability to charge parents for services when there is an intercounty transfer, something that probably was not happening given the court's general inability to have ordered the parents to make payments after the 2021 changes. This change makes it clear that the sending county is financially responsible for any special treatment program or placement it orders, regardless of whether the family has the ability to pay for it.

Family Code Sec. 51.10. RIGHT TO ASSISTANCE OF ATTORNEY; COMPENSATION.

(a) A child may be represented by an attorney at every stage of proceedings under this title, including:

- (1) the detention hearing required by Section [54.01](#) of this code;
- (2) the hearing to consider transfer to criminal court required by Section [54.02](#) of this code;
- (3) the adjudication hearing required by Section [54.03](#) of this code;
- (4) the disposition hearing required by Section [54.04](#) of this code;
- (5) the hearing to modify disposition required by Section [54.05](#) of this code;
- (6) hearings required by Chapter [55](#) of this code;
- (7) habeas corpus proceedings challenging the legality of detention resulting from action under this title; and
- (8) proceedings in a court of civil appeals or the Texas Supreme Court reviewing proceedings under this title.

(b) The child's right to representation by an attorney shall not be waived in:

- (1) a hearing to consider transfer to criminal court as required by Section [54.02](#);
- (2) an adjudication hearing as required by Section [54.03](#);
- (3) a disposition hearing as required by Section [54.04](#);
- (4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition in accordance with Section [54.05](#)(f); or
- (5) hearings required by Chapter [55](#).

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court shall order the retention of an attorney according to Subsection (d) or appoint an attorney according to Subsection (f).

(d) The court shall order a child's parent or other person responsible for support of the child to employ an attorney to represent the child, if:

- (1) the child is not represented by an attorney;
- (2) after giving the appropriate parties an opportunity to be heard, the court determines that the parent or other person responsible for support of the child is financially able to employ an attorney to represent the child; and
- (3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

~~[(e) The court may enforce orders under Subsection (d) by proceedings under Section 54.07 or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court. The order may be enforced under Section 54.07.]~~

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:

- (1) the child is not represented by an attorney;
- (2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and
- (3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

(h) Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this title.

(i) Except as provided in Subsection (d) of this section, an attorney appointed under this section to represent the interests of a child shall be paid from the general fund of the county in which the proceedings were instituted according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965. For this purpose, a bona fide appeal to a court of civil appeals or proceedings on the merits in the Texas Supreme

Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

(j) The juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in proceedings under this title as provided in the plan adopted under Section 51.102. The list of attorneys must indicate the level of case for which each attorney is eligible for appointment under Section 51.102(b)(2).

~~[(k) Subject to Chapter 61, the juvenile court may order the parent or other person responsible for support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under Subsection (f) or (g). The court may:~~

- ~~(1) order payment for each attorney who has represented the child at any hearing, including a detention hearing, discretionary transfer hearing, adjudication hearing, disposition hearing, or modification of disposition hearing;~~
- ~~(2) include amounts paid to or on behalf of the attorney by the county for preparation time and investigative and expert witness costs; and~~
- ~~(3) require full or partial reimbursement to the county.~~

~~[(l) The court may not order payments under Subsection (k) that exceed the financial ability of the parent or other person responsible for support of the child to meet the payment schedule ordered by the court.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: This is part of the bill to remove the remaining fees and costs in juvenile court. Juveniles are entitled to an attorney. Under current Section 51.10(d), which is not amended in this bill, the court shall order the parents to hire an attorney if the parent is financially able to do so. Section 51.10(e), which is repealed in this bill, allows the court to enforce that order under

Section 54.07, Family Code (which refers to Chapter 61, Family Code and is addressed below) or by appointing counsel and ordering the parent to pay a reasonable attorney's fee set by the court. This order is also enforceable under Chapter 61.

The repeal of Section 51.10(e) means that, while the court may still order a parent to hire an attorney for their child under subsection (d), the court has no mechanism to enforce this order. Further, the court no longer has authority under this subsection to appoint an attorney and require the parent to reimburse the county.

This bill further repeals Section 51.10(k). That subsection gives the court the authority to order reimbursement for payments made to counsel appointed under subsection (f) or (g). Subsection (f) requires the court to appoint an attorney when the court determines the family is financially unable to employ an attorney. Subsection (g) authorizes the court to appoint an attorney in any case in which it deems representation is necessary to protect the child's interests. This means the court may appoint an attorney when it determines it is necessary to protect the child's interests but can no longer require reimbursement when it does so. Section 51.10(l) is also repealed as it is tied specifically to subsection (k).

**~~[Code of Criminal Procedure Art. 26.057-
COST OF EMPLOYMENT OF COUNSEL
FOR CERTAIN MINORS.~~**

~~If a juvenile has been transferred to a criminal court under Section 54.02, Family Code, and if a court appoints counsel for the juvenile under Article 26.04 of this code, the county that pays for the counsel has a cause of action against a parent or other person who is responsible for the support of the juvenile and is financially able to employ counsel for the juvenile but refuses to do so. The county may recover its cost of payment to the appointed counsel and may recover attorney's fees necessary to prosecute the cause of action against the parent or other person.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to a case transferred to a criminal court under Section 54.02, Family Code, on or after September 1, 2023, regardless of

whether the underlying action commenced before, on, or after September 1, 2023. A case transferred to a criminal court before September 1, 2023, is governed by the law in effect on the date the case was transferred, and the former law is continued in effect for that purpose.

Summary of Changes: This is another change related to fees and costs. Under this provision, if an attorney is appointed for a juvenile who has been certified as an adult, the county that pays for the counsel has a cause of action against a parent or other person who is responsible for the support of the juvenile if financially able to employ counsel for their child but refuses to do so. This is the same as the court's ability to recover costs in juvenile court when a parent is not indigent but simply refuses to hire an attorney for their child. This provision has now been repealed, just like the provision for juvenile court. This essentially means that if parents refuse to hire attorneys for their children, the cost for an attorney will be borne by the county.

Family Code Sec. 53.03. DEFERRED PROSECUTION.

~~[(d) The juvenile board may adopt a fee schedule for deferred prosecution services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Justice Department shall provide. The maximum fee is \$15 a month. If the board adopts a schedule and rules for waiver, the probation officer or other designated officer of the court shall collect the fee authorized by the schedule from the parent, guardian, or custodian of a child for whom a deferred prosecution is authorized under this section or waive the fee in accordance with the rules adopted by the board. The officer shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision. If the board does not adopt a schedule and rules for waiver, a fee for deferred prosecution services may not be imposed.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: Last session, most of the fees and costs for juvenile court were repealed via SB 41. One of the few remaining fees after those changes was deferred prosecution fees, set to be no more than \$15 a month. This has now been repealed, meaning deferred prosecution fees cannot be charged.

Family Code Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS.

(a) If a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6), the juvenile court may enter an order requiring the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

~~[(b) A juvenile court that enters an order under Subsection (a) shall require the child or the child's parent or other person responsible for the child's support to pay the cost of attending an educational program under Subsection (a) if the court determines that the child, parent, or other person is financially able to make payment.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: In 2011, when the offense of electronic transmission of certain visual material depicting a minor was created to give an alternative to charging for child

pornography when teens engage in sexting, there was created the authority to order children adjudicated for this conduct indicating a need for supervision to successfully complete an educational program regarding sexting. The court was mandated to require the child, child's parent, or other person financially responsible for the child to pay the cost of the course if financially able to do so. The ability to order this cost has now been removed.

[Family Code Sec. 54.06. JUDGMENTS FOR SUPPORT.]

~~(a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(b)(6), eff. January 1, 2022.~~

~~[(b) At any stage of the proceeding, when a child has been placed outside the child's home and the parent of the child is obligated to pay support for the child under a court order under Title 5, the juvenile court shall order that the person entitled to receive the support assign the person's right to support for the child placed outside the child's home to the local juvenile probation department to be used for residential care and other support for the child unless the child has been committed to the Texas Juvenile Justice Department, in which event the court shall order that the assignment be made to the Texas Juvenile Justice Department.]~~

~~(c) A court may enforce an order for support under this section by ordering garnishment of the wages of the person ordered to pay support or by any other means available to enforce a child support order under Title 5.~~

~~(d) Repealed by Acts 2003, 78th Leg., ch. 283, Sec. 61(1).~~

~~(e) The court shall apply the child support guidelines under Subchapter C, Chapter 154, in an order requiring the payment of child support under this section. The court shall also require in an order to pay child support under this section that health insurance and dental insurance be provided for the child. Subchapter D, Chapter 154, applies to an order requiring health insurance and dental insurance for a child under this section.~~

~~(f) An order under this section prevails over any previous child support order issued with regard to the child to the extent of any conflict between the orders.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to an order for assignment of child support rendered on or after September 1, 2023. An order for assignment of child support rendered before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: Last session, Section 54.06(a), Family Code, was repealed. That section had provided that whenever a child was placed outside of the child's home, the court was mandated to order, after holding a hearing, the parent or other person to pay a reasonable sum for the support of the child. Last year's change did not impact the rest of Section 54.06, which mandated that the court order a parent who received child support under Title 5 to assign the support to the probation department or TJJD to pay for the child's residential care. This provision and the rest of 54.06, which allowed for enforcement of the order, have now been removed from statute, meaning such order is no longer allowed.

~~[Family Code Sec. 54.061. PAYMENT OF PROBATION FEES.~~

~~(a) If a child is placed on probation under Section 54.04(d)(1) 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 to the court a fee of not more than \$15 a month during the period that the child continues on probation.~~

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

~~(c) The court shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision.~~

~~(d) If the court finds that a child, parent, or other person responsible for the child's support is financially unable to pay the probation fee required under Subsection (a), the court shall~~

~~enter into the records of the child's case a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: Last session, most of the fees and costs for juvenile court were repealed via SB 41. One of the few remaining fees after those changes was probation fees, set to be no more than \$15 a month. This has now been repealed, meaning probation fees cannot be charged.

Family Code Sec. 56.01. RIGHT TO APPEAL.

(d) A child has the right to:

- (1) appeal, as provided by this subchapter;
- (2) representation by counsel on appeal; and
- (3) appointment of an attorney for the appeal if an attorney cannot be obtained because of indigency.

(e) On entering an order that is appealable under this section, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the child's rights listed under Subsection (d) of this section.

(f) If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney who represented the child before the juvenile court shall file a notice of appeal with the juvenile court and inform the court whether that attorney will handle the appeal. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

~~[(4) The court may order the child, the child's parent, or other person responsible for support of the child to pay the child's costs of appeal, including the costs of representation by an~~

attorney, unless the court determines the person to be ordered to pay the costs is indigent.]

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: This change is similar to the change related to appointment of an attorney. A child has the right to file an appeal. The attorney who represented the child is required, if the child and parent, guardian, or guardian ad litem express a desire to appeal, to file a notice of appeal with the court and inform the court whether the attorney will represent the child. Counsel for an appeal is appointed in accordance with Section 51.10, which was modified by this bill (see above). This change removes the court's ability to order the child, the parent, or another person financially responsible for the child, to pay the child's costs of the appeal, including representation by an attorney, in instances in which the court has not found that person to be indigent but an attorney is appointed because the parent refused to hire the attorney.

Family Code Sec. 61.002.

APPLICABILITY.

~~This [(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;

~~[(2) [(3)]]~~ for community service under Section 54.044(b);

~~[(3) [(4)]]~~ requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);

~~[(4) [(5)]]~~ enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);

~~[(5) [(6)]]~~ ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);

~~[(6) [(7)]]~~ requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);

~~[(8) 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) requiring payment of deferred prosecution supervision fees under Section 53.03(d);~~

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

~~[(7) [(11)]]~~ requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r); or

~~[(8) [(12)]]~~ requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title~~[-or~~

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

~~[(b) This subchapter does not apply to the entry and enforcement of a child support order under Section 54.06.]~~

Commentary by: Kaci Singer

Source: SB 1612 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023. The imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

Summary of Changes: Section 61.002, Family Code, gives the court the authority to enforce certain court orders. It has been amended to reflect the removal of the ability to order certain fees and costs. Since they can no longer be ordered, there is no need for an enforcement mechanism.

Those removed from here are: probation fees, reimbursement of attorney's fees when the parent refuses to hire an attorney despite not being indigent, reimbursement of attorney's fees when appointed under 51.10(j), deferred prosecution fees, and payment to attend a sexting educational program. It bears noting that the reference to 51.10(j), while it has been in the statute since it was first created in 2003, is a typographical error as 51.10(j) is not, and has never been, a subsection for appointing an attorney. It is likely that the proper reference was 51.10(k), which provided a means for courts to order repayment of attorney's fees for attorneys appointed in cases of indigence as well as when the court determined the child needed an attorney. This provision has been repealed, as described earlier.

Topic: Remote Detention Hearings

Family Code Sec. 54.012. REMOTE CONDUCT [INTERACTIVE-VIDEO RECORDING] OF DETENTION HEARING.

(a) A detention hearing under Section 54.01 may be conducted as a remote proceeding ~~[held using interactive video equipment]~~ if [:

~~[(1) the child and the child's attorney agree to the video hearing; and~~

~~[(2)] the parties to the proceeding have the opportunity to cross-examine witnesses. Consent of the parties is not required for the detention hearing to be held in the manner specified by this subsection unless the United States or Texas Constitution requires consent.~~

~~(a-1) A juvenile court may allow or require a party, attorney, witness, court reporter, or any other individual to participate in a detention hearing conducted as a remote proceeding.~~

~~(a-2) The judge of a juvenile court shall submit to the Office of Court Administration of the Texas Judicial System a plan for conducting a detention hearing as a remote proceeding under this section. The plan must:~~

~~(1) include protocols for handling physical evidence; and~~

~~(2) require an unobstructed view of any party or witness who provides testimony from a remote location.~~

~~[(b) A detention hearing may not be held using video equipment unless the video equipment for~~

~~the hearing provides for a two-way communication of image and sound among the child, the court, and other parties at the hearing.]~~

(c) A recording of the communications shall be made. The recording shall be preserved until the earlier of:

(1) the 91st day after the date on which the recording is made if the child is alleged to have engaged in conduct constituting a misdemeanor;

(2) the 120th day after the date on which the recording is made if the child is alleged to have engaged in conduct constituting a felony; or

(3) the date on which the adjudication hearing ends.

(d) An attorney for the child may obtain a copy of the recording on payment of the reasonable costs of reproducing the copy.

(e) In this section, "remote proceeding" means a proceeding in which one or more of the participants, including a judge, party, attorney, witness, court reporter, or other individual, attends the proceeding remotely through the use of technology and the Internet, including through teleconferencing or videoconferencing.

Commentary by: Kaci Singer

Source: HB 422

Effective Date: June 13, 2023

Applicability: Applies to proceedings occurring on or after the effective date

Summary of Changes: Current law allows for detention hearings to be held remotely using video equipment that allows for two-way communication of image and sound among the child, the court, and other parties at the hearing. However, this may be used only if the child and the child's attorney agree to a video hearing. This changes the law to remove the requirement that the child and the child's attorney agree, thereby allowing the court to require parties to participate remotely without their consent to do so. There is an exception if the United States or Texas Constitution requires consent. Each juvenile court judge is required to submit to the Office of Court Administration a plan for conducting detention hearings remotely. The bill also updates language regarding video equipment to acknowledge newer technology.

Although this law is specific to detention hearings, it bears noting that the Supreme Court of Texas adopted new Texas Rule of Civil

Procedure 21d, along with amendments to Texas Rule of Civil Procedure 21, which gives the court the authority to allow or require appearance at court proceedings by videoconference, teleconference, or other available electronic means, in accordance with the rules. Because the Texas Rules of Civil Procedure generally govern proceedings in juvenile cases, these rules would apply unless there is a statute in Title 3 Family Code that conflicts.

Topic: Services for Certified Juveniles

Family Code Sec. 54.021. SERVICES PROVIDED TO CHILD IN DETENTION FACILITY PENDING CRIMINAL PROSECUTION.

(a) A child ordered to be detained in a juvenile detention facility under Section 54.02(h) shall, to the extent practicable, be provided education, programming, and other services consistent with the minimum standards adopted by the Texas Juvenile Justice Board for juvenile detention facilities under Section 221.002, Human Resources Code.

(b) The facility administrator, or the administrator's designee, of a juvenile detention facility shall:

(1) not later than the 21st day after the date on which a child is ordered to be detained in a juvenile detention facility under Section 54.02(h):

(A) complete an initial assessment of the child to evaluate the needs of the child; and

(B) develop a written plan to ensure the child has an opportunity to make progress on identified rehabilitation goals pending trial; and

(2) at least once every 90 days after the date on which the facility administrator or designee develops the written plan described by Subdivision (1), prepare a status report that documents:

(A) the education, programming, and other services provided to the child;

(B) behavioral compliance or incidents, if any;

(C) any measurable progress on identified rehabilitation goals during the preceding 90 days of detention; and

(D) any comments, observations, or recommendations related to the child's educational or rehabilitative needs.

Commentary by: Kaci Singer

Source: HB 5195

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This new statute requires that juveniles certified to stand trial as adults who are not yet 17 and are detained in a juvenile detention facility pending trial are to be provided education, programming, and other services consistent with TJJD's standards for youth in detention facilities. TJJD standards already apply to these individuals, as they apply to all individuals detained at a juvenile detention facility. As such, subsection (a) is not a change.

What is a change is that now, when a juvenile who has been certified as an adult is housed in a juvenile detention facility as opposed to being housed in jail, the facility administrator or designee will be required to complete an initial assessment to evaluate the needs of the child and to develop a written plan to ensure the child has an opportunity to make progress on identified rehabilitation goals pending trial. This must be done within 21 days after the child is certified and ordered detained in the juvenile detention facility.

Additionally, at least once every 90 days after development of that plan, the facility administrator or designee must prepare a status report that documents the education, programming, and other services provided to the child; any behavior incidents; any measurable progress on identified rehabilitation goals; and any comments, observations, or recommendations related to educational or rehabilitative needs.

There is a potential issue with this statute in that it requires that rehabilitative need be assessed and services be provided to someone who has been certified as an adult but who has not been convicted of an offense. Facilities should consider this and take steps to ensure that any rehabilitative services address general issues and do not require the person to address the alleged violation of law since such a requirement may have 5th Amendment constitutional implications.

Topic: Juvenile Records

Family Code Sec. 58.007.

CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR, AND COURT RECORDS.

(a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a record could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1. This section does not apply to a record relating to a child that is:

- (1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;
- (2) maintained by a municipal or justice court; ~~[or]~~
- (3) subject to disclosure under Chapter 62, Code of Criminal Procedure;
- (4) required to be provided to the Federal Bureau of Investigation under Section 411.052, Government Code, for use with the National Instant Criminal Background Check System; or
- (5) required to be forwarded to the Department of Public Safety under Section 411.0521, Government Code.

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney representing the child's parent in a proceeding under this title;
- (4) an attorney representing the child;
- (5) a prosecuting attorney;
- (6) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;

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

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

Government Code Section 411.052. FEDERAL FIREARM REPORTING.

(a) In this section, "federal prohibited person information" means information that identifies:

(1) an individual who is at least 16 years of age as:

(A) ~~[(+)]~~ a person ordered by a court to receive inpatient mental health services under Chapter 574, Health and Safety Code;

(B) ~~[(2)]~~ a person acquitted in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered by a court to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;

(C) ~~[(3)]~~ a person determined to have an intellectual disability ~~[mental retardation]~~ and committed by a court for long-term placement in a residential care facility under Chapter 593, Health and Safety Code; or

(D) ~~[(4)] an incapacitated adult individual for whom a court has appointed a guardian of the individual under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs; or~~

~~[(5)] a person determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure;~~

(2) a child who is at least 16 years of age and has been:

(A) found unfit to proceed under Subchapter C, Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(B) found not responsible for the child's conduct under Subchapter D, Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(C) ordered by a court to receive inpatient mental health services under Subchapter B, C, or D, Chapter 55, Family Code, as a result of mental illness; or

(D) committed by a court to a residential care facility under Subchapter C or D, Chapter 55, Family Code, as a result of an intellectual disability; or

(3) an incapacitated adult person for whom a court has appointed a guardian of the person under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs.

(b) The department by rule shall establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System. Except as otherwise provided by state law, the department may disseminate federal prohibited person information under this subsection only to the extent necessary to allow the Federal Bureau of Investigation to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm.

(c) The department shall grant access to federal prohibited person information to the person who is the subject of the information.

(d) Federal prohibited person information maintained by the department is confidential information for the use of the department and, except as otherwise provided by this section and other state law, may not be disseminated by the department.

(e) The department by rule shall establish a procedure to correct department records and transmit those corrected records to the Federal Bureau of Investigation when a person provides:

(1) a copy of a judicial order or finding that a person is no longer an incapacitated adult or is entitled to relief from disabilities under Section 574.088, Health and Safety Code; or

(2) proof that the person has obtained notice of relief from disabilities under 18 U.S.C. Section 925.

**Government Code Section 411.0521.
REPORT TO DEPARTMENT
CONCERNING CERTAIN PERSONS'
ACCESS TO FIREARMS.**

(a) The clerk of the court shall prepare and forward to the department the information described by Subsection (b) not later than the 30th day after the date the court:

(1) performs any of the following actions:

(A) with respect to an individual who is at least 16 years of age:

(i) [(4)] orders a person to receive inpatient mental health services under Chapter 574, Health and Safety Code;

(ii) [(2)] acquits a person in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;

(iii) [(3)] commits a person determined to have an intellectual disability [mental retardation] for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;

(iv) [(4)] appoints a guardian of the incapacitated adult individual under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs;

[(5)] determines a person is incompetent to stand trial under Chapter 46B, Code of Criminal Procedure; or

(v) [(6)] finds a person is entitled to relief from disabilities under Section 574.088, Health and Safety Code; or

(B) with respect to a child who is at least 16 years of age:

(i) finds a child unfit to proceed under Subchapter C, Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(ii) finds a child not responsible for the child's conduct under Subchapter D, Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(iii) orders a child to receive inpatient mental health services under Subchapter B, C, or D, Chapter 55, Family Code, as a result of mental illness; or

(iv) commits a child to a residential care facility under Subchapter C or D, Chapter 55, Family Code, as a result of an intellectual disability; or

(2) appoints a guardian of the incapacitated adult person under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs.

(b) The clerk of the court shall prepare and forward the following information under Subsection (a):

- (1) the complete name, race, and sex of the person;
- (2) any known identifying number of the person, including social security number, driver's license number, or state identification number;
- (3) the person's date of birth; and
- (4) the federal prohibited person information that is the basis of the report required by this section.

(c) If practicable, the clerk of the court shall forward to the department the information described by Subsection (b) in an electronic format prescribed by the department.

(c-1) On request of the department, the clerk of the court shall forward a signed court order containing federal prohibited person information to the department for an audit of records provided to the Federal Bureau of Investigation under Section 411.052 for use with the National Instant Criminal Background Check System. If the department determines that a record forwarded under this subsection is incomplete or invalid:

- (1) the department shall notify the clerk of the court; and
- (2) the clerk of the court shall forward to the department any additional information or record.

(d) If an order previously reported to the department under Subsection (a) is reversed by order of any court, the clerk shall notify the department of the reversal not later than 30 days after the clerk receives the mandate from the appellate court.

(e) The duty of a clerk to prepare and forward information under this section is not affected by:

- (1) any subsequent appeal of the court order;
- (2) any subsequent modification of the court order; or
- (3) the expiration of the court order.

Commentary by: Kaci Singer

Source: SB 728

Effective Date: September 1, 2023

Applicability: Section 58.007, Family Code, applies to records created before, on, or after the effective date. Sections 411.052 and 411.0521, Government Code, applies to a finding, order, or commitment that occurs on or after the effective date.

Summary of Changes: The federal Bipartisan Safer Communities Act requires additional

background checks for firearms. These checks are related to mental health findings. Texas law makes juvenile records confidential and, as such, they could not be shared for purposes of the background check. Additionally, because juvenile mental health proceedings are typically handled in juvenile court, certain mental health findings were not statutorily required to be reported to DPS or any other state entity. This bill seeks to address some of those concerns.

Section 411.052, Government Code, requires the Department of Public Safety to establish a procedure to provide federal prohibited person information to the FBI for use with the National Instant Criminal Background Check System (NICS). DPS may share federal prohibited person information only to the extent necessary to allow the FBI to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm. The information that DPS has is confidential information that may only be disseminated as provided by Section 411.052.

The law currently defines "federal prohibited person information" to mean information that identifies an individual as a person: 1) ordered by a court to receive inpatient mental health services under Chapter 574, Health and Safety Code; 2) acquitted in a criminal case by reason of insanity or lack of mental responsibility; 3) determined to have an intellectual disability and committed to a long-term placement in a residential care facility under Chapter 593, Health and Safety Code; 4) determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure; or 5) determined by a court to need a guardian because the person (adult) lacks the mental capacity to manage the person's affairs.

This law change modifies the statute so that the first 4 of the provisions listed in the paragraph above apply to a person who is at least 16 years of age. Additionally, new subparagraph (a)(2) adds that the definition of federal prohibited person information now includes a child who is at least 16 years of age who has been: 1) found unfit to proceed or not responsible for conduct under Chapter 55, Family Code, as a result of mental illness or intellectual disability; 2) ordered by a court to receive inpatient mental health services under Chapter 55, Family Code, as a result of a mental illness; or 3) committed by a court to a

residential care facility as a result of an intellectual disability. An issue to be aware of is that the subchapters of Chapter 55 that are referred to in this new statute are no longer correct given the revisions in SB 1585, discussed above.

Section 411.0521, Government Code, has been modified to ensure that information that DPS is supposed to report to the FBI is provided to DPS. The clerk of the court that makes the findings under Chapter 55 that are included in the new definition of federal prohibited person information must report information about the person to DPS no later than the 30th day after the date of the court order and must also provide information upon request for the purpose of an audit.

In order to allow for a prosecutor, juvenile court, or probation department to share the mental health records covered by Section 411.052 and 411.0521, Government Code, with DPS so they may be shared with the FBI through NICS, the confidentiality provisions in Section 58.007, Family Code, needed to be modified. Rather than modify Section 58.007(b) to either list DPS and the FBI as specific entities that the records could be shared with for the purposes of Sections 411.0521 and 411.0521 or to include sharing under those sections in the exception clause in Section 58.007(b) in the same way that Article 15.27, Code of Criminal Procedure, and Section 54.051(d-1) are, the statute is changed to provide that the confidentiality provisions in Section 58.007 no longer apply to these records.

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

(a) Except as provided by this section, juvenile justice information collected and maintained by the Texas Juvenile Justice Department for statistical and research purposes is confidential information for the use of the department and may not be disseminated by the department.

(b) Juvenile justice information consists of information of the type described by Section 58.104, including statistical data in any form or medium collected, maintained, or submitted to the Texas Juvenile Justice Department under Section 221.007, Human Resources Code.

(c) The Texas Juvenile Justice Department may grant ~~[the following entities]~~ access to juvenile justice information:

(1) for research and statistical purposes or for any other purpose approved by the department to:

(A) ~~[(+)]~~ criminal justice agencies as defined by Section 411.082, Government Code;

(B) ~~[(2)]~~ the Texas Education Agency, as authorized under Section 37.084, Education Code;

(C) ~~[(3)]~~ any agency under the authority of the Health and Human Services Commission; or

(D) ~~[(4)]~~ the Department of Family and Protective Services; or

(2) for a purpose beneficial to and approved by the department to an individual or entity that:

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

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

(i) specifically authorizes access to identifiable juvenile justice information;

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

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

(iv) provides for sanctions if a requirement imposed under Subparagraph (i), (ii), or (iii) is violated ~~[(5) a public or private university].~~

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

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

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

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

~~(2) an individual or entity that:~~

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

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

~~(i) specifically authorizes access to information;~~

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

~~(iii) ensures the security and confidentiality of the information; and~~
~~(iv) provides for sanctions if a requirement imposed under Subparagraph (i), (ii), or (iii) is violated.]~~

(e) The Texas Juvenile Justice Department shall grant access to juvenile justice information for legislative purposes under Section 552.008, Government Code.

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

(f-1) In accordance with Chapter 552, Government Code, the Texas Juvenile Justice Department may grant access to juvenile justice information that is not identifiable information for research or statistical purposes or for any other purpose approved by the department to:

(1) criminal justice agencies as defined by Section 411.082, Government Code;

(2) the Texas Education Agency, as authorized under Section 37.084, Education Code;

(3) any agency under the authority of the Health and Human Services Commission;

(4) the Department of Family and Protective Services;

(5) a public or private university; or

(6) an individual or entity working on a research or statistical project.

(g) Except as provided by Subsection (e), the Texas Juvenile Justice Department is permitted but not required to release or disclose juvenile justice information to any person identified under this section.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies to sharing of records on or after September 1, 2023

Summary of Changes: Local juvenile probation departments are required to share certain juvenile justice information with TJJD. This includes information that is also reported in

DPS's juvenile justice information system. Because the purpose of providing this information to TJJD is not to have TJJD serve as a repository of the information but is rather to ensure that TJJD has the information to fulfill its obligation regarding juvenile justice, particularly with regard to statistics and research, this statute, since passed in 2005, has provided that the information is for TJJD's purposes and is confidential, including statistical information. The statute provides limited mechanisms for sharing the information with other entities and allows TJJD to ensure there are agreements in place regarding the information. This law changes that and was consistent with provisions related to DPS's sharing of criminal history record information in 411.083, Government Code. This change eliminates the need for an agreement with TJJD in order for TJJD to share statistical information and instead allows TJJD to share, in accordance with the Public Information Act, non-identifiable juvenile justice information to certain entities, including an individual or entity working on a research or statistical project. This release does not require the agreement that prior statute required.

Topic: Mental Health Proceedings, Fitness to Proceed, Lack of Responsibility

Family Code Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION.

(a) At any stage of the proceedings under this title, including when a child is initially detained in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility, the juvenile court may, at its discretion or at the request of the child's parent or guardian, order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by a disinterested expert, including a physician, psychiatrist, or psychologist, qualified by education and clinical training in mental health or intellectual disability ~~[mental retardation]~~ and experienced in forensic evaluation, to determine whether the child has a mental illness as defined by Section 571.003, Health and Safety Code, is a person with an intellectual disability ~~[mental retardation]~~ as defined by Section 591.003,

Health and Safety Code, or suffers from chemical dependency as defined by Section 464.001, Health and Safety Code. ~~[If the examination is to include a determination of the child's fitness to proceed, an expert may be appointed to conduct the examination only if the expert is qualified under Subchapter B, Chapter 46B, Code of Criminal Procedure, to examine a defendant in a criminal case, and the examination and the report resulting from an examination under this subsection must comply with the requirements under Subchapter B, Chapter 46B, Code of Criminal Procedure, for the examination and resulting report of a defendant in a criminal case.]~~

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

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

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

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SUBCHAPTER A. GENERAL PROVISIONS

Family Code Sec. 55.01. DEFINITIONS [MEANING OF "HAVING A MENTAL ILLNESS"].

In [For purposes of] this chapter:

- (1) "Adaptive behavior" and "intellectual disability" have the meanings assigned by Section 591.003, Health and Safety Code.
- (2) "Child with an intellectual disability" means a child determined by a physician or psychologist licensed in this state to have subaverage general intellectual functioning with deficits in adaptive behavior.
- (3) "Child with mental illness" ~~[, a child who is described as having a mental illness]~~ means a child determined by a physician or psychologist licensed in this state to have ~~[with]~~ a mental illness.
- (4) "Interdisciplinary team" means a group of intellectual disability professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with an intellectual disability and make recommendations for services for that person.
- (5) "Least restrictive appropriate setting" means the treatment or service setting closest to the child's home that provides the child with the greatest probability of improvement and is no more restrictive of the child's physical or social liberties than is necessary to provide the child with the most effective treatment or services and to protect adequately against any danger the child poses to self or others.
- (6) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.
- (7) "Restoration classes" means curriculum-based educational sessions a child attends to assist in restoring the child's fitness to proceed, including the child's capacity to understand the proceedings in juvenile court and to assist in the child's own defense.
- (8) "Subaverage general intellectual functioning" means intelligence that is measured on standardized psychometric instruments of two or more standard deviations

below the age-group mean for the instruments used [as defined by Section 571.003, Health and Safety Code].

Family Code Sec. 55.02. MENTAL HEALTH AND INTELLECTUAL DISABILITY JURISDICTION.

For the purpose of initiating proceedings to order mental health or intellectual disability services for a child ~~[or for commitment of a child]~~ as provided by this chapter, the juvenile court has jurisdiction of proceedings under Subtitle C or D, Title 7, Health and Safety Code.

Family Code Sec. 55.03. STANDARDS OF CARE.

(a) Except as provided by this chapter, a child for whom inpatient or outpatient mental health services are ~~[is]~~ ordered by a court under this chapter shall be cared for as provided by Subtitle C, Title 7, Health and Safety Code.

(b) Except as provided by this chapter, a child who is ordered ~~[committed]~~ by a court to a residential care facility due to an intellectual disability shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

Family Code Sec. 55.04. FORENSIC MENTAL EXAMINATION.

(a) In this section, "forensic mental examination" means an examination by a disinterested physician or psychologist to determine if a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision is a child with mental illness, is unfit to proceed in juvenile court due to mental illness or an intellectual disability, or lacks responsibility for conduct due to mental illness or an intellectual disability.

(b) A juvenile court may order a forensic mental examination if the court determines that probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision is a child with mental illness, is unfit to proceed in juvenile court due to mental illness or an intellectual disability, or lacks responsibility for conduct due to mental illness or an intellectual disability.

(c) To qualify for appointment as an expert under this chapter, a physician or psychologist must:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification or training:

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) training consisting of:

(i) at least 24 hours of specialized forensic training relating to incompetency, fitness to proceed, lack of responsibility for conduct, or insanity evaluations; and

(ii) at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the date of the appointment.

(d) In addition to meeting the qualifications required by Subsection (c), to be appointed as an expert, a physician or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in the 24 months preceding the appointment.

(e) A court may appoint as an expert a physician or psychologist who does not meet the requirements of Subsections (c) and (d) only if the court determines that exigent circumstances require the court to appoint an expert with specialized expertise to examine the child that is not ordinarily possessed by a physician or psychologist who meets the requirements of Subsections (c) and (d).

Family Code Sec. 55.05. CRITERIA FOR COURT-ORDERED MENTAL HEALTH SERVICES FOR CHILD.

(a) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive temporary inpatient mental health services only if the court finds, from clear and convincing evidence, that:

(1) the child is a child with mental illness; and

(2) as a result of that mental illness, the child:

(A) is likely to cause serious harm to the child's self;

(B) is likely to cause serious harm to others; or

(C) is:

- (i) suffering severe and abnormal mental, emotional, or physical distress;
 - (ii) experiencing substantial mental or physical deterioration of the child's ability to function independently; and
 - (iii) unable to make a rational and informed decision as to whether to submit to treatment or is unwilling to submit to treatment.
- (b) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive temporary outpatient mental health services only if the court finds:
 - (1) that appropriate mental health services are available to the child; and
 - (2) clear and convincing evidence that:
 - (A) the child is a child with severe and persistent mental illness;
 - (B) as a result of the mental illness, the child will, if not treated, experience deterioration of the ability to function independently to the extent that the child will be unable to live safely in the community without court-ordered outpatient mental health services;
 - (C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the child or others; and
 - (D) the child has an inability to effectively and voluntarily participate in outpatient treatment services, demonstrated by:
 - (i) any of the child's actions occurring within the two-year period preceding the date of the hearing; or
 - (ii) specific characteristics of the child's clinical condition that significantly impair the child's ability to make a rational and informed decision as to whether to submit to voluntary outpatient treatment.
- (c) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive extended inpatient mental health services only if the court finds, from clear and convincing evidence, that, in addition to the findings in Subsection (a):
 - (1) the child's condition is expected to continue for more than 90 days; and
 - (2) the child has received court-ordered inpatient mental health services under this chapter or under Chapter 574, Health and Safety Code, for at least 60 consecutive days during the preceding 12 months.

(d) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive extended outpatient mental health services only if, in addition to the findings in Subsection (b):

- (1) the child's condition is expected to continue for more than 90 days; and
- (2) the child has received:
 - (A) court-ordered inpatient mental health services under this chapter or under Chapter 574, Health and Safety Code, for at least 60 consecutive days during the preceding 12 months; or
 - (B) court-ordered outpatient mental health services under this chapter or under Chapter 574, Health and Safety Code, during the preceding 60 days.

Family Code Sec. 55.06. CRITERIA FOR COURT-ORDERED RESIDENTIAL INTELLECTUAL DISABILITY SERVICES FOR CHILD.

A child may not be court-ordered to receive services at a residential care facility unless:

- (1) the child is a child with an intellectual disability;
- (2) evidence is presented showing that because of the child's intellectual disability, the child:
 - (A) represents a substantial risk of physical impairment or injury to the child or others; or
 - (B) is unable to provide for and is not providing for the child's most basic personal physical needs;
- (3) the child cannot be adequately and appropriately habilitated in an available, less restrictive setting;
- (4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the child's needs; and
- (5) an interdisciplinary team recommends placement in the residential care facility.

SUBCHAPTER B. COURT-ORDERED MENTAL HEALTH SERVICES FOR CHILD WITH MENTAL ILLNESS

Family Code Sec. 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION.

(a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or

found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:

- (1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and
 - (2) make its own observation of the child.
- (b) If the court determines that probable cause exists to believe that the child is a child with [has a] mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 55.04 [51.20]. The information obtained from the examination must include expert opinion as to:
- (1) whether the child is a child with [has a] mental illness; ~~[and]~~
 - (2) whether the child meets the [commitment] criteria for court-ordered mental health services under Section 55.05 for:
 - (A) temporary inpatient mental health services;
 - (B) temporary outpatient mental health services;
 - (C) extended inpatient mental health services;
 - or
 - (D) extended outpatient mental health services; and
- (3) if applicable, the specific criteria the child meets under Subdivision (2) ~~[under Subtitle C, Title 7, Health and Safety Code. If ordered by the court, the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings]~~.
- (c) After considering all relevant information, including information obtained from an examination under Section 55.04 [51.20], the court shall:

- (1) proceed under Section 55.12 if the court determines that evidence exists to support a finding that the child is a child with [has a] mental illness and that the child meets the [commitment] criteria for court-ordered mental health services under Section 55.05 [Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12]; or
- (2) dissolve the stay and continue the juvenile court proceedings if the court determines that evidence does not exist to support a finding that the child is a child with [has a] mental illness or that the child meets the [commitment] criteria for court-ordered mental health services under

Section 55.05 [Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings].

Family Code Sec. 55.12. INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.

If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child is a child with [has a] mental illness and that the child meets the [commitment] criteria for court-ordered mental health services under Section 55.05 [under Subtitle C, Title 7, Health and Safety Code], the court shall:

- (1) initiate proceedings as provided by Section 55.65 [55.13] to order temporary or extended mental health services, as provided in this chapter and Subchapter C, Chapter 574, Health and Safety Code; or
- (2) refer the child's case as provided by Section 55.68 [55.14] to the appropriate court for the initiation of proceedings in that court to order temporary or extended mental health services for [commitment-of] the child under this chapter and Subchapter C, Chapter 574, Health and Safety Code.

Family Code Sec. 55.13. Re-designated as Sec. 55.65 and included below with amendments noted.

Family Code Sec. 55.14. Re-designated as Sec. 55.68 and included below with amendments noted.

Family Code Sec. 55.15. STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES.

Treatment ordered under this subchapter for a child with mental illness must focus on the stabilization of the child's mental illness and on meeting the child's psychiatric needs in the least restrictive appropriate setting. If the juvenile court or a court to which the child's case is referred under Section 55.12(2) orders mental health services for the child, the child shall be cared for, treated, and released in conformity to Subtitle C, Title 7, Health and Safety Code, except:

(1) a court order for mental health services for a child automatically expires on the 120th day after the date the child becomes 18 years of age; and

(2) the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or the juvenile court that referred the case to a court that ordered the mental health services of the intent to discharge the child at least 10 days prior to discharge.

Family Code Sec. 55.16. ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS.

(a) If the court to which the child's case is referred under Section 55.12(2) orders temporary or extended [~~inpatient~~] mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's order for mental health services.

(b) If the juvenile court orders temporary or extended [~~inpatient~~] mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the proceedings under this title then pending in juvenile court shall be stayed.

Family Code Sec. 55.17. MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY.

(a) If the court to which a child's case is referred under Section 55.12(2) does not order temporary or extended [~~inpatient~~] mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's decision.

(b) If the juvenile court does not order temporary or extended [~~inpatient~~] mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the juvenile court shall dissolve the stay and continue the juvenile court proceedings.

Family Code Sec. 55.18. DISCHARGE FROM COURT-ORDERED INPATIENT OR OUTPATIENT MENTAL HEALTH SERVICES [~~FACILITY~~] BEFORE REACHING 18 YEARS OF AGE.

If the child is discharged from the mental health facility or from outpatient treatment services before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) dissolve the stay and continue with proceedings under this title as though no order of mental health services had been made.

Family Code Sec. 55.19. DISCRETIONARY TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY.

(a) The juvenile court may waive its exclusive original jurisdiction and [~~shall~~] transfer all pending proceedings from the juvenile court to a criminal court on or after the 18th birthday of a child for whom the juvenile court or a court to which the child's case was [~~is~~] referred under Section 55.12(2) [~~has~~] ordered inpatient mental health services if:

(1) the child is not discharged or furloughed from the inpatient mental health facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) A court conducting a waiver of jurisdiction and discretionary transfer hearing under this section shall conduct the hearing according to Sections 54.02(j), (k), and (l).

(c) If after the hearing the juvenile court waives its jurisdiction and transfers the person to criminal court, the [~~The~~] juvenile court shall send notification of the transfer of a child under Subsection (a) to the inpatient mental health facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of

confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

Family Code Sec. 55.31. UNFITNESS TO PROCEED DETERMINATION; EXAMINATION.

(a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or an intellectual disability lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is unfit to proceed as a result of mental illness or an intellectual disability. In making its determination, the court may:

- (1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and
- (2) make its own observation of the child.

(c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 55.04 [51.20]. ~~The information obtained from the examination must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or an intellectual disability.~~

(d) During an examination ordered under this section, and in any report based on that examination, an expert shall consider, in addition to other issues determined relevant by the expert:

- (1) whether the child, as supported by current indications and the child's personal history:
 - (A) is a child with mental illness; or
 - (B) is a child with an intellectual disability;

(2) the child's capacity to:

- (A) appreciate the allegations against the child;
- (B) appreciate the range and nature of allowable dispositions that may be imposed in the proceedings against the child;
- (C) understand the roles of the participants and the adversarial nature of the legal process;
- (D) display appropriate courtroom behavior; and
- (E) testify relevantly; and

(3) the degree of impairment resulting from the child's mental illness or intellectual disability and the specific impact on the child's capacity to engage with counsel in a reasonable and rational manner.

(e) An expert's report to the court must state an opinion on the child's fitness to proceed or explain why the expert is unable to state that opinion and include:

- (1) the child's history and current status regarding any possible mental illness or intellectual disability;
- (2) the child's developmental history as it relates to any possible mental illness or intellectual disability;
- (3) the child's functional abilities related to fitness to stand trial;
- (4) the relationship between deficits in the child's functional abilities related to fitness to proceed and any mental illness or intellectual disability; and
- (5) if the expert believes the child is in need of remediation or restoration services, a discussion of:

- (A) whether the child's abilities are likely to be remediated or restored within the period described by Section 55.33(a)(1), (2), or (3);
- (B) whether the child may be adequately treated in an alternative setting;
- (C) any recommended interventions to aid in the remediation or restoration of the child's fitness;
- (D) whether the child meets criteria for court-ordered treatment or services under Section 55.05 or 55.06; and
- (E) if applicable, the specific criteria the child meets under Paragraph (D).

(f) [(d)] After considering all relevant information, including information obtained

from an examination under Section 55.04 [51.20], the court shall:

- (1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32; or
- (2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

Family Code Sec. 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 as a result of mental illness or an intellectual disability to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) provided that the child meets the inpatient mental health services or residential intellectual disability services [commitment] criteria under Section 55.05 or 55.06 [Subtitle C or D, Title 7, Health and Safety Code], order the child placed with the Health and Human Services Commission [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 commission [department];

(2) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility or residential care 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 or an intellectual disability; and
- (B) the placement is agreed to in writing by the administrator of the facility; or

(3) subject to Subsection (d) [(e)], if the court determines that the child may be adequately treated or served in an alternative setting and finds that the child does not meet criteria for court-ordered inpatient mental health services or residential intellectual disability services under Section 55.05 or 55.06, 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, with the possibility

of extension as ordered by the court [which order may not specify a shorter period].

(b) If a child receives treatment for mental illness or services for the child's intellectual disability on an outpatient basis in an alternative setting under Subsection (a)(3), juvenile probation departments may provide restoration classes in collaboration with the outpatient alternative setting.

(c) If the court orders a child placed in a private psychiatric inpatient facility or residential care facility under Subsection (a)(2) or in an alternative setting under Subsection (a)(3), the state or a political subdivision of the state may be ordered to pay any costs associated with the ordered services [child's placement], subject to an express appropriation of funds for the purpose.

(d) [(e)] Before issuing an order described by Subsection (a)(3), the court shall consult with the local juvenile probation department, [and] with local treatment or service providers, with the local mental health authority, and with the local intellectual and developmental disability authority to determine the appropriate treatment or services and restoration classes for the child.

Family Code Sec. 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.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Family Code Sec. 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY OR ALTERNATIVE SETTING; REPORT TO COURT.

(a) If the juvenile court issues an [a placement] order under Section 55.33(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or intellectual disability to the public or private facility or outpatient alternative setting [eenter], as appropriate.

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

(1) describes the treatment or services provided to the child by the facility or alternative setting [eenter]; and

(2) states the opinion of the director of the facility or alternative setting [eenter] as to whether the child is fit or unfit to proceed.

(c) If the report under Subsection (b) states that the child is unfit to proceed, the report must also include an opinion and the reasons for that opinion as to whether the child meets the criteria for court-ordered mental health services or court-ordered intellectual disability services under Section 55.05 or 55.06.

(d) The report of an outpatient alternative setting collaborating with a juvenile probation department to provide restoration classes must include any information provided by the juvenile probation department regarding the child's assessment at the conclusion of the restoration classes.

(e) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Family Code Sec. 55.36. REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION.

(a) If a report submitted under Section 55.35(b) states that a child is fit to proceed, the juvenile court shall find that the child is fit to proceed unless the child's attorney objects in writing or in open court not later than the second day after the

date the attorney receives a copy of the report under Section 55.35(c).

(b) On objection by the child's attorney under Subsection (a), the juvenile court shall promptly hold a hearing to determine whether the child is fit to proceed, except that the hearing may be held after the date that the placement order issued under Section 55.33(a) expires. At the hearing, the court shall determine the issue of the fitness of the child to proceed unless the child or the child's attorney demands in writing a jury before the 10th day before the date of the hearing.

(c) If, after a hearing, the court or jury finds that the child is fit to proceed, the court shall dissolve the stay and continue the juvenile court proceedings as though a question of fitness to proceed had not been raised.

(d) If, after a hearing, the court or jury finds that the child is unfit to proceed, the court shall proceed under Section 55.37 or 55.40, as appropriate.

Family Code Sec. 55.37. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental illness and that the child meets the [commitment] criteria for court-ordered mental health services under Section 55.05 [civil commitment under Subtitle C, Title 7, Health and Safety Code], the director of the public or private facility or outpatient alternative setting [eenter], as appropriate, shall submit to the court two certificates of medical examination for mental illness, as described by Subchapter A, Chapter 574, Health and Safety Code. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.66 for temporary or extended mental health services, as provided by this chapter and Subchapter C, Chapter 574, [55.38 in the juvenile court for commitment of the child under Subtitle C, Title 7,] Health and Safety Code; or

(2) refer the child's case as provided by Section 55.68 [55.39] to the appropriate court for the initiation of proceedings in that court for temporary or extended mental health services

for ~~[commitment of]~~ the child under this chapter and Subchapter C, Chapter 574, [Subtitle C, Title 7,] Health and Safety Code.

Family Code Sec. 55.38. Re-designated as Sec. 55.66 and included below with amendments noted.

~~[Family Code Sec. 55.39. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.~~

~~(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.37(2), the juvenile court shall:~~

~~(1) send all papers relating to the child's unfitness to proceed, including the verdict and judgment of the juvenile court finding the child unfit to proceed, to the clerk of the court to which the case is referred;~~

~~(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and~~

~~(3) if the child is in detention:~~

~~(A) order the child released from detention to the child's home or another appropriate place;~~

~~(B) order the child detained in an appropriate place other than a juvenile detention facility; or~~

~~(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.~~

~~(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.]~~

Family Code Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF INTELLECTUAL DISABILITY.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of an intellectual disability and that the child meets the ~~[commitment]~~ criteria for court-ordered residential intellectual disability services under Section 55.06 [civil commitment under Subtitle D, Title 7, Health and Safety Code], the director

of the residential care facility or alternative setting shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.67 ~~[55.41]~~ in the juvenile court for court-ordered residential intellectual disability services for [commitment of] the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.68 ~~[55.42]~~ to the appropriate court for the initiation of proceedings in that court for court-ordered residential intellectual disability services for [commitment of] the child under Subtitle D, Title 7, Health and Safety Code.

Family Code Sec. 55.41 redesignated as Sec. 55.67 and included below with amendments noted.

~~[Family Code Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR CHILDREN WITH INTELLECTUAL DISABILITY.~~

~~(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.40(2), the juvenile court shall:~~

~~(1) send all papers relating to the child's intellectual disability to the clerk of the court to which the case is referred;~~

~~(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and~~

~~(3) if the child is in detention:~~

~~(A) order the child released from detention to the child's home or another appropriate place;~~

~~(B) order the child detained in an appropriate place other than a juvenile detention facility; or~~

~~(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.~~

~~(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.]~~

Family Code Sec. 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) ordered ~~[committed]~~ by a court to receive services at 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 discharged from an alternative setting ~~[outpatient center]~~ before the child reaches 18 years of age.

(b) At the restoration hearing, the court shall determine the issue of whether the child is fit to proceed.

(c) The restoration hearing shall be conducted without a jury.

(d) The issue of fitness to proceed must be proved by a preponderance of the evidence.

(e) If, after a hearing, the court finds that the child is fit to proceed, the court shall continue the juvenile court proceedings.

(f) If, after a hearing, the court finds that the child is unfit to proceed, the court shall dismiss the motion for restoration.

Family Code Sec. 55-44. DISCRETIONARY TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD.

(a) The juvenile court may waive its exclusive original jurisdiction and ~~[shall]~~ transfer all pending proceedings from the juvenile court to a criminal court on or after the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care for persons with an intellectual disability if:

(1) the child is not discharged or currently on furlough from the facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) A court conducting a waiver of jurisdiction and discretionary transfer hearing under this section shall conduct the hearing according to Sections 54.02(j), (k), and (l).

(c) If after the hearing the juvenile court waives its jurisdiction and transfers the case to criminal court, the ~~[The]~~ juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Family Code Sec. 55-45. STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH.

(a) If the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, the child shall be cared for, treated, and released in accordance with Subtitle C, Title 7, Health and Safety Code, except that the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) If the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the intellectual disability services for ~~[commitment of]~~ the child to be provided at ~~[to]~~ a residential care facility, the child shall be cared for, treated, and released in accordance with Subtitle D, Title 7, Health and Safety Code, except that the administrator of the residential care

facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered intellectual disability services for ~~[commitment of]~~ the child or that referred the case to a court that ordered intellectual disability services for ~~[commitment of]~~ the child of the intent to discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

(c) If the referred child, as described in Subsection (b), is alleged to have committed an offense listed in Article 42A.054, Code of Criminal Procedure, the administrator of the residential care facility shall apply, in writing, by certified mail, return receipt requested, to the juvenile court that ordered services for ~~[commitment of]~~ the child or that referred the case to a court that ordered services for ~~[commitment of]~~ the child and show good cause for any release of the child from the facility for more than 48 hours. Notice of this request must be provided to the prosecuting attorney responsible for the case. The prosecuting attorney, the juvenile, or the administrator may apply for a hearing on this application. If no one applies for a hearing, the trial court shall resolve the application on the written submission. The rules of evidence do not apply to this hearing. An appeal of the trial court's ruling on the application is not allowed. The release of a child described in this subsection without the express approval of the trial court is punishable by contempt.

SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

Family Code Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION; EXAMINATION.

(a) A child alleged by petition to have engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or an intellectual disability, the child lacks substantial capacity either to appreciate the wrongfulness of the child's conduct or to conform the child's conduct to the requirements of law.

(b) On a motion by a party in which it is alleged that a child may not be responsible as a result of

mental illness or an intellectual disability for the child's conduct, the court shall order the child to be examined under Section 55.04 ~~[51-20]~~. The information obtained from the examinations must include expert opinion as to:

(1) whether the child is a child with mental illness or an intellectual disability;

(2) whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability;

(3) whether the child meets criteria for court-ordered mental health or intellectual disability services under Section 55.05 or 55.06; and

(4) if applicable, the specific criteria the child meets under Subdivision (3).

(c) The issue of whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability shall be tried to the court or jury in the adjudication hearing.

(d) Lack of responsibility for conduct as a result of mental illness or an intellectual disability must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability.

(f) If the court or jury finds the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability, the court shall proceed under Section 55.52.

(g) A child found to be not responsible for the child's conduct as a result of mental illness or an intellectual disability shall not be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.52.

Family Code Sec. 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) provided that the child meets the inpatient mental health services or residential intellectual disability services ~~[commitment]~~ criteria under Section 55.05 or 55.06 ~~[Subtitle C or D, Title 7, Health and Safety Code]~~, order the child placed with the Health and Human Services Commission ~~[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 commission ~~[department]~~;

(2) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility or residential care 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 or an intellectual disability; and

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

(3) subject to Subsection (c), if the court determines that the child may be adequately treated or served in an alternative setting and finds that the child does not meet criteria for court-ordered inpatient mental health services or residential intellectual disability services under Section 55.05 or 55.06, 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, with the possibility of extension as ordered by the court [which order may not specify a shorter period].

(b) If the court orders a child placed in a private psychiatric inpatient facility or residential care facility under Subsection (a)(2) or in an alternative setting under Subsection (a)(3), the state or a political subdivision of the state may be ordered to pay any costs associated with the ordered services ~~[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 local juvenile probation department, ~~[and]~~ with local treatment or service providers, with the local mental health authority, and with the local intellectual and developmental disability authority to determine the appropriate treatment or services for the child.

Family Code Sec. 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.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Family Code Sec. 55-54. INFORMATION REQUIRED TO BE SENT TO FACILITY OR ALTERNATIVE SETTING; REPORT TO COURT.

(a) If the juvenile court issues an ~~[a placement]~~ order under Section 55.52(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or intellectual disability to the public or private facility or alternative setting ~~[outpatient center]~~, as appropriate.

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

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

(2) states the opinion of the director of the facility or alternative setting ~~[center]~~ as to whether the child is a child with ~~[has a]~~ mental illness or an intellectual disability.

(c) If the report under Subsection (b) states that the child is a child with mental illness or an intellectual disability, the report must include an opinion as to whether the child meets criteria for court-ordered mental health services or court-

ordered intellectual disability services under Section 55.05 or 55.06.

(d) ~~[(e)]~~ The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Family Code Sec. 55.55. REPORT THAT CHILD DOES NOT HAVE MENTAL ILLNESS OR INTELLECTUAL DISABILITY; HEARING ON OBJECTION.

(a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or an intellectual disability, the juvenile court shall discharge the child unless:

(1) an adjudication hearing was conducted concerning conduct that included a violation of a penal law listed in Section 53.045(a) and a petition was approved by a grand jury under Section 53.045; and

(2) the prosecuting attorney objects in writing not later than the second day after the date the attorney receives a copy of the report under Section 55.54(c).

(b) On objection by the prosecuting attorney under Subsection (a), the juvenile court shall hold a hearing without a jury to determine whether the child is a child with ~~[has a]~~ mental illness or an intellectual disability and whether the child meets the ~~[commitment]~~ criteria for court-ordered mental health services or court-ordered intellectual disability services ~~[civil commitment]~~ under Section 55.05 or 55.06 ~~[Subtitle C or D, Title 7, Health and Safety Code]~~.

(c) At the hearing, the burden is on the state to prove by clear and convincing evidence that the child is a child with ~~[has a]~~ mental illness or an intellectual disability and that the child meets the ~~[commitment]~~ criteria for court-ordered mental health services or court-ordered intellectual disability services ~~[civil commitment]~~ under Section 55.05 or 55.06 ~~[Subtitle C or D, Title 7, Health and Safety Code]~~.

(d) If, after a hearing, the court finds that the child does not have a mental illness or an intellectual disability and that the child does not meet the ~~[commitment]~~ criteria for court-ordered treatment services under Section 55.05 or 55.06 ~~[Subtitle C or D, Title 7, Health and Safety Code]~~, the court shall discharge the child.

(e) If, after a hearing, the court finds that the child has a mental illness or an intellectual disability

and that the child meets the ~~[commitment]~~ criteria for court-ordered treatment services under Section 55.05 or 55.06 ~~[Subtitle C or D, Title 7, Health and Safety Code]~~, the court shall issue an appropriate ~~[commitment]~~ order for court-ordered mental health services or court-ordered intellectual disability services.

Family Code Sec. 55.56. REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF ~~[COMMITMENT]~~ PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.

If a report submitted under Section 55.54(b) states that a child is a child with ~~[has a]~~ mental illness and that the child meets the ~~[commitment]~~ criteria for court-ordered mental health services ~~[civil commitment]~~ under Section 55.05 ~~[Subtitle C, Title 7, Health and Safety Code]~~, the director of the public or private facility or alternative setting ~~[outpatient center]~~, as appropriate, shall submit to the court two certificates of medical examination for mental illness, as described by Subchapter A, Chapter 574, Health and Safety Code. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.66 ~~[55.57]~~ in the juvenile court for court-ordered mental health services for ~~[commitment of]~~ the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.68 ~~[55.58]~~ to the appropriate court for the initiation of proceedings in that court for court-ordered mental health services for ~~[commitment of]~~ the child under Subtitle C, Title 7, Health and Safety Code.

~~[Family Code Sec. 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS.~~

~~(a) If the juvenile court initiates commitment proceedings under Section 55.56(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:~~

~~(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and~~

~~(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.~~

~~(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:~~

~~(1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or~~

~~(2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.]~~

[Family Code Sec. 55.58. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.

~~(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.56(2), the juvenile court shall:~~

~~(1) send all papers relating to the child's mental illness, including the verdict and judgment of the juvenile court finding that the child was not responsible for the child's conduct, to the clerk of the court to which the case is referred;~~

~~(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and~~

~~(3) if the child is in detention:~~

~~(A) order the child released from detention to the child's home or another appropriate place;~~

~~(B) order the child detained in an appropriate place other than a juvenile detention facility; or~~

~~(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.~~

~~(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.]~~

Family Code Sec. 55.59. REPORT THAT CHILD HAS INTELLECTUAL DISABILITY; INITIATION OF [COMMITMENT] PROCEEDINGS FOR COURT-ORDERED RESIDENTIAL INTELLECTUAL DISABILITY SERVICES.

If a report submitted under Section 55.54(b) states that a child is a child with [has] an intellectual disability and that the child meets the [commitment] criteria for court-ordered residential intellectual disability services under Section 55.06 [civil commitment under Subtitle D, Title 7, Health and Safety Code], the director of the residential care facility or alternative setting shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of an affidavit, the juvenile court shall:

(1) initiate proceedings in the juvenile court as provided by Section 55.67 [55.60] for court-ordered residential intellectual disability services for [commitment of] the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case to the appropriate court as provided by Section 55.68 [55.61] for the initiation of proceedings in that court for court-ordered residential intellectual disability services for [commitment of] the child under Subtitle D, Title 7, Health and Safety Code.

[Family Code Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR CHILDREN WITH INTELLECTUAL DISABILITY.

~~(a) If the juvenile court initiates commitment proceedings under Section 55.59(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:~~

~~(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and~~

~~(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.~~

~~(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility only if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.~~

~~(c) On receipt of the court's order, the Department of Aging and Disability Services or the appropriate community center shall admit the child to a residential care facility.]~~

[Family Code Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR CHILDREN WITH INTELLECTUAL DISABILITY.

~~(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.59(2), the juvenile court shall:~~

~~(1) send all papers relating to the child's intellectual disability to the clerk of the court to which the case is referred;~~

~~(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and~~

~~(3) if the child is in detention:~~

~~(A) order the child released from detention to the child's home or another appropriate place;~~

~~(B) order the child detained in an appropriate place other than a juvenile detention facility; or~~

~~(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.~~

~~(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.]~~

SUBCHAPTER E. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH OR RESIDENTIAL INTELLECTUAL DISABILITY SERVICES

**Family Code Sec. 55.65 [55.43].
[COMMITMENT] PROCEEDINGS IN JUVENILE COURT FOR CHILD WITH MENTAL ILLNESS.**

(a) If the juvenile court initiates proceedings for temporary or extended mental health services under Section 55.12(1), the prosecuting attorney or the attorney for the child may file with the juvenile court an application for court-ordered mental health services under Sections [Section]

574.001 and 574.002, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; ~~[and]~~

(2) direct the local mental health authority to file, before the date set for the hearing, its recommendation for the child's proposed treatment, as required by Section 574.012, Health and Safety Code;

(3) identify the person responsible for court-ordered outpatient mental health services not later than the third day before the date set for a hearing that may result in the court ordering the child to receive court-ordered outpatient mental health services, as required by Section 574.0125, Health and Safety Code;

(4) appoint physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Section 574.009, Health and Safety Code; and

(5) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) The burden of proof at the hearing is on the party who filed the application.

(c) ~~[The juvenile court shall appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Section 574.009, Health and Safety Code.~~

[(d)] After conducting a hearing on an application under this section and with consideration given to the least restrictive appropriate setting for treatment of the child and to the parent's, managing conservator's, or guardian's availability and willingness to participate in the treatment of the child, the juvenile court shall:

(1) if the criteria under Section 55.05(a) or (b) [574.034 or 574.0345, Health and Safety Code,]

are satisfied, order temporary inpatient or outpatient mental health services for the child under Chapter 574, Health and Safety Code; or

(2) if the criteria under Section 55.05(c) or (d) [574.035 or 574.0355, Health and Safety Code,]
are satisfied, order extended inpatient or outpatient mental health services for the child under Chapter 574, Health and Safety Code.

(d) On receipt of the court's order for inpatient mental health services, the Health and Human

Services Commission shall identify a facility and admit the child to the identified facility.

(e) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

Family Code Sec. 55.66 [55-38].

[COMMITMENT] PROCEEDINGS IN JUVENILE COURT FOR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO MENTAL ILLNESS.

(a) If the juvenile court initiates [commitment] proceedings for court-ordered mental health services under Section 55.37(1) or 55.56(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Sections [Section] 574.001 and 574.002, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; [and]

(2) direct the local mental health authority to file, before the date set for the hearing, its recommendation for the child's proposed treatment, as required by Section 574.012, Health and Safety Code;

(3) identify the person responsible for court-ordered outpatient mental health services at least three days before the date of a hearing that may result in the court ordering the child to receive court-ordered outpatient mental health services, as required by Section 574.0125, Health and Safety Code; and

(4) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under this section and with consideration given to the least restrictive appropriate setting for treatment of the child and to the parent's, managing conservator's, or guardian's availability and

willingness to participate in the treatment of the child [Subsection (a)(2)], the juvenile court shall:

(1) if the criteria for court-ordered mental health services under Section 55.05(a) or (b) [574.034 or 574.0345, Health and Safety Code,] are satisfied, order temporary inpatient or outpatient mental health services; or

(2) if the criteria for court-ordered mental health services under Section 55.05(c) or (d) [574.035 or 574.0355, Health and Safety Code,] are satisfied, order extended inpatient or outpatient mental health services.

(c) On receipt of the court's order for inpatient mental health services, the Health and Human Services Commission shall identify a facility and admit the child to the identified facility.

(d) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

Family Code Sec. 55.67 [55-41].

[COMMITMENT] PROCEEDINGS IN JUVENILE COURT FOR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO [CHILDREN WITH] INTELLECTUAL DISABILITY.

(a) If the juvenile court initiates [commitment] proceedings under Section 55.40(1) or 55.59(1), the prosecuting attorney may file with the juvenile court an application for an interdisciplinary team report and recommendation that the child is in need of long-term placement in a residential care facility, under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under this section and with consideration given to the least restrictive appropriate setting for services for the child and to the parent's, managing conservator's, or guardian's availability and willingness to participate in the services for the child [~~Subsection (a)(2)~~], the juvenile court may order residential intellectual disability services for the child if the [~~commitment of the child to a residential care facility if the commitment~~] criteria under Section 55.06 [~~593.052, Health and Safety Code,~~] are satisfied.

(c) On receipt of the court's order, the Health and Human Services Commission [~~Department of Aging and Disability Services or the appropriate community center~~] shall identify a residential care facility and admit the child to the identified [~~a residential care~~] facility.

(d) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

**Family Code Sec. 55.68 [~~55.14~~].
REFERRAL FOR [~~COMMITMENT~~]
PROCEEDINGS FOR CHILD WITH
MENTAL ILLNESS OR CHILD FOUND
UNFIT TO PROCEED OR LACKING
RESPONSIBILITY FOR CONDUCT DUE
TO MENTAL ILLNESS OR
INTELLECTUAL DISABILITY.**

(a) If the juvenile court refers the child's case to an [~~the~~] appropriate court for the initiation of [~~commitment~~] proceedings for court-ordered treatment services under Section 55.12(2), 55.37(2), 55.40(2), 55.56(2), or 55.59(2), the juvenile court shall:

(1) send to the clerk of the court to which the case is referred all papers, including evaluations, examination reports, court findings, orders, verdicts, judgments, and reports from facilities and alternative settings, relating to;

(A) the child's mental illness or intellectual disability;

(B) the child's unfitness to proceed, if applicable; and

(C) the finding that the child was not responsible for the child's conduct, if applicable [~~to the clerk of the court to which the case is referred~~]; and

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1) [; and

(3) if the child is in detention:

[(A) order the child released from detention to the child's home or another appropriate place;

[(B) order the child detained in an appropriate place other than a juvenile detention facility; or

[(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court].

(b) The papers sent to the clerk of a court under Subsection (a)(1) constitute an application for court-ordered mental health services under Section 574.001, Health and Safety Code, or an application for placement under Section 593.041, Health and Safety Code, as applicable.

(c) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

Commentary by: Kaci Singer

Source: SB 1585

Effective Date: September 1, 2023

Applicability: Applies to a juvenile court hearing or proceeding that commences on or after September 1, 2023

Summary of Changes: This bill is the result of a workgroup of attorneys, probation staff, TJJD staff, and others convened to review Chapter 55, Family Code, and make changes with a goal of

making the law clearer. It was not designed to make substantive changes as much as it was designed to bring language from other statutes into the current law to make it easier to apply. The above includes the entirety of the chapter, with changes marked, for ease of reading and analysis.

The chapter has been reorganized in an attempt to make it easier to follow. Definitions have been added. Requirements that exist in other statute that have been added include: Section 55.04, related to forensic mental examinations; Section 55.05, related to criteria for court-ordered mental health services; Section 55.06, related to criteria for court-ordered residential intellectual disability services; and Section 55.31, related to the considerations required by an expert conducting an examination under Section 51.20, Family Code. Other changes include: modernizing language to person first respectful language; updating outdated terminology to the current terminology of intellectual disability; replacing the term “commitment” with “court-ordered services” and making other related changes to account for the use of outpatient services.

Though most changes are non-substantive, there are several substantive changes to note. The first involves transfer of the juvenile case to the criminal court. Under current law, Sections 55.19 and 55.44 provide that if a child who has been ordered to receive inpatient mental health services turns 18 prior to being discharged or furloughed from the inpatient mental health facility, the juvenile court is mandated to transfer all pending proceedings to the criminal court if the child is alleged to have engaged in delinquent conduct that is eligible for a determinate sentence under Section 53.045, Family Code. This has now been changed so that such transfer is discretionary and to dictate that the transfer requires a hearing in accordance with Section 54.02(j), (k), and (l), which are applicable to post-18 certification hearings. Section 55.44 also applies to a child ordered to obtain residential care for persons with an intellectual disability.

A second substantive change involves clarification with regard to detention hearings. The statute provides that, when the court orders a child to be evaluated for fitness to proceed or lack of responsibility, the juvenile court proceedings are stayed. It also, though, allows the

child to remain in detention until transport to an inpatient facility. Currently, there is no reference to detention hearings while awaiting such transport. Given the fact that juvenile proceedings were stayed, this created a situation where a child could remain in detention for a long period of time with no court review while awaiting a bed. Sections 55.65, 55.66, 55.67, and 55.68 now explicitly state that a child ordered detained is subject to timely detention hearings. As before, the child may also be released or ordered detained in another appropriate facility that is not a juvenile detention facility.

Another substantive change is a provision in Section 55.33 that allows juvenile probation departments, in collaboration with outpatient alternative settings, to provide restoration classes if a child is ordered to receive treatment for mental illness or intellectual disability on an outpatient basis as well as a provision in Section 55.34 that requires the court to consult not only with the probation department and local service providers but also with the local mental health authority and local intellectual and developmental disability authority to determine the appropriate treatment or services and restoration classes for the child. Section 55.35 requires reports to the court to include information provided by the juvenile probation department regarding the child’s assessment.

Topic: Juvenile Curfews

Local Government Code Sec. 370.007. JUVENILE CURFEWS PROHIBITED.

(a) Notwithstanding any other law, a political subdivision may not adopt or enforce an order, ordinance, or other measure that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age.

(b) This section does not apply to a curfew implemented under Chapter 418, Government Code, for purposes of emergency management.

Family Code Sec. 51.02. DEFINITIONS.

(15) “Status offender” means a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:

(A) running away from home under Section 51.03(b)(2);
 (B) a fineable only offense under Section 51.03(b)(1) transferred to the juvenile court under Section 51.08(b), but only if the conduct constituting the offense would not have been criminal if engaged in by an adult;
 (C) a violation of standards of student conduct as described by Section 51.03(b)(4);
 (D) ~~[a violation of a juvenile curfew ordinance or order;~~
~~[(E)]~~ a violation of a provision of the Alcoholic Beverage Code applicable to minors only; or
~~(E)~~ ~~[(F)]~~ a violation of any other fineable only offense under Section 8.07(a)(4) or (5), Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.

**Code of Criminal Procedure Art. 45.045.
 CAPIAS PRO FINE.**

(c) This article does not limit the authority of a court to order a child taken into custody under Article 45.058 ~~[or 45.059]~~.

**~~[Code of Criminal Procedure Art. 45.059.
 CHILDREN TAKEN INTO CUSTODY FOR
 VIOLATION OF JUVENILE CURFEW OR
 ORDER.~~**

~~(a) A peace officer taking into custody a person younger than 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners court of a county shall, without unnecessary delay:~~

- ~~(1) release the person to the person's parent, guardian, or custodian;~~
- ~~(2) take the person before a justice or municipal court to answer the charge; or~~
- ~~(3) take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.~~

~~(b) A juvenile curfew processing office must observe the following procedures:~~

- ~~(1) the office must be an unlocked, multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;~~
- ~~(2) the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;~~
- ~~(3) the person may not be held longer than necessary to accomplish the purposes of~~

~~identification, investigation, processing, release to a parent, guardian, or custodian, or arrangement of transportation to school or court;~~

~~(4) a juvenile curfew processing office may not be designated or intended for residential purposes;~~

~~(5) the person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office; and~~

~~(6) a person may not be held in a juvenile curfew processing office for more than six hours.~~

~~(c) A place designated under this article as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.]~~

**Code of Criminal Procedure Art. 45.060.
 UNADJUDICATED CHILDREN, NOW
 ADULTS; NOTICE ON REACHING AGE
 OF MAJORITY; OFFENSE.**

(a) Except as provided by Article ~~[Articles]~~ 45.058 ~~[and 45.059]~~, an individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday.

**~~[Local Government Code Sec. 341.905.
 JUVENILE CURFEW IN GENERAL LAW
 MUNICIPALITY.~~**

~~(a) To provide for the public safety, the governing body of a general law municipality has the same authority to adopt a juvenile curfew ordinance that a county has under Section 351.903.~~

~~(b) The governing body of a general law municipality may adopt by ordinance a juvenile curfew order adopted by the commissioners court of the county in which any part of the municipality is located and may adapt the order to fit the needs of the municipality.~~

~~(c) If the governing body of a general law municipality adopts an ordinance under this section, a person commits an offense if the person violates a restriction or prohibition imposed by the ordinance.~~

~~(d) An offense under this section is a Class C misdemeanor.]~~

~~[Local Government Code Sec. 351.903.~~
~~COUNTY JUVENILE CURFEW.~~

~~(a) To provide for the public safety, the commissioners court of a county by order may adopt a curfew to regulate the movements or actions of persons under 17 years of age during the period beginning one half hour after sunset and extending until one half hour before sunrise or during school hours, or both. The order applies only to the unincorporated area of the county.~~

~~(b) This authority includes the authority to:~~

- ~~(1) establish the hours of the curfew, including different hours for different days of the week;~~
- ~~(2) apply different curfew hours to different age groups of juveniles;~~
- ~~(3) describe the kinds of conduct subject to the curfew;~~
- ~~(4) determine the locations to which the curfew applies;~~
- ~~(5) determine which persons incur liability if a violation of the curfew occurs;~~
- ~~(6) prescribe procedures, in compliance with Article 45.059, Code of Criminal Procedure, a police officer must follow in enforcing the curfew; and~~
- ~~(7) establish exemptions to the curfew, including but not limited to exemptions for times when there are no classes being conducted, for holidays, and for persons going to or from work.~~

~~(c) If the commissioners court adopts an order under this section, a person commits an offense if the person violates a restriction or prohibition imposed by the order.~~

~~(d) An offense under this section is a Class C misdemeanor.]~~

~~[Local Government Code Sec. 370.002.~~
~~REVIEW OF JUVENILE CURFEW ORDER OR ORDINANCE.~~

~~(a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:~~

- ~~(1) review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;~~

~~(2) conduct public hearings on the need to continue the ordinance or order; and~~

~~(3) abolish, continue, or modify the ordinance or order.~~

~~(b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.]~~

Government Code Sec. 38.003. USE OF FUNDS IN ACCOUNT.

(a) The judge of a county, justice, or municipal court, in accordance with Section 38.002, may award money from a judicial donation trust fund established under Section 38.001 to eligible children or families who appear before the court for a truancy ~~[or curfew]~~ violation or in another misdemeanor offense proceeding before the court.

Government Code Sec. 71.0352.
JUVENILE DATA: JUSTICE, MUNICIPAL, AND TRUANCY COURTS.

As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System:

(1) a justice court, municipal court, or truancy court shall report the number of cases filed for:

(A) truant conduct under Section 65.003(a), Family Code; and

(B) the offense of parent contributing to nonattendance under Section 25.093, Education Code; and

~~[(C) a violation of a local daytime curfew ordinance adopted under Section 341.905 or 351.903, Local Government Code; and]~~

(2) in cases in which a child fails to obey an order of a justice court, municipal court, or truancy court under circumstances that would constitute contempt of court, the justice court, municipal court, or truancy court shall report the number of incidents in which the child is:

(A) referred to the appropriate juvenile court for delinquent conduct as provided by Article 45.050(c)(1), Code of Criminal Procedure, or Section 65.251, Family Code; or

(B) held in contempt, fined, or denied driving privileges as provided by Article 45.050(c)(2), Code of Criminal Procedure, or Section 65.251, Family Code.

Penal Code Sec. 8.07(e). AGE AFFECTING CRIMINAL RESPONSIBILITY.

(e) A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing an offense described by Subsection (a)(4) or (5) ~~[, other than an offense under a juvenile curfew ordinance or order]~~. This presumption may be refuted if the prosecution proves to the court by a preponderance of the evidence that the actor had sufficient capacity to understand that the conduct engaged in was wrong at the time the conduct was engaged in. The prosecution is not required to prove that the actor at the time of engaging in the conduct knew that the act was a criminal offense or knew the legal consequences of the offense.

Commentary by: Kaci Singer

Source: HB 1819

Effective Date: September 1, 2023

Applicability: A violation of a juvenile curfew ordinance or order may not be prosecuted or adjudicated after the effective date of this Act. If on the effective date of this Act a criminal or civil action is pending for a violation of a juvenile curfew ordinance or order, the action is dismissed on that date. However, a final conviction or adjudication for a violation of a juvenile curfew ordinance or order that exists on the effective date of this Act is unaffected by this Act.

Summary of Changes: The law now prohibits a juvenile curfew ordinance or order. Any references to a juvenile curfew have been deleted in statute, including in the definition of conduct indicating a need for supervision.

Interagency Search Engine

Topic: Search Engine

HEALTH AND SAFETY CODE. TITLE 9. SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

HEALTH AND SAFETY CODE CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

Health and Safety Code Sec. 810.001. DEFINITIONS.

In this chapter:

(1) "Client" means a child, an individual with a disability, or an elderly individual receiving services or care from a participating state agency, a designated user, or a facility or entity that is licensed, certified, or otherwise regulated by a participating state agency.

(2) "Department" means the Department of Information Resources.

(3) "Designated user" means a person designated by the department or a participating state agency under Section 810.004 to use the search engine.

(4) "License" has the meaning assigned by Section 2001.003, Government Code.

(5) "Participating state agency" means a state agency listed in Section 810.002.

(6) "Reportable conduct" means a participating state agency's determination:

(A) that an individual engaged in abuse, neglect, exploitation, or misconduct; and

(B) for which the agency has:

(i) provided any required notice or opportunity to contest the determination; and

(ii) issued a final determination.

(7) "Search engine" means the interagency reportable conduct search engine established under this chapter.

Health and Safety Code Sec. 810.002. APPLICABILITY.

This chapter applies to the following state agencies:

(1) the Department of Family and Protective Services;

(2) the Health and Human Services Commission;

(3) the Texas Education Agency; and

(4) the Texas Juvenile Justice Department.

Health and Safety Code Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE.

(a) The department, in collaboration with each participating state agency, shall establish an interagency reportable conduct search engine for persons to search information on reportable conduct in accordance with this chapter and rules adopted under this chapter maintained by:

(1) the Department of Family and Protective Services in the central registry established under Section 261.002, Family Code;

(2) the Health and Human Services Commission in the employee misconduct registry established under Chapter 253;

(3) the Texas Education Agency in the registry established under Section 22.092, Education Code; and

(4) the Texas Juvenile Justice Department in the integrated certification information system and in any informal list the Texas Juvenile Justice Department maintains.

(b) The department shall ensure the search engine results are machine-readable and accessible to each participating state agency and designated users in accordance with this chapter for the purpose of identifying individuals who may be ineligible for employment, a contract, certification, or licensure based on reportable conduct.

Health and Safety Code Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER CREDENTIALS.

(a) The executive head of each participating state agency shall designate agency employees or contractors who are eligible to access the search engine and the agency's automation systems to determine whether an individual has engaged in reportable conduct.

(b) In addition to the eligible individuals described by Subsection (a), each participating state agency shall designate additional users who are eligible to access the search engine and may require those users to determine whether an individual has engaged in reportable conduct. The additional designated users may include controlling persons, hiring managers, or administrators of:

(1) licensed or certified long-term care providers, including:

(A) home and community support services agencies licensed under Chapter 142;

(B) nursing facilities licensed under Chapter 242;

(C) assisted living facilities licensed under Chapter 247;

(D) prescribed pediatric extended care centers licensed under Chapter 248A;

(E) intermediate care facilities for individuals with an intellectual disability licensed under Chapter 252;

(F) state supported living centers, as defined by Section 531.002; and

(G) day activity and health services facilities licensed under Chapter 103, Human Resources Code;

(2) providers under a Section 1915(c) waiver program, as defined by Section 531.001, Government Code;

(3) juvenile probation departments and registered juvenile justice facilities;

(4) independent school districts, districts of innovation, open-enrollment charter schools, other charter entities, as defined by Section 21.006, Education Code, regional education service centers, education shared services arrangements, or any other educational entity or provider that is authorized to access the registry established under Section 22.092, Education Code;

(5) private schools that:

(A) offer a course of instruction for students in this state in one or more grades from prekindergarten through grade 12; and

(B) are:

(i) accredited by an organization recognized by the Texas Education Agency or the Texas Private School Accreditation Commission;

(ii) listed in the database of the National Center for Education Statistics of the United States Department of Education; or

(iii) otherwise authorized by Texas Education Agency rule to access the search engine; and

(6) nonprofit teacher organizations approved by the commissioner of education for the purpose of participating in the tutoring program established under Section 33.913, Education Code.

(c) The department and each participating state agency shall develop a process to issue user credentials to each designated user that authorizes the user to access the search engine. The process must require the revocation of user credentials for a person who is no longer eligible to access the search engine.

Health and Safety Code Sec. 810.005.
INFORMATION ACCESSIBLE THROUGH SEARCH ENGINE; ADDITIONAL INFORMATION SHARING.

(a) For each individual identified by a participating state agency as having engaged in reportable conduct, the search engine results for that individual must include:

(1) the individual's full name;

(2) at least one of the following:

(A) the individual's date of birth; or

(B) the last four digits of the individual's social security number;

(3) at least one of the following:

(A) information relevant to determining whether the individual is eligible for employment, a contract, certification, or licensure; or

(B) the type or a description of the reportable conduct;

(4) any available date on which:

(A) the reportable conduct occurred; or

(B) a final determination was issued on the reportable conduct; and

(5) the participating state agency that maintains the reportable conduct information.

(b) An individual who engaged in reportable conduct that requires the individual's inclusion in search engine results is not entitled to notice or an opportunity for a hearing before the individual's information is included in the search engine results or shared with the department, a participating state agency, or a designated user in accordance with this chapter and rules adopted under this chapter.

(c) A participating state agency may share with other participating agencies additional information on an individual included in search engine results to supplement the information contained in those results for purposes authorized under this chapter.

Health and Safety Code Sec. 810.006.
REQUIRED SEARCH QUERY AND USE
OF SEARCH ENGINE RESULTS.

(a) Each participating state agency and designated user shall conduct a search query using the search engine to determine whether an individual who may have access to a client has engaged in reportable conduct and, if the individual has engaged in reportable conduct, whether the individual is ineligible for:

(1) employment, a volunteer position, or a contract with the agency, the user, or a facility or entity licensed, certified, or otherwise regulated by the agency; or

(2) licensure or certification by the agency in a profession or for the operation of a facility or entity that the agency regulates.

(b) A participating state agency's or designated user's determination under Subsection (a) that an individual is ineligible for employment, a volunteer position, a contract, a license, or a certification must be based on standards authorized or required by law, including agency rules.

(c) A participating state agency or designated user must conduct a search query required under Subsection (a) before the agency or user employs, places in a volunteer position, enters into a contract with, or issues a license or certification to an individual. Each participating state agency by rule shall establish procedures for conducting periodic search queries using the search engine to monitor whether an individual the agency or a designated user employs, places in a volunteer position, contracts with, or issues a license or certification to engages in reportable conduct.

(d) Each participating state agency, including the Texas Education Agency in collaboration with the State Board for Educator Certification, by rule may:

(1) authorize an individual who is determined to have engaged in reportable conduct to be employed or placed in a volunteer position by, enter into a contract with, or receive a license or certification from the agency or a designated

user in accordance with standards prescribed by agency rules and as otherwise permitted by law; and

(2) prescribe the manner in which information contained in search engine results may be used based on:

(A) the nature of the reportable conduct;

(B) the date the reportable conduct occurred;

(C) the severity of the reportable conduct; and

(D) any other factors the agency determines necessary.

(e) Notwithstanding any provision of this chapter, a private school is not required to conduct search queries using the search engine for the purposes described by this chapter.

Health and Safety Code Sec. 810.007.
NOTICE AND HEARING.

(a) A participating state agency or designated user that does not enter into a contract with or issue a license or certification to an individual based on a determination of the individual's ineligibility under Section 810.006 shall notify the individual of that determination.

(b) Each participating state agency may provide an individual to whom notice is provided under this section an opportunity for a hearing regarding the determination of the individual's ineligibility under Section 810.006 on the individual's written request. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(c) Notwithstanding any other law, in a hearing conducted under this section a participating state agency:

(1) is not required to prove that an individual engaged in reportable conduct; and

(2) must prove by a preponderance of the evidence that an individual is ineligible under Section 810.006.

Health and Safety Code Sec. 810.008.
OFFICE OF INTERAGENCY
COORDINATION ON REPORTABLE
CONDUCT.

(a) The Office of Interagency Coordination on Reportable Conduct is established within the Department of Family and Protective Services to facilitate:

(1) coordination among the department and each participating state agency in administering this chapter; and

(2) communication between the department, each participating state agency, designated users, interested persons, and the public regarding any relevant search engine information.

(b) The Department of Family and Protective Services, in collaboration with the department and each other participating state agency, shall adopt rules on the establishment and operation of the Office of Interagency Coordination on Reportable Conduct.

Health and Safety Code Sec. 810.009.
MEMORANDUM OF UNDERSTANDING.

The department and each participating state agency shall enter into a memorandum of understanding on the implementation and administration of this chapter. The memorandum must specify each agency's roles and duties with respect to establishing and maintaining the search engine.

Health and Safety Code Sec. 810.010.
CONFIDENTIALITY.

Information contained in search engine results and additional information shared by a participating state agency under Section 810.005(c), including documents, is confidential and not subject to disclosure under Chapter 552, Government Code.

Topic: Texas Education Agency

Education Code Sec. 22.094. NOTICE OF ALLEGED MISCONDUCT; INVESTIGATION; HEARING.

(a) A person described by Section 22.093(b) and who is the subject of a report that alleges misconduct described by Section 22.093(c)(1)(A) or (B) or who is identified as having engaged in that misconduct using the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code, is entitled to a hearing on the merits of the allegations of misconduct under the procedures provided by Chapter 2001, Government Code, to contest the allegation in the report or search engine.

(b) On receiving a report filed under Section 22.093(f) or making an identification described by Subsection (a), the commissioner shall

promptly send to the person who is the subject of the report or identification a notice that includes:

(1) a statement informing the person that the person must request a hearing on the merits of the allegations of misconduct within the period provided by Subsection (c);

(2) a request that the person submit a written response within the period provided by Subsection (c) to show cause why the commissioner should not pursue an investigation; and

(3) a statement informing the person that if the person does not timely submit a written response to show cause as provided by Subdivision (2), the agency shall provide information indicating the person is under investigation in the manner provided by Subsection (d).

(e) If a person entitled to a hearing under Subsection (a) does not request a hearing as provided by Subsection (c), the commissioner shall:

(1) based on the report filed under Section 22.093(f) or the identification described by Subsection (a), make a determination whether the person engaged in misconduct; and

(2) if the commissioner determines that the person engaged in misconduct described by Section 22.093(c)(1)(A) or (B), instruct the agency to add the person's name to the registry maintained under Section 22.092.

Health and Safety Code Sec. 253.010.
REMOVAL FROM REGISTRY.

(a) The Health and Human Services Commission [department] may remove a person from the employee misconduct registry if, after receiving a written request from the person, the commission [department] determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

(b) The executive commissioner by rule may establish:

(1) criteria for a person to submit a request for removal under Subsection (a); and

(2) a process for the Health and Human Services Commission to determine whether the person meets the requirements for inclusion in the employee misconduct registry.

**Human Resources Code Sec. 42.056.
REQUIRED BACKGROUND AND
CRIMINAL HISTORY CHECKS;
CRIMINAL PENALTIES.**

(b) The department shall conduct background checks using:

- (1) the information provided under Subsection (a);
- (2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code;
- (3) the department's records of reported abuse and neglect; ~~and~~
- (4) any other registry, repository, or database required by federal law;
- (5) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and
- (6) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

**Topic: Department of Family and
Protective Services**

**Human Resources Code Sec. 42.159(c).
BACKGROUND AND CRIMINAL
HISTORY CHECKS REQUIRED.**

(c) The department shall conduct background and criminal history checks using:

- (1) the information provided under Subsection (a) or (b), as applicable;
- (2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; ~~and~~
- (3) the department's records of reported abuse and neglect;
- (4) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and
- (5) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

**Human Resources Code Sec. 42.206.
BACKGROUND AND CRIMINAL
HISTORY CHECKS REQUIRED.**

(c) The department shall conduct background and criminal history checks using:

- (1) the information provided under Subsection (a) or (b), as applicable;
- (2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code; ~~and~~
- (3) the department's records of reported abuse and neglect;
- (4) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and
- (5) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

Topic: Texas Juvenile Justice Department

**Human Resources Code Sec. 222.053.
REVOCATION OR SUSPENSION OF
CERTIFICATION OR PROVISIONAL
CERTIFICATION.**

(f) In this section, "certification" includes a provisional certification.

**Human Resources Code Sec. 222.054.
CERTIFICATION OR PROVISIONAL
CERTIFICATION INELIGIBILITY.**

(a) In this section, "certification" includes a provisional certification.

(b) The department may designate as permanently ineligible for certification under this chapter an individual who has been terminated from employment with the department for engaging in conduct that demonstrates the individual is not suitable for certification under this chapter.

(c) The executive director may convene, in person or telephonically, a panel of three board members to determine if a former department employee's continued eligibility to obtain a certification under this chapter threatens juveniles in the juvenile justice system. If the panel determines an individual's eligibility for certification

threatens juveniles in the juvenile justice system, the department shall temporarily designate the individual as ineligible for certification until an administrative hearing is held under Subsection (d). The hearing must be held as soon as possible following the temporary designation. The executive director may convene a panel under this subsection only if the danger posed by the person's continued eligibility for certification is imminent. The panel may hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) A person is entitled to a hearing before the State Office of Administrative Hearings if the department proposes to designate a person as permanently ineligible for certification.

(e) A person may appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County. The standard of review is under the substantial evidence rule.

Commentary by: Kaci Singer

Source: SB 1849

Effective Date: September 1, 2023

Applicability: As soon as practicable after the effective date of this Act, the Department of Information Resources shall collaborate with the Department of Family and Protective Services, the Health and Human Services Commission, the Texas Education Agency, and the Texas Juvenile Justice Department to establish the search engine as required by Chapter 810, Health and Safety Code, as added by this Act. The establishment of the search engine may take place in phases in accordance with an implementation plan developed by the state agencies in collaboration with the Office of Interagency Coordination on

Reportable Conduct established under Section 810.008, Health and Safety Code, as added by this Act. The implementation plan may include a pilot phase. At the conclusion of the implementation plan described by Subsection (c) of this section, each state agency and other persons authorized to use the search engine shall use the search engine as required by Chapter 810, Health and Safety Code, as added by this Act. As soon as practicable after the effective date of this Act, the commissioner of the Department of Family and Protective Services, the executive commissioner of the Health and Human Services Commission, the commissioner of education, and the Texas Juvenile Justice Board shall adopt rules as necessary to implement the changes in law made by this Act.

Summary of Changes: The Texas Juvenile Justice Department, Texas Education Agency, Health and Human Services Commission, and Department of Protective and Regulatory Services all provide some level of oversight and regulation of persons who provide services to children and other vulnerable populations. Each agency takes actions when someone under its purview engages in abuse, neglect, exploitation, or other misconduct that poses a risk to children or other vulnerable populations. However, the databases each agency maintains are not easily accessible to one another. This bill provides for the creation of a search engine that will allow information about persons who have engaged in certain conduct and been provided all required due process to be shared with the other agencies. Each agency will be responsible for determining how that information will be used to determine if the person's past conduct should prohibit the person from working with the population served by that agency.

Texas Juvenile Justice Department

Topic: Administrative Provisions

Human Resources Code Sec. 202.001. COMPOSITION OF BOARD; PRESIDING OFFICER.

(a) The board is composed of the following nine ~~[13]~~ members appointed by the governor with the advice and consent of the senate:

(1) one member who is a district court judge of a court designated as a juvenile court;

(2) one member who is a member ~~[three members who are members]~~ of a county commissioners court with juvenile justice experience;

(3) one prosecutor in juvenile court;

(4) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes fewer than 7,500 persons younger than 18 years of age;

(5) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes at least 7,500 but fewer than 80,000 persons younger than 18 years of age;

(6) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes 80,000 or more persons younger than 18 years of age;

(7) one adolescent mental health treatment professional licensed under Subtitle B or I, Title 3, Occupations Code, or a representative from a local mental health authority designated under Chapter 533, Health and Safety Code, who has experience working with children;

(8) one member who is:

(A) an educator, as that term is defined by Section 5.001, Education Code, with juvenile justice experience; or

(B) a juvenile justice professional with experience managing a secure juvenile justice facility operated by the department or a county; and

(9) one member ~~[three members]~~ of the general public.

(b) Members serve staggered six-year terms, with the terms of three ~~[four or five]~~ members expiring on February 1 of each odd-numbered year.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies to the Texas Juvenile Justice Board on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. The Texas Juvenile Justice Board membership was reduced from 13 members to 9 members. The reduction comes from reducing the number of public members from 3 to 1 and from reducing the number of county commissioners court members from 3 to 1. Additionally, the one county commissioners court member must now have juvenile justice experience. The position for a person who currently must be a licensed adolescent mental health treatment professional has been expanded to let it also be filled with a representative from a local mental health authority who has experience working with children. The position that is currently dedicated to an educator, which is defined as a person required to hold a certification under Subchapter B, Chapter 21, Education Code, has been expanded to be either an educator or a juvenile justice professional with experience managing a secure juvenile justice facility operated by either TJJD or a county. If filled by an educator, it must be a person who has juvenile justice experience. Because of the reduction in members, now three members expire on February 1 of each odd-numbered year.

Human Resources Code Sec. 202.005. BOARD MEMBER RECUSAL.

(a) A chief juvenile probation officer who is a board member shall avoid the appearance of a conflict of interest by not voting or participating in any decision by the board that solely benefits or penalizes or otherwise solely impacts the juvenile probation department over which the chief juvenile probation officer has authority. The chief juvenile probation officer may not vote or render any decisions regarding matters of officer discipline ~~[abuse and neglect]~~ presented to the board regarding the chief juvenile probation officer's department.

(a-1) If a juvenile justice professional is appointed as a board member under Section 202.001(a)(8),

the member shall avoid the appearance of a conflict of interest by not voting or participating in any decision by the board that solely benefits or penalizes or otherwise solely impacts any juvenile probation department or facility the professional is employed by or works for under a contract. The professional may not vote or render any decisions regarding matters of officer discipline presented to the board regarding any juvenile probation department or facility the professional is employed by or works for under a contract.

(b) The board may adopt recusal requirements in addition to those described by Subsections ~~[Subsection]~~ (a) and (a-1), including requirements that are more restrictive than those described by those subsections ~~[Subsection (a)]~~.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies to the Texas Juvenile Justice Board on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. The mandatory grounds for a board member to recuse have been updated to reflect that officer discipline matters, not simply abuse and neglect matters, come to the Board and a chief juvenile probation officer on the Board must recuse from a matter of officer discipline for a person from the chief's department. This is a technical wording change, not a change in actual practice.

New subsection (a-1) applies to a juvenile justice professional appointed to the board under amended Section 202.001(a) and requires them to recuse themselves in the same manner as chiefs, which is both from officer discipline matters regarding a person from a facility the board member is employed by or works for under a contract, as well as from any decision that solely benefits, penalizes, or otherwise solely impacts the department or facility the professional is employed by or works for under a contract.

Human Resources Code Sec. 202.006. TRAINING FOR BOARD MEMBERS.

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the

person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing department operations ~~[the legislation that created the department];~~

(2) the programs, functions, rules, and budget of the department;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the results of the most recent formal audit of the department;

(5) ~~(4)~~ the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(6) ~~(5)~~ any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies to the Texas Juvenile Justice Board on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. Required training for the Texas Juvenile Justice Board now includes the scope of and limitations on the Board's rulemaking authority and other laws applicable to members of a state policymaking body in performing their duties. The TJJD Executive Director must create a training manual and distribute it annually to each board members. The members must sign a statement acknowledging they have received and reviewed the training manual.

Human Resources Code Sec. 202.010. SUNSET PROVISION.

The Texas Juvenile Justice Board and the Texas Juvenile Justice Department are subject to

Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished September 1, 2027 [~~2023~~].

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. TJJD's new sunset date has been set at September 1, 2027.

Human Resources Code Sec. 203.001.

CONTROL OVER DEPARTMENT; DEPARTMENT MISSION.

(a) The board is the governing body of the department and is responsible for the operations of the department.

(b) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

(b-1) The board may delegate to the executive director the board's responsibilities as the board determines appropriate.

(b-2) In making a delegation under Subsection (b-1), the board shall provide, as appropriate:

(1) to the executive director with respect to each delegation:

(A) clear direction;

(B) performance measures; and

(C) reporting requirements; and

(2) to the department, sufficient oversight to ensure that delegated responsibilities are performed according to the mission and funding priorities described by Subsection (c).

(b-3) The executive director is a full-time employee of the board and shall:

(1) perform the regular administrative functions of the board and any other duty as the board directs; and

(2) under the direction of the board, perform the duties required by this subtitle or designated by the board.

(b-4) The executive director may not perform a discretionary or decision-making function for which the board is solely responsible.

(c) The board shall establish the mission of the department with the goal of establishing a cost-effective continuum of youth services that

emphasizes keeping youth in their home communities while balancing the interests of rehabilitative needs with public safety. The board shall establish funding priorities for services that support this mission and that do not provide incentives to incarcerate youth.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. This change allows the Texas Juvenile Justice Board to delegate its responsibilities to the executive director, as the board determines to be appropriate. When making a delegation, the board must provide the executive director clear direction, performance measures, and reporting requirements. The board must also provide the department sufficient oversight to ensure the delegated responsibilities are performed according to the mission and funding priorities in subsection (c), which is establishing a cost-effective continuum of youth services that emphasizes keeping youth in their home communities while balancing the interest of rehabilitative needs with public safety. It further specifies that the executive director is a full-time employee of the board and shall perform the regular administrative functions of the board and any other duty as the board directs as well as the duties required by Subtitle A, Title 12, Human Resources Code or designated by the board. The statute specifically prohibits the executive director from performing discretionary or decision-making functions for which the board is solely responsible.

Human Resources Code Sec. 203.002.

EXECUTIVE DIRECTOR.

(a) The board shall:

(1) employ an executive director to administer the department; and

(2) supervise the director's administration of the department.

(b) The executive director must possess the following minimum qualifications:

(1) five years of experience in the field of juvenile corrections or congregate care in an administrative capacity;

(2) three years of experience in the field of juvenile corrections or congregate care in an

administrative capacity and a graduate degree from an institution of higher education in a relevant field, including penology, adolescent development, behavior management, or rehabilitative services; or

(3) seven years of experience in management and administration of a government agency, institution of higher education, or business enterprise of a size comparable to the department.

(c) The department shall track the frequency with which the executive director takes the following actions as defined by department rule:

(1) selects a child for a conditional placement;

(2) selects a child for a home placement;

(3) waives the requirement for a child with a determinate sentence to spend the child's entire minimum period of confinement in a high-restriction facility;

(4) waives the requirement for a child to be on intensive supervision when initially released on parole;

(5) authorizes early discharges for a child on parole; or

(6) finalizes an appeal brought by an advocacy group or social service provider who was denied certain access to department facilities.

(d) The executive director shall provide the board and the Sunset Advisory Commission at the beginning of each calendar quarter aggregated data on the number of times each action described by Subsection (c) was taken during the previous calendar quarter.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. This change adds statutory qualifications that the executive director must possess in order to be employed as well as adding some required tracking and reporting. The executive director must have five years of administrative experience in juvenile corrections or congregate care; three years of administrative experience in juvenile corrections or congregate care and a graduate degree in a relevant field; or seven years of experience in management and administration of a government agency, institution of higher education, or business enterprise of a size comparable to TJJD.

TJJD is required to track the frequency with which the executive director takes certain actions as defined in agency rule. These are times the executive director selects a child for conditional placement or home placement, waives the requirement for a child with a determinate sentence to send the entire minimum period of confinement in high restriction, waives the requires for a child to be on intensive supervision when initially released on parole, authorizes early discharge for a child on parole, or finalizes an appeal brought by an advocacy group or social service provider who was denied certain access to TJJD facilities. The executive director is required to provide the board and the Sunset Advisory Commission aggregate data on these actions quarterly.

Human Resources Code Sec. 203.0081. ADVISORY COUNCIL ON JUVENILE SERVICES.

(a) The advisory council on juvenile services consists of:

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

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

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

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

(5) one representative of the county commissioners courts appointed by the board;

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

(7) seven chief juvenile probation officers appointed by the board as provided by Subsection (b); ~~and~~

(8) the commissioner of the Department of Family and Protective Services or the commissioner's designee.

(b) The board shall appoint to the advisory council one chief juvenile probation officer from each regional chiefs association in this state from a list of nominees submitted to the board by each regional chiefs association. To the greatest extent practicable, a regional chiefs association shall include in its list of nominees:

(1) one chief juvenile probation officer of a juvenile probation department serving a county

with a population that includes fewer than 7,500 persons younger than 18 years of age;

(2) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes at least 7,500 but fewer than 80,000 persons younger than 18 years of age; and

(3) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes 80,000 or more persons younger than 18 years of age.

(c) Advisory council members, other than ex officio members, serve staggered two-year terms, with the terms of one-half of the members, as nearly as practicable, expiring on February 1 of each year.

(c-1) The board shall adopt rules regarding:

(1) the purpose, role, responsibility, goals, and duration of the advisory council;

(2) the quorum requirement for the advisory council;

(3) training requirements for advisory council members;

(4) policies to avoid conflicts of interest by advisory council members;

(5) a periodic review process to evaluate the continuing need for the advisory council;

(6) policies to ensure the advisory council does not violate any provision of Chapter 551, Government Code, applicable to the board or the advisory council;

(7) the appropriate level of participation from ex officio advisory council members designated under Subsections (a)(1)-(4) and (8); and

(8) reporting requirements and other communication procedures between the board and the advisory council.

(d) The advisory council shall report to the board any determinations made under Subsection (e).

(e) The advisory council shall assist the department in:

(1) determining the needs and problems of county juvenile boards and probation departments;

(2) conducting long-range strategic planning;

(3) reviewing and proposing revisions to existing or newly proposed standards affecting juvenile probation programs, services, or facilities;

(4) analyzing the potential cost impact on juvenile probation departments of new standards proposed by the board; ~~and~~

(5) assessing and developing recommendations to improve the sharing of information between agencies that serve children, including agencies serving children in both the juvenile justice and child welfare systems; and

(6) advising the board on any other matter on the request of the board.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. The advisory council on juvenile services was created for the purpose of assisting TJJD in determining the needs and problems of county juvenile boards and probation departments, conducting long-range strategic planning, reviewing and proposing provisions to existing or newly proposed standards, and analyzing the potential cost impact of new standards. This change adds that the advisory council shall also assist TJJD in assessing and developing recommendations to improve the sharing of information between agencies that serve children, including agencies serving children in both the juvenile justice and child welfare systems. The advisory council has been expanded to include the commissioner of the Department of Family and Protective Services or designee.

The Texas Juvenile Justice Board is now tasked with adopting rules regarding the purpose, role, responsibility, goals, and duration of the advisory council; the quorum and training requirement; policies to avoid conflicts of interest; a periodic review process to evaluate the continuing need for the advisory council; policies to ensure the advisory council does not violate Chapter 551, Government Code (Open Meetings Act); the appropriate level of participation from the ex officio members (i.e. TJJD, HHSC, and DFPS); and reporting requirements and other communication procedures between the board and advisory council.

Human Resources Code Sec. 203.0083.

AUTHORITY TO ESTABLISH ADVISORY COMMITTEES.

(a) The board by rule may establish advisory committees to make recommendations to the

board on programs, rules, and policies administered by the board.

(b) In establishing an advisory committee under this section, the board shall adopt rules, including rules regarding:

(1) the purpose, role, responsibility, goals, and duration of the committee;

(2) the size of and quorum requirement for the committee;

(3) qualifications for committee membership;

(4) appointment procedures for members;

(5) terms of service for members;

(6) training requirements for members;

(7) policies to avoid conflicts of interest by members;

(8) a periodic review process to evaluate the continuing need for the committee; and

(9) policies to ensure the committee does not violate any provision of Chapter 551, Government Code, applicable to the board or the committee.

(c) The board shall establish a youth career and technical education advisory committee and adopt rules required by Subsection (b) for the committee. The advisory committee shall assist the department with overseeing and coordinating vocational training for youth in the custody of the department, including training provided by community colleges and other local entities with which the department may partner.

[Human Resources Code Sec. 246.002: ADVISORY COMMITTEE.]

~~(a) A department industries advisory committee is created consisting of nine members appointed by the board.~~

~~(b) Members serve staggered three year terms, with the terms of three members expiring February 1 of each odd numbered year.~~

~~(c) In making appointments under this section, the board shall endeavor to include representatives of industries appropriate for hiring children committed to the department.]~~

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. Newly added Section 203.0083 gives the Texas Juvenile Justice Board the authority to establish advisory committees to make

recommendation to the board on programs, rules, and policies administered by the board. In establishing these committees, the board shall adopt rules, including rules regarding the purpose, role, responsibility, goals, and duration of the committee; the size of and quorum requirements; qualification for membership; appointment procedures, terms of service, and training requirements for members; policies to avoid conflicts of interest; a periodic review process to evaluate the continuing need for the committee; and policies to ensure the committee does not violate any provision of Chapter 551, Government Code (Open Meetings Act).

Current Section 246.002, Human Resources Code requires the appointment of an Advisory Committee for TJJD's industry program. This has been repealed and replaced in substance by Section 203.0083(b). The new statute requires the board to establish a youth career and technical advisory committee and adopt rules for the committee. The committee is to assist TJJD with overseeing and coordinating vocational training for youth in TJJD custody, including training with community colleges and other local entities with which TJJD may partner.

Human Resources Code Sec. 203.0084. RISK FACTORS AND RISK ASSESSMENT TOOLS.

(a) The department shall develop a comprehensive set of risk factors to use in assessing the overall risk level of the facilities and entities inspected by the department under:

(1) Chapter 51, Family Code;

(2) Section 221.008 of this code; and

(3) Subtitle C, Title 12, of this code.

(b) The risk factors described by Subsection (a) may include:

(1) the entity type;

(2) available programming;

(3) past and repeat standards violations;

(4) the volume and types of complaints received by the department;

(5) recent leadership changes;

(6) high staff turnover;

(7) relevant findings from the office of independent ombudsman and the office of inspector general;

(8) negative media attention; and

(9) the number of months since the date of the department's last inspection of the entity.

(c) The department shall use the risk factors developed under this section to guide the inspections process for facilities and entities described by Subsection (a) by developing risk assessment tools with clear, objective standards to use in assessing the overall risk level of each entity.

(d) The department may develop distinct assessment tools under Subsection (c) for different entity types, as appropriate.

(e) The department shall periodically review the assessment tools developed under this section to ensure that the tools remain up to date and meaningful, as determined by the department.

Human Resources Code Sec. 203.0085. RISK-BASED INSPECTIONS.

(a) The department shall adopt a policy prioritizing inspections conducted by the department under:

(1) Chapter 51, Family Code;

(2) Section 221.008 of this code; and

(3) Subtitle C, Title 12, of this code.

(b) The policy under Subsection (a) must require the department to:

(1) prioritize the inspection of entities based on the relative risk level of each entity; and

(2) use the risk assessment tools established under Section 203.0084 to determine how frequently and intensively the department conducts risk-based inspections.

(c) The policy under Subsection (a) may provide for the department to use alternative inspection methods for entities determined to be low risk, including the following methods:

(1) desk audits of key documentation;

(2) abbreviated inspection procedures;

(3) videoconference technology; and

(4) other methods that are an alternative to conducting an in-person inspection.

(d) On request by the department, a juvenile probation department or a private facility under the department's jurisdiction shall provide information on a routine basis, as determined by the department, to assist the department in implementing a risk-based inspection schedule.

Family Code Sec. 51.12. PLACE AND CONDITIONS OF DETENTION.

(c-1) The Texas Juvenile Justice Department shall ~~annually~~ inspect each public or private juvenile pre-adjudication secure detention facility. The

department shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsections (a), (f), and (g); and

(2) minimum professional standards for the detention of children in pre-adjudication secure confinement promulgated by the department or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

Family Code Sec. 51.125. POST-ADJUDICATION CORRECTIONAL FACILITIES.

(c) The Texas Juvenile Justice Department shall ~~annually~~ inspect each public or private juvenile post-adjudication secure correctional facility that is not operated by the department. The department shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the confinement of children in accordance with minimum professional standards for the confinement of children in post-adjudication secure confinement promulgated by the department or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

Family Code Sec. 51.126. NONSECURE CORRECTIONAL FACILITIES.

(c) The Texas Juvenile Justice Department shall ~~annually~~ inspect each nonsecure correctional facility. The Texas Juvenile Justice Department shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the confinement of children in accordance with minimum professional standards for the confinement of children in nonsecure confinement promulgated by the Texas Juvenile Justice Department or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. The law currently requires TJJD to annually inspect every secure pre-adjudication correctional facility, secure post-adjudication correctional facility, and nonsecure correctional facility. The above changed and newly added statutes remove the annual requirement. Instead, TJJD is required to develop a comprehensive set of risk factors to use in assessing the overall risk level of facilities and entities. TJJD is required to use those tools to prioritize inspections based on the relative risk level of each entity and to determine how frequently and intensively to conduct risk-based inspections.

**Human Resources Code Sec. 203.010.
COMPLAINTS.**

(a) The department shall maintain a system to promptly and efficiently act on complaints received by the department by or on behalf of a juvenile relating to the programs, services, or facilities of the department or a local juvenile probation department.

(b) The department shall make information available describing its procedures for complaint investigation and resolution.

(c) Criminal complaints initially referred to the office of [the] inspector general relating to juvenile probation programs, services, or facilities shall be sent to the appropriate local law enforcement agency. The office of inspector general has concurrent jurisdiction on agreement with the local law enforcement agency to conduct a criminal investigation under Section 242.102. Any other complaint shall be referred to the appropriate division of the department. The board by rule shall establish policies for the referral of noncriminal complaints.

(d) The department shall provide immediate notice to a local juvenile probation department of a complaint received by the department relating to the programs, services, or facilities of the local juvenile probation department.

(e) The department shall periodically notify the complaint parties of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation. If the

complaint relates to a claim of abuse, neglect, or exploitation involving a local juvenile probation department, the department shall provide monthly updates on the status of the complaint and immediate updates regarding department decisions to the local juvenile probation department.

(f) The department shall keep information about each written complaint filed with the department. The information must include:

- (1) the subject matter of the complaint;
- (2) the parties to the complaint;
- (3) a summary of the results of the review or investigation of the complaint;
- (4) the period of time between the date the complaint is received and the date the complaint is closed; and
- (5) the disposition of the complaint.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. TJJD is required to maintain a system to act on complaints received by or on behalf of a juvenile relating to TJJD or juvenile probation department programs, services, or facilities. When the TJJD office of inspector general receives a criminal complaint related to a juvenile probation program, service, or facility, statute requires TJJD to send the complaint to the appropriate local law enforcement agency. This change in law gives the TJJD office of inspector general concurrent jurisdiction over the criminal complaint with the agreement of the local law enforcement agency.

**Human Resources Code Sec. 203.0101.
STATISTICAL ANALYSIS OF
COMPLAINTS.**

(a) The department shall make available on the department's Internet website a statistical analysis of the complaints received against certified officers by the department.

(b) The complaint analysis under this section must include aggregate information on the number, source, type, and disposition of complaints received against certified officers during the preceding fiscal year and include the following information:

- (1) the number of certified officers by certification type;
- (2) the number of complaints against certified officers by certification type;
- (3) the number of complaints resolved and the manner of resolution, including:
 - (A) the total number of agreed, default, and board orders entered;
 - (B) the total number of cases referred for contested case hearings by the State Office of Administrative Hearings;
 - (C) the total number of contested cases heard by the State Office of Administrative Hearings; and
 - (D) the total number of contested cases that were appealed to a district court;
- (4) the average number of days required to resolve a complaint;
- (5) a detailed analysis of the resolution for each closed complaint, by the nature of the alleged violation; and
- (6) a detailed analysis of each closed complaint, by source.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. TJJD is able to accept complaints against certified juvenile probation officer, juvenile supervision officers, and communities activities officers. Most of the complaints are submitted through the toll-free number TJJD maintains for reports of abuse, neglect, or exploitation or criminal conduct. This statute requires TJJD to make available on its website a statistical analysis of those complaints, including how those complaints were resolved through TJJD's certified officer discipline process.

Human Resources Code Sec. 203.013. INTERNAL AUDIT; REPORT.

- (a) The department shall regularly conduct internal audits of the department, including audits of:
 - (1) facilities operated by and under contract with the department; and
 - (2) medical services provided to children in the custody of the department.
- (b) The department shall on a quarterly basis report the results of the audits to:

- (1) the committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities; and
- (2) the state auditor.

(c) The executive director shall acknowledge receipt of and discuss the results of internal audits with the board.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. This change in law specifically requires the executive director to acknowledge receipt of internal audits and discuss those with the TJJD Board.

Human Resources Code Sec. 203.014. TOLL-FREE NUMBER.

- (a) The department shall establish a permanent, toll-free number for the purpose of receiving any information concerning the abuse, neglect, or exploitation of children in the custody of the department or housed in a local probation facility.
- (b) The department shall ensure that:
 - (1) the toll-free number is prominently displayed in each department facility and each local probation facility;
 - (2) children in the custody of the department or housed in a local probation facility and employees of the department and the facility have confidential access to telephones for the purpose of calling the toll-free number; and
 - (3) the toll-free number is in operation and answered by staff 24 hours a day, every day of the year.
- (c) The office of inspector general shall operate the toll-free number required by Subsection (a) and the 24-hour incident reporting center and [department] shall share the complaints received with the appropriate department entity [on the toll free number with the office of inspector general and the office of the independent ombudsman].

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. TJJD has long been required to operate a toll-free number to receive reports of alleged abuse, neglect, or exploitation and to share those complaints with the office of inspector general and the office of independent ombudsman. The reporting center is located within the division of TJJD's office of inspector general. This change in law specifies that specific division of the office of inspector general, rather than the agency generally, is responsible for operating the toll-free number. It also requires that office of inspector general division to share complaints with the appropriate entity within TJJD. The authority to share those complaints with the office of independent ombudsman, which is a separate state agency from TJJD, has been deleted from this statute.

**Human Resources Code Sec. 203.017.
REGIONALIZATION PLAN.**

(a) The department shall develop and the board shall adopt a regionalization plan for keeping children closer to home in lieu of commitment to the secure facilities operated by the department under Subtitle C.

(a-1) The department shall update and submit the regionalization plan developed under Subsection (a) to the Sunset Advisory Commission and standing legislative committees with primary jurisdiction over juvenile justice matters by December 1 of each even-numbered year. Before submitting the plan, the department must present an updated draft of the regionalization plan to the board for public comment and board approval.

(a-2) The department may incorporate relevant suggestions, needs, or recommendations from the regionalization plan into subsequent strategic plans, legislative appropriation requests, and any other necessary document to support the plan's implementation.

(b) The department shall consult with juvenile probation departments in developing a regionalization plan, including the identification of:

- (1) post-adjudication facility capacity that may be dedicated to support the plan; and
- (2) resources needed to implement the plan.

(b-1) In addition to the requirements of Subsection (b), in developing the regionalization plan, the department shall consult with:

- (1) the advisory council on juvenile services;
- (2) juvenile probation departments;
- (3) regional juvenile probation associations;
- (4) advocacy groups;
- (5) parents and guardians of children under the jurisdiction of the department;
- (6) individuals formerly involved in the juvenile justice system; and
- (7) any other stakeholder the department determines may be helpful.

(e) The regionalization plan must, as applicable:
(1) include a budget review, redirection of staff, and funding mechanisms necessary to support the plan;
(2) create a new division of the department responsible for administering the regionalization plan and monitoring program quality and accountability;
(3) ~~include sufficient mechanisms to divert at least:~~

~~[(A) 30 juveniles from commitment to secure facilities operated by the department for the state fiscal year beginning September 1, 2015; and~~

~~[(B) 150 juveniles from commitment to secure facilities operated by the department for the state fiscal year beginning September 1, 2016; and~~

~~[(4)]~~ for the state fiscal year beginning September 1, 2017, and each subsequent state fiscal year, include any savings that are generated by the decreases in the population of the secure facilities operated by the department under Subtitle C that exceed the cost of implementing the plan;

(4) include:

(A) information on the department's compliance with statutory regionalization requirements;

(B) information on internal goals for diverting children from commitment to the department; and

(C) an analysis of rates of commitment to the custody of the department, broken down by region and county, and any relevant recommendations regarding trends in these rates; and

(5) include specific, actionable steps regarding how the department will enhance regional capacity, coordination, and collaboration among juvenile probation departments to keep children closer to home as an alternative to

commitment to the department's facilities while ensuring access to programs and the supervision necessary to maintain public safety.

(e-1) In developing the steps under Subsection (e)(5), the department shall consider:

(1) options to target or expand funding for juvenile probation departments to enhance community-based programs and maximize the use of existing juvenile justice beds;

(2) opportunities to use financial and other incentives to encourage diversion, facilitate cooperation within and across the regions established under Subsection (c), and emphasize the benefits of sharing available resources among counties;

(3) plans for creating additional capacity to minimize gaps in juvenile justice beds and services at the local level, including the expansion or development of beds and facilities designated specifically for regional use; and

(4) processes for downsizing, closing, or repurposing large state secure facilities to shift toward a more regionally based juvenile justice system.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. Legislation passed in 2015 required TJJD to adopt a regionalization plan for the purpose of diverting juveniles from commitment to TJJD and keeping them in their local communities whenever possible. This legislation requires TJJD to update that plan by December 1, 2024, and requires consultation with the advisory council, regional juvenile probation associations, advocacy groups, parents and guardians of youth committed to TJJD, and any other stakeholders TJJD determines may be helpful. TJJD is authorized to incorporate relevant suggestions, needs, or recommendations from the regionalization plan into subsequent strategic plans, legislative appropriation requests, and other documents necessary to support implementation. Outdated plan requirements were removed. New requirements for the plan are that it include information on TJJD's compliance with statutory regionalization requirements and internal goals for diverting youth from commitment to TJJD and include specific,

actional steps to enhance regionalization in order to keep juveniles closer to home rather than being committed while still ensuring access to programs and supervision necessary to maintain public safety. TJJD is to consider: options to target or expand funding to probation departments to enhance community-based programs and maximize the use of existing beds; opportunities to use financial and other incentives to encourage diversion, facilitate cooperation within and among regions, and emphasize the benefits of sharing available resources among counties; plans for creating additional capacity at the local level; and processes for downsizing, closing, or repurposing large state secure facilities to shift toward a more regionally-based juvenile justice system.

Human Resources Code Sec. 203.018. SPECIALIZED PROGRAMS AND SPECIAL PROJECTS.

(e) The department or any local probation department may ~~not~~ use or contract with a facility that was constructed or previously used for the confinement of adult offenders if the department determines that the facility is appropriately retrofitted to accommodate youth-specific requirements and needs.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. As part of regionalization legislation in 2015, the law was changed to specify that neither TJJD nor any local probation department could use or contract with a facility that was constructed or previously used for the confinement of adult offenders. This prohibition meant that no existing adult facilities could be repurposed for using with juveniles. The law has now been changed to allow TJJD or local probation departments to use these facilities as long as TJJD determines the facility is appropriately retrofitted to accommodate youth-specific requirements and needs.

**Human Resources Code Sec. 203.0185.
RESOURCE MAPPING.**

(a) The department shall partner with one or more public or private institutions of higher education to inventory and map resources available for children in the juvenile justice system. To determine the types of information the department requires to timely identify and address resource, program, and service gaps in probation regions that result in commitments to department secure facilities, the department shall consult with:

- (1) institutions of higher education;
- (2) the advisory council on juvenile services;
- and
- (3) other relevant stakeholders.

(b) The board shall adopt rules requiring juvenile probation departments, at useful and reasonable intervals, to report to the department relevant information on resource, program, and service gaps identified under Subsection (a), including information on:

- (1) the needs of children committed to the department that are not being met with community resources; and
- (2) the types of resources, programs, and services that, if available in the community, may allow juvenile probation departments to keep children closer to home as an alternative to commitment to the department.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. This new statute requires TJJD to partner with one or more public or private colleges or universities to inventory and map resources that are available for children in the juvenile justice system. TJJD is required to consult with institutional of higher education, the advisory council on juvenile services, and other relevant stakeholders in order to determine the types of information that TJJD needs in order to timely identify and address resource, program, and service gaps in probation regions that result in commitment to TJJD. The TJJD Board is required to adopt rules requiring juvenile probation departments to report relevant information on resource, program, and service gaps.

**Topic: Administrative Rules and
Standards**

**Human Resources Code Sec. 221.002.
GENERAL RULES GOVERNING
JUVENILE BOARDS, PROBATION
DEPARTMENTS, PROBATION
OFFICERS, PROGRAMS, AND
FACILITIES.**

(a) The board shall adopt reasonable rules that provide:

- (1) minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services;
- (2) a code of ethics for probation and detention officers and for the enforcement of that code;
- (3) appropriate educational, preservice and in-service training, and certification standards for probation and detention officers or court-supervised community-based program personnel;
- (4) subject to Subsection (d), minimum standards for public and private juvenile pre-adjudication secure detention facilities, public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board or governmental unit, private juvenile post-adjudication secure correctional facilities operated under a contract with a governmental unit, except those facilities exempt from certification by Section 42.052(g), and nonsecure correctional facilities operated by or under contract with a governmental unit;
- (5) minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee; and
- (6) minimum standards for the operation of substance abuse facilities or programs that are juvenile justice facilities or juvenile justice programs, as defined by Section 261.405, Family Code.

(d) In adopting rules under Subsection (a)(4), the board shall ensure that the minimum standards for facilities described by Subsection (a)(4) are designed to ensure that juveniles confined in those facilities are provided the rights, benefits, responsibilities, and privileges to which a juvenile

is entitled under the United States Constitution, federal law, and the constitution and laws of this state. The minimum standards must include a humane physical and psychological environment, safe conditions of confinement, protection from harm, adequate rehabilitation and education, adequate medical and mental health treatment, and due process of law.

(d-1) In adopting rules under Subsection (a)(4), the board shall authorize a juvenile probation department to house a child committed to the department in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility as the child awaits transfer to the department.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on the effective date

Summary of Changes: This is part of TJJD's Sunset bill. Due to the COVID-19 pandemic and the Great Resignation, there has been a severe shortage of staff in the juvenile justice system, particularly in facilities at both the state and local level. This shortage of staff has created a shortage of available bed space. This has been compounded by the increase in juvenile crime, particularly serious crimes, in the same time period. Because of these issues, there is currently a waiting time for a juvenile who has been committed to TJJD to actually be admitted there. These juveniles remain in pre-adjudication detention facilities. This change requires TJJD to adopt standards that authorize these juveniles to be housed in either pre-adjudication or post-adjudication facilities as the child awaits transportation to the department. Although the statute says "transfer," this is not actually a transfer under any statutes that use the term "transfer." It is merely transportation for admission to TJJD.

Topic: Certification of Officers

Human Resources Code Sec. 222.001. MINIMUM STANDARDS FOR PROBATION OFFICERS.

(a) To be eligible for appointment as a probation officer, a person who was not employed as a

probation officer before September 1, 1981, must:

(1) ~~[be of good moral character;~~
~~[(2) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;~~

~~[(3) have either:~~

~~[(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the department; or~~

~~[(B) one year of experience in full-time case work, counseling, or community or group work;~~

~~[(i) in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons; and~~

~~[(ii) that the department determines provides the kind of experience necessary to meet this requirement;~~

~~[(4)] have satisfactorily completed the course of preservice training or instruction and any continuing education required by the department;~~

~~(2) [(5)] have passed the tests or examinations required by the department; and~~

~~(3) [(6)] possess the level of certification required by the department.~~

~~[(b) The board by rule may authorize the waiver of the requirement of a year of graduate study or full-time employment experience if the authority responsible for employing the officer establishes to the satisfaction of the department that, after a diligent search, the authority cannot locate a person meeting that requirement to fill a job opening.]~~

(b-1) The department by rule shall establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification. Rules adopted by the department under this subsection must be the least restrictive rules possible to ensure certified juvenile probation officers are qualified to protect children and public safety without creating barriers to entry into the profession.

(c) The board by rule may authorize the temporary employment of a person who has not completed a course of preservice training, passed the examination, or attained the required level of certification, contingent on the person meeting those requirements within the time specified by the board.

(d) A person must possess the level of training, experience, and certification required by the department to be eligible for employment in a probation office in a position supervising other probation officers. The department may require several levels of certification to reflect increasing levels of responsibility. A department rule relating to levels of certification does not affect the continued employment of a probation officer in a supervisory position if the person holds that position on the date on which the rule takes effect.

(e) The department may waive any certification requirement, except a fee requirement, for an applicant who has a valid certification from another state that has certification requirements that are substantially equivalent to the requirements in this state.

~~[(f) The department may waive the degree accreditation requirement in Subsection (a)(2) if the applicant possesses a foreign or other degree that the department determines is the substantial equivalent of a bachelor's degree. The board shall adopt rules defining the procedures to be used to request a waiver of the accreditation requirement in Subsection (a)(2).]~~

Human Resources Code Sec. 222.002. MINIMUM STANDARDS FOR DETENTION OFFICERS.

To be eligible for appointment as a detention officer, a person who was not employed as a detention officer before September 1, 2005, must:

- (1) ~~[be of good moral character;~~
- ~~[(2)]~~ be at least 21 years of age;
- (2) ~~[(3)]~~ have acquired a high school diploma or its equivalent;
- (3) ~~[(4)]~~ have satisfactorily completed the course of preservice training or instruction required by the department;
- (4) ~~[(5)]~~ have passed the tests or examinations required by the department; and
- (5) ~~[(6)]~~ possess the level of certification required by the department.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on the effective date. No later than January 1, 2024, TJJD shall repeal any rule requiring that an individual must be of good moral character

Summary of Changes: This is part of TJJD's Sunset bill. The law currently sets minimum educational and work experience requirements for a person to qualify to be certified as a juvenile probation officer. This includes a bachelor's degree and either one year of graduate study in certain fields or one year of full-time employment in certain fields. These requirements have all been removed from statute. Instead, TJJD, with input from the advisory council and other relevant stakeholder Advisory Council, is to establish the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification. The rules must be the least restrictive possible to ensure juvenile probation officers are qualified to protect children and public safety without creating barriers to entry into the profession. Additionally, though TJJD has never had a means to impose the requirement that persons serving as probation officers and supervision officers be of good moral character, given the subjectivity, the requirement is now repealed from statute and TJJD is mandated to repeal it from its rules no later than January 1, 2024.

Human Resources Code Sec. 222.0521. APPLICATION OF CERTAIN LAW.

Chapter 53, Occupations Code, applies to the issuance of a certification issued by the department.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Not applicable

Summary of Changes: This is part of TJJD's Sunset bill. This provision has been added to law to make it clear that Chapter 53, Occupations Code, related to using criminal history when making licensing decisions, applies to certificates TJJD issues for probation officer, supervision officers, and community activities officers. TJJD's standards regarding criminal history for certified officers are currently in compliance with Chapter 53, Occupations Code.

Human Resources Code Sec. 222.0522.
PROVISIONAL CERTIFICATION.

- (a) The department may issue a provisional certification to an employee of a juvenile probation department or a private facility that houses youth on probation until the employee is certified under Section 222.001, 222.002, or 222.003, as applicable.
- (b) The department shall adopt rules to implement Subsection (a), including rules regarding eligibility for provisional certification and application procedures.

Human Resources Code Sec. 222.053.
REVOCATION OR SUSPENSION OF CERTIFICATION OR PROVISIONAL CERTIFICATION.

- (a) The department may revoke or suspend a certification, or reprimand a certified officer:
- (1) for a violation of this chapter or a department rule; or
 - (2) if, under Subsection (c), a panel determines that continued certification of the person threatens juveniles in the juvenile justice system.
- (b) The department may place on probation a person whose certification is suspended. If the suspension is probated, the department may require the person to:
- (1) report regularly to the department on matters that are the basis of the probation; and
 - (2) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.
- (c) The executive director may convene, in person or telephonically, a panel of three board members to determine if a person's continued certification threatens juveniles in the juvenile justice system. If the panel determines that the person's continued certification threatens juveniles in the juvenile justice system, the person's license is temporarily suspended until an administrative hearing is held as soon as possible under Subsection (d). The executive director may convene a panel under this subsection only if the danger posed by the person's continued certification is imminent. The panel may hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) A person is entitled to a hearing before the State Office of Administrative Hearings if the department proposes to suspend or revoke the person's certification.

(e) A person may appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County. The standard of review is under the substantial evidence rule.

(f) In this section, "certification" includes a provisional certification.

Human Resources Code Sec. 222.054.
CERTIFICATION OR PROVISIONAL CERTIFICATION INELIGIBILITY.

(a) In this section, "certification" includes a provisional certification.

(b) The department may designate as permanently ineligible for certification under this chapter an individual who has been terminated from employment with the department for engaging in conduct that demonstrates the individual is not suitable for certification under this chapter.

(c) The executive director may convene, in person or telephonically, a panel of three board members to determine if a former department employee's continued eligibility to obtain a certification under this chapter threatens juveniles in the juvenile justice system. If the panel determines an individual's eligibility for certification threatens juveniles in the juvenile justice system, the department shall temporarily designate the individual as ineligible for certification until an administrative hearing is held under Subsection

(d). The hearing must be held as soon as possible following the temporary designation. The executive director may convene a panel under this subsection only if the danger posed by the person's continued eligibility for certification is imminent. The panel may hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) A person is entitled to a hearing before the State Office of Administrative Hearings if the department proposes to designate a person as permanently ineligible for certification.

(e) A person may appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County.

The standard of review is under the substantial evidence rule.

Commentary by: Kaci Singer

Source: SB 1727/SB 1849

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: Part of this is from TJJD's Sunset legislation and part of it is from a bill designed to have child-serving agencies share information about individuals who engaged in certain wrongdoing. That bill is covered in depth elsewhere in this newsletter. The portions include here relate to TJJD certifications.

TJJD issues professional certifications to juvenile probation officers, supervision officers, and community activities officers. Unlike many other professional licenses, there is not a mechanism to obtain this certification outside of being employment by a local probation department or facility. Persons in these positions have 180 days to become certified, but can begin performing the duties prior to certification upon completion of certain training topics and passing an exam.

Unfortunately, there have been times that people engage in conduct in this first 180 days that indicates they should not receive a certification. However, TJJD's statutory authority to impose discipline was limited to a person actually in possession of a certification.

These changes allow TJJD to issue provisional certifications and take disciplinary action when a person has a provisional certification, to include revoking that provisional certification and temporarily suspending it pending the disciplinary process being completed. The person is eligible for a hearing at the State Office of Administrative Hearings (SOAH) just like a person with a certification.

TJJD is also now authorized by statute to determine that its employees who engage in certain conduct are ineligible for certification as a juvenile probation officer, supervision officer, or community activities officer. These individuals are also eligible for a hearing at SOAH and for being temporarily marked as ineligible for certification pending the hearing process.

Occupations Code. CHAPTER 60. **DIGITAL LICENSES**

Occupations Code Sec. 60.001.

DEFINITIONS.

In this chapter:

(1) "Licensing authority" means a state agency, county, or municipality that is authorized to issue an occupational license.

(2) "Occupational license" means a license, certificate, registration, permit, or other form of authorization required by statute, ordinance, order, or rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

Occupations Code Sec. 60.002.

REQUIREMENTS FOR DIGITAL LICENSES.

A licensing authority that issues an occupational license may issue a digital license to a license holder. If the licensing authority issues a digital license, the digital license must comply with the following requirements:

(1) the digital license must be in a secure format and readily accessible by the license holder through an Internet website and on a wireless communication device;

(2) the public must be able to view a license holder's digital license through an Internet website or by using a QR code as defined by Section 443.001, Health and Safety Code; and

(3) if the authority contracts with a vendor for the issuance of a digital license, the digital license must be in a format in which the vendor and authority can verify the validity of the license.

Commentary by: Kaci Singer

Source: HB 2453

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This new statute allows a licensing authority, such as TJJD, to issue digital occupational licenses. The digital license must be in a secure format and readily accessible to the license holder through an Internet website and on a wireless communication device. It also must be viewable by the public through a website or QR code.

Topic: State Aid

Human Resources Code Sec. 223.001. DETERMINATION OF AMOUNT OF STATE AID.

(a) The department shall annually allocate funds for financial assistance to juvenile boards to provide juvenile services according to current estimates of the number of juveniles in each county, a basic probation funding formula for departments that clearly defines what basic probation entails and which services are provided, and other factors the department determines are appropriate.

(a-1) The department may incorporate as factors in the basic probation funding formula under Subsection (a) measures that create incentives for diverting children from the juvenile justice system. The department may prioritize factors for which the department collects relevant information. The board may adopt rules establishing and defining the factors under this subsection.

(a-2) When revising the basic probation funding formula under Subsection (a), the department shall consult and coordinate with relevant stakeholders, including:

(1) the advisory council on juvenile services; and

(2) the Legislative Budget Board.

(c) The department shall set aside a portion of the funds appropriated to the department for discretionary state aid to fund programs designed to address special needs or projects of local juvenile boards, including projects dedicated to specific target populations based on risk and needs, and with established recidivism reduction goals. The department shall develop discretionary grant funding protocols based on documented, data-driven, and research-based practices. The department may incorporate incentives into the discretionary grant funding protocols that encourage collaboration between juvenile probation departments.

(d-1) The board, in consultation with the advisory council on juvenile services, shall adopt rules requiring a juvenile probation department to apply for the placement of a child in a regional specialized program before a juvenile court commits the child to the department's custody under Chapter 54, Family Code. The board by

rule may establish exceptions to this requirement for offenses or circumstances the department considers inappropriate for diversion from commitment to state custody.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. As part of its basic probation funding formula, TJJD is now authorized to incorporate measures that create incentives for diverting juveniles from the juvenile justice system. The TJJD board is authorized to adopt rules establishing and defining the factors. TJJD is to consult and coordinate with relevant stakeholders, including the advisory council on juvenile services and the Legislative Budget Board. TJJD is also authorized to incorporate incentives into discretionary grant funding protocols in order to encourage collaboration between juvenile probation departments. The TJJD Board is required to adopt rules requiring a juvenile probation department to apply for the placement of a child in a regional specialized program before a juvenile court commits the child to TJJD, though the Board may establish exceptions to the requirement for conduct or circumstances TJJD considers inappropriate for diversion.

Topic: Reports and Information

Human Resources Code Sec. 241.009. COMMITMENT INFORMATION.

(a) Not later than October 1 of each year, the department shall publish on the department's Internet website aggregated information on the number of children committed to the department during the previous fiscal year, categorized by:

(1) committing offense level;

(2) sentence type;

(3) age; and

(4) sex.

(b) The department shall publish quarterly on the department's Internet website end-of-month data described by Subsection (a), aggregated for all children committed to the department and for

children placed in each secure facility and halfway house.

(c) The department shall ensure that information regarding an individual child cannot be identified in any of the aggregated information published under this section.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. TJJD is required to annually publish information on the number of youth committed to TJJD, categorized by committing offense level, sentence type, age, and sex. TJJD is also to publish that data quarterly for all children placed in each secure facility or halfway house. TJJD is to ensure information regarding an individual child cannot be identified.

Human Resources Code Sec. 242.002.

[EVALUATION OF] TREATMENT PROGRAMS; AVAILABILITY.

~~[(a) The department shall annually review the effectiveness of the department's programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for sex offenders, capital offenders, children who are chemically dependent, emotionally disturbed children, and females.~~

~~(b) On or before December 31 of each even-numbered year, the department shall make a report on the effectiveness of the programs to the Legislative Budget Board.]~~

(c) The department shall offer or make available programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for females and for sex offenders, capital offenders, children who are chemically dependent, and children with mental illness, ~~[described by Subsection (a)]~~ in an adequate manner so that a child in the custody of the department receives appropriate rehabilitation services recommended for the child by the court committing the child to the department.

(d) If the department is unable to offer or make available programs described by ~~[Subsection (a) in the manner provided by]~~ Subsection (c), the department shall, not later than December 31 of

each even-numbered year, provide the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report explaining:

- (1) which programs are not offered or are unavailable; and
- (2) the reason the programs are not offered or are unavailable.

Human Resources Code Sec. 245.0535.

COMPREHENSIVE REENTRY AND REINTEGRATION PLAN FOR CHILDREN; STUDY AND REPORT.

(h) The department shall conduct and coordinate research:

- (1) to determine whether the comprehensive reentry and reintegration plan developed under this section reduces recidivism rates; and
- (2) to review the effectiveness of the department's programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for females and for sex offenders, capital offenders, children who are chemically dependent, and children with mental illness.

(i) Not later than December 31 of each even-numbered year, the department shall deliver a report of the results of research conducted or coordinated under Subsection (h) to the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of each house of the legislature with primary jurisdiction over juvenile justice and corrections.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. TJJD had multiple statutes requiring it to make reports to different entities. These changes consolidate those requirements into one statute so that there is one report required.

Topic: Actions Regarding Youth

**Human Resources Code Sec. 243.001.
PLACEMENT IN DEPARTMENT
FACILITIES.**

(d) The department shall place a child in the most restrictive setting appropriate as the child awaits an adjudication or prosecution for conduct constituting a felony of the first or second degree while in the department's custody. The board by rule shall establish placement procedures that guide the department in determining the most appropriate setting for the child based on rehabilitative needs while preserving due process rights.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. This statute requires TJJD to place a youth in the most restrictive appropriate setting if the child is awaiting prosecution for alleged conduct classified as a first or second degree felony and requires the board to establish procedures by rule that guide the department in determining the most appropriate setting while preserving due process rights. TJJD already has rules regarding the placement of juveniles in more restrictive settings within a facility as well as rules regarding revocation of parole. These rules are consistent with due process rights required by the constitution, by statute, and by the *Morales v. Turman* settlement agreement.

**Human Resources Code Sec. 244.014.
REFERRAL OF DETERMINATE
SENTENCE OFFENDERS FOR
TRANSFER.**

(a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

- (1) the child has not completed the sentence; and
- (2) the child's conduct, regardless of whether the child was released under supervision under

Section 245.051, indicates that the welfare of the community requires the transfer.

(a-1) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department shall refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

- (1) the child has not completed the sentence;
- (2) while the child was committed to the custody of the department, the child was subsequently adjudicated or convicted for conduct constituting a felony of the first or second degree or an offense punishable under Section 22.01(b)(1), Penal Code; and
- (3) the child was at least 16 years of age at the time the conduct occurred.

(b) The department shall cooperate with the court on any proceeding on the transfer of the child.

(c) If a child is released under supervision, a juvenile court adjudication that the child engaged in delinquent conduct constituting a felony offense, a criminal court conviction of the child for a felony offense, or a determination under Section 244.005(4) revoking the child's release under supervision is required before referral of the child to the juvenile court under Subsection (a).

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. Current law gives TJJD discretion to request a hearing under Section 54.11, Family Code, seeking to have the committing juvenile court order a youth committed to TJJD with a determinate sentence to be transferred to TDCJ prison as long as certain criteria exist. This change requires, rather than allows, TJJD to request such a hearing if a youth committed to TJJD with a determinate sentence is adjudicated or convicted of conduct classified as a first or second degree felony or third degree assault of a public servant with bodily injury as long as the conduct occurred while the youth was at least 16, was committed to TJJD, and prior to sentence expiration. It has long been TJJD practice to request a transfer hearing in such instance, so

while this is a statutory change, it is not a change in practice.

Topic: Office of Inspector General

Human Resources Code Sec. 242.102.

OFFICE OF INSPECTOR GENERAL

(a) The office of inspector general is established at the department under the direction of the board as a law enforcement agency for the purpose of:

(1) preventing, ~~detecting~~, and investigating:

(A) crimes committed by department employees, including parole officers employed by or under a contract with the department; and

(B) crimes and delinquent conduct committed at a facility operated by the department, a residential facility operated by another entity under a contract with the department, or any facility in which a child committed to the custody of the department is housed or receives medical or mental health treatment, including:

(i) unauthorized or illegal entry into a department facility;

(ii) the introduction of contraband into a department facility;

(iii) escape from a secure facility; and

(iv) organized criminal activity; ~~and~~

(2) investigating complaints received under Section 203.010 involving allegations of abuse, neglect, or exploitation of children in juvenile justice programs or facilities under Section 261.405, Family Code;

(3) investigating complaints of abuse, neglect, or exploitation of:

(A) juveniles housed in a pre-adjudication or post-adjudication public or private secure or nonsecure facility regardless of licensing entity; and

(B) juveniles committed to the department;

(4) apprehending juveniles after escape or violation of release conditions as described by Section 243.051;

(5) investigating gang-related activity within the juvenile justice system; and

(6) performing entry security and exterior perimeter security searches for a department-operated secure correctional facility, as defined by Section 51.02, Family Code.

(a-1) The office of inspector general has concurrent jurisdiction on agreement with the local law enforcement agency to conduct a criminal investigation under Subsection (a)(3).

(a-2) The office of inspector general shall operate the incident reporting center for the department under Section 203.014.

(b) The office of inspector general shall prepare an investigative ~~and deliver a~~ report concerning the results of investigations ~~any investigation~~ conducted under this section and may deliver the report to any of the following:

(1) the department ~~board~~;

(2) the appropriate district or county attorney ~~executive director~~;

(3) any applicable advisory board;

(4) the governor;

(5) the lieutenant governor;

(6) the speaker of the house of representatives;

(7) the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities;

(8) the special prosecution unit;

(9) the state auditor; ~~or and~~

(10) any other appropriate state agency responsible for licensing or certifying department employees or facilities.

(b-1) An individual or entity that receives a report under Subsection (b) may not disclose the information unless otherwise authorized by law.

(c) The report prepared under Subsection (b) must include a summary of the actions performed by the office of inspector general in conducting the investigation, a statement of whether the investigation resulted in a determination ~~finding~~ that abuse, neglect, or exploitation, a criminal offense, or delinquent conduct occurred, and a description of the determination ~~finding~~. The report is public information under Chapter 552, Government Code, only to the extent authorized under that chapter and other law.

(c-1) The board by rule shall require any findings related to an administrative investigation under Subsection (a)(2) to be reviewed for legal sufficiency before being made public.

(d) The office of inspector general may employ investigators and security officers and employ and appoint ~~commission~~ inspectors general as peace officers for the purpose of carrying out the duties described by this section. An inspector general shall have all of the powers and duties

given to peace officers under Articles 2A.051 and 2A.059 [~~Article 2.13~~], Code of Criminal Procedure.

(e) Peace officers employed and appointed [~~commissioned~~] under Subsection (d) must:

(1) be certified by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code; and

(2) complete advanced courses relating to the duties of peace officers employed and appointed [~~commissioned~~] under Subsection (d) as part of any continuing education requirements for the peace officers.

(g) The chief inspector general shall on a quarterly basis prepare and deliver a report concerning the operations of the office of inspector general to:

(1) the board;

(2) the executive director;

(3) any applicable advisory board;

(4) the governor;

(5) the lieutenant governor;

(6) the speaker of the house of representatives;

(7) the standing committees of the senate and house of representatives with primary jurisdiction over correctional facilities;

(8) the state auditor; ~~and~~

(9) the comptroller; and

(10) the special prosecution unit.

(h) A report prepared under Subsection (g) is public information under Chapter 552, Government Code, to the extent authorized under that chapter and other law, and the department shall publish the report on the department's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the types of investigations conducted by the office of inspector general, such as whether an investigation concerned narcotics or an alleged incident of sexual abuse;

(2) the relationship of a victim to a perpetrator, if applicable; ~~and~~

(3) the number of investigations conducted concerning suicides, deaths, and hospitalizations of children in the custody of the department at secure facilities, on parole, or at other placement locations; and

(4) the final disposition of any complaint received under Section 203.010 related to juvenile probation departments and Section

261.405, Family Code, that concerns the abuse, neglect, or exploitation of a juvenile.

~~[Human Resources Code Sec. 221.011.]~~ ~~INVESTIGATORS.~~

~~(a) The department may employ and commission investigators as peace officers for the purpose of investigating allegations of abuse, neglect, and exploitation in juvenile justice programs and facilities under Section 261.405, Family Code.~~

~~(b) Peace officers employed and commissioned under Subsection (a) must be certified by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code.]~~

~~[Human Resources Code Sec. 221.055.]~~ ~~QUARTERLY REPORT ON ABUSE, NEGLECT, AND EXPLOITATION.~~

~~(a) The department shall prepare and deliver a quarterly report to the board concerning the final outcome of any complaint received under Section 261.405, Family Code, that concerns the abuse, neglect, or exploitation of a juvenile. The report must include a summary of the actions performed by the department and any applicable juvenile board or juvenile probation department in resolving the complaint.~~

~~(b) A report prepared under Subsection (a) is public information under Chapter 552, Government Code, only to the extent authorized by that chapter.]~~

~~[Human Resources Code Sec. 243.052.]~~ ~~APPREHENSION SPECIALISTS.~~

~~(a) The department may employ and commission apprehension specialists as peace officers for the purpose of apprehending a child under Section 243.051.~~

~~(b) Peace officers employed and commissioned under Subsection (a) must be certified by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code.]~~

Code of Criminal Procedure Art. 2A.001 [2.12]. WHO ARE PEACE OFFICERS.

The following are peace officers:

...

(27) officers appointed by the inspector general of [~~apprehension specialists and inspectors general commissioned by~~] the Texas Juvenile Justice Department [~~as officers~~] under Section

[Sections] 242.102 [and ~~243.052~~], Human Resources Code;

...

(33) ~~[investigators commissioned by the Texas Juvenile Justice Department as officers under Section 221.011, Human Resources Code; and~~ [(34)] the fire marshal and any related officers, inspectors, or investigators commissioned by a county under Subchapter B, Chapter 352, Local Government Code.

Commentary by: Kaci Singer

Source: SB 1727/HB 4504

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. The office of inspector general was created within the Texas Youth Commission in 2007 for the purpose of investigating criminal activity by TJJD employees or in TJJD facilities or programs. Over the years, the division's responsibilities have been extended so that it also investigates abuse, neglect, and exploitation allegations in TJJD and county programs, performs security checks at the TJJD gatehouse, apprehends TJJD youth when there is probable cause to believe they have escaped a facility or violated their conditions of release.

These changes consolidate the responsibilities of the TJJD office of inspector general into one section of statute. They also expand the division's authority to include investigating gang activity and performing entry and exterior perimeter security searches at TJJD facilities.

The statutory changes are also designed to give the division the ability to investigate abuse, neglect, and exploitation at any facility in which a juvenile is housed, be it a TJJD youth or a juvenile under juvenile court jurisdiction, regardless of whether the entity is licensed by another state agency other than TJJD.

The office of inspector general's investigative reports are now allowed, rather than required, to be delivered to governor, lieutenant governor, legislators, and others. Those entities are prohibited from releasing the reports unless authorized by law.

The TJJD Board is required by rule to require any findings in abuse, neglect, and exploitation investigation to be reviewed for legal sufficiency

before being made public. It bears noting that such reports are only public information to the extent authorized under law.

The office of inspector general is required to make quarterly reports that must be published on TJJD's website. That data is now to also include the final disposition of any complaint received by TJJD related to juvenile probation departments under Section 203.010, Human Resources Code, and any complaints received under 261.405, Family Code, that concern the abuse, neglect, or exploitation of a juvenile.

(Note: The renumbering of Code of Criminal Procedure Articles 2.12 and 2.13 noted above are from HB 4504, a non-substantive revision of statutes the resulted in extensive renumbering.)

Government Code Sec. 662.005. ENTITLEMENT TO PAID DAY OFF.

(b) Except as provided by Section 662.010, and notwithstanding Section 659.015 or another law, a state employee who is a peace officer commissioned or appointed, as applicable, by a state officer or state agency listed under Article 2.12, Code of Criminal Procedure, or who is employed by the Department of Public Safety either to perform communications or dispatch services related to traffic law enforcement or as a public security officer, as that term is defined by Section 1701.001, Occupations Code, or who is employed by the Parks and Wildlife Department to perform communications and dispatch services to assist law enforcement officers commissioned by the Parks and Wildlife Commission in performing law enforcement duties, or who is employed by the Texas Juvenile Justice Department to perform communication service duties for the incident reporting center and to assist law enforcement officers appointed by the office of inspector general of the Texas Juvenile Justice Department in performing investigative duties, or who is employed as a security officer providing security and entry searches for secure correctional facilities operated by the Texas Juvenile Justice Department, and who is required to work on a national or state holiday that falls on a Saturday or Sunday is entitled to compensatory time off at the rate of one hour for each hour worked on the holiday.

Commentary by: Kaci Singer

Source: SB 1727/HB 4504

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This change entitles a TJJD employee who performs communication service duties for the incident reporting center, who assists law enforcement officers in the TJJD office of inspector division, or who is employed as a security officer to provide security and entry services for TJJD secure correctional facilities to compensatory time off if required to work on a state or national holiday that falls on a Saturday or Sunday.

**Code of Criminal Procedure Art. 18B.001.
DEFINITIONS.**

- (1) "Authorized peace officer" means:
- (A) a sheriff or deputy sheriff;
 - (B) a constable or deputy constable;
 - (C) a marshal or police officer of a municipality;
 - (D) a ranger or officer commissioned by the Public Safety Commission or the director of the department;
 - (E) an investigator of a prosecutor's office;
 - (F) a law enforcement agent of the Texas Alcoholic Beverage Commission;
 - (G) a law enforcement officer commissioned by the Parks and Wildlife Commission;
 - (H) an enforcement officer appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;
 - (I) a law enforcement officer appointed by the inspector general of the Texas Juvenile Justice Department under Section 242.102, Human Resources Code;
 - (J) an investigator commissioned by the attorney general under Section 402.009, Government Code; or
 - (K) ~~(J)~~ a member of an arson investigating unit commissioned by a municipality, a county, or the state.
- (4) "Designated law enforcement office or agency" means:
- (A) the sheriff's department of a county with a population of 3.3 million or more;
 - (B) a police department in a municipality with a population of 200,000 or more; ~~[or]~~
 - (C) the office of inspector general of the Texas Department of Criminal Justice; or

(D) the office of inspector general of the Texas Juvenile Justice Department.

**Code of Criminal Procedure Art. 18B.252.
PEACE OFFICERS AUTHORIZED TO
POSSESS, INSTALL, OPERATE, OR
MONITOR EQUIPMENT.**

(b) If the director of the department or the director's designee approves the policy submitted under Article 18B.251, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, the inspector general of the Texas Juvenile Justice Department or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee, as applicable, shall submit to the director a written list of all peace officers in the designated law enforcement office or agency who are authorized to possess, install, operate, or monitor pen registers, ESN readers, or similar equipment.

**Code of Criminal Procedure Art. 18B.302.
REPORT OF EXPENDITURES.**

(a) The inspector general of the Texas Department of Criminal Justice, the inspector general of the Texas Juvenile Justice Department or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency, as applicable, shall submit to the director of the department a written report of expenditures made by the designated law enforcement office or agency to purchase and maintain a pen register, ESN reader, or similar equipment authorized under this chapter.

**Code of Criminal Procedure Art. 18B.451.
SUBPOENA AUTHORITY.**

The director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, the inspector general of the Texas Juvenile Justice Department or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee may issue an administrative subpoena to a communication common carrier or a provider of an electronic communications service to compel the production of any carrier's or service provider's business records that:

- (1) disclose information about:
 - (A) the carrier's or service provider's customers; or
 - (B) users of the services offered by the carrier or service provider; and
- (2) are material to a criminal investigation.

Code of Criminal Procedure Art.

18B.452. REPORT OF ISSUANCE OF SUBPOENA.

Not later than the 30th day after the date on which an administrative subpoena is issued under Article 18B.451, the inspector general of the Texas Department of Criminal Justice, the inspector general of the Texas Juvenile Justice Department or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency, as applicable, shall report to the department the issuance of the subpoena.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of TJJD's Sunset bill. These changes allow the TJJD office of inspector general to request the installation of a pen register, ESN reader, or similar equipment in the same manner as certain other peace officers in the state.

Topic: Paid Parental Leave

Government Code Sec. 661.912. FAMILY AND MEDICAL LEAVE ACT.

- (a) Except as provided by Section 661.9125, to [Tø] the extent required by federal law, a state employee who has a total of at least 12 months of state service and who has worked at least 1,250 hours during the 12-month period preceding the beginning of leave under this section is entitled to leave under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.).
- (b) The employee must first use all available and applicable paid vacation and sick leave while taking leave under this section, except that an employee who is receiving temporary disability benefits or workers' compensation benefits or is taking paid leave under Section 661.9125 is not required to first use applicable paid vacation or

sick leave while receiving those benefits or taking paid leave under Section 661.9125.

Government Code Sec. 661.9125. PAID PARENTAL LEAVE FOR CERTAIN EMPLOYEES.

(a) This section applies only to a state employee who:

- (1) is a member of the Employees Retirement System of Texas or is employed by a board, commission, department, or other agency in the executive branch of state government created by the constitution or a statute of this state, except for an institution of higher education as defined by Section 61.003, Education Code; and
- (2) takes leave under Section 661.912 for the:

- (A) birth of a child;
- (B) birth of a child by the employee's spouse;
- (C) birth of a child by a gestational surrogate;
- or
- (D) adoption of a child.

(b) Except as provided by Subsection (c), a state employee who takes leave under Section 661.912 for the purpose of Subsection (a)(2)(A) is entitled to 40 days of paid leave during leave taken under that section.

(c) A state employee who takes leave under Section 661.912 for the purpose of Subsection (a)(2)(B), (C), or (D) is entitled to 20 days of paid leave during leave taken under Section 661.912.

(d) This section does not entitle an employee to any leave in addition to leave taken under Section 661.912.

(e) A state employee is not required to use all available paid vacation and sick leave before the employee is entitled to take paid leave under this section.

(f) This section may not be construed to:

- (1) create an employment right;
- (2) confer a protected status; or
- (3) create a cause of action against this state.

Commentary by: Kaci Singer

Source: SB 222

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This new statute provides paid parental leave to state employees for the birth or adoption of a child. A person giving birth is provided 40 days of paid leave. A person whose spouse gives birth, who has a child through a surrogate, or who adopts a child is

provided 20 days of paid leave. This leave may be used before the person exhausts their personal and sick leave.

**Topic: Confidentiality of Health Care
Provider Information**

Tax Code Sec. 25.025.

**CONFIDENTIALITY OF CERTAIN HOME
ADDRESS INFORMATION.**

(a) This section applies only to:

(1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure, and the spouse or surviving spouse of the peace officer;

(2) the adult child of a current peace officer as defined by Article 2.12, Code of Criminal Procedure;

(3) a current or honorably retired county jailer as defined by Section 1701.001, Occupations Code;

(4) an employee of the Texas Department of Criminal Justice;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code;

(6) an individual who shows that the individual, the individual's child, or another person in the individual's household is a victim of family violence as defined by Section 71.004, Family Code, by providing:

(A) a copy of a protective order issued under Chapter 85, Family Code, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the individual, the individual's child, or another person in the individual's household is a victim of family violence;

(7) an individual who shows that the individual, the individual's child, or another person in the individual's household is a victim of sexual assault or abuse, stalking, or trafficking of persons by providing:

(A) a copy of a protective order issued under Subchapter A or B, Chapter 7B, Code of Criminal Procedure, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the individual, the

individual's child, or another person in the individual's household is a victim of sexual assault or abuse, stalking, or trafficking of persons;

(8) a participant in the address confidentiality program administered by the attorney general under Subchapter B, Chapter 58, Code of Criminal Procedure, who provides proof of certification under Article 58.059, Code of Criminal Procedure;

(9) a federal judge, a federal bankruptcy judge, a marshal of the United States Marshals Service, a state judge, or a family member of a federal judge, a federal bankruptcy judge, a marshal of the United States Marshals Service, or a state judge;

(10) 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;

(11) 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;

(12) an officer or employee of a community supervision and corrections department established under Chapter 76, Government Code, who performs a duty described by Section 76.004(b) of that code;

(13) a criminal investigator of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(14) a current or honorably retired police officer or inspector of the United States Federal Protective Service;

(15) a current or former United States attorney, assistant United States attorney, federal public defender, deputy federal public defender, or assistant federal public defender and the spouse and child of the attorney or public defender;

(16) 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;

(17) a medical examiner or person who performs forensic analysis or testing who is employed by this state or one or more political subdivisions of this state;

(18) a current or former member of the United States armed forces who has served in an area

that the president of the United States by executive order designates for purposes of 26 U.S.C. Section 112 as an area in which armed forces of the United States are or have engaged in combat;

(19) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department;

(20) 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;

(21) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;

(22) a current or former employee of the Texas Civil Commitment Office or the predecessor in function of the office or a division of the office;

(23) a current or former employee of a federal judge or state judge;

(24) 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;

(25) an elected public officer; ~~and~~

(26) a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code;

(27) a current or former employee or contract staff member of a university health care provider at a corrections facility operated by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department; and

(28) a current or former attorney for the Department of Family and Protective Services.

Commentary by: Kaci Singer

Source: HB 1911

Effective Date: June 9, 2023

Applicability: On or after the effective date

Summary of Changes: These changes add current or former employees of a university health care provider at a TDCJ or TJJD correctional facility as well current or former DFPS attorneys to the list of people who may choose to restrict public access to the information

about their homes that are in the appraisal records.

Topic: TJJD Employee Reports to Law Enforcement

Human Resources Code Sec. 203.020. **REPORT OF CRIMINAL CONDUCT;** **PENALTY.**

(a) Each employee of the department or of a department contractor who becomes aware of conduct constituting a criminal offense engaged in by another employee of the department or by a department contractor against a person receiving services from the department or a department contractor shall report the conduct to a local law enforcement agency not later than the 48th hour after the hour the employee becomes aware of the conduct.

(b) A person commits an offense if the person is required to make a report under Subsection (a) and knowingly fails to make the report.

(c) An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to hinder an investigation of or conceal the criminal conduct described by Subsection (a).

Human Resources Code Sec. 203.021. **EMPLOYER RETALIATION** **PROHIBITED.**

(a) In this section, "adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from submitting or supporting a report under Section 203.020.

(b) An employer may not suspend or terminate the employment of, discriminate against, or take any other adverse employment action against a person who in good faith:

(1) reports conduct constituting a criminal offense as required by Section 203.020; or

(2) initiates or cooperates with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 203.020.

(c) An employee may sue for injunctive relief, damages, or both if, in violation of this section, the employee:

- (1) is suspended or terminated from the person's employment;
- (2) is discriminated against; or
- (3) suffers any other adverse employment action.

(d) A plaintiff who prevails in a suit under this section may recover:

- (1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
- (2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;
- (3) court costs; and
- (4) reasonable attorney's fees.

(e) In addition to amounts recovered under Subsection (d), a plaintiff who prevails in a suit under this section is entitled to:

- (1) reinstatement to the person's former position or a comparable position in terms of compensation, benefits, and other conditions of employment;
- (2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and
- (3) compensation for wages lost during the period of suspension or termination.

(f) A department employee who alleges a violation of this section may sue the department for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section.

(g) A plaintiff suing under this section has the burden of proof, except there is a rebuttable presumption that the plaintiff's employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person submitted a report in good faith.

(h) A suit under this section may be brought in a district or statutory county court of the county in which:

- (1) the plaintiff was employed by the defendant;
- or
- (2) the defendant conducts business.

(i) It is an affirmative defense to a suit under Subsection (c) that an employer would have taken

against the employee the action that forms the basis of the suit based solely on information, observation, or evidence unrelated to the fact that the employee made a report under Section 203.020 or initiated or cooperated with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 203.020.

(j) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.

(k) This section does not apply to a person who reports the person's own criminal conduct or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the person's own criminal conduct.

Commentary by: Kaci Singer

Source: SB 182 (only portions of the bill relevant to juvenile law are included)

Effective Date: September 1, 2023

Applicability: On or after the effective date

Summary of Changes: This new statute requires TJJD employees and employees of TJJD contractors who become aware of conduct constituting a criminal offense committed by another TJJD employee or employee of a TJJD contractor against a person receiving services from TJJD or the contractor to report that conduct to a local law enforcement agency within 48 hours. This is different from the requirements to report to TJJD's Office of Inspector General

and will require employees to also report the conduct to a local law enforcement agency. Failure to make the report is a class A misdemeanor except that it is a state jail felony if it is shown at trial that the actor intended to hinder an investigation or conceal the criminal conduct.

The statute also prohibits employer retaliation for making such a report or for participating in the investigation and creates a cause of action.

Office of the Independent Ombudsman

Topic: Oversight of Post-Adjudication Facilities

Human Resources Code Sec. 261.002. ESTABLISHMENT; PURPOSE.

The office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of ~~the~~ children;

(1) committed to the department, including a child released under supervision before final discharge; and

(2) adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board.

Human Resources Code Sec. 261.101. DUTIES AND POWERS.

(a) The independent ombudsman shall:

(1) review the procedures established by the board and evaluate the delivery of services to children to ensure that the rights of children are fully observed;

(2) review complaints filed with the independent ombudsman concerning the actions of the department, juvenile probation departments, or other entities operating facilities in which children adjudicated for conduct that constitutes an offense are placed and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;

(3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that:

(A) a child committed to the department, a child adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board, or the child's family may be in need of assistance from the office; or

(B) a systemic issue raised in a complaint about the [department's] provision of services to children by the department, juvenile probation departments, or other entities operating facilities in which children

adjudicated for conduct that constitutes an offense are placed ~~[is raised by a complaint]~~;

(4) review or inspect periodically the facilities and procedures of any institution or residence in which a child adjudicated for conduct that constitutes an offense has been placed by the department or a juvenile probation department, whether public or private, to ensure that the rights of children are fully observed;

(5) provide assistance to a child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child;

(6) review court orders as necessary to fulfill its duties;

(7) recommend changes in any procedure relating to the treatment of children committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board;

(8) make appropriate referrals under any of the duties and powers listed in this subsection;

(9) supervise assistants who are serving as advocates in internal administrative and disciplinary hearings by representing ~~[in their representation of]~~ children committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board ~~[internal administrative and disciplinary hearings]~~;

(10) review reports received by the department relating to complaints regarding juvenile probation programs, services, or facilities and analyze the data contained in the reports to identify trends in complaints;

(11) report a possible standards violation by a ~~[local]~~ juvenile probation department to the appropriate division of the department; and

(12) immediately report the findings of any investigation related to the operation of a post-adjudication correctional facility in a county to the chief juvenile probation officer and the juvenile board of the county.

(g) The department and juvenile probation departments shall notify the office regarding any

private facility described by Subsection (f)(1) with which the department or the juvenile probation department contracts to place children adjudicated as having engaged in conduct indicating a need for supervision or delinquent conduct. The report under this subsection must be made annually and updated at the time a new contract is entered into with a facility described by this subsection. The office shall adopt rules to implement the reporting requirements under this subsection, including the specific times the report must be made.

**Human Resources Code Sec. 261.056.
COMMUNICATION AND
CONFIDENTIALITY.**

(a) The department shall allow any child committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board to communicate with the independent ombudsman or an assistant to the ombudsman. The communication:

- (1) may be in person, by mail, or by any other means; and
- (2) is confidential and privileged.

**Human Resources Code Sec. 261.057.
PROMOTION OF AWARENESS OF
OFFICE.**

The independent ombudsman shall promote awareness among the public and the children committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board of:

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

**Human Resources Code Sec. 261.102.
TREATMENT OF ~~[DEPARTMENT]~~
EMPLOYEES WHO COOPERATE WITH
INDEPENDENT OMBUDSMAN.**

The department, a juvenile probation department, or another entity operating a facility in which children adjudicated for conduct that constitutes an offense are placed may not discharge or in any manner discriminate or retaliate against an employee who in good faith

makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

**Human Resources Code Sec. 261.151.
ACCESS TO INFORMATION OF
GOVERNMENTAL ENTITIES.**

(c) A local law enforcement agency shall allow the independent ombudsman access to its records relating to any child in the care or custody of the department or any child adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board.

**Human Resources Code Sec. 261.152.
ACCESS TO INFORMATION OF PRIVATE
ENTITIES.**

The independent ombudsman shall have access to the records of a private entity that relate to a child committed to the department or a child adjudicated for conduct that constitutes an offense and placed in a private facility contracted with a juvenile probation department or juvenile board.

**Human Resources Code Sec. 261.153.
ACCESS TO INFORMATION OF JUVENILE
PROBATION DEPARTMENTS.**

The independent ombudsman shall have access to the records of a juvenile probation department that relate to a child adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Not applicable

Summary of Changes: This is part of the Sunset bill. Several years ago, legislation was changed to expand the responsibility of the Office of Independent Ombudsman (OIO) to include juveniles placed in facilities operated by a juvenile probation department or those having a contract with a juvenile probation department or juvenile board. The above changes put that authority into the OIO's purpose and establishment section, provide for confidential communications between the office and those juveniles, provide protection to employees of

those facilities who cooperate with the OIO, and give the OIO access to the records of facilities and juvenile probation departments as necessary for this purpose.

Topic: Complaints

Human Resources Code Sec. 261.061. COMPLAINTS.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Not applicable

Summary of Changes: The Office of Independent Ombudsman is required to periodically notify parties to a complaint of the status of that complaint. This change creates an exception if providing that notice would jeopardize an investigation.

Topic: Inspections

Human Resources Code Sec. 261.105. RISK FACTORS AND RISK ASSESSMENT TOOLS.

(a) The office shall develop a comprehensive set of risk factors to use in assessing the overall risk level of facilities and entities described by Section 261.101(f) and of department parole offices. The risk factors may include:

- (1) the entity type;
- (2) past and repeat children's rights violations;
- (3) the volume and types of complaints received by the office;
- (4) recent changes in a facility or parole office leadership;
- (5) high staff turnover;
- (6) relevant investigations by the office of the inspector general of the department;
- (7) negative media attention; and
- (8) the number of months since the date of the office's last inspection of the entity.

(b) The office shall use the risk factors developed under this section to guide the inspections of facilities and entities described by Section

261.101(f), and of department parole offices, by developing risk assessment tools with clear, objective standards to use in assessing the overall risk level of each facility, entity, or parole office.

(c) The office may develop distinct assessment tools under Subsection (b) for different entity types, as appropriate.

(d) The office shall periodically review the assessment tools developed under this section to ensure that the tools remain up to date and meaningful, as determined by the office.

Human Resources Code Sec. 261.106. RISK-BASED INSPECTIONS.

(a) The office shall adopt a policy prioritizing the inspection of facilities conducted under Section 261.101(f) and of department parole offices based on the relative risk level of each entity.

(b) The policy under Subsection (a) must require the office to use the risk assessment tools established under Section 261.105 to determine how frequently and intensively the office conducts risk-based inspections.

(c) The policy under Subsection (a) may provide for the office to use alternative inspection methods for entities determined to be low risk, including the following methods:

- (1) desk audits of key documentation;
- (2) abbreviated inspection procedures;
- (3) videoconference technology; and
- (4) other methods that are an alternative to conducting an in-person inspection.

(d) On request by the office, the department, a juvenile probation department, or a private facility under the office's jurisdiction shall provide information on a routine basis, as determined by the office, to assist the office in implementing a risk-based inspection schedule.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Not applicable

Summary of Changes: These new statutes require the Office of Independent Ombudsman (OIO) to develop risk assessment tools and use them to determine how frequently and intensively to conduct inspections. TJJD, juvenile probation departments, and private facilities are required to provide information to assist the OIO in implementing a risk-based inspection schedule. These statutes are consistent with the

new statutes requiring TJJJ to implement a risk-based inspection schedule.

Education Code

Topic: School Removal (DAEP and JJAEP)

Education Code Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT.

(a) Subject to the requirements of Section 37.009(a), a [A] student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) ~~[marihuana or]~~ a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq., excluding marihuana, as defined by Section 481.002, Health and Safety Code, or tetrahydrocannabinol, as defined by rule adopted under Section 481.003 of that code; or

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(C-1) possesses, uses, or is under the influence of, or sells, gives, or delivers to another person marihuana, as defined by Section 481.002, Health and Safety Code, or tetrahydrocannabinol, as defined by rule adopted under Section 481.003 of that code;

(C-2) possesses, uses, sells, gives, or delivers to another person an e-cigarette, as defined by Section 161.081, Health and Safety Code;

(D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section

1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage; (E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; (F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code; or (G) engages in conduct that contains the elements of the offense of harassment under Section 42.07(a)(1), (2), (3), or (7), Penal Code, against an employee of the school district.

Education Code Sec. 37.007. EXPULSION FOR SERIOUS OFFENSES.

(a) Except as provided by Subsection (k) and subject to the requirements of Section 37.009(a), a student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Section 46.02, Penal Code, or elements of an offense relating to prohibited weapons under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code; (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code;

(E) aggravated kidnapping under Section 20.04, Penal Code;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code;

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(I) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) [~~or (D)~~], if the conduct is punishable as a felony.

**Education Code Sec. 37.008.
DISCIPLINARY ALTERNATIVE
EDUCATION PROGRAM.**

(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs, e-cigarettes, or alcohol as specified under Section 37.006 or 37.007. A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

**Education Code Sec. 37.009.
CONFERENCE; HEARING; REVIEW.**

(a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the campus behavior coordinator or other appropriate administrator shall schedule a conference among the campus behavior coordinator or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus behavior coordinator, after consideration of the factors under Section 37.001(a)(4), shall order the placement of the student for a period consistent with the student code of conduct. Before ordering the suspension, expulsion, removal to a

disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that the student is a threat to the safety of other students or to district employees.

(a-1) If a disciplinary alternative education program is at capacity at the time a campus behavior coordinator is deciding placement under Subsection (a) for a student who engaged in conduct described under Section 37.006(a)(2)(C-1), (C-2), (D), or (E), the student shall be:

(1) placed in in-school suspension; and

(2) if a position becomes available in the program before the expiration of the period of the placement, transferred to the program for the remainder of the period.

(a-2) If a disciplinary alternative education program is at capacity at the time a campus behavior coordinator is deciding placement under Subsection (a) for a student who engaged in conduct described under Section 37.007 that constitutes violent conduct, as defined by commissioner rule, a student who has been placed in the program for conduct described under Section 37.006(a)(2)(C-1), (C-2), (D), or (E):

(1) may be removed from the program and placed in in-school suspension to make a

position in the program available for the student who engaged in violent conduct; and (2) if removed from the program under Subdivision (1) and a position in the program becomes available before the expiration of the period of the placement, shall be returned to the program for the remainder of the period.

Commentary by: Kaci Singer

Source: HB 114

Effective Date: September 1, 2023

Applicability: Applies to removals occurring on or after September 1, 2023

Summary of Changes: Under current law, a student is subject to “mandatory” removal to a disciplinary alternative education program (DAEP) if the student, while on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off property, engages in conduct that involves selling, giving, or delivering to another person marijuana, a controlled substance, or a dangerous drug. This is currently in Section 37.006(a)(2)(C), Education Code. A student is also subject to “mandatory” removal to a DAEP if the student sells, gives, or delivers to another person alcohol; commits a serious act or offense while under the influence of alcohol; or possesses, uses, or is under the influence of alcohol. Section 37.006(a)(2)(D). However, under current Sec. 37.007(a)(3), if the conduct defined in 37.006(a)(2)(C) or (D) is conduct punishable as a felony, the student is subject to expulsion and such is considered a “mandatory” expulsion for funding purposes, meaning the state, not the school district, pays.

This bill changes that scheme so that marijuana, tetrahydrocannabinol (THC), e-cigarette, and alcohol conduct described in 37.006(a)(2) is not eligible for “mandatory” expulsion but is eligible for “mandatory” removal to a DAEP. This applies regardless of whether the offense is a felony or a misdemeanor.

This law change was accomplished in the following way. First, Sec. 37.006(a)(2)(C)(i) was amended to provide that it applies to a controlled substance other than marijuana or THC. Section 37.006(a)(2)(C)(ii) still applies to dangerous drugs. This means that a reference to 37.006(a)(2)(C) is a reference to controlled

substances other than marijuana and THC, removing them from the provision in 37.007(a)(3) that addresses drug-related expulsion to a JJAEP under the “mandatory” provisions. Second, Section 37.006(a)(2)(C-1) was created to include marijuana, and THC and provisions applying specifically to 37.006(a)(2)(C-1) were added.

Third, e-cigarettes were added to the “mandatory” DAEP removal provision via Section 37.006(a)(2)(C-2). An e-cigarette is defined as an electronic cigarette or other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device. For this provision, it does not matter what, if any, substance is in the e-cigarette.

Fourth, alcohol remains a “mandatory” DAEP removal in 37.006(a)(2)(D); however, the reference to 37.006(a)(2)(D) was deleted from 37.007(a)(3), making felony-level alcohol conduct no longer eligible for “mandatory” expulsion.

Section 37.007(b) on “discretionary” expulsions was unchanged. Therefore, a student who sells, gives, or delivers to another person or who possesses, uses, or is under the influence of any amount of marijuana, controlled substance, dangerous drug, or alcohol while on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off school property is subject to “discretionary” expulsion. Possession of an e-cigarette is not included, so the substance in the e-cigarette is what would control in determining if discretionary expulsion is available.

This bill also seeks to call attention to changes made in 2015 that often seem to be overlooked when it comes to removal and expulsion. Section 37.009(a) was modified in 2015, via SB 107, to include the following language: “Before ordering the suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider whether the student acted in self-defense, the intent or lack of intent

at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, *regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action* [emphasis added].” The stated purpose of the bill that made this change was to insert discretion into these removal decisions. Despite this, many districts continue to believe that they do not have discretion. In an effort to combat this continuing belief, the bill adds in both Section 37.006 and 37.007 a reference that the “mandatory” removal is subject to the requirements of Section 37.009(a), meaning the analysis must be conducted and the school has discretion on whether on to remove.

The bill modifies Section 37.008(k), which provides that a DAEP may provide a program of educational and support services to a student and the student's parents when the offense involves drugs and alcohol, to also include such program when the offense involves e-cigarettes.

Newly added Section 37.009(a-1) provides that if the DAEP is at capacity when the campus behavior coordinator is making a decision involving marijuana, THC, e-cigarettes, alcohol, or an abusable volatile chemical, the student shall be placed in in-school suspension and then transferred to the DAEP if a position becomes available before the end of the period of placement.

Newly added Section 37.009(a-2) provides that if the DAEP is full, a student there for marijuana, THC, e-cigarettes, alcohol, or abusable volatile chemical can be removed and placed in in-school suspension if the spot is needed for a student who engaged in violent conduct. If a new spot becomes available before the end of the removed student's placement period, the student shall be returned to the DAEP.

Topic: Restraints, Tasers, and Pepper Spray at Schools

Education Code Sec. 37.0021. USE OF CONFINEMENT, RESTRAINT, SECLUSION, AND TIME-OUT.

(b) In this section:

(1) “Restraint” means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

(2) “Seclusion” means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(3) “Time-out” means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(4) “Law enforcement duties” means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

(5) “Taser” means a device manufactured, sold, or distributed by Taser International, Incorporated, that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream. The term, for purposes of this section, includes a similar device manufactured, sold, or distributed by another person.

(d) Subject to Subsection (j), the [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;

(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.

(h) This section and any rules or procedures adopted under this section apply to a peace officer only if the peace officer:

- (1) is employed or commissioned by a school district; or
- (2) provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.

(j) A peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity may not restrain or use a chemical irritant spray or Taser on a student enrolled in fifth grade or below unless the student poses a serious risk of harm to the student or another person.

Commentary by: Kaci Singer

Source: SB 133

Effective Date: June 18, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This bill prohibits a peace officer or security officer performing law enforcement duties on school property or during a school-sponsored event from using a Taser or pepper spray on, or otherwise restraining, a child who is enrolled in 5th grade or below unless the child poses a serious risk of harm to self or others. It bears noting that subsection (h) provides that this entire section of law applies only to law enforcement officers employed or commissioned by a school district or who provide, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and local law enforcement agency.

Topic: Population Thresholds

Education Code Sec. 37.011. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Justice Department. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

- (1) is not required to be approved by the department; and
- (2) is not subject to Subsection (c), (d), (f), or (g).

(a-1) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if:

- (1) the county had a population of 125,000 or less according to the 2000 federal census; and
- (2) the juvenile board of the county enters into, with the approval of the Texas Juvenile Justice Department, a memorandum of understanding with each school district within the county that:
 - (A) outlines the responsibilities of the board and school districts in minimizing the number of students expelled without receiving alternative educational services; and
 - (B) includes the coordination procedures required by Section 37.013.

(a-2) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if the county:

- (1) has a population of 195,000 [~~180,000~~] or less;
- (2) is adjacent to two counties, each of which has a population of more than 1.7 million; and
- (3) has seven or more school districts located wholly within the county's boundaries.

(a-3) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if the county:

- (1) has a population of more than 200,000 and less than 233,500 [~~220,000~~];
- (2) has five or more school districts located wholly within the county's boundaries; and
- (3) has located in the county a juvenile justice alternative education program that, on May 1, 2011, served fewer than 15 students.

Education Code Sec. 25.093. PARENT CONTRIBUTING TO NON-ATTENDANCE.

(b) The attendance officer or other appropriate school official shall file a complaint against the parent in:

- (1) the constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of 2.1 [~~1.75~~] million or more;
- (2) a justice court of any precinct in the county in which the parent resides or in which the school is located; or
- (3) a municipal court of the municipality in which the parent resides or in which the school is located.

Family Code Sec. 65.004. TRUANCY COURTS; JURISDICTION.

(a) The following are designated as truancy courts:

- (1) in a county with a population of 2.1 [~~1.75~~] million or more, the constitutional county court;
- (2) justice courts; and
- (3) municipal courts.

Commentary by: Kaci Singer

Source: HB 4559 (only portions of the bill are included)

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: Many statutes contain population thresholds that determine applicability to particular counties. This bill revised many of those statutes so that certain laws did not start applying to counties because of a population change. The ones included here impact education.

When initially passed, Section 37.011, Education Code, was designed to ensure that children who are expelled from schools are not expelled to the street and instead still have a mechanism to receive an education. That mechanism is the

juvenile justice alternative education program (JJAEP). Counties with a population above 125,000 are mandated to have a JJAEP while those with less than 125,000 are permitted but not required to. As the 2010 census was approaching and it was apparent that several of the counties would surpass the 125,000 number, subsection (a-1) was added to allow those counties to be “considered to be a county with a population of 125,000 or less” and forego the mandatory JJAEP if they entered into a memorandum of understanding with each school board in the county. The MOU was required to outline the responsibilities of the juvenile board and the school districts in minimizing the number of students expelled without receiving educational services and to include coordination procedures required by Section 37.013, Education Code.

Subsection (a-1) is still in effect, and is the means for most counties with a growing population who do not wish to operate a JJAEP to provide educational services to children expelled from school to avoid doing so. However, two counties have legislation that applies specifically to them. Subsection (a-2) was drafted to apply to Ellis County, and subsection (a-3) was drafted to apply to Smith County. Both of these counties surpassed the upper population limit in their respective subsections, meaning the subsections no longer applied. In order to continue not providing a JJAEP, they would need to enter into the MOUs required in subsection (a-1). This legislation has amended those subsections by increasing the population so that it now applies to them again. This means that until their population again goes over the upper limit, they are treated like a county that is under 125,000 and do not need to have MOUs with the school boards in order to not operate a JJAEP.

Section 25.093, Education Code, changes the threshold for the constitutional county court having jurisdiction over a parent contributing to non-attendance case from counties with a population of 1.75 million to counties with a population of 2.1 million. Likewise, Section 65.004, Family Code, does the same for truancy courts. According to the 2020 U.S. Census, the only counties in Texas with a population over 2.1 million are Harris, Dallas, and Tarrant.

Topic: Hazing

Education Code Sec. 37.152. PERSONAL HAZING OFFENSE.

- (a) A person commits an offense if the person:
- (1) engages in hazing;
 - (2) solicits, encourages, directs, aids, or attempts to aid another in engaging in hazing;
 - (3) recklessly permits hazing to occur; or
 - (4) has firsthand knowledge of the planning of a specific hazing incident involving a student in an educational institution, or has firsthand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge ~~[in writing]~~ to the dean of students or other appropriate official of the institution, a peace officer, or a law enforcement agency.
- (b) The offense of failing to report is a Class B misdemeanor.
- (c) Any other offense under this section that does not cause serious bodily injury to another is a Class B misdemeanor.
- (d) Any other offense under this section that causes serious bodily injury to another is a Class A misdemeanor.
- (e) Any other offense under this section that causes the death of another is a state jail felony.
- (f) Except if an offense causes the death of a student, in sentencing a person convicted of an offense under this section, the court may require the person to perform community service, subject to the same conditions imposed on a person placed on community supervision under Chapter 42A, Code of Criminal Procedure, for an appropriate period of time in lieu of confinement in county jail or in lieu of a part of the time the person is sentenced to confinement in county jail.

Education Code Sec. 37.155. IMMUNITY FROM PROSECUTION OR CIVIL LIABILITY AVAILABLE.

- (b) Any person, including an entity organized to support an organization, who voluntarily reports a specific hazing incident involving a student in an educational institution to the dean of students or other appropriate official of the institution, a peace officer, or a law enforcement agency is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of the reported hazing incident if the person:

(1) reports the incident before being contacted by the institution or a law enforcement agency concerning the incident or otherwise being included in the institution's or a law enforcement agency's investigation of the incident; and

(2) ~~[as determined by the dean of students or other appropriate official of the institution designated by the institution,]~~ cooperates in good faith throughout;

(A) any institutional process regarding the incident, as determined by the dean of students or other appropriate official of the institution designated by the institution; or

(B) any law enforcement agency's investigation regarding the incident, as determined by the chief or other appropriate official of the law enforcement agency designated by the law enforcement agency.

Commentary by: Kaci Singer

Source: SB 37

Effective Date: September 1, 2023

Applicability: Applies to an offense committed or civil cause of action accruing on or after the effective date

Summary of Changes: Under current law, one means of committing the offense of hazing is to have knowledge of the planning or occurrence of a specific hazing incident involving a student and to knowingly fail to report that knowledge in writing to the dean of students or other appropriate school official. Further, there is specific criminal and civil immunity if a person makes such a report.

This law adds peace officers and law enforcement as appropriate places to report the planned or completed incident so that the elements of the offense are not proven as well as to the specific civil and criminal immunity protections.

Courts and Juvenile Boards

Topic: Brazos County Judicial District

Government Code Sec. 24.60095. 472nd JUDICIAL DISTRICT (BRAZOS COUNTY).

(a) The 472nd Judicial District is composed of Brazos County.

(b) The 472nd District Court has primary responsibility for cases involving civil matters, family law matters, and juvenile matters.

Commentary by: Kaci Singer

Source: HB 3474 (only portions of the bill relevant to juvenile law are included)

Effective Date: September 1, 2023

Applicability: The court is created on the effective date.

Summary of Changes: This change in law creates a new district court in Brazos County that has primary responsibility for cases involving civil, family law, and juvenile matters.

Topic: Jurisdiction of County Court of Stephens County

Government Code Sec. 26.315. STEPHENS COUNTY.

(a) In addition to other jurisdiction provided by law, the [The] County Court of Stephens County has original concurrent jurisdiction with the justice courts in all civil matters in which the justice courts have jurisdiction under general law [the general jurisdiction of a probate court and juvenile jurisdiction as provided by Section 26.042(b) but has no other criminal or civil jurisdiction].

(b) The district clerk shall maintain the records of the County Court of Stephens County.

Commentary by: Kaci Singer

Source: HB 3474 (only portions of the bill relevant to juvenile law are included)

Effective Date: September 1, 2023

Applicability: The court is created on the effective date.

Summary of Changes: This change in law provides that, in addition to its other jurisdiction, the County Court of Stephens County has concurrent jurisdiction with justice courts. Although it deletes a reference to the court's juvenile jurisdiction, it maintains juvenile jurisdiction through the reference to "other jurisdiction provided by law." Government Code Section 26.042(b) is what gives the court its juvenile jurisdiction. The change also gives the district clerk the responsibility to maintain the records of the County Court of Stephens County.

Topic: Juvenile Boards

Human Resources Code Sec. 152.0901. GALVESTON COUNTY.

~~[(d) The board shall meet monthly to review the work of the chief juvenile probation officer and the other juvenile probation officers and to consider any matter relating to juveniles and the disposition of cases relating to juveniles pending before the juvenile court.]~~

(i) Sections ~~[152.0002,]~~ 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Galveston County.

Commentary by: Kaci Singer

Source: HB 5309

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This change in law removes a requirement that the Galveston County juvenile board meet monthly and instead applies Section 152.0002, which requires quarterly meetings, to the juvenile board. Galveston County's juvenile board was the only juvenile board to ever require monthly meetings in statute. A review of legislative history as well as of available documents available did not result in a discovery of the reasons for this requirement.

Human Resources Code Sec. 152.1181. NAVARRO COUNTY.

(a) The juvenile board of Navarro County is composed of the county judge, the district judges

in Navarro County, the judges of the county courts at law in the county, and the criminal district attorney. The juvenile board may appoint five public members to serve on the board without salary for a term determined by the board.

Commentary by: Kaci Singer

Source: HB 5370

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This change in law adds the judges of the county courts at law to the Navarro County juvenile board. The Navarro County court at law was created in statute in 2009 and given concurrent jurisdiction over juvenile matters. However, the judge was never added to the juvenile board in statute.

**Human Resources Code Section 152.0671.
DENTON COUNTY.**

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

Commentary by: Kaci Singer

Source: HB 3474

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date.

Summary of Changes: As discussed below, HB 3474 creates a statutory criminal law magistrate court in Denton county. As part of that bill, the juvenile board statute was updated to remove the statutory courts and include only the county court at law judge.

**Topic: Denton County Criminal Law
Magistrate Court**

**SUBCHAPTER SS. DENTON COUNTY
CRIMINAL LAW MAGISTRATE COURT**

Government Code Sec. 54.2801.

CREATION.

The Denton County Criminal Law Magistrate Court is a court with the jurisdiction provided by this subchapter.

Government Code Sec. 54.2802.

APPOINTMENT; OVERSIGHT.

(a) The district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County shall appoint one or more judges to preside over the criminal law magistrate court. An appointed judge must:

(1) serve Denton County as a district court judge, a criminal statutory county court judge, an associate judge of a court with criminal jurisdiction, a magistrate, including a jail magistrate, a judge of a municipal court of record, or a justice of the peace;

(2) be a licensed attorney in good standing with the State Bar of Texas;

(3) be authorized to access criminal history records under state and federal law;

(4) have completed training necessary to serve as a magistrate in Denton County, as determined by the district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County; and

(5) meet the qualifications under Section 54.2807.

(b) The district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County shall:

(1) designate to oversee the criminal law magistrate court either:

(A) one district court judge and one criminal statutory county court judge; or

(B) a criminal law magistrate court associate judge appointed under Section 54.2805; and

(2) supervise the magistrate court to ensure the magistrates appointed give preference to duties under Chapters 14, 15, 16, 17, and 18, Code of Criminal Procedure.

(c) The magistrates of the criminal law magistrate court shall comply with the standing orders and directives regarding criminal cases of the district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County, including a presiding criminal judge of Denton County.

Government Code Sec. 54.2803.

JURISDICTION.

(a) Except as provided by Subsection (b), the criminal law magistrate court has the criminal jurisdiction provided for magistrates by the

constitution and laws of this state in all criminal cases:

- (1) alleging an offense other than an offense punishable only as a Class C misdemeanor;
- (2) for which a magistrate or judge has determined there is probable cause to believe the defendant committed the crime alleged;
- (3) in which the defendant has been released or is confined in the Denton County jail; and
- (4) in which either:

(A) the defendant has not yet been charged by information or indictment; or

(B) the judge presiding over the case has specifically authorized the criminal law magistrate to take certain actions.

(b) The criminal law magistrate court and the criminal law magistrate court associate judge do not have jurisdiction to:

(1) hear a trial on the merits of an offense, except as provided by Section 54.2811(c); or

(2) take any action not specifically authorized by an order of referral from the judge presiding in a criminal case in which the defendant has been charged by information or indictment.

(c) The magisterial duties in a criminal case shall be transferred to the criminal law magistrate court:

(1) on request of a presiding judge in a criminal case for which the defendant has been charged by information or indictment; or

(2) after a defendant has been transferred to the custody of the Denton County jail or released from custody on bond in Denton County.

Government Code Sec. 54.2804. POWERS AND DUTIES.

The criminal law magistrate court may:

(1) determine probable cause for purposes of an arrest or search;

(2) issue an order of commitment, a warrant of arrest, or an order of protection;

(3) perform the duty of a magistrate under Chapters 14, 15, 16, 17, and 18, Code of Criminal Procedure;

(4) reduce or modify a bond, find a bond ordered by another judge or magistrate to be insufficient, or require conditions of a bond;

(5) hear any motion filed in a case over which the court has jurisdiction;

(6) administer oaths; and

(7) perform an action on a proceeding referred to the magistrate under Section 54.2811.

Government Code Sec. 54.2805.

CRIMINAL LAW MAGISTRATE COURT ASSOCIATE JUDGE.

The district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County may, with the approval of the Commissioners Court of Denton County and two-thirds of the district court and criminal statutory county court judges, appoint a district or criminal statutory county court judge qualified under Section 54.2807 as the criminal law magistrate court associate judge to:

(1) serve the district and criminal county courts of Denton County;

(2) oversee the criminal law magistrate court; and

(3) recommend for appointment full-time and part-time jail magistrates.

Government Code Sec. 54.2806. JAIL MAGISTRATE.

(a) The district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County may, with the approval of the Commissioners Court of Denton County, appoint by joint standing order one or more full-time jail magistrates qualified to serve under Section 54.2807.

(b) A jail magistrate has the jurisdiction provided by the constitution and laws of this state for magistrates for criminal cases in which the defendant is in the custody of Denton County jail and has not yet been charged with a criminal offense by complaint, information, or indictment.

(c) A jail magistrate shall ensure timely compliance with Article 15.17, Code of Criminal Procedure, in all cases within the magistrate's jurisdiction, give preference to performing the duties of a magistrate under that article, and perform the following duties:

(1) consider sworn complaints or affidavits establishing probable cause and entering orders of release or commitment;

(2) conduct hearings under Article 15.17, Code of Criminal Procedure, provide warnings, and advise a defendant of the defendant's right to counsel;

(3) determine if a defendant is indigent and in need of appointed counsel;

(4) set, adjust, or revoke a bond;

(5) set the conditions of bond;

(6) conduct an examining trial;
(7) issue search and arrest warrants;
(8) issue magistrate's orders of emergency protection; and
(9) with the express authorization of a justice of the peace, exercise concurrent criminal jurisdiction with the justice of the peace to dispose as provided by law of cases filed in the precinct of the authorizing justice of the peace, except for a trial on the merits following a plea of not guilty.

(d) A jail magistrate may be assigned additional duties by the criminal law magistrate court associate judge appointed under Section 54.2805.

(e) A jail magistrate has the express authority and duty to:

(1) order the release of defendant due to an extraordinary medical condition;
(2) consider information and make inquiries regarding a defendant's mental health;
(3) issue orders or writs as necessary for the evaluation, treatment, and accommodation of a defendant's mental health issue; and
(4) communicate with the Denton County local mental health authority or another qualified mental health professional to provide continuing care to a defendant.

(f) In addition to the full-time jail magistrates appointed under Subsection (a), the district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County may appoint or engage by joint standing order one or more part-time jail magistrates to serve as a jail magistrate as assigned. A part-time jail magistrate must be qualified to serve as a magistrate in the county under Section 54.2807 and be a sitting district, statutory county, or municipal court judge or a justice of the peace in Denton County.

Government Code Sec. 54.2807. QUALIFICATIONS.

To be eligible for appointment as the criminal law magistrate court associate judge, a jail magistrate, or another magistrate in the criminal law magistrate court, a person must:

(1) have been a resident of Denton County for at least two years preceding the person's appointment; and
(2) have been licensed to practice law in this state for at least four years.

Government Code Sec. 54.2808. COMPENSATION.

A criminal law magistrate court associate judge, a jail magistrate, and each other magistrate in the criminal law magistrate court shall be paid a total annual salary set by the Commissioners Court of Denton County. The salary shall be paid in a manner and from a fund determined by the commissioners court.

Government Code Sec. 54.2809. JUDICIAL IMMUNITY.

A criminal law magistrate court associate judge, a jail magistrate, and each other magistrate in the criminal law magistrate court has the same judicial immunity as a district judge.

Government Code Sec. 54.2810. TERMINATION OF SERVICES.

(a) Except as provided by Subsection (b), a criminal law magistrate court associate judge, a jail magistrate, and each other magistrate in the criminal law magistrate court may be terminated by a two-thirds vote of the district court judges with jurisdiction in Denton County and the judges of the criminal statutory county courts of Denton County.

(b) A part-time jail magistrate serves solely at the discretion of a criminal law magistrate court associate judge appointed under Section 54.2805 or of the district court judge and criminal statutory county court judge designated to oversee the criminal law magistrate court under Section 54.2802(b).

Government Code Sec. 54.2811. PROCEEDING THAT MAY BE REFERRED.

(a) A district court judge with jurisdiction in Denton County, the judge of a criminal statutory county court of Denton County, or the judge of the juvenile court of Denton County may refer to the criminal law magistrate court the following matters in a criminal case:

(1) a negotiated plea of guilty or no contest before the court;
(2) a bond forfeiture, remittitur, and related proceedings;
(3) a pretrial motion;
(4) a writ of habeas corpus;
(5) an examining trial;
(6) jury selection;

(7) an occupational driver's license;
(8) a waiver of extradition or a related matter under Chapter 51, Code of Criminal Procedure;
(9) the issuance of search warrants, including a search warrant under Article 18.02(a)(10), Code of Criminal Procedure, notwithstanding Article 18.01(c), Code of Criminal Procedure;
(10) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;
(11) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
(12) a civil commitment matter under Subtitle C, Title 7, Health and Safety Code;
(13) setting, adjusting, or revoking bond;
(14) the conduct of initial juvenile detention hearings or any other matter in a juvenile case if referred by the judge of the juvenile court of the county and approved by the Denton County Juvenile Board; and
(15) any other matter the judge considers necessary and proper.
(b) Except as limited by an order of referral, the criminal law magistrate court associate judge may:
(1) conduct a hearing;
(2) hear evidence;
(3) compel production of relevant evidence;
(4) rule on the admissibility of evidence;
(5) issue a summons for the appearance of witnesses;
(6) examine a witness;
(7) swear a witness for a hearing;
(8) make findings of fact on evidence;
(9) formulate conclusions of law;
(10) rule on pretrial motions;
(11) recommend the rulings, orders, or judgment to be made in a case;
(12) regulate proceedings in a hearing before the associate judge;
(13) accept a negotiated plea of guilty or no contest made before the court and:
(A) enter a finding of guilty and impose or suspend the sentence; or
(B) defer adjudication of guilt;
(14) select a jury;
(15) accept a negotiated plea in a probation revocation;
(16) conduct a contested probation revocation hearing;
(17) sign a dismissal in a misdemeanor case; and

(18) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(c) Notwithstanding Section 54.2803(b), the judge of the juvenile court of Denton County may refer to the criminal law magistrate court associate judge any proceeding over which the juvenile court has exclusive original jurisdiction under Title 3, Family Code, including any matter ancillary to that proceeding. The criminal law magistrate court associate judge may accept a plea of guilty for a misdemeanor or felony or a plea of true from a defendant or juvenile, regardless of the classification of the offense charged or the conduct alleged.

(d) The criminal law magistrate court associate judge may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the judge, or on dockets called by the judge, and may consider unadjudicated cases at sentencing under Section 12.45, Penal Code.

(e) A criminal law magistrate, including the criminal law magistrate court associate judge, has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

Government Code Sec. 54.2812. ORDER OF REFERRAL.

(a) To refer one or more cases to the criminal law magistrate court or the criminal law magistrate court associate judge, a judge must issue a written order of referral that specifies the magistrate court's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate court and direct the magistrate to report only on specific issues, perform particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket; and

(7) set forth general powers and limitations or authority of the magistrate applicable to any case referred.

**Government Code Sec. 54.2813.
FORFEITURES.**

Bail bonds and personal bonds may be forfeited by the criminal law magistrate court or the criminal law magistrate court associate judge in the manner provided by Chapter 22, Code of Criminal Procedure, and those forfeitures shall be filed with:

- (1) the district clerk if associated with a felony case;
- (2) the county clerk if associated with a Class A or Class B misdemeanor case; or
- (3) the justice court clerk associated with the Class C misdemeanor case in which the bond was originally filed.

**Government Code Sec. 54.2814. PAPERS
TRANSMITTED TO JUDGE.**

At the conclusion of the proceedings, a magistrate or the criminal law magistrate court associate judge shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

**Government Code Sec. 54.2815.
JUDICIAL ACTION.**

- (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate or the criminal law magistrate court associate judge.
- (b) If the referring court does not modify, correct, reject, reverse, or recommit an action of the magistrate or the criminal law magistrate court associate judge, the action becomes the decree of the referring court.

**Government Code Sec. 54.2816.
EXCHANGE OF BENCHES.**

- (a) The judges of the criminal law magistrate court may exchange benches and may sit and act for each other in any proceeding pending in the criminal law magistrate court.
- (b) When conducting a capias pro fine hearing for any court, the criminal law magistrate court acts in the same capacity and with the same authority as the judge who issued the capias pro fine.

**Government Code Sec. 54.2817. COURT
REPORTER.**

At the request of a party in a criminal case, the criminal law magistrate court shall provide a court reporter to record the proceedings before the magistrate.

**Government Code Sec. 54.2818.
WITNESS.**

- (a) A witness who appears before the criminal law magistrate court and is sworn is subject to the penalties for perjury provided by law.
- (b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the referring court.

Government Code Sec. 54.2819. CLERK.

- (a) The district clerk serves as clerk of the criminal law magistrate court, except that after a Class A or Class B misdemeanor is filed in the county court at law and assigned to the magistrate court, the county clerk serves as clerk for that misdemeanor case.
- (b) The district clerk shall establish a docket and keep the minutes for the cases filed in or transferred to the magistrate court. The district clerk shall perform any other duties that local administrative rules require in connection with the implementation of this subchapter. The local administrative judge shall ensure that the duties required under this subsection are performed. To facilitate the duties associated with serving as the clerk of the magistrate court, the district clerk and the deputies of the district clerk may serve as deputy county clerks at the discretion of the district clerk.
- (c) The clerk of the case shall include as part of the record on appeal a copy of the order and local administrative rule under which a magistrate court acted.

Government Code Sec. 54.2820. COSTS.

- (a) When the district clerk is the clerk under this subchapter, the district clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the criminal law magistrate court that are charged in the district courts.
- (b) When the county clerk is the clerk under this subchapter, the county clerk shall charge the

same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the county courts.

Commentary by: Kaci Singer

Source: HB 3474 (only portions of the bill relevant to juvenile law are included)

Effective Date: September 1, 2023

Applicability: The court is created on the effective date.

Summary of Changes: This new statute creates the Denton County Criminal Law Magistrate Court. This analysis focuses on the juvenile justice related aspects of this new court.

The district court judges and criminal statutory county court judges in Denton County shall appoint one or more judges to preside over this court. Those eligible for appointment are persons serving as a district court judge, criminal statutory county court judge, associate judge of a court with criminal jurisdiction, magistrate, including a jail magistrate, municipal court judge, or justice of the peace as long as the person is also an attorney licensed in good standing with the State Bar of Texas who has been licensed at least four years, is authorized to access criminal history records under state and federal law, has completed required training, and has been a resident of Denton County for at least the two years preceding the appointment.

The court has criminal jurisdiction in all criminal cases alleging an offense, other than a Class C misdemeanor, for which a magistrate has determined there is probable cause and the defendant has not been charged or the judge presiding over the case has specifically authorized the criminal law magistrate to take certain actions. The court does not have jurisdiction to hear a trial on the merits except when the judge of the Denton County juvenile court has referred a Title 3 case to the criminal law magistrate court, including any matter ancillary to that proceeding. The court may accept a plea of guilty from a defendant or a plea of true from a juvenile, regardless of the classification of the charge or conduct alleged. The court also does not have authority to take any action that is not specifically authorized by the order of referral from the judge presiding in a criminal case in which the defendant has been charged by information or indictment.

Although the language in the statute refers to the matters that may be referred in a criminal case, Section 54.2811 appears to allow the juvenile court to refer to the criminal law magistrate court the conduct of an initial detention hearing or any other matter in a juvenile case as long as the Denton County Juvenile Board approves. It also allows for the referral of “any other matter the judge considers necessary and proper.” It is unclear how this new statute will be squared with existing Section 54.10, Family Code, which limits an associate judge or referee’s ability to preside over determinate sentence cases to only taking a stipulation of evidence and does not allow for an associate judge or referee to preside over certification hearings under Section 54.02, Family Code. The answer may hinge on whether or not the person appointed to the role is an associate judge or referee.

Topic: Interpreter Costs

Government Code Sec. 57.002. APPOINTMENT OF INTERPRETER OR CART PROVIDER; CART PROVIDER LIST; PAYMENT OF INTERPRETER COSTS.

(a) A court shall appoint a certified court interpreter or a certified CART provider for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English if a motion for the appointment of an interpreter or provider is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint a certified court interpreter or a certified CART provider for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English.

(b-1) A licensed court interpreter appointed by a court under Subsection (a) or (b) must hold a license that includes the appropriate designation under Section 157.101(d) that indicates the interpreter is permitted to interpret in that court.

(c) Subject to Subsection (e), in a county with a population of less than 50,000, a court may appoint a spoken language interpreter who is not a licensed court interpreter.

(d) Subject to Subsection (e), in a county with a population of 50,000 or more, a court may appoint a spoken language interpreter who is not a certified or licensed court interpreter if:

- (1) the language necessary in the proceeding is a language other than Spanish; and
- (2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

(d-1) Subject to Subsection (e), a court in a county to which Section 21.021, Civil Practice and Remedies Code, applies may appoint a spoken language interpreter who is not a licensed court interpreter.

(e) A person appointed under Subsection (c) or (d):

- (1) must be qualified by the court as an expert under the Texas Rules of Evidence;
- (2) must be at least 18 years of age; and
- (3) may not be a party to the proceeding.

(f) The department shall maintain a list of certified CART providers and, on request, may send the list to a person or court.

(g) A party to a proceeding in a court who files a statement of inability to afford payment of court costs under Rule 145, Texas Rules of Civil Procedure, is not required to provide an interpreter at the party's expense or pay the costs associated with the services of an interpreter appointed under this section that are incurred during the course of the action, unless the statement has been contested and the court has ordered the party to pay costs pursuant to Rule 145. Nothing in this subsection is intended to apply to interpreter services or other auxiliary aids for individuals who are deaf, hard of hearing, or have communication disabilities, which shall be provided to those individuals free of charge pursuant to federal and state laws.

(h) Each county auditor, or other individual designated by the commissioners court of a county, in consultation with the district and county clerks shall submit to the Office of Court Administration of the Texas Judicial System, in the manner prescribed by the office, information on the money the county spent during the preceding fiscal year to provide court-ordered interpretation services in civil and criminal proceedings. The information must include:

- (1) the number of interpreters appointed;

(2) the number of interpreters appointed for parties or witnesses who are indigent;

(3) the amount of money the county spent to provide court-ordered interpretation services; and

(4) for civil proceedings, whether a party to the proceeding filed a statement of inability to afford payment of court costs under Rule 145, Texas Rules of Civil Procedure, applicable to the appointment of an interpreter.

(i) Not later than December 1 of each year, the Office of Court Administration of the Texas Judicial System shall:

(1) submit to the legislature a report that aggregates by county the information submitted under Subsection (h) for the preceding fiscal year; and

(2) publish the report on the office's Internet website.

Commentary by: Kaci Singer

Source: SB 380

Effective Date: May 23, 2023

Applicability: Applies to an action pending on or filed on or after the effective date.

Summary of Changes: The purpose of this change in law is to make it clear that court-appointed professionals, including interpreters, are a covered court cost for those individuals who need them and who have filed a valid statement of inability to pay. The law explicitly states that a party who has filed an inability to afford court costs is not required to pay for an interpreter unless the statement has been contested in court and the party has been order to pay under Texas Rule of Civil Procedure 145.

Topic: Statistics and Monthly Reports

Government Code Sec. 71.035.

STATISTICS; ENFORCEMENT BY MANDAMUS.

(a) The council shall gather judicial statistics and other pertinent information, including for each trial court in this state monthly court activity statistics and case-level information on the amount and character of the business transacted by the court, from the several state judges and other court officials of this state. The monthly information gathered by the council for each trial

court in a county with a population of at least one million must include, but is not limited to:

- (1) the number of cases assigned to the court;
- (2) the case clearance rate for the court;
- (3) the number of cases disposed by the court;
- (4) the number of jury panels empaneled for the court;
- (5) the number of orders of continuance for an attorney before the court or by the court;
- (6) the number of pleas accepted by the court;
- (7) the number of cases tried by the judge of the court or before a jury; and
- (8) the number of cases tried before a visiting or associate judge of the court.

(a-1) The [In addition, the] council shall implement a monthly tracking system to ensure accountability for counties and courts which participate in the statewide integrated system for child support, medical support, and dental support enforcement established under Section 231.0011, Family Code. As a duty of office, the district clerks and county clerks serving the affected courts shall report monthly such information as may be required by the council, including, at a minimum, the time required to enforce cases from date of delinquency, from date of filing, and from date of service until date of disposition. Such information as is necessary to complete the report and not directly within the control of the district or county clerk, such as date of delinquency, shall be provided to the clerk by the child support registry or by the enforcement agency providing Title IV-D enforcement services in the court.

(a-2) A [The] monthly report required by Subsection (a) or (a-1) must [shall] be transmitted to the Office of Court Administration of the Texas Judicial System no later than the

20th day of the month following the month reported, in the [such] form and manner [as may be] prescribed by the office [Office of Court Administration], which may include electronic data transfer. The office shall publish the information for each court on the office's public Internet website in a searchable format.

(a-3) In a county with a population greater than one million, a court official for each court in the county shall submit to the appropriate county official for publication on the county's public Internet website a copy of each monthly report required under Subsections (a) and (a-1) within the time required by Subsection (a-2). The county shall publish the information for each court on the county's Internet website in a searchable format [Copies of such reports shall be maintained in the office of the appropriate district or county clerk for a period of at least two years and shall be available to the public for inspection and reproduction].

Commentary by: Kaci Singer

Source: SB 380

Effective Date: September 1, 2023

Applicability: As soon as practicable after the effective date, the Texas Judicial Council shall adopt any rules necessary to implement the changes in law made by this Act.

Summary of Changes: The clerk of each court is required to make monthly reports to the Texas Judicial Council. This change in law requires the clerks in counties with more than one million people to report more specific information and data than they currently do.

Governmental Entities

Topic: Employer Requirements

LABOR CODE CHAPTER 104A. **REPORTING WORKPLACE VIOLENCE**

Labor Code Sec. 104A.001. **DEFINITIONS.**

In this chapter:

- (1) “Commission” means the Texas Workforce Commission.
- (2) “Employee” means an individual who is employed by an employer for compensation.
- (3) “Employer” means a person who employs one or more employees.

Labor Code Sec. 104A.002. NOTICE BY EMPLOYER.

Each employer shall post a notice to employees of the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety. The notice must be posted:

- (1) in a conspicuous place in the employer’s place of business;
- (2) in sufficient locations to be convenient to all employees; and
- (3) in English and Spanish, as appropriate.

Labor Code Sec. 104A.003. RULES.

The commission, in consultation with the Department of Public Safety, by rule shall prescribe the form and content of the notice required by this section. The rules must require that the notice:

- (1) contain the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety; and
- (2) inform employees of the right to make a report to the Department of Public Safety anonymously.

Commentary by: Kaci Singer

Source: HB 182

Effective Date: September 1, 2023

Applicability: On or after the effective date

Summary of Changes: This new statute requires all employers in the state, defined to

mean any person that has at least one employee, to post a notice for employees of the contract information for reporting workplace violence or suspicious activity to DPS. The notice must be posted in a conspicuous place in the business, in enough locations to be convenient to all employees, and in English and Spanish, as appropriate. The Texas Workforce Commission, in consultation with DPS, is required to adopt a rule prescribing the form and content of the required notice. Reports may be made to DPS anonymously. The Workforce Commission has until March 1, 2024, to adopt the rules.

Topic: Public Information Act

Government Code Sec. 552.0031. **BUSINESS DAYS.**

(a) Except as provided by this section, in this chapter “business day” means a day other than:

- (1) a Saturday or Sunday;
- (2) a national holiday under Section 662.003(a); or
- (3) a state holiday under Section 662.003(b).

(b) The fact that an employee works from an alternative work site does not affect whether a day is considered a business day under this chapter.

(c) An optional holiday under Section 662.003(c) is not a business day of a governmental body if the officer for public information of the governmental body observes the optional holiday.

(d) A holiday established by the governing body of an institution of higher education under Section 662.011(a) is not a business day of the institution of higher education.

(e) The Friday before or Monday after a holiday described by Subsection (a)(2) or (3) is not a business day of a governmental body if the holiday occurs on a Saturday or Sunday and the governmental body observes the holiday on that Friday or Monday.

(f) Subject to the requirements of this subsection, a governmental body may designate a day on which the governmental body’s administrative offices are closed or operating with minimum staffing as a nonbusiness day. The designation of

a nonbusiness day for an independent school district must be made by the board of trustees. The designation of a nonbusiness day for a governmental body other than an independent school district must be made by the executive director or other chief administrative officer. A governmental body may designate not more than 10 nonbusiness days under this subsection each calendar year.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This new statute defines business days for the purposes of the Public Information Act and clarifies that an employee's place of work does not affect whether a day is considered a business day. Business days are every Monday to Friday that is not a national holiday or state holiday as set out in Section 662.003, Government Code. National holidays are: New Year's Day, MLK Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. State holidays are: Confederate Heroes Day, Texas Independence Day, San Jacinto Day, Emancipation Day, LBJ Day, the Friday after Thanksgiving, and the days before and after Christmas. The statute further provides that the Friday or Monday after a national or state holiday is not a business day if the holiday falls on a Saturday or Sunday and the governmental body observes the holiday on that Friday or Monday. A holiday established by the governing body of an institution of higher education is not a business day.

An optional holiday is not considered a business day if the governmental body's public information officer observes the optional holiday. Optional holidays are Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez.

Each governmental body is authorized to designate as a nonbusiness day a day on which the body's administrative offices are closed or operating with minimum staffing. The designation must be made by the executive officer or chief administrative officer except that, for an independent school district, the designation must be made by the school board. Governmental

bodies are limited to designating 10 nonbusiness days per calendar year.

Government Code Sec. 552.012. OPEN RECORDS TRAINING.

(b-1) The attorney general may require each public official of a governmental body to complete the course of training if the attorney general determines that the governmental body has failed to comply with a requirement of this chapter. The attorney general must notify each public official in writing of the attorney general's determination and the requirement to complete the training. A public official who receives notice from the attorney general under this subsection must complete the training not later than the 60th day after the date the official receives the notice.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date.

Summary of Changes: This new statute allows the attorney general to require each public official of a governmental body to complete a training course if the attorney general determines the body has failed to comply with the requirements of the Public Information Act. The attorney general must notify the official in writing and the official has 60 days from the date of notice to complete the training.

Government Code Sec. 552.103. LITIGATION OR SETTLEMENT NEGOTIATIONS INVOLVING THE STATE OR A POLITICAL SUBDIVISION.

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and

postconviction remedies in state and federal court.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

(d) The exception to disclosure provided by this section does not apply to information requested under this chapter if:

(1) the information relates to a general, primary, or special election, as those terms are defined by Section 1.005, Election Code;

(2) the information is in the possession of a governmental body that administers elections described by Subdivision (1); and

(3) the governmental body described by Subdivision (2) is not a governmental body described by Section 552.003(1)(A)(i).

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: Applies only to a request for information that is received by a governmental body or an officer for public information on or after the effective date of this Act. A request for information that was received before the effective date of this Act is governed by the law in effect on the date the request was received, and the former law is continued in effect for that purpose.

Summary of Changes: Current statute provides that information is excepted from disclosure if it relates to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee may be a party based on their office or employment. This new subsection provides that the exception does not apply if the information relates to an election and is in the possession of a governmental body that administers elections but is not a board, commission, department, committee, institution, agency, or office within or created by the executive or legislative branch of state government that is directed by one or more elected or appointed members.

Government Code Sec. 552.108.

EXCEPTION: CERTAIN LAW ENFORCEMENT, CORRECTIONS, AND PROSECUTORIAL INFORMATION.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime. A governmental body shall promptly release basic information responsive to a request made under this chapter unless the governmental body seeks to withhold the information as provided by another provision of

this chapter, and regardless of whether the governmental body requests an attorney general decision under Subchapter G regarding other information subject to the request.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: On or after the effective date

Summary of Changes: The law provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from disclosure in certain circumstances. However, the exception does not apply to basic information about the arrested person, an arrest, or a crime. The additional language provides that the governmental body shall promptly release such information unless the body seeks to withhold the information under another provision and regardless of whether the body seeks an attorney general decision regarding other information that is in the request.

**Government Code Sec. 552.271.
INSPECTION OF PUBLIC INFORMATION
IN PAPER RECORD IF COPY NOT
REQUESTED.**

(e) A requestor who has exceeded a limit established by a governmental body under Section 552.275 may not inspect public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the governmental body under Section 552.275(e).

**Government Code Sec. 552.272.
INSPECTION OF ELECTRONIC RECORD
IF COPY NOT REQUESTED.**

(f) A requestor who has exceeded a limit established by a governmental body under Section 552.275 may not inspect public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the governmental body under Section 552.275(e).

**Government Code Sec. 552.275,
REQUESTS THAT REQUIRE LARGE
AMOUNTS OF EMPLOYEE OR
PERSONNEL TIME.**

(a) A governmental body may establish reasonable monthly and yearly limits on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time.

(a-1) For purposes of this section, all county officials who have designated the same officer for public information may calculate the amount of time that personnel are required to spend collectively for purposes of the monthly or yearly limit.

(b) A yearly time limit established under Subsection (a) may not be less than 36 hours for a requestor during the 12-month period that corresponds to the fiscal year of the governmental body. A monthly time limit established under Subsection (a) may not be less than 15 hours for a requestor for a one-month period.

(c) In determining whether a time limit established under Subsection (a) applies, any time spent complying with a request for public information submitted in the name of a minor, as defined by Section 101.003(a), Family Code, is to be included in the calculation of the cumulative amount of time spent complying with a request for public information by a parent, guardian, or other person who has control of the minor under a court order and with whom the minor resides, unless that parent, guardian, or other person establishes that another person submitted that request in the name of the minor.

(d) If a governmental body establishes a time limit under Subsection (a), each time the governmental body complies with a request for public information, the governmental body shall provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that requestor during the applicable monthly or yearly period. The amount of time spent preparing the written statement may not be included in the amount of time included in the statement provided to the

requestor under this subsection unless the requestor's time limit for the period has been exceeded.

(e) Subject to Subsection (e-1), if in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the limit established by the governmental body under Subsection (a), the governmental body shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with the request. The written estimate must be provided to the requestor on or before the 10th day after the date on which the public information was requested. The amount of this charge relating to the cost of locating, compiling, and producing the public information shall be established by rules prescribed by the attorney general under Sections 552.262(a) and (b).

(e-1) This subsection applies only to a request made by a requestor who has made a previous request to a governmental body that has not been withdrawn, for which the governmental body has located and compiled documents in response, and for which the governmental body has issued a statement under Subsection (e) that remains unpaid on the date the requestor submits the new request. A governmental body is not required to locate, compile, produce, or provide copies of documents or prepare a statement under Subsection (e) in response to a new request described by this subsection until the date the requestor pays each unpaid statement issued under Subsection (e) in connection with a previous request or withdraws the previous request to which the statement applies.

(f) If the governmental body determines that additional time is required to prepare the written estimate under Subsection (e) and provides the requestor with a written statement of that determination, the governmental body must provide the written statement under that subsection as soon as practicable, but on or before the 10th day after the date the governmental body provided the statement under this subsection.

(g) If a governmental body provides a requestor with a [the] written statement under Subsection (e) or (o) and the time limits prescribed by Subsection (a) regarding the requestor have been

exceeded, the governmental body is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the governmental body provided the written statement under that subsection, the requestor submits payment of the amount stated in the written statement provided under Subsection (e) or provides identification or submits payment as required by Subsection (o), as applicable.

(h) If the requestor fails or refuses to provide identification or submit payment under Subsection (g), the requestor is considered to have withdrawn the requestor's pending request for public information.

(i) This section does not prohibit a governmental body from providing a copy of public information without charge or at a reduced rate under Section 552.267 or from waiving a charge for providing a copy of public information under that section.

(j) This section does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

(1) dissemination by a news medium or communication service provider, including:

(A) an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or

(B) an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or

(2) creation or maintenance of an abstract plant as described by Section 2501.004, Insurance Code.

(k) This section does not apply if the requestor is an elected official of the United States, this state, or a political subdivision of this state.

(l) This section does not apply if the requestor is a representative of a publicly funded legal services organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code.

(m) In this section:

(1) “Communication service provider” has the meaning assigned by Section 22.021, Civil Practice and Remedies Code.

(2) “News medium” means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

- (A) print;
- (B) television;
- (C) radio;
- (D) photographic;
- (E) mechanical;
- (F) electronic; and
- (G) other means, known or unknown, that are accessible to the public.

(n) A governmental body may request photo identification from a requestor for the sole purpose of establishing that the requestor has not:

(1) exceeded a limit established by the governmental body under Subsection (a); and

(2) concealed the requestor’s identity.

(o) A request for photo identification under Subsection (n) must include a statement under Subsection (e) applicable to the requestor who has exceeded a limit established by the governmental body and a statement that describes each specific reason why Subsection (n) may apply to the requestor. The governmental body shall accept as proof of a requestor’s identification physical presentment of photo identification or an image of the photo identification that is transmitted electronically or through the mail. A requestor from whom a governmental body has requested photo identification under Subsection (n) may decline to provide identification and obtain the requested information by paying the charge assessed in the statement.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: Applies only to a request for information that is received by a governmental body or an officer for public information on or after the effective date

Summary of Changes: Section 552.275, Government Code, allows a governmental body to establish reasonable monthly and yearly limits on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time. The limit may not be less than 36 hours per year or 15 hours per month. The changes in Section 552.275 allow the entity to request a photo ID from a requestor for the sole purpose of determining that the requestor has not exceeded the limit or concealed their identity. The request for identification must contain specific information regarding why the entity is requesting the identification and is allowed to do so. The person may decline to provide identification and instead pay the charge assessed in the statement to obtain the information.

If a governmental body establishes a limit, they are required to provide each requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative time spent for that requestor during the applicable monthly or yearly period. Under current law, the time spent preparing that statement cannot be included in the amount of time included in the statement. With the change in Section 552.275(d), the time spent preparing the written statement may be included once the requestor’s time limit for the period has been exceeded.

The changes in Sections 552.271 and 552.272 prohibit a person who has exceeded their time limit from reviewing records on behalf of another requestor until the person has paid the costs due.

Government Code Sec. 552.3031.
ELECTRONIC SUBMISSION OF
REQUEST FOR ATTORNEY GENERAL
DECISION.

(a) This section does not apply to a request for an attorney general decision made under this subchapter if:

(1) the governmental body requesting the decision;

(A) has fewer than 16 full-time employees; or
(B) is located in a county with a population of less than 150,000;

(2) the amount or format of responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible; or

(3) the request is hand delivered to the office of the attorney general.

(b) A governmental body that requests an attorney general decision under this subchapter must submit the request through the attorney general's designated electronic filing system.

(c) The attorney general may adopt rules necessary to implement this section, including rules that define the amount or type of formatting of information described by Subsection (a)(2) that makes use of the electronic filing system impractical or impossible.

Government Code Sec. 552.308.

TIMELINESS OF ACTION BY UNITED STATES MAIL, INTERAGENCY MAIL, OR COMMON OR CONTRACT CARRIER.

(a) Except as provided by Section 552.3031, when ~~When~~ this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

(1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period.

(b) Except as provided by Section 552.3031, when ~~When~~ this subchapter requires an agency of this state to submit or otherwise give to the attorney general within a specified period a request, notice, or other writing, the requirement is met in a timely fashion if:

(1) the request, notice, or other writing is sent to the attorney general by interagency mail; and

(2) the agency provides evidence sufficient to establish that the request, notice, or other

writing was deposited in the interagency mail within that period.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: Applies to a request submitted on or after the effective date

Summary of Changes: Newly enacted Section 552.3031 requires a governmental body that requests an attorney general decision regarding withholding of records to submit the request through the attorney general's designated electronic filing system. This requirement does not apply if the governmental body has fewer than 16 full-time employees or is located in a county with a population of fewer than 150,000. It also does not apply if the amount or format of responsive information at issue makes using the electronic filing system impractical or impossible or if the request is hand delivered to the attorney general's office. The changes in Section 552.308 are conforming changes related to new Section 552.0331.

Government Code Sec. 552.306.

RENDITION OF ATTORNEY GENERAL DECISION; ISSUANCE OF WRITTEN OPINION.

(c) A governmental body shall as soon as practicable but within a reasonable period of time after the date the attorney general issues an opinion under Subsection (b) regarding information requested under this chapter:

(1) provide the requestor of the information an itemized estimate of charges for production of the information if the estimate is required by Section 552.2615;

(2) if the requested information is voluminous:

(A) take the following actions if the governmental body determines that it is able to disclose the information in a single batch:

(i) provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the governmental body to produce the information within a reasonable period of time;

(ii) include in the notice the date and hour that the governmental body will disclose the information to the requestor, which may not be later than the 15th business day after the

date the governmental body provides the notice; and

(iii) produce the information at the date and time included in the notice; or

(B) take the following actions if the governmental body determines that it is unable to disclose the information in a single batch:

(i) provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the governmental body to produce the information within a reasonable period of time and in a single batch;

(ii) include in the notice the date and hour that the governmental body will disclose the first batch of information to the requestor, which may not be later than the 15th business day after the date the governmental body provides the notice;

(iii) provide a written certified notice to the requestor and the attorney general when each subsequent batch of information is disclosed to the requestor of the date and hour that the governmental body will disclose the next batch of information to the requestor, which may not be later than the 15th business day after the date the governmental body provides the notice; and
(iv) produce the requested information at each date and time included in a notice;

(3) produce the information if it is required to be produced;

(4) notify the requestor in writing that the governmental body is withholding the information as authorized by the opinion; or

(5) notify the requestor in writing that the governmental body has filed suit against the attorney general under Section 552.324 regarding the information.

(d) A governmental body is presumed to have complied with the requirements of Subsection (c) if the governmental body takes an action under that subsection regarding information that is the subject of an opinion issued by the attorney general not later than the 30th day after the date the attorney general issues the opinion.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: Applies to a request for an attorney general decision made on or after the effective date

Summary of Changes: As originally filed, this was a short bill that included the addition of Section 552.306 (with different language) and Section 552.310, discussed below. The author's statement of intent explained the purpose of this change was to address the fact that the law did not ensure the timely release of requested information after the attorney general's decision was issued disallowing the withholding of the information. The purpose of this change was to put parameters in place requiring a timely release. Under this law, the governmental body must provide certain information to the requestor as soon as practicable but within a reasonable period of time after the date the opinion is issued. The statute spells out what must be provided, depending on the amount and type of information. The governmental body is presumed to have complied with the requirements if it takes the required action no later than the 30th day after the opinion is issued.

Government Code Sec. 552.310.

SEARCHABLE DATABASE.

(a) The office of the attorney general shall make available on the office's Internet website an easily accessible and searchable database consisting of:

(1) information identifying each request for an attorney general decision made under this subchapter; and

(2) the attorney general's opinion issued for the request.

(b) The database at a minimum must allow a person to search for a request or opinion described by Subsection (a) by:

(1) the name of the governmental body making the request; and

(2) the exception under Subchapter C that a governmental body asserts in the request applies to its request to withhold information from public disclosure.

(c) The database must allow a person to view the current status of a request described by Subsection (a)(1) and an estimated timeline indicating the date each stage of review of the request will be started and completed.

Commentary by: Kaci Singer

Source: HB 3033

Effective Date: September 1, 2023

Applicability: As soon as practicable, but not later than January 1, 2024, the attorney general shall make the required database available on its website.

Summary of Changes: This new section requires the attorney general to make available on its public website an easily accessible and searchable database consisting of information identifying each request for an attorney general decision made with regard to public information

requests and the attorney general's issued opinion. The database must allow a person to search by the name of the governmental body and the exception asserted. It must also allow a person to view the current status of the request and an estimated timeline indicating the date each stage of review will be started and completed.

Procedure and Evidence

Topic: Admissibility of Evidence

Code of Criminal Procedure Art. 38.072. HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS.

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 18 ~~[14]~~ years of age or a person with a disability:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct);
- (3) Section 43.25 (Sexual Performance by a Child);
- (4) Section 43.05(a)(2) or (3) (Compelling Prostitution);
- (5) Section 20A.02(a)(5), (6), (7), ~~[20A.02(a)(7)]~~ or (8) (Trafficking of Persons); ~~[or]~~
- (6) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(5), (6), (7), or (8); or
- (7) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), ~~[or]~~ (5), or (6) of this section.

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

Applicability: Applies to the admissibility of a statement in an action that commences on or after the effective date.

Summary of Changes: This change is part of the trafficking bill that is passed every session. These changes make the law on admissibility of outcry statements in certain offenses involving children and persons with disabilities. One change is that the age of a child that it applies to has been raised from 14 to 18. Another change is that the list of applicable offenses has been expanded to include trafficking or forced labor or service or receiving a benefit from participating in a venture that involves such activity and newly created compelling a person with a disabled to commit prostitution. That said, this provision of law does not appear to be applicable to juvenile

proceedings. Section 51.17, Family Code provides, “*except as otherwise provided by this title [emphasis added]*,” the Texas Rules of Evidence applicable to criminal cases and Articles 33.03 and 33.07 and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title.” Section 54.031, Family Code, sets out the law on the admissibility of hearsay statements of certain abuse victims in a juvenile proceeding. It applies to children 12 years of age or younger and includes fewer offenses than Article 38.072 does.

Code of Criminal Procedure Art. 38.24. STATEMENTS OBTAINED BY INVESTIGATIVE HYPNOSIS.

(a) In this article, “investigative hypnosis” means a law enforcement technique that uses hypnosis to explore the memory of a witness to enhance the witness’s recall of a legally relevant event, including descriptions of people, conversations, and the environment.

(b) This article applies to all statements made during or after a hypnotic session by a person who has undergone investigative hypnosis performed by a law enforcement agency for the purpose of enhancing the person’s recollection of an event at issue in a criminal investigation or case, including courtroom testimony regarding those statements and including statements identifying an accused that are made pursuant to pretrial identification procedures.

(c) A statement described by Subsection (b) is not admissible against a defendant in a criminal trial, whether offered in the guilt or innocence phase or the punishment phase of the trial, if the hypnotic session giving rise to the statement was performed by a law enforcement agency to investigate the offense that is the subject of the trial. Notwithstanding Article 38.23, this article does not affect the admissibility of any physical evidence, or the testimony of any witness identified, that independently corroborates the commission of the offense.

Commentary by: Kaci Singer

Source: SB 338

Effective Date: September 1, 2023

Applicability: Applies to the admissibility of a statement in an action that commences on or after the effective date.

Summary of Changes: Hypnosis is a tool that has been used by law enforcement since the 1980s. In 1987, the Texas Commission on Law Enforcement (TCOLE) was charged with implementing training and testing for law enforcement. The handbook for the course has not been updated since the training was established in the 1980s. In investigative hypnosis, witnesses are told that memory works like a video tape and that, during hypnosis, they will be able to recall events and people in ways that their normal memory would not be able to access. However, studies have shown that the use of hypnosis produces a large amount of unreliable eyewitness testimony. Rather than work to recover memory, it actually leads witnesses to be more confident in their “memories,” even when they are false. In 2021, Texas DPS suspended their hypnosis program. At least 27 states prohibit the admissibility of testimony concerning memories “retrieved” during hypnosis. This new statute does the same in Texas. Although this is in the Code of Criminal Procedure, it applies to juvenile cases by virtue of Section 51.17, Family Code, which makes Chapter 38, Code of Criminal Procedure, applicable in juvenile cases.

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

Sec. 1. (a) Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

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

- (A) Chapter 21 (Sexual Offenses);
- (B) Chapter 22 (Assaultive Offenses); or
- (C) Section 25.02 (Prohibited Sexual Conduct); or

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

- (A) Section 43.25 (Sexual Performance by a Child);
- (B) Section 20A.02(a)(5), (6), (7),
~~[20A.02(a)(7)]~~ or (8) (Trafficking of Persons);
~~[or]~~

(C) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(5), (6), (7), or (8); or

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

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

- (1) the state of mind of the defendant and the child; and
- (2) the previous and subsequent relationship between the defendant and the child.

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

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

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

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

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

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

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

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

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

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

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

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

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

Applicability: Applies to the admissibility of a statement in an action that commences on or after the effective date.

Summary of Changes: This change is part of the trafficking bill that is passed every session. These changes add additional trafficking offenses to the list of extraneous offenses that may be admitted in certain cases.

Topic: Statute of Limitations - Trafficking and Child Pornography

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

...

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which the public servant exercises control in the public servant's official capacity;

(C) forgery or the uttering, using, or passing of forged instruments;

(D) injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E) sexual assault, except as provided by Subdivision (1) or (8) ~~[(7)]~~;

(F) arson;

(G) trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or

(H) compelling prostitution under Section 43.05(a)(1), Penal Code;

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) fraudulent securing of document execution;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit under Section 32.32, Penal Code;

(E) money laundering;

(F) credit card or debit card abuse under Section 32.31, Penal Code;

(G) fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H) exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

(I) health care fraud under Section 35A.02, Penal Code; ~~[(F)]~~

(J) bigamy under Section 25.01, Penal Code, except as provided by Subdivision (7) ~~[(6)]~~; or

(K) possession or promotion of child pornography under Section 43.26, Penal Code;

...

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

~~(A) [sexual performance by a child under Section 43.25, Penal Code;~~

~~[(B)] aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or~~

~~[(C)] burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (A) ~~[(B)]~~ of this subdivision;~~

(6) 20 years from the 18th birthday of the victim of one of the following offenses:

(A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code; or

(B) sexual performance by a child under Section 43.25, Penal Code;

(7) ten years from the 18th birthday of the victim of the offense:

~~(A) [trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;~~

~~[(B)] injury to a child under Section 22.04, Penal Code; or~~

~~[(C)] bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being~~

married is younger than 18 years of age at the time the offense is committed;

~~(8) [(7)]~~ two years from the date the offense was discovered: sexual assault punishable as a state jail felony under Section 22.011(f)(2), Penal Code; or

~~(9) [(8)]~~ three years from the date of the commission of the offense: all other felonies.

Commentary by: Kaci Singer

Source: HB 1769

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: The statute of limitations for trafficking a child for forced labor or services is changed from 10 years past the child's 18th birthday to 20 years past the child's 18th birthday. Applies that same statute of limitations to sexual performance by a child, not just a child under 17 years of age. Since the definition of a child for that purpose is a person under 18 years of age, the practical change is that this statute of limitations now applies to the 17 year old victims. The statute of limitations for possession or promotion of child pornography is changed to 7 years, the same as in SB 129.

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

...

(I) compelling prostitution under Section 43.05(a)(2) or (3), Penal Code;

...

(6) ten years from the 18th birthday of the victim of the offense:

(A) trafficking of a child ~~[persons]~~ under Section 20A.02(a)(5) or (6), Penal Code;

(B) injury to a child under Section 22.04, Penal Code; or

(C) bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed;

(7) ten years from the date the offense was discovered: trafficking of a disabled individual under Section 20A.02(a)(5) or (6), Penal Code;

(8) two years from the date the offense was discovered: sexual assault punishable as a state jail felony under Section 22.011(f)(2), Penal Code; or

(9) [(8)] three years from the date of the commission of the offense: all other felonies.

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

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

Summary of Changes: This change is part of the trafficking bill that is passed every session. This addresses the statute of limitations for newly added offenses of trafficking and compelling prostitution involving persons with disabilities.

Code of Criminal Procedure. Art. 12.01. FELONIES.

FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

...

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) fraudulent securing of document execution;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit under Section 32.32, Penal Code;

(E) money laundering;

(F) credit card or debit card abuse under Section 32.31, Penal Code;

(G) fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H) exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

(I) health care fraud under Section 35A.02, Penal Code; ~~[or]~~

(J) bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6); or

(K) possession or promotion of child pornography under Section 43.26, Penal Code;

Commentary by: Kaci Singer

Source: SB 129

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: The statute of limitations for possession or promotion of child pornography has been extended from 3 years to 7 years.

Topic: Statute of Limitations - Family Violence Assault

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

...

(4) five years from the date of the commission of the offense:

(A) theft or robbery;

(B) except as provided by Subdivision (5), kidnapping or burglary;

(C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D) abandoning or endangering a child; [Ø]

(E) insurance fraud;

(F) assault under Section 22.01, Penal Code, if the assault was committed 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;

(G) continuous violence against the family under Section 25.11, Penal Code; or

(H) aggravated assault under Section 22.02, Penal Code;

Code of Criminal Procedure Art. 12.02. MISDEMEANORS.

(a) Except as provided by Subsection (b), the following charging instruments may be presented within two years from the date of the commission of the offense, and not afterward:

(1) an [An] indictment or information for any Class A or Class B misdemeanor; and

(2) a [may be presented within two years from the date of the commission of the offense, and not afterward.

~~[(b)-A]~~ complaint or information for any Class C misdemeanor.

(b) An indictment, information, or complaint, as applicable, for assault under Section 22.01, Penal Code, may be presented within three [two] years from the date of the commission of the offense, and not afterward, if the offense:

(1) is punishable as a misdemeanor; and

(2) was committed 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.

Commentary by: Kaci Singer

Source: HB 467

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: This bill extends the statute of limitations for family violence assault offenses. Felony family violence assault under 22.01, Penal Code, continuous violence against the family under Section 25.11, Penal Code, and aggravated assault under Section 22.02, Penal Code, now have a five year statute of limitations instead of three. Misdemeanor family violence assault under Section 22.01, Penal Code, now has a statute of limitations of three years instead of two.

Topic: Statute of Limitations - Tampering with Evidence

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011 (a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) sexual assault, if:

(i) during the investigation of the offense biological matter is collected and the matter:

(a) has not yet been subjected to forensic DNA testing; or

(b) has been subjected to forensic DNA testing and the testing results show that

the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii) probable cause exists to believe that the defendant has committed the same or a similar sex offense against five or more victims;

(D) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code;

(E) indecency with a child under Section 21.11, Penal Code;

(F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;

(H) continuous trafficking of persons under Section 20A.03, Penal Code; ~~or~~

(I) compelling prostitution under Section 43.05(a)(2), Penal Code; or

(J) tampering with physical evidence under Section 37.09(a)(1) or (d)(1), Penal Code, if:

(i) the evidence tampered with is a human corpse, as defined by that section; or

(ii) the investigation of the offense shows that a reasonable person in the position of the defendant at the time of the commission of the offense would have cause to believe that the evidence tampered with is related to a criminal homicide under Chapter 19, Penal Code;

Commentary by: Kaci Singer

Source: HB 1207

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: There is now no statute of limitations for tampering with evidence if the evidence is a human course or if the person had cause to believe it was related to a criminal homicide. The purpose is to mitigate destruction of or tampering with evidence in these cases and to provide law enforcement with another tool to prosecute those involved with murder cases.

**Topic: Statute of Limitations -
Abandoning or Endangering a Child**

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

...

(4) five years from the date of the commission of the offense:

(A) theft or robbery;

(B) except as provided by Subdivision (5), kidnapping or burglary;

(C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code; or

(D) ~~abandoning or endangering a child; or~~
~~(E)~~ insurance fraud;

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

(6) ten years from the 18th birthday of the victim of the offense:

(A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;

(B) injury to a child under Section 22.04, Penal Code; ~~or~~

(C) bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed; or

(D) abandoning or endangering a child;

(7) two years from the date the offense was discovered: sexual assault punishable as a state

jail felony under Section 22.011(f)(2), Penal Code; or
(8) three years from the date of the commission of the offense: all other felonies.

Commentary by: Kaci Singer

Source: HB 1506

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: This change extends the statute of limitations for the offense of abandoning or endangering a child from 5 years from the date of the offense to 10 years from the 18th birthday of the victim.

Topic: Statute of Limitations - Burglary

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

...

(J) burglary under Section 30.02, Penal Code, if:

(i) the offense is punishable under Subsection (d) of that section because the defendant entered a habitation with the intent to commit an offense under Section 22.011 or 22.021, Penal Code; and

(ii) during the investigation of the offense biological matter is collected and the matter:

(a) has not yet been subjected to forensic DNA testing; or

(b) has been subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained;

...

(4) five years from the date of the commission of the offense:

(A) theft or robbery;

(B) except as provided by Subdivision (5), kidnapping ~~[or burglary]~~;

(B-1) except as provided by Subdivision (1) or (5), burglary;

(C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D) abandoning or endangering a child; or

(E) insurance fraud;

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C) subject to Subdivision (1)(J), burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section because ~~and~~ the defendant entered a habitation ~~[committed the offense]~~ with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

Commentary by: Kaci Singer

Source: HB 2019

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: This law change provides there is no statute of limitations for burglary with intent to commit sexual assault or aggravated sexual assault if biological matter has been recovered and either has not been tested or has been tested and does not match the victim or any other person whose identity is readily ascertained.

Non-Substantive Revisions

Topic: Person-First Respectful Language

Family Code Sec. 56.01. RIGHT TO APPEAL.

(c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

(A) Section 54.02 respecting transfer of the child for prosecution as an adult;

(B) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;

(C) Section 54.04 disposing of the case;

(D) Section 54.05 respecting modification of a previous juvenile court disposition; or

(E) Chapter 55 by a juvenile court committing a child to a facility for persons with mental illness [~~the mentally ill~~] or intellectual disabilities [~~intellectually disabled~~]; or

(2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the Texas Department of Criminal Justice.

Human Resources Code Sec. 242.002. [EVALUATION OF] TREATMENT PROGRAMS; AVAILABILITY.

~~[(a) The department shall annually review the effectiveness of the department's programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for sex offenders, capital offenders, children who are chemically dependent, emotionally disturbed children, and females.~~

~~[(b) On or before December 31 of each even-numbered year, the department shall make a report on the effectiveness of the programs to the Legislative Budget Board.]~~

(c) The department shall offer or make available programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for females and for sex offenders, capital offenders, children who are chemically dependent, and children with mental illness. [~~described by Subsection (a)~~] in an adequate manner so that a

child in the custody of the department receives appropriate rehabilitation services recommended for the child by the court committing the child to the department.

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

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

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

Human Resources Code Sec. 242.056. ADVOCACY AND SUPPORT GROUPS.

(a) The department shall allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, persons with mental illness [~~the mentally ill~~], or victims of sexual assault to provide on-site information, support, and other services for children confined in department facilities.

Human Resources Code Sec. 221.056. RESIDENTIAL TREATMENT FACILITY.

(a) The department may contract with a local mental health [~~and mental retardation~~] authority for the establishment of a residential treatment facility for juveniles with mental illness or emotional injury who, as a condition of juvenile probation, are ordered by a court to reside at the facility and receive education services at the facility. The department may work in cooperation with the local mental health [~~and mental retardation~~] authority to provide mental health residential treatment services for juveniles residing at a facility established under this section.

**Human Resources Code Sec. 244.011.
CHILDREN WITH MENTAL ILLNESS OR
INTELLECTUAL DISABILITIES
[MENTAL RETARDATION].**

(a) The department shall accept a child with mental illness or intellectual disabilities who is committed to the department [~~who is mentally ill or mentally retarded~~].

(b) Unless ~~the~~ [a] child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the department shall discharge a child with mental illness or intellectual disabilities [~~who is mentally ill or mentally retarded~~] from its custody if:

- (1) the child has completed the minimum length of stay for the child's committing offense; and
- (2) the department determines that the child is unable to progress in the department's rehabilitation programs because of the child's mental illness or intellectual disabilities [~~mental retardation~~].

(c) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability [~~mental retardation~~] is not receiving intellectual disability [~~mental retardation~~] services, the child's discharge is effective on the earlier of:

- (1) the date the court enters an order regarding an application for intellectual disability [~~mental retardation~~] services filed under Section 244.012(b); or
- (2) the 30th day after the date that the application is filed.

(d) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability [~~mental retardation~~] is receiving intellectual disability [~~mental retardation~~] services, the child's discharge from the department is effective immediately.

(e) If a child with mental illness or intellectual disabilities [~~who is mentally ill or mentally retarded~~] is discharged from the department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

**Human Resources Code Sec. 244.012.
EXAMINATION BEFORE DISCHARGE.**

(a) The department shall establish a system that identifies children with mental illness or intellectual disabilities in the department's custody [~~who are mentally ill or mentally retarded~~].

(b) Before a child with mental illness [~~who is identified as mentally ill~~] is discharged from the department's custody under Section 244.011(b), a department psychiatrist shall examine the child. The department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

- (1) the child is not receiving court-ordered mental health services; and
- (2) the psychiatrist who examined the child determines that the child is a child with mental illness [~~mentally ill~~] and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) Before a child who is identified as having an intellectual disability [~~mentally retarded~~] under Chapter 593, Health and Safety Code, is discharged from the department's custody under Section 244.011(b), the department shall refer the child for intellectual disability [~~mental retardation~~] services if the child is not receiving intellectual disability [~~mental retardation~~] services.

Commentary by: Kaci Singer

Source: SB 1727

Effective Date: September 1, 2023

Applicability: Not applicable

Summary of Changes: In 2011, the Texas legislature created a statute entitled the Person First Respectful Language Initiative (Chapter 392, Government Code), which recognizes that language used in reference to persons with disabilities shapes and reflects society's attitudes toward persons with disabilities and that certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The statute directs that specific terms, such as mentally ill and mentally retarded, be replaced with terms like "persons with mental illness" and "persons with intellectual

disabilities.” Language in Family Code and TJJD enabling statutes was updated in this bill and in several other bills. The language is not identical, so there will now be several versions of the same statutes until there is legislation consolidating them.

Family Code Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION.

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

(b) If, after conducting an examination of a child ordered under Subsection (a) and reviewing any other relevant information, there is reason to believe that the child has a mental illness or an intellectual disability [~~mental retardation~~] or suffers from chemical dependency, the probation department shall refer the child to the local mental health authority or local intellectual and developmental disability [~~mental retardation~~]

authority or to another appropriate and legally authorized agency or provider for evaluation and services, unless the prosecuting attorney has filed a petition under Section 53.04.

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

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

Family Code Sec. 54.0408. REFERRAL OF CHILD EXITING PROBATION TO MENTAL HEALTH AUTHORITY OR INTELLECTUAL AND DEVELOPMENTAL DISABILITY [~~MENTAL RETARDATION~~] AUTHORITY.

A juvenile probation officer shall refer a child who has been determined to have a mental illness or an intellectual disability [~~mental retardation~~] to an appropriate local mental health authority or local intellectual and developmental disability [~~mental retardation~~] authority at least three months before the child is to complete the child’s juvenile probation term unless the child is currently receiving treatment from the local mental health authority or local intellectual and developmental disability [~~mental retardation~~] authority of the county in which the child resides.

Family Code Sec. 58.0051. INTERAGENCY SHARING OF EDUCATIONAL RECORDS.

(a) In this section:

(2) "Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

- (A) a state or local juvenile justice agency as defined by Section 58.101;
- (B) health and human services agencies, as defined by Section 531.001, Government Code, and the Health and Human Services Commission;
- (C) the Department of Family and Protective Services;
- (D) the Department of Public Safety;
- (E) the Texas Education Agency;
- (F) an independent school district;
- (G) a juvenile justice alternative education program;
- (H) a charter school;
- (I) a local mental health authority or local intellectual and developmental disability ~~[mental retardation]~~ authority;
- (J) a court with jurisdiction over juveniles;
- (K) a district attorney's office;
- (L) a county attorney's office; and
- (M) a children's advocacy center established under Section 264.402.

**Human Resources Code Sec. 221.056.
RESIDENTIAL TREATMENT FACILITY.**

(a) The department may contract with a local mental health authority and local intellectual and developmental disability ~~[and—mental retardation]~~ authority for the establishment of a residential treatment facility for juveniles with mental illness or emotional injury who, as a condition of juvenile probation, are ordered by a court to reside at the facility and receive education services at the facility. The department may work in cooperation with the local mental health authority and local intellectual and developmental disability ~~[and—mental retardation]~~ authority to provide mental health residential treatment services for juveniles residing at a facility established under this section.

Human Resources Code Sec.

244.011. CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY ~~[MENTAL RETARDATION]~~.

(a) The department shall accept a child committed to the department who is a person with a mental illness or a person with an intellectual disability ~~[mentally ill or mentally retarded]~~.

(b) Unless a child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the department shall discharge a child who is a person with a mental illness or a person with an intellectual disability ~~[mentally ill or mentally retarded]~~ from its custody if:

- (1) the child has completed the minimum length of stay for the child's committing offense; and
- (2) the department determines that the child is unable to progress in the department's rehabilitation programs because of the child's mental illness or intellectual disability ~~[mental retardation]~~.

(c) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability ~~[mental retardation]~~ is not receiving intellectual disability ~~[mental retardation]~~ services, the child's discharge is effective on the earlier of:

- (1) the date the court enters an order regarding an application for intellectual disability ~~[mental retardation]~~ services filed under Section 244.012(b); or
- (2) the 30th day after the date that the application is filed.

(d) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability ~~[mental retardation]~~ is receiving intellectual disability ~~[mental retardation]~~ services, the child's discharge from the department is effective immediately.

(e) If a child who is a person with a mental illness or a person with an intellectual disability ~~[mentally ill or mentally retarded]~~ is discharged from the department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

**Human Resources Code Sec. 244.012.
EXAMINATION BEFORE DISCHARGE.**

(a) The department shall establish a system that identifies children in the department's custody who have a mental illness or an intellectual disability ~~[are mentally ill or mentally retarded]~~.

(c) Before a child who is identified as a person with an intellectual disability ~~[mentally retarded]~~ under Chapter 593, Health and Safety Code, is discharged from the department's custody under Section 244.011(b), the department shall refer the child for intellectual disability ~~[mental retardation]~~ services if the child is not receiving those ~~[mental retardation]~~ services.

Commentary by: Kaci Singer

Source: HB 446

Effective Date: September 1, 2023

Applicability: Not applicable

Summary of Changes: These are provisions from a second bill that updated language to be person-first respectful. Further changes were made by SB 1585, which is included in the provision of this newsletter focusing on changes to Title 3, Family Code.

**Topic: Health and Human Services
Revisions**

**Family Code Sec. 53.011. SERVICES
PROVIDED TO CERTAIN CHILDREN
AND FAMILIES.**

(a) In this section:

(1) "Community resource coordination group" has the meaning assigned by Section 547.0101 ~~[531.421]~~, Government Code.

(2) "Local-level interagency staffing group" means a group established under the memorandum of understanding described by Subchapter D, Chapter 522 ~~[Section 531.055]~~, Government Code.

**Family Code Sec. 58.0051.
INTERAGENCY SHARING OF
EDUCATIONAL RECORDS.**

(2) "Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

(A) a state or local juvenile justice agency as defined by Section 58.101;

(B) health and human services agencies, as defined by Section 521.0001 ~~[531.001]~~, Government Code, and the Health and Human Services Commission;

(C) the Department of Family and Protective Services;

(D) the Department of Public Safety;

(E) the Texas Education Agency;

(F) an independent school district;

(G) a juvenile justice alternative education program;

(H) a charter school;

(I) a local mental health or mental retardation authority;

(J) a court with jurisdiction over juveniles;

(K) a district attorney's office;

(L) a county attorney's office; and

(M) a children's advocacy center established under Section 264.402.

**Family Code Sec. 261.401. AGENCY
INVESTIGATION.**

(b) Except as provided by Section 261.404 of this code and former Section 531.02013(1)(D), Government Code, a state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

**SUBCHAPTER D. COORDINATION OF
MULTIAGENCY SERVICES**

**Government Code Sec. 522.0151.
DEFINITION.**

In this subchapter, "least restrictive setting" means a service setting for an individual that, in comparison to other available service settings:

(1) is most able to meet the individual's identified needs;

(2) prioritizes a home and community-based care setting; and

(3) engages the strengths of the family. (Gov. Code, Sec. 531.055(f).)

**Government Code Sec. 552.0152.
APPLICABILITY OF SUBCHAPTER TO
CERTAIN STATE ENTITIES.**

This subchapter applies to the following state entities:

- (1) the commission;
- (2) the Department of Family and Protective Services;
- (3) the Department of State Health Services;
- (4) the Texas Education Agency;
- (5) the Texas Correctional Office on Offenders with Medical or Mental Impairments;
- (6) the Texas Department of Criminal Justice;
- (7) the Texas Department of Housing and Community Affairs;
- (8) the Texas Workforce Commission; and
- (9) the Texas Juvenile Justice Department. (Gov. Code, Sec. 531.055(a) (part).)

**Government Code Sec. 522.0153.
MEMORANDUM OF UNDERSTANDING
REQUIRED.**

The state entities to which this subchapter applies shall enter into a joint memorandum of understanding to promote a system of local-level interagency staffing groups for the identification and coordination of services for individuals needing multiagency services that:

- (1) are to be provided in the least restrictive setting appropriate; and
- (2) use residential, institutional, or congregate care settings only as a last resort. (Gov. Code, Sec. 531.055(a) (part).)

**Government Code Sec. 522.0154.
DEVELOPMENT AND
IMPLEMENTATION OF MEMORANDUM
OF UNDERSTANDING.**

- (a) The division within the commission that coordinates the policy for and delivery of mental health services shall oversee the development and implementation of the memorandum of understanding required by this subchapter.
- (b) The state entities that participate in developing the memorandum of understanding shall consult with and solicit input from advocacy and consumer groups. (Gov. Code, Secs. 531.055(a) (part), (c).)

**Government Code Sec. 522.0155.
CONTENTS OF MEMORANDUM OF
UNDERSTANDING.**

The memorandum of understanding required by this subchapter must:

- (1) clarify the statutory responsibilities of each state entity to which this subchapter applies in relation to individuals needing multiagency services, including subcategories for different services such as:

- (A) family preservation and strengthening;
- (B) physical and behavioral health care;
- (C) prevention and early intervention services, including services designed to prevent:

- (i) child abuse;
- (ii) neglect; or
- (iii) delinquency, truancy, or school dropout;

- (D) diversion from juvenile or criminal justice involvement;

- (E) housing;

- (F) aging in place;

- (G) emergency shelter;

- (H) residential care;

- (I) after-care;

- (J) information and referral; and

- (K) investigation services;

- (2) include a functional definition of “individuals needing multiagency services”;

- (3) outline membership, officers, and necessary standing committees of local-level interagency staffing groups;

- (4) define procedures aimed at eliminating duplication of services relating to assessment and diagnosis, treatment, residential placement and care, and case management of individuals needing multiagency services;

- (5) define procedures for addressing disputes between the state entities that relate to the entities’ areas of service responsibilities;

- (6) provide that each local-level interagency staffing group includes:

- (A) a local representative of each state entity;
- (B) representatives of local private sector agencies; and

- (C) family members or caregivers of individuals needing multiagency services or other current or previous consumers of multiagency services acting as general consumer advocates;

- (7) provide that the local representative of each state entity has authority to contribute entity

resources to solving problems identified by the local-level interagency staffing group;

(8) provide that if an individual's needs exceed the resources of a state entity, the entity may, with the consent of the individual's legal guardian, if applicable, submit a referral on behalf of the individual to the local-level interagency staffing group for consideration;

(9) provide that a local-level interagency staffing group may be called together by a representative of any member state entity;

(10) provide that a state entity representative may be excused from attending a meeting if the staffing group determines that the age or needs of the individual to be considered are clearly not within the entity's service responsibilities, provided that each entity representative is encouraged to attend all meetings to contribute to the collective ability of the staffing group to solve an individual's need for multiagency services;

(11) define the relationship between state-level interagency staffing groups and local-level interagency staffing groups in a manner that defines, supports, and maintains local autonomy;

(12) provide that records used or developed by a local-level interagency staffing group or the group's members that relate to a particular individual are confidential and may not be released to any other person or agency except as provided by this subchapter or other law; and

(13) provide a procedure that permits the state entities to share confidential information while preserving the confidential nature of the information. (Gov. Code, Sec. 531.055(b).)

**Government Code Sec. 522.0156.
ADOPTION OF MEMORANDUM OF
UNDERSTANDING; REVISIONS.**

Each state entity to which this subchapter applies shall adopt the memorandum of understanding required by this subchapter and all revisions to the memorandum. The entities shall develop revisions as necessary to reflect major reorganizations or statutory changes affecting the entities. (Gov. Code, Sec. 531.055(d).)

**Government Code Sec. 522.0157. STATE-
LEVEL INTERAGENCY STAFFING
GROUP DUTIES; BIENNIAL REPORT.**

The state entities to which this subchapter applies shall ensure that a state-level interagency staffing group provides:

(1) information and guidance to local-level interagency staffing groups regarding:

(A) the availability of programs and resources in the community; and

(B) best practices for addressing the needs of individuals with complex needs in the least restrictive setting appropriate; and

(2) a biennial report to the administrative head of each entity, the legislature, and the governor that includes:

(A) the number of individuals served through the local-level interagency staffing groups and the outcomes of the services provided;

(B) a description of any identified barriers to the state's ability to provide effective services to individuals needing multiagency services; and

(C) any other information relevant to improving the delivery of services to individuals needing multiagency services. (Gov. Code, Sec. 531.055(e).)

Commentary by: Kaci Singer

Source: HB 4611

Effective Date: April 1, 2025

Applicability: Not applicable because these are non-substantive changes

Summary of Changes: These changes are part of an ongoing non-substantive revision of statutes. They are from a lengthy bill that revises statutes applicable to the Health and Human Services Commission. that are now in new section numbers are noted in the above portions of the bill. Government Code Sec. 531.055, which concerns the coordination of care between HHSC, TJJD, and juvenile probation departments, including a memorandum of understanding, has been subdivided into multiple new sections. The new sections include a reference to the portions of Section 531.055 that are in each section. Other changes were made to reflect changes to other statute numbers. Because some of those changes are in statutes that apply to juvenile justice, they have been included in this newsletter so as to provide a full overview of changes to statutes that juvenile justice practitioners use, particularly if changes to

documents are necessary as a result of these changes.

**Topic: Alcohol and Substance Misuse
Awareness Programs**

**Alcoholic Beverage Code Sec. 106.115.
ALCOHOL AWARENESS PROGRAM.**

(a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to successfully complete one of the following programs:

(1) an alcohol awareness program under this section that is regulated under Chapter 171, Government Code; or

(2) a substance misuse [drug] education program under Section 521.374(a)(1), Transportation Code, that is regulated under Chapter 171, Government Code; ~~or~~

~~[(3) a drug and alcohol driving awareness program under Section 1001.103, Education Code].~~

(a-1) On conviction of a minor of an offense under Section 49.02, Penal Code, or Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to successfully complete an alcohol awareness program or [;] a substance misuse [drug] education program ~~or~~ ~~a drug and alcohol driving awareness program described by Subsection (a)]~~. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to successfully complete an alcohol awareness program or [;] a substance misuse [drug] education program ~~or~~ ~~a drug and alcohol driving awareness program described by Subsection (a)]~~.

**Code of Criminal Procedure Art. 45.051.
SUSPENSION OF SENTENCE AND
DEFERRAL OF FINAL DISPOSITION.**

(b) During the deferral period, the judge may require the defendant to:

(1) post a bond in the amount of the fine assessed as punishment for the offense to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed as punishment for the offense;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) successfully complete an alcohol awareness or substance misuse [drug abuse] treatment or education program, such as:

(A) a substance misuse [drug] education program that is designed to educate persons on the dangers of substance misuse [drug abuse] in accordance with Section 521.374(a)(1), Transportation Code, and that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, Government Code; or

(B) 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;

(7) pay as reimbursement fees the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(g) If a judge requires a defendant under Subsection (b) to successfully complete an alcohol awareness program or substance misuse [drug] education program as described by Subdivision (6) of that subsection, unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay a reimbursement fee for the cost of the program. The judge may allow the defendant to pay the fee in installments during the deferral period.

Family Code Sec. 53.03(h-1). 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 a substance misuse [drug] education program that is designed to educate persons on the dangers of substance misuse [drug-abuse] in accordance with Section 521.374(a)(1), Transportation Code, and that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, Government Code.

Family Code Sec. 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 a substance misuse [drug]

education program that is designed to educate persons on the dangers of substance misuse [drug abuse] in accordance with Section 521.374(a)(1), Transportation Code, and 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 a substance misuse [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 the program. The court shall allow the child's parent or guardian to pay the cost of the program in installments.

Commentary by: Kaci Singer

Source: HB 5183

Effective Date: June 18, 2023

Applicability: Not applicable because these are non-substantive changes

Summary of Changes: These are non-substantive changes that change the language regarding drug education programs to substance misuse education programs.

Penal Code Offenses

Topic: Criminal Responsibility for Conduct of Another

Penal Code Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER.

(a) A person is criminally responsible for an offense committed by the conduct of another if:

- (1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;
- (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or
- (3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. In this subsection, "conspiracy" means an agreement between two or more persons to commit a felony.

Commentary by: Kaci Singer

Source: HB 2961

Effective Date: September 1, 2023

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

Summary of Changes: This change puts a definition of conspiracy in statute. The definition is the common meaning of the term conspiracy, so it is not a substantive change.

Topic: Preparatory Offenses

Penal Code Sec. 15.032. CHILD GROOMING.

(a) A person commits an offense if, with the intent that an offense under Chapter 43 or an offense involving sexual activity, the occurrence of which would subject the actor to criminal liability under Chapter 20A, 21, or 22, be committed, the person knowingly persuades, induces, entices, or coerces, or attempts to persuade, induce, entice, or coerce, a child younger than 18 years of age to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would:

- (1) constitute an offense under Chapter 43 or an offense involving sexual activity the occurrence of which would subject the actor to criminal liability under Chapter 20A, 21, or 22; or
- (2) make the child a party to the commission of an offense described by Subdivision (1).

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under:

- (1) Chapter 20A, if the offense involved conduct described by Section 20A.02(a)(7) or (8);
- (2) Section 21.02;
- (3) Section 21.11;
- (4) Section 22.011, if the victim of the offense was a child under 18 years of age; or
- (5) Section 22.021, if the victim of the offense was a child under 18 years of age.

(c) It is an affirmative defense to prosecution under this section that the actor is under the age of 18 and:

- (1) the actor engaged in conduct described by Subsection (a) with respect to another child under the age of 18:

(A) who is not more than three years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or

(B) who was the spouse of the actor at the time of the offense; and

- (2) the conduct occurred only between the actor and the other child described by Subdivision (1).

(d) 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 but not both sections.

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This is part of the trafficking bill that is passed every session. This new statute creates the new offense of child grooming, which is committed if, with the intent that an offense under Chapter 43, Penal Code, or an offense involving sexual activity that would result in criminal liability under Chapter 20A, 21, or 22, Penal Code, be committed, a person knowingly persuades, induces, entices, or coerces, a child younger than 18 years of age to engage in conduct that, under circumstances surrounding the actor's conduct, as the actor believes them to be, would constitute an offense under those provisions or that would make a child a party to the commission of such an offense.

An offense under this new statute is a third degree felony unless the actor has previously been convicted of certain offenses, in which case it is a second degree felony.

With regard to children, it is an affirmative defense if the actor is younger than 18 and engaged in the conduct with another child under 18 who is either the spouse of the actor or is no more than three years older or younger than the actor and had a dating relationship with the actor at the time of the offense, as long as the conduct occurred only between the actor and the other child.

Topic: Criminal Homicide

Penal Code Sec. 19.03. CAPITAL MURDER.

(d) For purposes of Subsection (a)(1), the actor is presumed to have known the person murdered was a peace officer or fireman if the person was wearing a distinctive uniform or badge indicating the person's employment as a peace officer or fireman.

Commentary by: Kaci Singer

Source: SB 386

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This bill is known as the Richard Houston II Act. In December 2021, Officer Richard Houston, with the Mesquite Police Department, was shot and killed while responding to a disturbance. During the trial, the defense claimed the defendant did not know that Officer Houston was a police officer, despite the fact that he was in uniform and his vehicle lights were on. The defendant was convicted. However, because of the defense argument, this law was created to explicitly state in statute that if a person is wearing a distinctive uniform or badge, there is a presumption that the defendant knew the person was a peace officer or fireman.

Topic: Trafficking

Penal Code Sec. 20A.01. DEFINITIONS.

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

Penal Code Sec. 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 or disabled individual with the intent that the trafficked child or disabled individual 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 or disabled individual and by any means causes the trafficked child or disabled individual to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(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 or disabled individual trafficked in the manner described in Subdivision (7).

(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 or whether the actor knows the victim is disabled at the time of the offense;

(2) the commission of the offense results in serious bodily injury to or the death of the person who is trafficked;

(3) the commission of the offense results in the death of an unborn child of the person who is trafficked; or

(4) the actor:

(A) used or exhibited a deadly weapon during the commission of the offense;

(B) intentionally, knowingly, or recklessly impeded the normal breathing or circulation of the blood of the trafficked person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth; or

(C) recruited, enticed, or obtained the trafficked person [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.

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: These changes are from the trafficking bill that is passed every session. Individuals with disabilities have been added to the trafficking offenses that are applicable to children. Additionally, it is now a first degree felony for the actor in a trafficking offense to use or exhibit a deadly weapon or to intentionally, knowingly, or recklessly impede the normal breathing or circulation of the blood of the trafficked person by apply pressure to the person's throat or neck or by blocking the person's nose or mouth.

Topic: Sexual Offenses

Penal Code Sec. 21.08. INDECENT EXPOSURE.

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

(1) a Class A misdemeanor if it is shown on the trial of the offense that the defendant has been previously convicted one time of an offense under this section; and

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

Commentary by: Kaci Singer

Source: HB 1730

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This creates higher offense levels for repeatedly engaging in the offense of indecent exposure. A second conviction is a Class A misdemeanor. Third and subsequent convictions are state jail felonies. Juvenile adjudications are not a conviction, so indecent exposure for a juvenile is always a class B misdemeanor and juvenile adjudications cannot be used to enhance under this provision.

Penal Code Sec. 21.165. UNLAWFUL PRODUCTION OR DISTRIBUTION OF CERTAIN SEXUALLY EXPLICIT VIDEOS.

(a) In this section:

(1) “Deep fake video” means a video, created with the intent to deceive, that appears to depict a real person performing an action that did not occur in reality.

(2) “Intimate parts” and “sexual conduct” have the meanings assigned by Section 21.16.

(b) A person commits an offense if, without the effective consent of the person appearing to be depicted, the person knowingly produces or distributes by electronic means a deep fake video that appears to depict the person with the person’s intimate parts exposed or engaged in sexual conduct.

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

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

Commentary by: Kaci Singer

Source: SB 1361

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This new statute creates a class A misdemeanor if a person, without consent of the person appearing to be depicted, produces or distributes by electronic

means a deep fake video that appears to depict the person engaging in sexual conduct or with the person’s intimate parts exposed. A deep fake video is one that appears to depict a real person performing an action that did not occur in reality.

Penal Code Sec. 21.17. VOYEURISM.

(a) A person commits an offense if the person, with the intent to arouse or gratify the sexual desire of the actor, observes, including remotely through the use of electronic means, another person without the other person’s consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy.

Commentary by: Kaci Singer

Source: HB 2306

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This change adds observing a person remotely through electronic means to the voyeurism statute in order to match the law to modern technology.

Topic: Assaultive Offenses

Penal Code Sec. 22.01. ASSAULT.

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

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

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

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense that was committed:

(i) [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; and

(ii) under:

(a) this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11;

(b) Section 25.07, if the applicable violation was based on the commission of family violence as described by Subsection (a)(1) of that section; or

(c) Section 25.072, if any of the applicable violations were based on the commission of family violence as described by Section 25.07(a)(1); 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) a person the actor knows is pregnant at the time of the offense.

(b-3) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed 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;

(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense that was committed:

(A) [under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11] 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; and

(B) under:

(i) this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11;

(ii) Section 25.07, if the applicable violation was based on the commission of family violence as described by Subsection (a)(1) of that section; or

(iii) Section 25.072, if any of the applicable violations were based on the commission of family violence as described by Section 25.07(a)(1); and

(3) 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.

Commentary by: Kaci Singer

Source: HB 1589

Effective Date: September 1, 2023

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

Summary of Changes: This change in law allows for enhancement of family violence cases if the defendant has a prior conviction of violating certain bond conditions or a protective order.

Penal Code Sec. 22.012. INDECENT ASSAULT.

(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:

(A) the defendant has been previously convicted of an offense under this section, other than an offense punishable under Paragraph (B); or

(B) the defendant is a health care services provider or a mental health services provider and the act is:

(i) committed during the course of providing a treatment or service to the victim; and

(ii) beyond the scope of generally accepted practices for the treatment or service; or

(2) a felony of the third degree if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section that is punishable under Subdivision (1)(B).

(d) In this section, “health care services provider” and “mental health services provider” have the meanings assigned by Section 22.011.

Commentary by: Kaci Singer

Source: HB 55

Effective Date: September 1, 2023

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

Summary of Changes: This change in law allows for enhancement of indecent assault to a state jail felony if the defendant has a prior conviction or if the defendant is a health care or mental health services provider and committed the offense during the course of providing a treatment or service to the victim. It is a third degree felony if the person has a prior conviction as a health care or mental health services provider.

Penal Code Sec. 22.02. AGGRAVATED ASSAULT.

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

(1) the actor uses a deadly weapon during the commission of the assault and causes:

(A) serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) a traumatic brain or spine injury to another that results in a persistent vegetative state or irreversible paralysis;

(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;

(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.

Commentary by: Kaci Singer

Source: HB 28

Effective Date: September 1, 2023

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

Summary of Changes: This change in law is known as the Todd-Hogland Act. According to news reports, in 2010, Brandi Todd was at a park in Erath County with her young children when a stranger approached her from behind and stabbed her in the spine as she sat on a bench. She was paralyzed. In 2017, Jamie Hogland, then a student at Tarleton State in Erath County, was paralyzed when a stranger shot her in the face after mistaking her apartment for a drug dealer’s apartment. The offenses were second degree felonies, so the attacker’s punishments were limited to a maximum of 20 years. Had the attackers been family members of the victims, the offenses would have been first degree felonies. This was labeled a loophole in the law. This change provides that if the actor uses a deadly weapon and causes a traumatic brain or spine injury to another that results in a persistent vegetative state or irreversible paralysis, the offense is a first degree felony.

Penal Code Sec. 22.02. 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;

(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; or

(4) the actor commits the assault as part of a mass shooting.

Penal Code Sec. 1.07. DEFINITIONS.

(30-a) "Mass shooting" means a person's discharge of a firearm to cause serious bodily injury or death, or to attempt to cause serious bodily injury or death, to four or more persons:

(A) during the same criminal transaction; or

(B) during different criminal transactions but pursuant to the same scheme or course of conduct.

Penal Code Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF THE SAME CRIMINAL EPISODE.

(a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which the accused ~~[he]~~ has been found guilty shall be pronounced.

Except as provided by Subsections [Subsection] (b) and (c), the sentences shall run concurrently.

(c) If in a single criminal action the accused is found guilty of more than one offense under Section 22.02 that arises out of the same criminal episode, the sentences run consecutively if each sentence is for a conviction of an assault punishable as a felony of the first degree under Section 22.02(b)(4).

Penal Code Sec. 3.04. SEVERANCE.

(c) The right to severance under this section does not apply to a prosecution for offenses described by Section 3.03(b) or (c) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order other relief as justice requires.

Commentary by: Kaci Singer

Source: HB 165

Effective Date: September 1, 2023

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

Summary of Changes: These changes are designed to allow stacking of sentences for aggravated assault in a mass shooting.

Penal Code Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL.

(a) In this section:

(1) "Abandon" [,"abandon"] means to leave [a child] in any place without providing reasonable and necessary care a [for the] child, elderly individual, or disabled individual under circumstances under which no reasonable, similarly situated person [adult] would leave a child or individual of that age and ability.

(2) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(b) A person commits an offense if the person, having custody, care, or control of a child, elderly individual, or disabled individual ~~[younger than 15 years]~~, ~~[he]~~ intentionally abandons the child or individual in any place under circumstances that expose the child or individual to an unreasonable risk of harm.

(c) A person commits an offense if the person ~~[he]~~ intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child, elderly individual, or disabled individual ~~[younger than 15 years]~~ in imminent danger of death, bodily injury, or physical or mental impairment.

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child, elderly individual, or disabled individual 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, elderly individual, or disabled individual;

(2) the person's conduct related to the proximity or accessibility of the controlled substance methamphetamine to the child, elderly individual, or disabled individual and an analysis of a specimen of the child's or individual's blood, urine, or other bodily substance indicates the presence of methamphetamine in the body of the child or individual ~~[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.

(d) Except as provided by Subsection (e), an offense under Subsection (b) is:

(1) a state jail felony if the actor abandoned the child, elderly individual, or disabled individual with intent to return for the child or individual; or

(2) a felony of the third degree if the actor abandoned the child, elderly individual, or disabled individual without intent to return for the child or individual.

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child, elderly individual, or disabled individual under circumstances that a reasonable person would believe would place the child or individual in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution under Subsection (c) that the act or omission enables the child, elderly individual, or disabled individual to practice for or participate in an organized athletic event and that appropriate safety equipment and procedures are employed in the event.

(h) It is an exception to the application of this section for abandoning or endangering a child that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

...

(4) five years from the date of the commission of the offense:

(A) theft or robbery;

(B) except as provided by Subdivision (5), kidnapping or burglary;

(C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D) abandoning or endangering a child, elderly individual, or disabled individual; or

(E) insurance fraud;

Commentary by: Kaci Singer

Source: HB 2187

Effective Date: September 1, 2023

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

Summary of Changes: The offense of abandoning or endangering a child was expanded to include elderly individuals and individuals with disabilities. The statute of limitations was amended to include this change. The statute of limitations is 5 years. References to Section 22.041 in other statutes are updated to match the new heading. The changes are nonsubstantive and are not included in this newsletter.

Topic: Offenses Against the Family

Penal Code Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY.

(a) A person commits an offense if the person takes or retains a child younger than 18 years of age:

(1) when the person knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody;

(2) when the person has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child; or

(3) outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person.

(b) A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, the noncustodial parent knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

(c) It is a defense to prosecution under Subsection (a)(2) that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

(c-1) It is an affirmative defense to prosecution under Subsection (a)(3) that:

(1) the taking or retention of the child was pursuant to a valid order providing for possession of or access to the child; or

(2) notwithstanding any violation of a valid order providing for possession of or access to the child, the actor's retention of the child was due only to circumstances beyond the actor's control and the actor promptly provided notice or made reasonable attempts to provide notice

of those circumstances to the other person entitled to possession of or access to the child.

(c-2) Subsection (a)(3) does not apply if, at the time of the offense, the person taking or retaining the child:

(1) was entitled to possession of or access to the child; and

(2) was fleeing the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or the person.

(d) An offense under this section is a state jail felony.

(e) If conduct that constitutes an offense under Subsection (a)(3) also constitutes an offense under Section 20.03, the actor may be prosecuted only under Section 20.03.

Code of Criminal Procedure. Art. 12.01. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) sexual assault, if:

(i) during the investigation of the offense biological matter is collected and the matter:

(a) has not yet been subjected to forensic DNA testing; or

(b) has been subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii) probable cause exists to believe that the defendant has committed the same or a similar sex offense against five or more victims;

(D) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code;

(E) indecency with a child under Section 21.11, Penal Code;

(F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;
(H) continuous trafficking of persons under Section 20A.03, Penal Code; ~~or~~
(I) compelling prostitution under Section 43.05(a)(2), Penal Code; or
(J) interference with child custody under Section 25.03(a)(3), Penal Code;

...

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) kidnapping under Section 20.03, Penal Code, or aggravated kidnapping under Section 20.04 ~~[20.04(a)(4)]~~, Penal Code~~[-if the defendant committed the offense with the intent to violate or abuse the victim sexually];~~
or

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

Commentary by: Kaci Singer

Source: HB 3025

Effective Date: September 1, 2023

Applicability: Does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

Summary of Changes: This bill is known as Bianca's law. When she was 20 months old, Bianca's father took her to Mexico in violation of a court-ordered child custody arrangement. He was charged with interference with child custody and a court issued a warrant for his arrest. Sixteen years later, a private investigator found him in Mexico. While Mexican authorities took him into custody briefly, they did not extradite him to Texas because Mexico does not deem interference with child custody.

This bill changes the law to require prosecution for kidnapping rather than interference with child custody when the person flees the United States with the child and the elements of the offense of kidnapping are met. It also removes the

statute of limitations for interference with child custody if the child is removed from the United States and expands the statute of limitations that is 20 years past a victim's 18th birthday to include all kidnapping and aggravated kidnapping.

**Topic: Arson, Criminal Mischief, and
Other Property Damage or Destruction**

**Penal Code Sec. 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;

(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; or

(D) the amount of pecuniary loss is less than \$150,000 and the actor:

(i) causes wholly or partly impairment or interruption of property used for public power supply; 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 power supply;

(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.

Commentary by: Kaci Singer

Source: HB 1833

Effective Date: September 1, 2023

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

Summary of Changes: This change creates a third degree felony offense of criminal mischief if the actor causes the impairment or interruption of the public power supply or property used for public power supply if the pecuniary loss is \$150,000 or less.

**Penal Code Sec. 28.09. DAMAGING
CRITICAL INFRASTRUCTURE FACILITY.**

(a) In this section:

(1) "Critical infrastructure facility" means an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility.

(2) "Cyber attack" means an attempt to damage, disrupt, or gain unauthorized access to a computer, computer network, or computer system.

(3) "Drone" has the meaning assigned by Article 2.33, Code of Criminal Procedure, as added by

Chapter 1011 (H.B. 1758), Acts of the 87th Legislature, Regular Session, 2021.

(4) “Explosive weapon” has the meaning assigned by Section 28.03.

(5) “Extended power outage” means a power outage:

(A) lasting for two hours or more; or

(B) affecting 1,000 or more meters used to measure electric energy consumption by retail customers.

(6) “Firearm” has the meaning assigned by Section 46.01.

(b) A person commits an offense if, without the effective consent of the owner or operator of a critical infrastructure facility, the person:

(1) intentionally or knowingly damages, destroys, vandalizes, or impairs the function of any critical infrastructure facility; and

(2) as a result of the conduct described by Subdivision (1), causes an extended power outage.

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

(1) the amount of pecuniary damage to the critical infrastructure facility is \$100,000 or more; or

(2) the actor uses a firearm, drone, cyber attack, or explosive weapon in the commission of the offense.

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

Penal Code Sec. 19.04. MANSLAUGHTER.

(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 it is shown on the trial of the offense that the defendant committed an offense under Section 28.09 and that conduct caused the death of an individual.

Commentary by: Kaci Singer

Source: SB 947

Effective Date: September 1, 2023

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

Summary of Changes: This bill creates a new offense for intentional attacks on critical infrastructure facilities. Such offense is a second degree felony except it is a first degree felony if the pecuniary damage is \$100,000 or more or if

the actor uses a firearm, drone, cyberattack, or explosive weapon. Additionally, the offense of manslaughter becomes a first degree felony if an attack under the new law causes the death of an individual.

Topic: Theft

Penal Code Sec. 31.04. THEFT OF SERVICE.

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

(1) in writing;

(2) sent by:

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

(B) commercial delivery service; and

(3) sent to the actor using the actor’s mailing address shown on:

(A) the rental agreement or service agreement;

(B) records of the person whose service was secured; or

(C) if the actor secured performance of service by issuing or passing a check or similar sight order for the payment of money, using the actor’s address shown on:

(i) the check or order; or

(ii) the records of the bank or other drawee on which the check or order is drawn.

Commentary by: Kaci Singer

Source: HB 2897

Effective Date: September 1, 2023

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

Summary of Changes: This change is designed to make it easier to file a criminal complaint for theft of services related to a hot check by reconciling notice requirements for establishing the offense.

Topic: Catalytic Converters

Penal Code Sec. 28.03. CRIMINAL MISCHIEF.

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

...

(4) a state jail felony if the amount of pecuniary loss is:

...

(E) less than \$30,000, if the property is a motor vehicle that is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter from the motor vehicle;

Penal Code Sec. 31.03. THEFT.

(c) For purposes of Subsection (b):

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, the transaction for [that] which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

...

(10) an actor in possession of property consisting of one or more catalytic converters that have been removed from a motor vehicle is presumed to have unlawfully appropriated the property unless the actor:

(A) is the owner, as defined by Section 601.002, Transportation Code, of each vehicle from which the catalytic converters were removed; or

(B) possesses the catalytic converters in the ordinary course of the actor's business, including in the ordinary course of business of an entity described by Section 1956.123(1), Occupations Code.

(e) Except as provided by Subsections [Subsection] (f) and (f-1), an offense under this section is:

(4) a state jail felony if:

...

(G) the cost of replacing the property stolen is less than \$30,000 and the property stolen is a catalytic converter;

...

(7) a felony of the first degree if the value of the property stolen is \$300,000 or more.

(f-1) An offense described for purposes of punishment by Subsections (e)(4)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the property stolen is a catalytic converter; and

(2) the actor possessed a firearm during the commission of the offense.

(h) In this section:

...

(7) "Catalytic converter" means a catalytic converter and any material removed from the catalytic converter.

(8) "Firearm" has the meaning assigned by Section 46.01.

Penal Code Sec. 31.21. UNAUTHORIZED POSSESSION OF CATALYTIC CONVERTER.

(a) A person commits an offense if the person:

(1) intentionally or knowingly possesses a catalytic converter that has been removed from a motor vehicle; and

(2) is not a person who is authorized under Subsection (b) to possess the catalytic converter.

(b) A person is presumed to be authorized to possess a catalytic converter that has been removed from a motor vehicle if the person:

(1) is the owner, as defined by Section 601.002, Transportation Code, of the vehicle from which the catalytic converter was removed; or

(2) possesses the catalytic converter in the ordinary course of the person's business, including in the ordinary course of business of an entity described by Section 1956.123(1), Occupations Code.

(c) The presumption established under Subsection (b) does not apply to a person described by Subsection (b)(2) who knows that the catalytic converter was unlawfully removed from a motor vehicle or otherwise unlawfully obtained.

(d) Except as provided by Subsection (e), an offense under this section is a state jail felony.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has been previously convicted of an offense under this section;

(2) in connection with the offense, engaged in conduct constituting conspiracy under Section 15.02 to commit an offense under Section 28.03 or 31.03 with respect to a catalytic converter; or
(3) possessed a firearm during the commission of the offense.

(f) 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.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

...

(19) an offense under Section 28.03 that is punishable under Subsection (b)(4)(E) of that section;

(20) an offense under Section 31.21 that is punishable under Subsection (d) of that section;

or

(21) any offense classified as a felony under the Tax Code.

Commentary by: Kaci Singer

Source: SB 224

Effective Date: September 1, 2023

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

Summary of Changes: This bill creates new offenses designed to address the rise in catalytic converter thefts. It enhances the punishment if a person possessed a firearm in the commission of the offense of theft of a catalytic converter.

Topic: Fraud

Penal Code Sec. 32.21. FORGERY.

(f-1) For purposes of Subsection (e-1), it is presumed that a person in possession of money that is forged within the meaning of Subsection (a)(1)(A) intended to obtain a property or service of a value equal to the total purported value of the forged money.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Commentary by: Kaci Singer

Source: HB 1910

Effective Date: September 1, 2023

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

Summary of Changes: This change is designed to hold forgers responsible for the purported value of the forged items they possess, not just the value of the goods they obtain with the forged currency.

Topic: Obstructing Governmental Operation

Penal Code Sec. 38.02. FAILURE TO IDENTIFY.

(a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or
- (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(b-1) A person commits an offense if the person:

(1) is an operator of a motor vehicle, as defined by Section 32.34, who is lawfully detained by a peace officer for an alleged violation of a law;

(2) fails to provide or display the person's driver's license on the officer's request for the license; and

(3) intentionally refuses to give the person's name, driver's license number, residence address, or date of birth to the peace officer on the officer's request for that information.

(b-2) For purposes of Subsection (b-1)(3), giving a peace officer a residence address that is different from the address associated with the person's driver's license does not constitute a refusal to give the person's residence address in violation of that provision if the address given to the officer is the person's actual residence address.

(c) Except as provided by Subsections [Subsections] (d) and (d-1) [and (e)], an offense under this section is:

- (1) a Class C misdemeanor if the offense is committed under Subsection (a) or (b-1); or
- (2) a Class B misdemeanor if the offense is committed under Subsection (b).

(d-1) An offense under Subsection (b-1) is a Class B misdemeanor if it is shown on the trial of the offense that the actor gave a false or fictitious name to the peace officer during the commission of the offense.

(f) Subject to Subsection (e), if conduct that constitutes an offense under Subsection (b-1) also constitutes an offense under any other law, the actor may be prosecuted under that subsection, the other law, or both.

Commentary by: Kaci Singer

Source: SB 1551

Effective Date: September 1, 2023

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

Summary of Changes: These changes are designed to reduce the incidents of drivers providing someone else's name when being taken into custody. It is now an offense for a driver who is lawfully detained to fail to provide a driver's license and to refuse to provide the driver's name, license number, address, or date of birth on request of the peace officer. It is not an offense if the driver provides a different address than the one on the driver's license as long as the provided address is actually the driver's address.

Penal Code Sec. 38.112. TAMPERING WITH ELECTRONIC MONITORING DEVICE.

(a) A person who is required to submit to electronic monitoring of the person's location as part of an electronic monitoring program under Article 42.035, Code of Criminal Procedure, or as a condition of community supervision, parole, mandatory supervision, or release on bail commits an offense if the person knowingly removes or disables, or causes or conspires or cooperates with another person to remove or disable, a tracking device that the person is required to wear to enable the electronic monitoring of the person's location.

(b) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if the person is in the super-intensive supervision program described by Section 508.317(d), Government Code.

(c) This section does not apply to the removal or disabling of a tracking device by a health care provider, as defined by Section 161.201, Health and Safety Code, due to medical necessity.

**Code of Criminal Procedure Art. 42.08.
CUMULATIVE OR CONCURRENT
SENTENCE.**

(b-1)(1) A judge sentencing a defendant convicted of an offense under Section 38.112, Penal Code, committed while on parole or mandatory supervision may order the sentence for the offense to:

(A) run concurrently with the sentence for the offense for which the defendant was released on parole or to mandatory supervision; or

(B) if the defendant's parole or mandatory supervision has been revoked, commence immediately on completion of the sentence for the offense for which the defendant was released on parole or to mandatory supervision.

(2) A judge who orders a sentence to be imposed consecutively in the manner described by Subdivision (1)(B) shall, on pronouncing the sentence, order the defendant transferred to the custody of the Texas Department of Criminal Justice for purposes of serving the applicable sentences consecutively as described by that subdivision if the defendant has not been taken into custody by the department following the revocation of the defendant's parole or mandatory supervision.

Commentary by: Kaci Singer

Source: SB 1004

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: These new statutes create a state jail felony if a person required to submit to electronic monitoring as a condition of community supervision, parole, mandatory supervision, or release on bail knowingly removes or disables the tracking device. It is a third degree felony if the person is in the super-intensive supervision program described by Section 508.137.

Article 42.08, Code of Criminal Procedure, allows the judge to order the sentence to run concurrently with the sentence for the offense for which the defendant was released on parole or mandatory supervision or, if parole or mandatory sentence is revoked, to commence upon completion of the original sentence.

Given the adult-specific language of this bill (release on TJJD "parole" is statutorily referred to as "release under supervision") and the fact

that that the sentencing changes in Section 42.08 are applicable only to adults, it does not appear this statute applies to any juveniles, including those released under supervision by TJJD.

**Penal Code Sec. 38.115. OPERATION OF
UNMANNED AIRCRAFT OVER
CORRECTIONAL FACILITY OR
DETENTION FACILITY.**

(a) In this section:

(1) "Contraband" means any item not provided by or authorized by the operator of a correctional facility or detention facility.

(2) "Correctional facility" means:

(A) a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice;

(B) a municipal or county jail;

(C) a confinement facility operated by or under contract with the Federal Bureau of Prisons; or

(D) a secure correctional facility or secure detention facility, as defined by Section 51.02, Family Code.

(3) "Detention facility" means a facility operated by or under contract with United States Immigration and Customs Enforcement for the purpose of detaining aliens and placing them in removal proceedings.

(b) A person commits an offense if the person intentionally or knowingly:

(1) operates an unmanned aircraft over a correctional facility or detention facility and the unmanned aircraft is not higher than 400 feet above ground level;

(2) allows an unmanned aircraft to make contact with a correctional facility or detention facility, including any person or object on the premises of or within the facility; or

(3) allows an unmanned aircraft to come within a distance of a correctional facility or detention facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(c) This section does not apply to conduct described by Subsection (b) that is committed by:

(1) the federal government, this state, or a governmental entity;

(2) a person under contract with or otherwise acting under the direction or on behalf of the federal government, this state, or a governmental entity;

(3) a person who has the prior written consent of the owner or operator of the correctional facility or detention facility;

(4) a law enforcement agency; or

(5) a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency.

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

(1) a Class A misdemeanor if the actor has previously been convicted under this section; or

(2) a state jail felony if, during the commission of the offense, the actor used the unmanned aircraft to:

(A) provide contraband to a person in the custody of the correctional facility or detention facility; or

(B) otherwise introduce contraband into the correctional facility or detention facility.

Government Code Sec. 423.0045.

OFFENSE: OPERATION OF UNMANNED AIRCRAFT OVER ~~[CORRECTIONAL FACILITY, DETENTION FACILITY, OR] CRITICAL INFRASTRUCTURE FACILITY.~~

~~[(a) In this section:~~

~~(1) "Correctional facility" means:~~

~~(A) a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice;~~

~~(B) a municipal or county jail;~~

~~(C) a confinement facility operated by or under contract with the Federal Bureau of Prisons; or~~

~~(D) a secure correctional facility or secure detention facility, as defined by Section 51.02, Family Code.]~~

~~[(3) "Detention facility" means a facility operated by or under contract with United States Immigration and Customs Enforcement for the purpose of detaining aliens and placing them in removal proceedings.]~~

~~(b) A person commits an offense if the person intentionally or knowingly:~~

~~(1) operates an unmanned aircraft over a ~~[correctional facility, detention facility, or] critical infrastructure facility and the unmanned aircraft is not higher than 400 feet above ground level;~~~~

~~(2) allows an unmanned aircraft to make contact with a ~~[correctional facility, detention facility, or] critical infrastructure facility,~~~~

including any person or object on the premises of or within the facility; or

~~(3) allows an unmanned aircraft to come within a distance of a ~~[correctional facility, detention facility, or] critical infrastructure facility~~ that is close enough to interfere with the operations of or cause a disturbance to the facility.~~

~~(c) This section does not apply to:~~

~~[(1) conduct described by Subsection (b) that ~~[involves a correctional facility, detention facility, or critical infrastructure facility and] is committed by:~~~~

~~(1) ~~[(A)]~~ the federal government, the state, or a governmental entity;~~

~~(2) ~~[(B)]~~ a person under contract with or otherwise acting under the direction or on behalf of the federal government, the state, or a governmental entity;~~

~~(3) ~~[(C)]~~ a law enforcement agency;~~

~~(4) ~~[(D)]~~ a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency;~~

~~(5) ~~[(E)]~~~~

~~[(F)] an operator of an unmanned aircraft that is being used for a commercial purpose, if the operation is conducted in compliance with:~~

~~(A) ~~[(i)]~~ each applicable Federal Aviation Administration rule, restriction, or exemption; and~~

~~(B) ~~[(ii)]~~ all required Federal Aviation Administration authorizations;~~

~~(6) ~~[(G)]~~~~

~~[(2) conduct described by Subsection (b) that involves a critical infrastructure facility and is committed by:~~

~~[(A)] an owner or operator of the critical infrastructure facility;~~

~~(7) ~~[(B)]~~ a person under contract with or otherwise acting under the direction or on behalf of an owner or operator of the critical infrastructure facility;~~

~~(8) ~~[(C)]~~ a person who has the prior written consent of the owner or operator of the critical infrastructure facility; or~~

~~(9) ~~[(D)]~~ the owner or occupant of the property on which the critical infrastructure facility is located or a person who has the prior written consent of the owner or occupant of that property.~~

Commentary by: Kaci Singer

Source: HB 3075

Effective Date: September 1, 2023

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

Summary of Changes: According to the bill analysis, a law passed in 2017 created an offense for operating an unmanned aircraft over a correctional facility, with certain exceptions. The National Press Photographers Association, Texas Press Association, and a journalist filed a lawsuit in federal court alleging that the criminal penalties restricted the journalist's First Amendment right to newsgathering and speech and restricted the journalist from utilizing such aircraft for certain newsgathering activities. In March 2022, the U.S. District Court for the Western District of Texas ruled much of the statute unconstitutional. Concerned observers now note a lack of restrictions on unmanned aircraft flights above correctional facilities.

These changes seek to address security concerns by restricting the unauthorized operation of unmanned aircraft over these facilities. Additionally, officers will be able to investigate and determine the reason for the operation of the unmanned aircraft over a correctional facility. There is a criminal offense related to such operation.

Topic: Disorderly Conduct and Related Offenses

Code of Criminal Procedure Art. 59.01. DEFINITIONS.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

...

(xiv) ~~[a Class A misdemeanor or]~~ any offense ~~[felony]~~ under Section 545.420, Transportation Code ~~[, other than a Class A misdemeanor that is classified as a Class A misdemeanor based solely on conduct constituting a violation of Subsection (e)(2)(B) of that section]; or~~ (xv) any offense punishable under Section 42.03(d) or (e), Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph

(B)(vii), (ix), (x), (xi), ~~[(xii), (xiv), or (xv)]~~ of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), ~~[(xii), (xiv), or (xv)]~~ of this subdivision, or a crime of violence;

Penal Code Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law, but not both.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

...

(19) any offense punishable under Section 42.03(d) or (e);

(20) [(49)] any offense classified as a felony under the Tax Code; or

(21) any offense under Section 545.420, Transportation Code.

Commentary by: Kaci Singer

Source: HB 1442

Effective Date: September 1, 2023

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

Summary of Changes: According to the bill analysis, the creation of reckless driving exhibition in 2021 meant that police could no longer use deadly conduct charges to seize vehicles when street takeovers occurred. The stated issue was that reckless driving exhibition was not included in Engaging in Organized Criminal Activity so it could not be elevated into Chapter 59 using Chapter 71 as a legal basis for seizure.

This bill defines contraband under Chapter 59, Code of Criminal Procedure, to include vehicles used in the commission of certain offenses under Section 42.03. It also adds them and any offense under Section 545.420, Transportation Code to

Engaging in Organized Criminal Activity under Section 71.02.

Transportation Code Sec. 545.420.

RACING ON HIGHWAY;

IMPOUNDMENT OF A VEHICLE.

(i) ~~[This subsection applies only to a motor vehicle used in the commission of an offense under this section that results in an accident with property damage or personal injury.]~~ A peace officer shall require a ~~[the]~~ vehicle used in the commission of an offense under Subsection (a) or an offense punishable under Section 42.03(d) or (e), Penal Code, to be taken to the nearest licensed vehicle storage facility unless the vehicle is seized as evidence, in which case the vehicle may be taken to a storage facility as designated by the peace officer involved. Notwithstanding Article 18.23, Code of Criminal Procedure, the owner of a ~~[motor]~~ vehicle that is removed or stored under this subsection is liable for all removal and storage fees incurred and is not entitled to take possession of the vehicle until those fees are paid.

Commentary by: Kaci Singer

Source: HB 2899

Effective Date: June 2, 2023

Applicability: Applies on or after the effective date

Summary of Changes: Current law requires the impoundment of a vehicle used in street racing if the offense resulted in property damage or bodily injury. This change expands that authorization to require impoundment of any vehicle involved in street racing. It also extends that authorization to an offense under 42.03(d) or (e), Penal Code, Obstructing the Highway committed while engaging in a reckless driving exhibition.

Penal Code Sec. 42.07. HARASSMENT.

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

- (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;

(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; or

(9) makes obscene, intimidating, or threatening telephone calls or other electronic communications from a temporary or disposable telephone number provided by an Internet application or other technological means.

Commentary by: Kaci Singer

Source: HB 1427

Effective Date: September 1, 2023

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

Summary of Changes: The bill analysis indicates there is a "loophole" in the law that does not allow for a charge when a person initiates communication that is obscene, intimidating, or threatening if the communication is made through a "burner" phone. That has now been added.

Penal Code Sec. 42.072. STALKING.

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed

~~[specifically]~~ at a specific other ~~[another]~~ person, knowingly engages in conduct that:

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

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

(B) ~~that an offense will be committed against:~~

~~(i) [bodily injury or death for] a member of the other person's family or household; [or]~~

~~(ii) [for] an individual with whom the other person has a dating relationship; or~~

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

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship;

~~(A) to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship, or the other person's property;[,] or~~

~~(B) to feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended; and~~

(3) would cause a reasonable person under circumstances similar to the circumstances of the other person to:

(A) fear bodily injury or death for the person [himself or herself];

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

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

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

Code of Criminal Procedure Art. 38.46. EVIDENCE IN PROSECUTIONS FOR STALKING.

(a) In a prosecution for stalking, each party may offer testimony as to all relevant facts and circumstances that would aid the trier of fact in determining whether the actor's conduct would

cause a reasonable person in circumstances similar to the circumstances of the alleged victim to experience a fear described by Section 42.072(a)(3)(A), (B), or (C), Penal Code, including the facts and circumstances surrounding any existing or previous relationship between the actor and the alleged victim, a member of the alleged victim's family or household, or an individual with whom the alleged victim has a dating relationship.

Commentary by: Kaci Singer

Source: SB 1717

Effective Date: September 1, 2023

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

Summary of Changes: Prosecutors believe that the current stalking statute lacks clarity where the stalker is a current or former intimate partner with a history of domestic abuse, as many actions can indicate a direct threat intended to scare the victim. Prosecutors also believe the law is cumbersome and difficult to use, leaving many victims without meaningful protection. These changes are designed to expand the description of how a victim perceives the stalker's actions, to include feeling terrified or intimidated.

Current law allows each party in a prosecution for stalking to offer testimony that would help the trier of fact to determine if the accused's conduct would cause a reasonable person to experience a fear described by the Penal Code statute defining the offense of stalking. This changes it from a reasonable person to a reasonable person in circumstances similar to the circumstances of the alleged victim.

Penal Code Sec. 42.074. UNLAWFUL DISCLOSURE OF RESIDENCE ADDRESS OR TELEPHONE NUMBER.

(a) A person commits an offense if the person posts on a publicly accessible website the residence address or telephone number of an individual with the intent to cause harm or a threat of harm to the individual or a member of the individual's family or household.

(b) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense results in the bodily injury of:

(1) the individual whose residence address or telephone number was posted on a publicly accessible website; or

(2) a member of the individual's family or household.

(c) This section does not apply to a public servant who posted information described by Subsection (a) to a publicly accessible website in the performance of the public servant's duties as required by or in accordance with state or federal law.

(d) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.06(a-1), the actor may be prosecuted under either section but not both.

Commentary by: Kaci Singer

Source: HB 611

Effective Date: September 1, 2023

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

Summary of Changes: This new statute creates the offense of "doxing," which refers to posting someone's home address or telephone number with the intent to cause harm or a threat of harm to the person or a member of their family or household. It is a Class B misdemeanor. However, it is a Class A misdemeanor if the posting actually results in bodily injury to the individual or a member their family or household. The statute does not apply to public servants who post the information in the performance of their duties as required by or in accordance with state or federal law.

Penal Code Sec. 42.107. POSSESSION OF ANIMAL BY PERSON CONVICTED OF ANIMAL CRUELTY.

(a) A person commits an offense if the person:

(1) possesses or exercises control over an animal; and

(2) within the five-year period preceding the date of the instant offense, has been previously convicted of an offense under:

(A) Section 42.091, 42.092, or 42.10; or

(B) federal law or a penal law of another state containing elements that are substantially similar to the elements of an offense described by Paragraph (A).

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

misdemeanor if the defendant has been previously convicted of an offense under this section.

Commentary by: Kaci Singer

Source: HB 598

Effective Date: September 1, 2023

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

Summary of Changes: This statute creates the new offense of possession of an animal by a person who has been convicted of animal cruelty. It applies to a person convicted in the five-year period preceding the instant offense as long as the conviction was under Section 42.091, 42.092, or 42.10 or a federal law or penal law in another state that contains substantially similar elements. The offense is a Class C misdemeanor. However, if a person has a prior conviction under this new section, the offense is a Class B misdemeanor. Because juvenile adjudications are not convictions, they cannot be used under this statute.

Topic: Public Indecency

Penal Code Sec. 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 Sec. 43.021. SOLICITATION OF PROSTITUTION.

(b) An offense under Subsection (a) is a state jail felony, except that the offense is:

(1) a 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; or

(2) a felony of the second degree if the person to ~~[with]~~ whom the actor offers or agrees to pay the fee for the purpose of engaging ~~[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.

(b-1) The punishment prescribed for an offense under Subsection (a) 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 1527

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: Section 43.02(c-2) was transferred to Section 43.021 but not substantively changed. The elements of solicitation of prostitution with a child victim have been modified from agreeing to engage in sexual conduct to offering or agreeing to pay a fee for the purpose of engaging in sexual conduct.

Penal Code Sec. 43.03. PROMOTION OF PROSTITUTION.

(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution.

(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 the actor has been previously convicted of an offense under this section; or

(2) a felony of the first degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age ~~[engaging in prostitution]~~, regardless of whether the actor knows the age of the person at the time of the offense.

Commentary by: Kaci Singer

Source: SB 1653

Effective Date: September 1, 2023

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

Summary of Changes: Currently, the elements of the offense of promotion of prostitution involving a person younger than 18 require that the child be engaging in prostitution. This change removes the requirement that the 18 year old be engaged in prostitution. The stated purpose is to ensure all children are protected from those who solicit them for prostitution.

Penal Code Sec. 43.05. COMPELLING PROSTITUTION.

(a) A person commits an offense if the person knowingly:

(1) causes another by force, threat, coercion, or fraud to commit prostitution; ~~[or]~~

(2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense; or

(3) causes by any means a disabled individual, as defined by Section 22.021(b), to commit prostitution, regardless of whether the actor knows the individual is disabled at the time of the offense.

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This change is from the trafficking bill that is passed every session. Individuals with disabilities have been added to the offense of compelling prostitution.

Penal Code Sec. 43.25. SEXUAL PERFORMANCE BY A CHILD.

(f) It is an affirmative defense to a prosecution under this section that:

- (1) the defendant was the spouse of the child at the time of the offense;
- (2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or
- (3) the defendant is not more than two years older than the child.

Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.

(c) The affirmative defenses provided by Sections 43.25(f)(2) and (3) [Section 43.25(f)] also apply to a prosecution under this section.

(d) An offense under Subsection (a) is a felony of the third degree, except that the offense is:

- (1) a felony of the second degree if:
 - (A) it is shown on the trial of the offense that the person has been previously convicted one time of an offense under that subsection; or
 - (B) the person possesses visual material that contains 10 or more visual depictions of a child as described by Subsection (a)(1) but fewer than 50 such depictions; and

- (2) a felony of the first degree if:
 - (A) it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under that subsection; or
 - (B) the person possesses visual material that contains:

- (i) 50 or more visual depictions of a child as described by Subsection (a)(1); or
 - (ii) a videotape or film that visually depicts conduct constituting an offense under Section 22.011(a)(2).

(d-1) If it is shown on the trial of an offense under Subsection (a) that the person engaged in conduct that constituted an offense under Subsection (e) during the same criminal episode:

- (1) an offense described for purposes of punishment by Subsection (d)(1) is a felony of the first degree; or
- (2) the minimum term of confinement for an offense described for purposes of punishment by Subsection (d)(2) is increased to 15 years.

(d-2) The enhancement provided by Subsection (d-1) is unavailable if the person is also

prosecuted under Subsection (e) for conduct occurring during the same criminal episode.

(e) A person commits an offense if:

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

~~[(f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.]~~

Commentary by: Kaci Singer

Source: SB 1527

Effective Date: September 1, 2023

Applicability: Applies to offenses committed on or after the effective date. However, see the analysis below for SB 129.

Summary of Changes: Under current law, the affirmative defenses for sexual performance of a child are all available for possession of child pornography. With this change, there is no longer a defense to possession of child pornography if the defendant was the spouse of the child at the time.

There are now tiered offense levels for possession of child pornography based on the number of visual depictions. At least 10 but fewer than 50 is a second degree felony while 50 or more is a first degree felony. It is also a first degree felony to possess a videotape or film that visually depicts sexual assault of a child. There is no longer a statutory presumption that possession was with the intent to promote if there are 6 or more visual depictions.

There is an enhancement available if the person, in the same criminal episode, promotes or possesses the material with intent to promote it.

See the discussion below for SB 129. It appears that SB 129 is given effect and SB 1527 is not when it comes to the offense levels based on the number of visual depictions. The provisions in SB 1527 removing the affirmative defense, removing the presumption based on 6 or more visual depictions, and creating an increased penalty for possession of a videotape or film depicting the sexual assault of a child can be harmonized because they do not conflict. As such, they should be given effect.

Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.

(d) An offense under Subsection (a) is:

(1) a felony of the third degree if the person possesses visual material that contains fewer than 100 visual depictions of a child as described by Subsection (a)(1);

(2) ~~except that the offense is:~~

~~[(1)] a felony of the second degree if [it is shown on the trial of the offense that] the person possesses visual material that contains 100 or more visual depictions of a child as described by Subsection (a)(1) but fewer than 500 such depictions [has been previously convicted one time of an offense under that subsection];~~

(3) ~~and~~

~~[(2)] a felony of the first degree if [it is shown on the trial of the offense that] the person possesses visual material that contains 500 or more visual depictions of a child as described by Subsection (a)(1); or~~

(4) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that, at the time of the offense, the person was:

(A) an employee at a child-care facility or a residential child-care facility, as those terms are defined by Section 42.002, Human Resources Code;

(B) an employee at a residential treatment facility established under Section 221.056, Human Resources Code;

(C) an employee at a shelter or facility that serves youth and that receives state funds; or

(D) receiving state funds for the care of a child depicted by the visual material ~~[has been previously convicted two or more times of an offense under that subsection].~~

(d-1) If it is shown on the trial of an offense under Subsection (a) that the visual material depicted a child younger than 10 years of age at the time the image of the child was made or that the defendant has been previously convicted of an offense under that subsection:

(1) an offense described for purposes of punishment by Subsection (d)(1) or (2) is increased to the next higher category of offense;
or

(2) the minimum term of confinement for an offense described for purposes of punishment by Subsection (d)(3) is increased to 15 years.

Commentary by: Kaci Singer

Source: SB 129

Effective Date: September 1, 2023

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

Summary of Changes: This bill adds new ways to commit the offense of possession or promotion of child pornography. It is now a first degree felony, punishable by a life sentence or a term of not more than 99 or less than 25 years if the person was an employee of a child-care facility or residential facility under Section 42.002, Human Resources Code, a residential treatment facility under Section 221.056, Human Resources Code, or any shelter or facility that serves youth and receives state funds or is a person receiving state funds for the care of any child depicted in the visual material.

Like SB 1527, discussed above, this bill creates tiered offense levels based on the number of visual depictions. However, the thresholds are different. Under this bill, “fewer than 100 visual depictions” is classified as a third degree felony, whereas a third degree felony under SB 1527 is “fewer than 10 visual depictions.” A second degree felony under SB 129 is 100 or more but fewer than 500 depictions; under SB 1527, 10 or more but fewer than 50 is a second degree felony. More than 500 is a first degree felony under SB 129, but more than 50 is a first degree felony under SB 1527. If there is a prior conviction, an offense described in subsections (d)(1) (less than 100) and (d)(2) (100 to less than 500) is enhanced by one while an offense under (d)(3) (500 or more) has a minimum term of confinement of 15 years.

Section 311.025, Government Code, provides that when amendments to the same statute are enacted at the same session of the legislature, the amendments are to be harmonized, if possible, so that effect may be given to each. However, when they cannot be harmonized, as appears to the case here, the latest in date of enactment prevails. The date of enactment is the date on which the last legislative vote is taken on the bill. In this instance, SB 1527 was last voted by the House on May 6, 2023, whereas SB 129 was last voted by the House on May 22, 2023. Thus, SB 129 is the

latest enacted and should prevail with regard to the offense levels based on the number of visual depictions.

Penal Code Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.

(i) For purposes of conduct prohibited under this section, visual material to which that conduct applies includes a depiction of a child:

- (1) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
- (2) whose image as a child younger than 18 years of age was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

Penal Code Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR.

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

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

(b-1) For purposes of conduct prohibited under Subsection (b), visual material to which that conduct applies includes a depiction of a minor:

- (1) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
- (2) whose image as a minor was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

Penal Code Sec. 43.262. POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING A CHILD.

(b) A person commits an offense if the person knowingly possesses, accesses with intent to view, or promotes visual material that:

- (1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;
- (2) appeals to the prurient interest in sex; and
- (3) has no serious literary, artistic, political, or scientific value.

(b-1) For purposes of conduct prohibited under Subsection (b), visual material to which that conduct applies includes a depiction of a child:

- (1) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
- (2) whose image as a child younger than 18 years of age was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

Commentary by: Kaci Singer

Source: HB 2700

Effective Date: September 1, 2023

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

Summary of Changes: This is another bill designed to address “deep fake videos” that appear to depict a real person performing an action that did not occur in reality. When these videos are based on a real person who is younger than 18 and is recognizable, they are treated as a depiction of a child for the purposes of possession or promotion of child pornography, possession or promotion of lewd visual material depicting a child, and electronic transmission of certain visual material depicting a minor (i.e. “sexting”).

Topic: Weapons

Penal Code Sec. 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 postsecondary educational institution, on any grounds or building owned by and under the control of a school or postsecondary educational institution and on which an activity sponsored by the [a] school or ~~[educational]~~ institution is being conducted, or in a passenger transportation vehicle of a school or postsecondary educational institution, whether the school or postsecondary educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the school or 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 a postsecondary educational institution ~~[an institution of higher education or private or independent institution of higher education]~~, on any grounds or building owned by and under the control of the institution and on

which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

...

(c) In this section:

...

(3-a) “Postsecondary educational institution” means an institution of higher education or a private or independent institution of higher education.

(4-a) “School” means an accredited primary or secondary school.

Commentary by: Kaci Singer

Source: HB 1760

Effective Date: September 1, 2023

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

Summary of Changes: According to the bill analysis, there was concern that ambiguity with regard to firearms laws could be interpreted that it is a violation of law to carry a firearm on the premises of a school where students are located, such as a school event. This aims to clarify that it is only unlawful to carry a firearm on buildings or premises owned by or under the control of the school or institution of higher education.

Alcohol and Other Substances

Topic: Alcohol

Alcoholic Beverage Code Sec. 106.06(a). PURCHASE OF ALCOHOL FOR A MINOR; FURNISHING ALCOHOL TO A MINOR.

(a) Except as provided in Subsection (b) [~~of this section~~], a person commits an offense if the person [he] purchases an alcoholic beverage for or gives [~~or with criminal negligence makes available~~] an alcoholic beverage to a minor [~~with criminal negligence~~].

(c) Except as provided by Subsection (c-1), an [~~An~~] offense under this section is a Class A misdemeanor.

(c-1) An offense under this section is a state jail felony if it is shown on the trial of the offense that the person purchased an alcoholic beverage for or gave an alcoholic beverage to a minor who, as a result of the consumption of the alcoholic beverage, caused another person to suffer serious bodily injury or death.

Commentary by: Kaci Singer

Source: HB 420

Effective Date: September 1, 2023

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

Summary of Changes: This bill is cited as Kyle and Ethan's Law. In April 2019, Ethan and Kyle were at a party at an adult's home where alcohol was served. The two were killed in a one-vehicle collision. It was determined that the law was lacking because it did not include an ability to be enhanced when the minor, as a result of consuming the alcohol, causes another person to suffer serious bodily injury or death. It is now a state jail felony when this happens. Additionally, making alcohol available to a minor with criminal negligence has been removed from the statute. The statute now applies to purchasing alcohol for or giving alcohol to a minor.

Alcoholic Beverage Code Sec. 106.12. EXPUNCTION OF CONVICTION OR ARREST RECORDS OF A MINOR.

(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 21 years, may apply to the court in

which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.

(c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, prosecutorial and law enforcement records, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

(d) Any person placed under a custodial or noncustodial arrest for not more than one incident in violation of this code while a minor and who was not convicted of the violation may apply to the court in which the person was charged to have the records of the arrest expunged. The application must contain the applicant's sworn statement that the applicant was not arrested for an event leading to a violation of this code other than the arrest the applicant seeks to expunge. If the court finds the applicant was not arrested for any other event leading to a violation of this code while a minor, the court shall order all complaints, verdicts, prosecutorial and law enforcement records, and other documents relating to the violation to be expunged from the applicant's record. If the event leading to a violation of this code included multiple violations during this event all violations of this code are eligible for expungement.

(e) The court shall charge an applicant a [~~reimbursement~~] fee in the amount of \$30 for each application for expunction filed under this section to defray the cost of notifying state agencies of orders of expunction under this section.

(f) The procedures for expunction provided under this section are separate and distinct from the expunction procedures under Chapter 55, Code of Criminal Procedure.

Commentary by: Kaci Singer

Source: SB 1725

Effective Date: September 1, 2023

Applicability: Applies to the expunction of records of a conviction or arrest made before, on, or after the effective date

Summary of Changes: According to the bill analysis, prosecutors have interpreted the existing law on expunctions of alcohol citations to be limited to only one citation when multiple citations are issued in the same contact with law enforcement. This changes to law to make it clear that first time minor offenders who have multiple violations linked to one incident are able to have the entire incident expunged from their record.

Topic: Fentanyl

Health and Safety Code Sec. 193.005.

PERSONAL INFORMATION.

(e-1) The medical certification on a death certificate must include either the term “Fentanyl Poisoning” or the term “Fentanyl Toxicity” if:

(1) a toxicology examination reveals a controlled substance listed in Penalty Group 1-B present in the body of the decedent in an amount or concentration that is considered to be lethal by generally accepted scientific standards; and

(2) the results of an autopsy performed on the decedent are consistent with an opioid overdose as the cause of death.

Health and Safety Code Sec. 481.102.

PENALTY GROUP 1.

Penalty Group 1 consists of:

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

[~~Alfentanil~~];

Allylprodine;

Alphacetylmethadol;

Benzethidine;

Betaprodine;

Clonitazene;

Diampromide;

Diethylthiambutene;

Difenoxin not listed in Penalty Group 3 or 4;

Dimenoxadol;

Dimethylthiambutene;

Dioxaphetyl butyrate;

Dipipanone;

Ethylmethylthiambutene;

Etonitazene;

Etoxadine;

Furethidine;

Hydroxypethidine;

Ketobemidone;

Levophenacymorphan;

Meprodine;

Methadol;

Moramide;

Morpheridine;

Noracymethadol;

Norlevorphanol;

Normethadone;

Norpipanone;

Phenadoxone;

Phenampromide;

Phenomorphane;

Phenoperidine;

Piritramide;

Proheptazine;

Propidine;

Propiram;

[~~Sufentanil~~];

Tilidine; and

Trimeperidine;

...

(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:

[~~Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidyl]-N-phenylacetamide);~~

[~~Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide);~~

Alphaprodine;

Anileridine;

[~~Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidyl]-N-phenylpropanamide);~~

[~~Beta-hydroxy-3-methylfentanyl~~];

Bezitrामide;

[~~Carfentanil~~];

Dihydrocodeine not listed in Penalty Group 3 or 4;

Diphenoxylate not listed in Penalty Group 3 or 4;
 Isomethadone;
 Levomethorphan;
 Levorphanol;
 Metazocine;
 Methadone;
 Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
~~[3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);~~
~~[3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide);]~~
 Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;
~~[Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinylpropanamide);]~~
 PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
 Pethidine (Meperidine);
 Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4 carboxylate;
 Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 Phenazocine;
 Piminodine;
 Racemethorphan; and
 Racemorphan;
~~[Remifentanyl; and~~
~~[Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidyl]-propanamide);]~~

...

**Health and Safety Code Sec. 481.1022.
 PENALTY GROUP 1-B.**

Penalty Group 1-B consists of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl(N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
Alfentanil;
Alpha-methylthiofentanyl(N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

Beta-hydroxyfentanyl(N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
Beta-hydroxy-3-methylfentanyl;
Carfentanil;
Fentanyl [fentanyl], alpha-methylfentanyl, and any other derivative of fentanyl;
3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinylpropanamide);
Remifentanyl;
Sufentanil; and
Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

**Health and Safety Code Sec. 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) An offense under Subsection (a) is a ~~[state jail]~~ felony of the third degree 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 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 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 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 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 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 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 Sec. 481.134. DRUG-FREE ZONES.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.1123(b), (c) [481.1123(e)], (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;
- (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.

Penal Code Sec. 19.02. MURDER.

(b) A person commits an offense if the person [he]:

- (1) intentionally or knowingly causes the death of an individual;
- (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; ~~[or]~~
- (3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the

commission or attempt, the person [he] commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual; or

(4) knowingly manufactures or delivers a controlled substance included in Penalty Group 1-B under Section 481.1022, Health and Safety Code, in violation of Section 481.1123, Health and Safety Code, and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant.

(e) It is a defense to prosecution under Subsection (b)(4) that the actor's conduct in manufacturing or delivering the controlled substance was authorized under Chapter 481, Health and Safety Code, or other state or federal law.

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

(d) Punishment may not be increased under this section if the defendant is also prosecuted under Section 19.02(b)(4), Penal Code, for conduct occurring during the same criminal episode.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

...

(5-b) unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022, Health and Safety Code;

...

Commentary by: Kaci Singer

Source: HB 6

Effective Date: September 1, 2023

Applicability: Changes in 193.005 apply to a death that occurs on or after the effective date

or that occurs before but is discovered on or after the effective date. The other changes apply to an offense committed on or after the effective date. Applies on or after the effective date

Summary of Changes: These changes are designed to address the rise in fentanyl deaths. Fentanyl-related drugs have been consolidated in Penalty Group 1-B. The minimum offense level for punishment for manufacture or delivery of a controlled substance has been increased from a state jail felony to a third degree felony and has been added to the offenses eligible for punishment enhancement if committed in a drug free zone. The other offense levels, though they carry varying minimum sentences, have been designated as first degree felonies. They were previously undesignated.

The criteria for designating a death as fentanyl poisoning has been created, with a requirement to include this on the death certificate as homicide. The offense of murder has been modified to include unlawful manufacture or delivery of a Penalty Group 1-B substance if a person dies as a result of using the substance. It is a defense to prosecution if the actor's manufacture or deliver was authorized under state or federal law. Unlawful possession with intent to deliver a Penalty Group 1-B substance has been added to offenses for which the punishment level may be enhanced under Engaging in Organized Criminal Activity. However, Section 481.141 provides that punishment may not be enhanced if the person is prosecuted for murder under the new provision.

Topic: Designation as First Degree Felony

Health and Safety Code Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1.

(e) An offense under Subsection (a) 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 10 years, and a fine not to exceed \$100,000, 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 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 15 years, and a fine not to exceed \$250,000, 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 Sec. 481.1121. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-A.

(b) An offense under this section is:

- (1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;
- (2) a felony of the second degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;
- (3) a felony of the first degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000; and
- (4) 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 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 4,000 or more.

Health and Safety Code Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2 OR 2-A.

(e) An offense under Subsection (a) 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 10 years, and a fine not to exceed \$100,000, 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 Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4.

(e) An offense under Subsection (a) 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 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

**Health and Safety Code Sec. 481.115.
OFFENSE: POSSESSION OF
SUBSTANCES IN PENALTY GROUP 1 OR
1-B.**

(f) An offense under Subsection (a) 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 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

**Health and Safety Code Sec. 481.1151.
OFFENSE: POSSESSION OF SUBSTANCE
IN PENALTY GROUP 1-A.**

(b) An offense under this section is:

- (1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;
- (2) a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;
- (3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;
- (4) a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and
- (5) 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 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 8,000 or more.

**Health and Safety Code Sec. 481.116.
OFFENSE: POSSESSION OF SUBSTANCE
IN PENALTY GROUP 1-A.**

(e) An offense under Subsection (a) 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 five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

**Health and Safety Code Sec. 481.1161.
OFFENSE: POSSESSION OF SUBSTANCE
IN PENALTY GROUP 2-A.**

(b) An offense under this section is:

- (1) a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less;
- (2) a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;
- (3) a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces;
- (4) a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than 5 pounds;
- (5) a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 2,000 pounds or less but more than 50 pounds; and
- (6) 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 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

**Health and Safety Code Sec. 481.117.
OFFENSE: POSSESSION OF SUBSTANCE
IN PENALTY GROUP 3.**

(e) An offense under Subsection (a) 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 five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Health and Safety Code Sec. 481.118.
OFFENSE: POSSESSION OF SUBSTANCE
IN PENALTY GROUP 4.

(e) An offense under Subsection (a) 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 five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Health and Safety Code Sec. 481.120.
OFFENSE: DELIVERY OF MARIHUANA.

(b) An offense under Subsection (a) is:

- (1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;
- (2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;
- (3) a state jail felony if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;
- (4) a felony of the second degree if the amount of marihuana delivered is 50 pounds or less but more than five pounds;
- (5) a felony of the first degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and
- (6) 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 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is more than 2,000 pounds.

Health and Safety Code Sec. 481.121.
OFFENSE: POSSESSION OF
MARIHUANA.

(b) An offense under Subsection (a) is:

- (1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;
- (2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and

(6) 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 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is more than 2,000 pounds.

Health and Safety Code Sec. 481.126.
OFFENSE: ILLEGAL BARTER,
EXPENDITURE, OR INVESTMENT.

(a) A person commits an offense if the person:

- (1) barter property or expends funds the person knows are derived from the commission of a first degree felony ~~[an]~~ offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;
- (2) barter property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5);
- (3) barter property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or
- (4) barter property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5).

Commentary by: Kaci Singer

Source: HB 6

Effective Date: September 1, 2023

Applicability: On or after the effective date

Summary of Changes: The highest level of drug offenses contains language giving it the possible punishment level but not designating it as a felony type. These changes declare these offenses now to be first degree felonies; however, they do not make any changes to the available sentences.

Topic: Kratom

Health and Safety Code Chapter 444. **MANUFACTURE, DISTRIBUTION, AND** **SALE OF KRATOM PRODUCTS.**

Health and Safety Code Sec. 444.001 **DEFINITIONS.**

In this chapter:

- (1) "Food" has the meaning assigned by Section 431.002.
- (2) "Kratom" means any part of the leaf of the plant *Mitragyna speciosa*.
- (3) "Kratom processor" means a person who:
 - (A) manufactures, prepares, distributes, or maintains kratom products for sale;
 - (B) advertises, represents, or holds oneself out as a manufacturer, preparer, or seller of kratom products;
 - (C) is responsible for ensuring the purity and proper labeling of kratom products; or
 - (D) packages or labels kratom products.
- (4) "Kratom product" means a food, including an extract, capsule, or pill, containing any form of kratom.
- (5) "Kratom retailer" means a kratom processor who sells kratom products to consumers or who advertises, represents, or holds oneself out as a person who sells kratom products to consumers.

Health and Safety Code Sec. 444.002. **LABEL REQUIRED.**

- (a) A kratom processor shall label each kratom product with the product use directions necessary to ensure safe use of the product by a consumer, including the recommended serving size for the product.
- (b) A kratom retailer may only sell a kratom product that is properly labeled in accordance with this section.

Health and Safety Code Sec. 444.003. **ADULTERATED, CONTAMINATED, AND** **PROHIBITED KRATOM PRODUCTS.**

A kratom processor or kratom retailer may not prepare, distribute, sell, or offer to sell a kratom product that:

- (1) is adulterated with a dangerous non-kratom substance affecting the quality or strength of the

product to a degree that renders the product injurious to a consumer;

(2) is contaminated with a poisonous or otherwise deleterious non-kratom substance, including any substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act);

(3) contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the overall alkaloid composition of the product; or

(4) contains any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

Health and Safety Code Sec. 444.004. **OFFENSE FOR DISTRIBUTION OR SALE** **OF KRATOM PRODUCT TO MINOR.**

(a) A person commits an offense if the person distributes, sells, or exposes for sale a kratom product to an individual younger than 18 years of age.

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

Health and Safety Code Sec. 444.005. **CIVIL PENALTY.**

(a) A person who violates this chapter is subject to a civil penalty in the amount of:

- (1) \$250 for the first violation;
- (2) \$500 for the second violation; and
- (3) \$1,000 for each subsequent violation.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(c) A kratom retailer is not liable for a civil penalty under this section for a violation of Section 444.002 or 444.003 if the kratom retailer proves by a preponderance of the evidence that the violation was unintentional and due to the kratom retailer's good faith reliance on the representation of another kratom processor.

(d) The attorney general or the district or county attorney for the county or municipal attorney for the municipality in which the violation is alleged to have occurred may bring an action to recover a civil penalty under this section.

Health and Safety Code Sec. 444.006.
PENALTIES UNDER OTHER LAW.

The penalties prescribed by this chapter are in addition to any other penalties prescribed by law, including penalties prescribed by Chapters 431 and 481.

Health and Safety Code Sec. 444.007.
RULES.

The executive commissioner may adopt rules consistent with this chapter as necessary to ensure the safe consumption and distribution of kratom and kratom products.

Commentary by: Kaci Singer

Source: HB 6

Effective Date: September 1, 2023

Applicability: On or after the effective date

Summary of Changes: This new statute regulates kratom and kratom products in Texas. With regard to children, it is a Class C misdemeanor to distribute, sell, or expose kratom for sale to a minor under the age of 18.

Other Offenses

Topic: Transportation Code

Transportation Code Sec. 545.157. PASSING CERTAIN VEHICLES.

(a) This section applies only to the following vehicles:

- (1) a stationary authorized emergency vehicle using visual signals that meet the requirements of Sections 547.305 and 547.702;
 - (2) a stationary tow truck using equipment authorized by Section 547.305(d);
 - (3) a Texas Department of Transportation vehicle or a highway maintenance or construction vehicle operated pursuant to a contract awarded under Subchapter A, Chapter 223, not separated from the roadway by a traffic control channelizing device and using visual signals that comply with the standards and specifications adopted under Section 547.105;
 - (4) a service vehicle used by or for a utility, as defined by Section 203.091, and using visual signals that comply with the standards and specifications adopted under Section 547.105;
 - (5) a stationary vehicle used exclusively to transport municipal solid waste, as defined by Section 361.003, Health and Safety Code, or recyclable material, as defined by Section 361.421, Health and Safety Code, while being operated in connection with the removal or transportation of municipal solid waste or recyclable material from a location adjacent to the highway; and
 - (6) a vehicle operated by or pursuant to a contract with a toll project entity, as defined by Section 372.001, using visual signals that comply with the standards and specifications adopted under Section 547.105.
- (b) On approaching a vehicle described by Subsection (a), an operator, unless otherwise directed by a police officer, shall:
- (1) vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle; or
 - (2) slow to a speed not to exceed:
 - (A) 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or more; or

(B) five miles per hour when the posted speed limit is less than 25 miles per hour.

(c) A person who violates ~~[violation of]~~ this section commits an offense. An offense under this section is:

~~[(1) a misdemeanor punishable under Section 542.401;~~

~~[(2)]~~ a misdemeanor punishable by a fine of not less than \$500 or more than \$1,250, except that the offense is:

(1) a misdemeanor punishable by a fine of not less than \$1,000 or more than \$2,000 for a second or subsequent offense committed within five years of the date on which the most recent preceding offense was committed;

(2) a Class A misdemeanor if the offense ~~[violation results in property damage; or~~

~~[(3) a Class B misdemeanor if the violation]~~ results in bodily injury to another; or

(3) a state jail felony for a second or subsequent offense punishable under Subdivision (2).

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

(d-1) If it is shown on the trial of the offense that the person has previously been convicted of an offense under this section, on conviction the court may order the person's driver's license to be suspended for a period not to exceed six months.

(d-2) The court may require a defendant who fails to pay a previously assessed fine or costs under this section, or who is determined by the court to have insufficient resources or income to pay a fine or costs under this section, to discharge all or part of the fine or costs assessed under this section by performing community service.

Commentary by: Kaci Singer

Source: HB 898

Effective Date: September 1, 2023

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

Summary of Changes: This statute is the Move Over or Slow Down Law. It requires drivers to move over a lane or slow to 20 mph under the speed limit when emergency vehicles, law enforcement, tow trucks, utility service vehicles, TxDOT vehicles, or other construction or

maintenance vehicles that are on the side of the road with their visual signals or flashing lights on.

The law currently allows for a fine up to \$200 for failure to comply. If that failure to comply results in a crash causing injury to those protected under the law, drivers can be fined up to \$2000. These changes modify that structure, allowing for enhanced punishment for subsequent convictions within a certain time period, included creating a state jail felony for multiple convictions involving bodily injury. Additionally, the court may order the suspension of a defendant's driver's license. The court is also authorized to allow a defendant to discharge all or part of the fine or costs by performing community service if the defendant has insufficient resources or income to pay.

Topic: Human Resources Code

Human Resources Code Sec. 121.006. [PENALTIES FOR] IMPROPER USE OF ASSISTANCE AND SERVICE ANIMALS; OFFENSE.

(a) A person commits an offense if the person intentionally or knowingly represents [who uses a service animal with a harness or leash of the type commonly used by persons with disabilities who use trained animals, in order to represent] that an [his or her] animal is an assistance animal or a [specially trained] service animal when the animal is not specially trained or equipped to help a person with a disability. An offense under this subsection [training has not in fact been provided,] is [guilty of] a misdemeanor

punishable [and on conviction shall be punished] by:

- (1) a fine of not more than \$1,000 [\$300]; and
- (2) 30 hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.

(b) A person who habitually abuses or neglects to feed or otherwise neglects to properly care for the person's [his or her] assistance animal or service animal is subject to seizure of the animal under Subchapter B, Chapter 821, Health and Safety Code.

Commentary by: Kaci Singer

Source: HB 4164

Effective Date: September 1, 2023

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

Summary of Changes: The changes in this statute are designed to address the increase in people without disabilities attempting to pass off their pets as service dogs for a variety of reasons. As a result, business owners and employees have become increasingly distrustful that animals represented to be service dogs actually are. This results in people with a legitimate need for a service dog being aggressively questioned or removed from establishments. These changes rename the statute, change the elements to include falsely representing that an animal is an assistance or service animal when it has not been specially trained or equipped as such, and raising the maximum fine from \$300 to \$1000.

Civil Practice and Remedies Code

Topic: Theft Education Program

Civil Practice and Remedies Code Sec. 124.001. SUSPECTED THEFT OF PROPERTY OR ATTEMPTED THEFT OF PROPERTY [DETENTION].

(a) A person who reasonably believes that another has stolen or is attempting to steal property is privileged to detain that person in a reasonable manner and for a reasonable time to investigate ownership of the property.

(b) A person who is in the business of selling goods or services as a merchant is not precluded from offering a person who is suspected of stealing or attempting to steal property from the merchant an opportunity to complete a theft education program under Section 124.002 to deter theft and address criminal behavior instead of reporting the suspected offense to a law enforcement agency.

(c) A merchant who offers a person an opportunity to complete a theft education program shall:

- (1) notify the person of that opportunity;
- (2) inform the person of the civil and criminal remedies available to the merchant and the state, including informing the person that the merchant retains the right to report the suspected offense to a law enforcement agency if the person does not successfully complete the program; and
- (3) maintain records for a period of not less than two years of:
 - (A) any criteria used by the merchant in determining whether to offer a person the opportunity to complete a theft education program;
 - (B) the terms of each offer made; and
 - (C) the name of each person to whom the merchant made an offer.

(d) A merchant shall make records maintained under Subsection (c)(3) available to a district attorney, criminal district attorney, or county attorney on request.

(e) Nothing in this section precludes a peace officer, district attorney, criminal district attorney, county attorney, or judge from offering a person a theft education program under Section 124.002 in compliance with this chapter.

Civil Practice and Remedies Code Sec. 124.002. THEFT EDUCATION PROGRAM.

(a) A theft education program for a person who is suspected of stealing or attempting to steal property under Section 124.001 must:

- (1) address the type of alleged criminal offense;
- (2) seek to modify the person's behavioral decision-making process;
- (3) engage the person with interactive exercises designed to instill appropriate societal behavior; and
- (4) promote accountability and reconciliation between the person and the merchant.

(b) A provider of a theft education program may not discriminate against a person who is otherwise eligible to participate in the program based on:

- (1) the person's race, color, religion, sex, familial status, or national origin; or
- (2) the person's ability to pay.

(c) A program provider that charges a fee for participation in a theft education program:

- (1) shall develop a plan to offer discounts, alternative payment schedules, or scholarship funds to a person who the provider has verified is indigent;
- (2) may reduce or waive the fee for the program based on the ability to pay of a person described by Subdivision (1); and

(3) may not compensate a merchant who offers a person the opportunity to complete the program.

(d) A person may not be required to make an admission of guilt to participate in a theft education program.

(e) Notwithstanding any other law, a person who successfully completes a theft education program under this section may not be subject to any additional civil penalties under any other provision of law.

Civil Practice and Remedies Code Sec. 124.003. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY.

A person who offers or provides a theft education program in compliance with this chapter is not criminally or civilly liable for failure to notify a law enforcement agency of the suspected theft or attempted theft.

Commentary by: Kaci Singer

Source: HB 2129

Effective Date: September 1, 2023

Applicability: Applies on or after the effective date

Summary of Changes: This bill allows a retail business to offer a person who is suspected of theft or attempted theft the

opportunity to complete a theft education course. The business must maintain records for at least two years of any criteria used in determining whether to offer a person the opportunity to complete a theft education program, the terms of each offer mand, and the name of each person to whom the merchant made an offer. The merchant must make the records available to a district attorney or county attorney upon request. A person cannot be required to make an admission of guilt to participate in a theft education program. Although the new statute requires the merchant to inform the person of the civil and criminal remedies available to the merchant and the state and that the merchant retains the right to report the alleged offense to law enforcement if the person does not successfully complete the education program, there is no language in the bill that makes it clear the person cannot be prosecuted if the person successfully completed. The only protective language is that a person who successfully completes the program may not be subject to any additional civil penalties under the law.

Law Enforcement

Topic: Missing Children and Missing Persons

Government Code Sec. 411.355. ACTIVATION.

(a) On the request of a local law enforcement agency regarding an abducted child, the department shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) the local law enforcement agency believes that a child has been abducted, including a child who:

(A) is younger than 14 years of age; and

(B) regardless of whether the child departed willingly with the other person, has been taken from the care and custody of the child's parent or legal guardian without the permission of the parent or legal guardian by another person who is:

(i) more than three years older than the child; and

(ii) not related to the child by any degree of consanguinity or affinity as defined under Subchapter B, Chapter 573, Government Code;

(2) the local law enforcement agency believes that the abducted child is in immediate danger of serious bodily injury or death or of becoming the victim of a sexual assault;

(3) the local law enforcement agency confirms that a preliminary investigation has taken place that verifies the abduction and eliminates alternative explanations for the child's disappearance; and

(4) sufficient information is available to disseminate to the public that could assist in locating the child, a person suspected of abducting the child, or a vehicle suspected of being used in the abduction.

(b) On the request of a local law enforcement agency regarding a missing person with an intellectual disability, the department shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) the local law enforcement agency receives notice of a missing person with an intellectual disability;

(2) the local law enforcement agency verifies that at the time the person is reported missing:

(A) the person has an intellectual disability, as determined according to the procedure provided by Section 593.005, Health and Safety Code; and

(B) the person's location is unknown;

(3) the local law enforcement agency determines that the person's disappearance poses a credible threat to the person's health and safety; and

(4) sufficient information is available to disseminate to the public that could assist in locating the person.

(c) The department may modify the criteria described by Subsection (a) or (b) as necessary for the proper implementation of the alert system.

Government Code Sec. 411.3555. LOCAL AREA ACTIVATION FOR CERTAIN MISSING CHILDREN.

On the request of a local law enforcement agency that knows a child is missing but has not verified the criteria described by Section 411.355(a), and if the chief law enforcement officer of the local law enforcement agency believes that activation of the alert system is warranted, the department shall:

(1) activate the alert system only in the following areas:

(A) within a 100-mile radius of the location from which the child is believed to have gone missing or the location in which the child was last seen, as applicable; and

(B) in all counties adjacent to the county from which the child is believed to have gone missing or the county in which the child was last seen, as applicable; and

(2) notify appropriate participants in the alert system, as established by rule.

Government Code Sec. 411.356. LOCAL LAW ENFORCEMENT AGENCIES.

Before requesting activation of the alert system, a local law enforcement agency must verify that the

criteria described by Section 411.355(a) or (b) ~~or 411.3555~~, as applicable, have been satisfied. On verification of the applicable criteria, the local law enforcement agency shall immediately contact the department to request activation and shall supply the necessary information on the forms prescribed by the director.

Commentary by: Kaci Singer

Source: HB 3556

Effective Date: June 13, 2023

Applicability: Applies on or after the effective date.

Summary of Changes: This bill was filed as a result of the kidnapping and murder of seven-year-old Athena Strand by a delivery driver who struck her with his vehicle and then kidnapped and murdered her to avoid getting in trouble. In the hours after Athena's kidnapping, her parents tried to get an Amber Alert issued but were unable to do so under the statute (Section 411.355, Government Code), which requires a belief by local law enforcement that a person under age 14 has been abducted. The addition of Section 411.3555 allows law enforcement to activate a regional alert within a 100-mile radius and in all adjacent counties when the criteria in Section 411.355 have not been established but the chief of the law enforcement agency believes activation is warranted. The new section does not require the child be under age 14 like the Amber Alert statute does. (There are no changes in Section 411.355 in this bill, but it has been included for context.)

Code of Criminal Procedure Art. 2.13. DUTIES AND POWERS.

(c) It is the duty of every officer to take possession of a child under Article ~~63.00905(g)~~ ~~[63.009(g)]~~.

Code of Criminal Procedure Art. 63.009. LAW ENFORCEMENT REQUIREMENTS GENERALLY.

(a) A law enforcement agency, on receiving a report of a ~~[missing child or]~~ 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 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;

(4) not later than 48 hours after receiving the report, electronically submit to each municipal or county law enforcement agency within 200 miles the report and any information that may help determine the present location of the person;

(5) 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

(6) ~~[(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 if applicable; and

(C) submitted to each municipal or county law enforcement agency within 200 miles.

~~[(a-1) A local law enforcement agency, on receiving a report of a child missing under the circumstances described by Article 63.001 (3)(D) for a period of not less than 48 hours, shall immediately make a reasonable effort to locate the child and determine the well-being of the child. On determining the location of the child, if the agency has reason to believe that the child is a victim of abuse or neglect as defined by Section 261.001, Family Code, the agency:~~

~~(1) shall notify the Department of Family and Protective Services; and~~

~~(2) may take possession of the child under Subchapter B, Chapter 262, Family Code.~~

~~(a-2) The Department of Family and Protective Services, on receiving notice under Subsection (a-1), may initiate an investigation into the allegation of abuse or neglect under Section 261.301, Family Code, and take possession of the child under Chapter 262, Family Code.]~~

(b) Information not immediately available when the original entry is made shall be entered into the clearinghouse, 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.

(c) All Texas law enforcement agencies are required to enter information about all unidentified bodies into the clearinghouse and the national crime information center unidentified person file. A law enforcement agency shall, not later than the 10th working day after the date the death is reported to the agency, 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 clearinghouse and the national crime information center file. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(d) If a local law enforcement agency investigating a report of a ~~[missing child or]~~ missing person obtains a warrant for the arrest of a person for taking or retaining the ~~[missing child or]~~ missing person, the local law enforcement agency shall immediately enter the name and other descriptive information of the person into

the national crime information center wanted person file if the person meets the center's criteria. The local law enforcement agency shall also enter all available identifying features, including dental records, fingerprints, and other physical characteristics of the ~~[missing child or]~~ missing person. The information shall be cross-referenced with the information in the national crime information center missing person file.

(e) A local law enforcement agency that has access to the national crime information center database shall cooperate with other law enforcement agencies in entering or retrieving information from the national crime information center database.

(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 the entry in the national crime information center database; and

(2) notify the National Missing and Unidentified Persons System.

~~[(g) On determining the location of a child under Subsection (a)(1) or (2), other than a child who is subject to the continuing jurisdiction of a district court, an officer shall take possession of the child and shall deliver or arrange for the delivery of the child to a person entitled to possession of the child. If the person entitled to possession of the child is not immediately available, the law enforcement officer shall deliver the child to the Department of Protective and Regulatory Services.]~~

Code of Criminal Procedure Art. 63.00905. LAW ENFORCEMENT REQUIREMENTS FOR REPORT OF MISSING CHILD.

(a) Regardless of the jurisdiction in which the child went missing, a law enforcement agency, on receiving a report of a missing child, shall:

(1) immediately start an investigation in order to determine the present location of the child;

(2) immediately, but not later than two hours after receiving the report, enter the name of the child into the clearinghouse and the national crime information center missing person file if the child meets the center's criteria, 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;

(3) immediately, but not later than two hours after the agency receives the report, enter the applicable information into the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the Department of Public Safety;

(4) not later than 48 hours after receiving the report, electronically submit to each municipal or county law enforcement agency within 200 miles the report and any information that may help determine the present location of the child;

(5) not later than the 30th day after the date the agency receives the report, enter the name of the child 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; and

(6) inform the person who filed the report of the missing child 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) submitted to each municipal or county law enforcement agency within 200 miles.

(b) A local law enforcement agency, on receiving a report of a child missing under the circumstances described by Article 63.001(3)(D) for a period of not less than 48 hours, shall immediately make a reasonable effort to locate the child and determine the well-being of the child. On determining the location of the child, if the agency has reason to believe that the child is a victim of abuse or neglect as defined by Section 261.001, Family Code, the agency:

(1) shall notify the Department of Family and Protective Services; and

(2) may take possession of the child under Subchapter B, Chapter 262, Family Code.

(c) The Department of Family and Protective Services, on receiving notice under Subsection (b), may initiate an investigation into the

allegation of abuse or neglect under Section 261.301, Family Code, and take possession of the child under Chapter 262, Family Code.

(d) Information not immediately available when the original entry is made shall be entered into the clearinghouse, 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.

(e) If a local law enforcement agency investigating a report of a missing child obtains a warrant for the arrest of a person for taking or retaining the missing child, the local law enforcement agency shall immediately enter the name and other descriptive information of the person into the national crime information center wanted person file if the person meets the center's criteria. The local law enforcement agency shall also enter all available identifying features, including dental records, fingerprints, and other physical characteristics of the missing child. The information shall be cross-referenced with the information in the national crime information center missing person file.

(f) Immediately after the return of a missing child, the local law enforcement agency having jurisdiction of the investigation shall:

(1) clear the entry in the national crime information center database; and

(2) notify the National Missing and Unidentified Persons System.

(g) On determining the location of a child, other than a child who is subject to the continuing jurisdiction of a district court, an officer shall take possession of the child and shall deliver or arrange for the delivery of the child to a person entitled to possession of the child. If the person entitled to possession of the child is not immediately available, the law enforcement officer shall deliver the child to the Department of Family and Protective Services.

Code of Criminal Procedure Art. 63.0091. LAW ENFORCEMENT REQUIREMENTS REGARDING REPORTS OF CERTAIN MISSING CHILDREN.

(a) The public safety director of the Department of Public Safety shall adopt rules regarding the procedures for a local law enforcement agency on receiving a report of a missing child who:

(1) had been reported missing on four or more occasions in the 24-month period preceding the date of the current report;

(2) is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report; or

(3) is ~~[under 14 years of age and otherwise determined by the local law enforcement agency or the Department of Public Safety to be]~~ at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision for any reason the agency considers to be high risk, including because the missing child:

(A) disappeared while in a dangerous environment;

(B) has mental or behavioral health needs;

(C) previously exhibited signs of mental illness;

(D) has an intellectual or developmental disability; or

(E) is known to have been last seen or in communication with an adult unknown to the child's family or legal guardian.

(b) The rules adopted under this article must require that:

(1) in entering information regarding the report into the national crime information center missing person file as required by Article 63.00905(a)(2) [63.009(a)(3)] for a missing child described by Subsection (a), the local law enforcement agency shall indicate, in the manner specified in the rules, that the child is at a high risk of harm and include relevant information regarding:

(A) any prior occasions on which the child was reported missing; and

(B) the circumstances considered when designating the child as high risk; and

(2) the local law enforcement agency that receives a report of a missing child described by Subsection (a)(3) shall:

(A) reasonably escalate the response; and

(B) immediately, but not later than two hours after receiving the report, notify all law enforcement agencies within 100 miles, including agencies from other states, of the circumstances and high risk designation of the missing child.

(c) If, at the time the initial entry into the national crime information center missing person file is

made, the local law enforcement agency has not determined that the requirements of this article apply to the report of the missing child, the information required by Subsection ~~(b)(1)~~ ~~[(b)]~~ must be added to the entry promptly after the agency investigating the report or the Department of Public Safety determines that the missing child is described by Subsection (a).

[Code of Criminal Procedure Art. 63.0092. OPTION TO DESIGNATE MISSING CHILD AS HIGH RISK.]

~~(a) This article applies to a report of a missing child who is at least 14 years of age and who a local law enforcement agency or the Department of Public Safety determines is at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision.~~

~~(b) In entering information regarding a report described by Subsection (a) into the national crime information center missing person file as required by Article 63.009(a)(3), the local law enforcement agency may indicate that the child is at a high risk of harm and may include any other relevant information.]~~

Occupations Code Sec. 1701.253. SCHOOL CURRICULUM.

(q) As part of the minimum curriculum requirements, the commission shall establish a basic education and training program on missing children and missing persons, including instruction on the associated reporting requirements under Chapter 63, Code of Criminal Procedure. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

Occupations Code Sec. 1701.2581. VOLUNTARY ADVANCED EDUCATION AND TRAINING PROGRAM ON MISSING CHILDREN AND PERSONS.

The commission shall make available to each officer a voluntary advanced education and training program on missing children and missing persons. The program must include instruction on the associated reporting requirements under Chapter 63, Code of Criminal Procedure.

Commentary by: Kaci Singer

Source: HB 2660 (See also SB 2429)

Effective Date: September 1, 2023

Applicability: Changes in Chapter 63, Code of Criminal Procedure, apply to the report of a missing person or missing child made to law enforcement on or after the effective date. Section 1701.253(q), Occupations Code, applies to a person who submits an application for a peace officer license on or after January 1, 2025. TCOLE shall establish required training programs and adopt rules no later than December 1, 2024.

Summary of Changes: This bill is a combination of two bills, HB 2660 and SB 2429. Although the entirety of HB 2660 is called “Tim’s Law,” there are only limited portions that were originally in HB 2660. The majority of the bill is SB 2429, which has a different purpose and is related to children. Though both purposes will be discussed, the focus will be on SB 2429’s provisions.

For the purposes of these statutes, a missing person is a person 18 years of age or older whose disappearance is possibly not voluntary. A child is a person under 18 years of age. A missing child is a child whose whereabouts are unknown to the child’s legal custodian when the circumstances of the absence indicate the child did not leave voluntarily and the taking of the child was not authorized by law, the child left voluntarily without the custodian’s consent and without intent to return, the child was taken or retained in violation of the terms of a court order for possession or access to the child, or the child was taken or retained without permission of the custodian and with effect of depriving the custodian of possession or access unless the taking or retention was prompted by the commission or attempted commission of family violence.

In April 2022, a 15-year-old girl from North Richland Hills disappeared from the American Airlines Center. Her father immediately reported her missing to a Dallas police officer working security for the venue. Video surveillance showed her leaving the center with an unknown adult man. The father was told to return home to North Richland Hills and file a missing child report as Dallas police considered this to be a runaway case. Dallas police believed she left the venue voluntarily and knew she had run away before.

She was recovered 10 days later in Oklahoma City, where she had been sexually trafficked with the use of online ads.

According to the analysis of the bill, factors other than the fact that the girl had run away before should have been considered and, had procedures for investigating instances of missing children been clearer, there might have been less confusion about jurisdiction and reporting requirements.

Under the law as currently exists, Article 63.009 includes a mixture of provisions that apply to missing children and missing adults. With regard to children, Article 63.009, Code of Criminal Procedure, currently requires law enforcement, on receiving a report that a child is missing and the child is at high risk of harm or is otherwise in danger, to immediately start an investigation in order to determine the child’s location. If the child is not at high risk of harm or in danger, the investigation must be started “with due diligence.” In either event, if the case meets NCIC’s criteria for entry, the child’s name and identifying information is to be reported into the clearinghouse and NCIC missing person file immediately but no later than two hours after receiving the report.

These changes remove provisions applicable to children and place them in a standalone new provision, Article 63.00905. There are also changes from how missing children reports are currently handled by law enforcement. The new statute provides that, regardless of the jurisdiction in which a child went missing, any law enforcement agency that receives a report of a missing child shall immediately start an investigation in order to determine the present location of the child. There is no longer a distinction for immediate investigation when a child is at high risk of harm or otherwise in danger and due diligence start of the investigation when the child is not.

The requirement to put the child’s information into the clearinghouse and NCIC missing person file immediately, but no later than two hours after receiving the report, still exists. There is now a requirement to enter the applicable information into TLETS immediately, but no later than two hours after receiving the report. There is also now a requirement for law enforcement to

electronically submit information that may help find the child to every municipal and county law enforcement agency within 200 miles.

Under current law, there is a requirement to enter both missing adults and missing children into the National Missing and Unidentified Persons System within 60 days. With this change, the information must be entered within 30 days when the missing person is a child.

Law enforcement must inform the person who filed the report that the information will be entered into the clearinghouse, NCIC, and National Missing and Unidentified Persons System and will be submitted to each municipal and county law enforcement agency within 200 miles.

When additional information is obtained after the initial entry into the clearinghouse, NCIC, and National Missing and Unidentified Persons System, it shall be entered as a supplement as soon as possible.

Article 63.00905(b) contains the language currently in Article 63.009(a-1) regarding a child missing under circumstances described by 63.001(3)(D) (parental abduction) with no substantive change.

Article 63.00905(e), regarding entering information once a warrant is obtained, matches the language in 63.009(d) and is not a substantive change.

Article 63.00905(f), regarding clearing the entry and making notifications when a child has been returned, matches the language in 63.009(f) and is not a substantive change.

Article 63.00905(g), regarding taking possession of a child and delivering the child to the person entitled to possession or to DFPS, matches the language in former 63.009(g) and is not a substantive change.

Article 63.0091 requires DPS to adopt rules regarding the procedures for local law enforcement agencies that receive reports of missing children who fit certain criteria. Under current law, these criteria include that the child must be less than 14 years of age and otherwise be determined by the local law enforcement agency or DPS to be at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision. This bill changes that criteria.

First, the age requirement has been removed so that this provision now applies to any missing child, regardless of age. Secondly, there is additional guidance on what might make the child at high risk, including disappearing while in a dangerous environment, having mental or behavioral health needs, having previously exhibited signs of mental illness, having an intellectual or developmental disability, having been last seen or in communication with an adult unknown to the family or legal guardian, or any reason the law enforcement agency considers to be high risk.

DPS' rules now must require the law enforcement agency, when making the missing person report in NCIC, to include the circumstances considered when designating the child as high risk. They also must require an agency that receives a report of a missing child at high risk to reasonably escalate the response and to notify immediately, but no later than two hours after receiving the report, law enforcement agencies within 100 miles, including agencies from other states, of the circumstances and high risk designation of the child.

TCOLE is required to establish a basic education and training program on missing children and missing persons, including instructions on the reporting requirements. New officers are required to take the course. TCOLE must also make available a voluntary advanced education and training program on missing children and missing persons.

The portions of the law that are part of Tim's Law are in portions of Section 63.009(a), specifically 63.009(a)(4) and (6). This law is named after Timothy Perez, a 31-year-old Conroe man who was reported missing in March 2022 while visiting his brother in Austin. Though reported missing to Austin police, he encountered Round Rock police shortly after that report was made. Austin PD had not shared that he was missing, so Round Rock PD had no way to know. The law did not require such sharing. Now, within 48 hours of receiving a report of a missing person, law enforcement must electronically submit the report and any helpful information to each municipal or county law enforcement agency within 200 miles. This is the same new requirement as applies to missing children.

Topic: Incident-Based Crime Statistics

Government Code Sec. 411.054. INCIDENT-BASED CRIME STATISTICS REPORTING BY LOCAL LAW ENFORCEMENT AGENCIES [GOAL].

(a) The department shall require ~~[establish a goal that, not later than September 1, 2019,]~~ all local law enforcement agencies to:

(1) implement ~~[will have implemented]~~ an incident-based reporting system that meets the reporting requirements of the National Incident-Based Reporting System of the Federal Bureau of Investigation; and

(2) ~~[will]~~ use the system described by Subdivision (1) to submit to the department information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency.

(b) The department by rule shall prescribe the form and manner for submitting information and statistics under this section ~~[Not later than January 1, 2017, the department shall submit a report to the legislature that identifies the number of local law enforcement agencies that have implemented the system described by Subsection (a)].~~

(c) Except as otherwise provided by this section and Section 411.0541, information and statistics submitted to the department under this section are confidential and not subject to disclosure under Chapter 552.

(d) The department shall submit the information and statistics received by the department under this section to the Uniform Crime Reporting Program of the Federal Bureau of Investigation, as required by that program.

Government Code Sec. 411.0541. TEXAS CRIME INFORMATION SYSTEM.

(a) In this section:

(1) "Criminal justice agency" means:

(A) a state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of the agency's annual budget to the administration of criminal justice; or

(B) a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order.

(2) "System" means the computer-based Texas crime information system established under Subsection (b).

(b) The department shall establish and maintain a computer-based Texas crime information system that includes all of the information and statistics submitted to the department under Section 411.054.

(c) The department shall restrict access to the system to authorized personnel of criminal justice agencies, as determined by the department.

(d) The department shall use the information included in the system to periodically publish reports regarding the nature and extent of criminal activities in this state. The department shall submit each report published under this subsection to the governor and each member of the legislature and shall publish each report on the department's Internet website.

Commentary by: Kaci Singer

Source: HB 4879

Effective Date: September 1, 2023

Applicability: DPS shall adopt rules necessary to implement Section 411.0541

Summary of Changes: These changes mandate that, rather than establish a goal for completion by a date certain, DPS shall require local law enforcement agencies implement incident-based reporting systems and use those systems to submit information to DPS concerning criminal offenses. DPS is to create a rule to prescribe the form and manner for submitting the information.

DPS is required to create a Texas Crime Information System that includes all the submitted information. The information submitted is confidential and not subject to disclosure except as provided by Sections 411.054 and 411.0541. Only criminal justice agencies may access the system. DPS is to use the information to periodically publish reports regarding criminal activity in Texas.

Topic: Notifications to Victims of Sexual Assault

Code of Criminal Procedure.
SUBCHAPTER I. PEACE OFFICER AND
[REQUIRED NOTIFICATIONS BY] LAW
ENFORCEMENT AGENCY DUTIES;
VICTIM NOTIFICATIONS.

Code of Criminal Procedure Art. 56A.403.
DUTIES OF PEACE OFFICERS
REGARDING VICTIMS OF SEXUAL
ASSAULT.

(a) A peace officer who investigates an incident involving sexual assault or who responds to a disturbance call that may involve sexual assault shall provide to the victim a written notice containing information about the rights of crime victims under Article 56A.052.

(b) At the initial contact or at the earliest possible time after the initial contact between a sexual assault victim and the peace officer responding to the incident or disturbance call about the offense, the peace officer shall:

(1) provide to the victim:

(A) a written referral to the nearest sexual assault program as defined by Section 351.251, Local Government Code; and

(B) information about the statewide electronic tracking system established under Section 420.034, Government Code;

(2) offer to request a forensic medical examination on behalf of the victim in accordance with Article 56A.251;

(3) coordinate with the local response team, as defined by Section 351.251, Local Government Code, to provide continuing care to the victim or to further investigate the offense; and

(4) provide to the victim a written notice containing all of the information required by this article.

(c) Each law enforcement agency shall consult with a local sexual assault program or response team, as those terms are defined by Section 351.251, Local Government Code, to develop the written notice required by Subsection (b). The notice must include the information described by Subsection (d) and may be combined with the written notice required under Article 56A.401. At least once each biennium, the law enforcement agency shall update the notice required by Subsection (b).

(d) The notice required by Subsection (b) must be in English and Spanish and include the current contact information for a victim assistance

coordinator under Article 56A.201 and a crime victim liaison under Article 56A.203. The notice is considered sufficient if it includes the following statements:

“NOTICE TO ADULT VICTIMS OF SEXUAL ASSAULT”

“It is a crime for any person to cause you any physical injury or harm.”

“Please tell the investigating peace officer if you have been injured or if you feel you are going to be in danger when the officer leaves or at a later time.”

“You have the right to:

“(1) obtain a forensic medical examination within 120 hours of the assault to collect potential evidence and receive preventative medications, even if you decide not to make a report to a law enforcement agency;

“(2) anonymously track or receive updates regarding the status and location of each item of evidence collected in your case;

“(3) have a sexual assault program advocate present during a forensic medical examination;

“(4) have a sexual assault program advocate or other victim’s representative present during an investigative interview with law enforcement;

“(5) ask the local prosecutor to file a criminal complaint against the person who assaulted you; and

“(6) if a defendant is arrested for a crime against you involving certain sexual crimes, stalking, or trafficking;

“(A) request an order for emergency protection to be issued by a magistrate; and

“(B) apply to a court for a permanent order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney).”

“For example, the court can enter an order that prohibits the person who assaulted you from:

“(1) committing further acts of violence;

“(2) threatening, harassing, or contacting you or a member of your family or household; and

“(3) going near your place of employment or near a child care facility or school attended by you or a member of your family or household.”

“You cannot be charged a fee by a court in connection with filing, serving, or entering a protective order.”

“If you have questions about the status of your case or need assistance, you may contact the crime victim liaison (insert name) at our agency

(law enforcement agency address and victim liaison phone number)."

"If you would like to speak with someone in the prosecuting attorney's office, you may reach their victim assistance coordinator at (address and phone number)."

"Call the following sexual assault program or social service organization if you need assistance or wish to speak with an advocate:

"_____."

"You may receive a sexual assault forensic medical examination at the following location(s):

"_____."

"To get help from the National Human Trafficking Hotline: 1-888-373-7888 or text HELP or INFO to BeFree (233733)."

(e) A sexual assault program may provide a written description of the program's services to a law enforcement agency, for use in delivering the written referral required by Subsection (b).

[Art. 56A.402. REFERRAL TO SEXUAL ASSAULT PROGRAM.

(a) At the time a law enforcement agency provides notice under Article 56A.401, the agency shall provide, if the agency possesses the relevant information:

(1) a referral to a sexual assault program as defined by Section 420.003, Government Code; and

(2) a written description of the services provided by the program.

(b) A sexual assault program may provide a written description of the program's services to a law enforcement agency.]

Commentary by: Kaci Singer

Source: SB 806

Effective Date: September 1, 2023

Applicability: Applies to a sexual assault committed on or after the effective date

Summary of Changes: These changes require law enforcement officers to provide victims of sexual assault with information regarding their rights, including the ability to obtain a forensic medical exam, track case evidence updates, and speaking with a victim assistance coordinator. The purpose is to ensure victims of sexual assault are connected with resources as quickly as possible in an effort to begin the healing process and prevent revictimization. The language is modeled after the information law enforcement is currently required to provide to victims of domestic violence assaults.

Justice and Municipal Courts

Tragic events like the one in Uvalde have increased awareness about the importance of identifying and responding to at-risk youth and those with mental illness. Experts believe that early identification and intervention involving gateway offenses is crucial in reducing recidivism, system involvement, costs, and in helping youth access necessary services.

Beginning in 2019, the Texas Judicial Council began working with representatives of justice and municipal courts, juvenile prosecutors, and juvenile defense attorneys to propose statutory changes. The proposed changes, devised by the Texas Judicial Council's Youth Diversion Workgroup and recommended by the Texas Judicial Council's Criminal Justice Committee in 2022 to the legislature, aim to help identify at-risk youth and those living with mental illness, and to keep such youth from spiraling deeper into the criminal justice system while also holding them accountable for their actions.

The Texas juvenile justice system consists of distinct civil and criminal components. Civil adjudication entails juvenile probation and juvenile courts and is governed by the Family Code. Criminal adjudication, which is governed by the Code of Criminal Procedure, entails a relatively small number of teenagers accused of felonies who are certified to stand trial as adults in district courts. In municipal and justice courts, criminal adjudication mostly entails children (ages 10-16) accused of non-traffic Class C misdemeanors.

Texas law authorizes most Class C misdemeanors to be civilly adjudicated as conduct indicating a need for supervision (CINS) (See Section 51.03 of the Family Code). Prior to 1987, CINS was the exclusive method for handling such cases. Since then, the number of CINS cases has dwindled. Because juvenile probation and juvenile courts are unable to accommodate the volume of such cases, few cases are handled as CINS. Annually, 30,000-50,000 juvenile justice cases that could be civilly adjudicated as CINS are criminally adjudicated as Class C misdemeanors. With limited financial resources and public recognition for the important role they play in the juvenile justice system, municipal and justice courts have

become the first line of responders in most cases involving the misconduct of children. For nearly two decades, the judiciary has worked with the legislature to improve how cases involving youth are handled in municipal and justice courts and to ensure the rights are protected and that disparities are addressed. Critics claim that disparities in how CINS and Class C misdemeanors are handled make the juvenile justice system unfair. When civilly adjudicated, Texas law provides for the possibility of statutory diversion prior to court. However, under current law, when criminally adjudicated in municipal and justice courts, there is no similar statutory authorization.

H.B. 3186 increases opportunities for early identification and for redirecting children accused of certain "gateway" Class C misdemeanors. Currently, municipal and justice courts can only order diversion strategies after a case has been convicted or deferred. H.B. 3186 makes these strategies available at the front end of a case, where they can be more effective. This aligns municipal and justice court practice with those used by juvenile probation and juvenile courts. The bill also recalibrates and expands opportunities for collaboration and financial resources in both rural and urban parts of Texas. H.B. 3186 requires the adoption of a youth diversion plan for every municipal and justice court no later than January 1, 2025.

Note: Throughout this bill summary, unless specified otherwise, all references to new and amended articles in Chapter 45 are references to the Code of Criminal Procedure.

Code of Criminal Procedure Chapter 45. **SUBCHAPTER E. YOUTH DIVERSION**

Code of Criminal Procedure Art. 45.301. **DEFINITIONS.**

In this subchapter:

(1) "Charge" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint.

(2) "Child" has the meaning assigned by Article 45.058(h).

(3) “Court” means a justice court, municipal court, or other court subject to this chapter.

(4) “Diversion” means an intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child’s actions. The term includes diversion under Article 45.309 or 45.310.

(5) “Offense” means a misdemeanor punishable by fine only, other than a traffic offense.

(6) “Parent” has the meaning assigned by Article 45.057(a).

(7) “Service provider” means a governmental agency, political subdivision, open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families.

(8) “Youth diversion plan” means a plan adopted under Article 45.306.

Code of Criminal Procedure Art. 45.302.
APPLICABILITY.

This subchapter applies only to a child who is alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense.

Code of Criminal Procedure Art. 45.303.
TRANSFER TO JUVENILE COURT NOT AFFECTED.

Nothing in this subchapter precludes:

(1) a case involving a child from being referred, adjudicated, or disposed of as conduct indicating a need for supervision under Title 3, Family Code; or

(2) a waiver of criminal jurisdiction and transfer of a child’s case as provided by Section 51.08, Family Code.

Code of Criminal Procedure Art. 45.304.
DIVERSION ELIGIBILITY.

(a) Except as otherwise provided by this subchapter, a child shall be diverted from formal criminal prosecution as provided by this subchapter.

(b) A child is eligible to enter into a diversion agreement under this subchapter only once every 365 days.

(c) A child is not eligible for diversion if the child has previously had an unsuccessful diversion under this subchapter.

(d) A child is not eligible for diversion if a diversion is objected to by the attorney representing the state.

(e) A court may not divert a child from criminal prosecution as provided by this subchapter without the written consent of the child and the child’s parent.

Code of Criminal Procedure Art. 45.305.
DIVERSION STRATEGIES.

(a) Diversion strategies include:

(1) requiring a child to participate in a program, including:

(A) a court-approved teen court program operated by a service provider;

(B) a school-related program;

(C) an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program;

(D) a rehabilitation program; or

(E) a self-improvement program, including a program relating to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution;

(2) referring a child to a service provider for services, including:

(A) at-risk youth services under Subchapter D, Chapter 264, Family Code;

(B) juvenile case manager services under Article 45.056;

(C) work and job skills training, including job interviewing and work preparation;

(D) academic monitoring or tutoring, including preparation for a high school equivalency examination administered under Section 7.111, Education Code;

(E) community-based services;

(F) mental health screening and clinical assessment;

(G) counseling, including private or in-school counseling; or

(H) mentoring services;

(3) requiring a child to:

(A) participate in mediation or other dispute resolution processes;

(B) submit to alcohol or drug testing; or

(C) substantially comply with a course of treatment prescribed by a physician or other

licensed medical or mental health professional; and

(4) requiring a child, by court order, to:

(A) pay restitution not to exceed \$100 for an offense against property under Title 7, Penal Code;

(B) perform not more than 20 hours of community service; or

(C) perform any other reasonable action determined by the court.

(b) A diversion strategy may be imposed under:

(1) an intermediate diversion under Article 45.309;

(2) a diversion by a justice or judge under Article 45.310; or

(3) a system of graduated sanctions for certain school offenses under Section 37.144, Education Code.

(c) A diversion strategy under this subchapter may not require a child who is a home-schooled student, as defined by Section 29.916, Education Code, to:

(1) attend an elementary or secondary school; or

(2) use an educational curriculum other than the curriculum selected by the parent.

Code of Criminal Procedure Art. 45.306. YOUTH DIVERSION PLAN.

(a) A youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion. A youth diversion plan does not limit the types of diversion strategies that may be imposed under a diversion agreement under Article 45.308.

(b) Each justice and municipal court shall adopt a youth diversion plan.

(c) A youth diversion plan may be devised for a county or municipality or an individual court within a county or municipality.

(d) In accordance with Chapter 791, Government Code, a local government may enter into an agreement with one or more local governments to create a regional youth diversion plan and collaborate in the implementation of this subchapter.

(e) A youth diversion plan may include an agreement with a service provider to provide services for a diversion strategy.

(f) A youth diversion plan may contain guidelines for disposition or diversion of a child's case by law enforcement. The guidelines are not mandatory.

(g) A current youth diversion plan must be maintained on file for public inspection in each justice and municipal court, including courts that collaborate with one or more counties or municipalities.

(h) A court or local government may adopt rules necessary to coordinate services under a youth diversion plan or to implement this subchapter.

Code of Criminal Procedure Art. 45.307. YOUTH DIVERSION COORDINATOR.

(a) A court may designate a youth diversion coordinator to assist the court in:

(1) determining whether a child is eligible for diversion;

(2) employing a diversion strategy authorized by this subchapter;

(3) presenting and maintaining diversion agreements;

(4) monitoring diversions;

(5) maintaining records regarding whether one or more diversions were successful or unsuccessful; and

(6) coordinating referrals to court.

(b) The responsibilities of the youth diversion coordinator may be performed by:

(1) a court administrator or court clerk, or a person who regularly performs the duties of court administrator or court clerk;

(2) an individual or entity that provides juvenile case manager services under Article 45.056;

(3) a court-related services office;

(4) a community supervision and corrections department, including a juvenile probation department;

(5) a county or municipal employee, including a peace officer;

(6) a community volunteer;

(7) an institution of higher education, including a public, private, or independent institution of higher education; or

(8) a qualified nonprofit organization as determined by the court.

Code of Criminal Procedure Art. 45.308. DIVERSION AGREEMENT.

(a) A diversion agreement must identify the parties to the agreement and the responsibilities of the child and the child's parent to ensure their meaningful participation in a diversion under Article 45.309 or 45.310.

(b) Stated objectives in a diversion agreement must be measurable, realistic, and reasonable and consider the circumstances of the child, the best interests of the child, and the long-term safety of the community.

(c) A diversion agreement must include:

(1) the terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner and identifying any offense or charge being diverted;

(2) possible outcomes or consequences of a successful diversion and an unsuccessful diversion;

(3) an explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion;

(4) an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement;

(5) the period of the diversion;

(6) a verification that:

(A) the child and the child's parent were notified of the child's rights, including the right to refuse diversion; and

(B) the child knowingly and voluntarily consents to participate in the diversion; and

(7) written acknowledgment and acceptance of the agreement by the child and the child's parent.

(d) The terms of an agreement may vary depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used.

(e) A charge may not be filed against a child or, if filed, shall be dismissed by the court if the child:

(1) does not contest the charge;

(2) is eligible for diversion under Article 45.304; and

(3) accepts the terms of the agreement.

(f) Entering into a diversion agreement under this article extends the court's jurisdiction for the term of the agreement.

(g) On entering into a diversion agreement, a copy of the agreement shall be provided to the child and the child's parent, the clerk of the court, a youth diversion coordinator, and any person specified by the youth diversion plan.

Code of Criminal Procedure Art. 45.309. **INTERMEDIATE DIVERSION.**

(a) If provided by a youth diversion plan, a youth diversion coordinator or juvenile case manager shall advise the child and the child's parent before a case is filed that the case may be diverted under this article for a reasonable period not to exceed 180 days if:

(1) the child is eligible for diversion under Article 45.304;

(2) diversion is in the best interests of the child and promotes the long-term safety of the community;

(3) the child and the child's parent consent to diversion with the knowledge that diversion is optional; and

(4) the child and the child's parent are informed that they may terminate the diversion at any time and, if terminated, the case will be referred to court.

(b) The terms of a diversion agreement under this article must be in writing and may include any of the diversion strategies under Article 45.305.

(c) The case of a child who successfully complies with the terms of a diversion agreement under this article shall be closed and reported as successful to the court.

(d) A child who does not comply with the terms of a diversion agreement under this article shall be referred to court under Article 45.311.

Code of Criminal Procedure Art. 45.310. **DIVERSION BY JUSTICE OR JUDGE.**

(a) If a charge involving a child who is eligible for diversion is filed with a court, a justice or judge shall divert the case under this article as follows:

(1) if the child does not contest the charge, a justice or judge shall divert the case under this article without the child having to enter a plea; or

(2) if the child contests the charge, a justice or judge shall divert the case under this article at the conclusion of trial on a finding of guilt without entering a judgment of conviction as provided by Article 45.041.

(b) A diversion under this article may not exceed 180 days.

(c) The terms of a diversion agreement under this article must be in writing and may include any of the diversion strategies described by Article 45.305.

(d) The case of a child who successfully complies with the terms of a diversion agreement under this article shall be closed and reported as successful to the court.

(e) A child who does not comply with the terms of a diversion agreement under this article shall be referred to court for a hearing under Article 45.311.

Code of Criminal Procedure Art. 45.311.
REFERRAL TO COURT.

(a) A court shall conduct a non-adversarial hearing for a child who does not successfully complete the terms of a diversion under Article 45.309 or 45.310 and is referred to the court.

(b) The hearing is an opportunity for a justice or judge to confer with the child and the child's parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may be of assistance to the child or the court in determining what is in the best interests of the child and the long-term safety of the community.

(c) After the hearing, a court may enter an order:

(1) amending or setting aside terms in the diversion agreement;

(2) extending the diversion for a period not to exceed one year from the initial start date of the diversion;

(3) issuing a continuance for the hearing for a period not to exceed 60 days to allow an opportunity for compliance with the terms of the diversion;

(4) subject to Subsection (d), requiring the child's parent to perform any act or refrain from performing any act as the court determines will increase the likelihood the child will successfully complete the diversion and comply with any other order of the court that is reasonable and necessary for the welfare of the child;

(5) finding the diversion successful on the basis of substantial compliance; or

(6) finding the diversion unsuccessful and:

(A) transferring the child to juvenile court for alleged conduct indicating a need for supervision under Section 51.08, Family Code; or

(B) referring the charge to the prosecutor for consideration of re-filing.

(d) An order under Subsection (c)(4) may not have the substantive effect of interfering with a

parent's fundamental right to determine how to raise the parent's child, unless the court finds that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health.

(e) An order under Subsection (c)(4) is enforceable against the parent by contempt.

(f) The statute of limitations in Article 12.02(b) is tolled during the diversion period for purposes of Subsection (c)(6)(B).

Code of Criminal Procedure Art. 45.312.
LOCAL YOUTH DIVERSION
ADMINISTRATIVE FEE.

(a) The clerk of a justice or municipal court may collect from a child's parent a \$50 administrative fee to defray the costs of the diversion of the child's case under this subchapter.

(b) The fee under this article may not be collected unless specified as a term of the diversion agreement accepted by the child's parent. If the fee is not paid after giving the child's parent an opportunity to be heard, the court shall order the parent, if financially able, to pay the fee to the clerk of the court.

(c) A court shall waive the fee if the child's parent is indigent or does not have sufficient resources or income to pay the fee.

(d) A court may adopt rules for the waiver of a fee for financial hardship under this article.

(e) An order under Subsection (b) is enforceable against the parent by contempt.

(f) The clerk of the court shall keep a record of the fees collected under this article and shall forward the funds to the county treasurer, municipal treasurer, or person fulfilling the role of a county treasurer or municipal treasurer, as appropriate.

(g) The fee collected under this article shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under this subchapter.

(h) Except for the fee authorized under Subsection (a), a fee may not be assessed for a child diverted under this subchapter.

(i) The diversion of a child may not be contingent on payment of a fee under this article.

Code of Criminal Procedure Art. 45.313.
DIVERSION RECORDS.

(a) A justice or municipal court shall maintain statistics for each diversion strategy authorized by this subchapter.

(b) Other than statistical records, all records generated under this subchapter are confidential under Article 45.0217.

(c) All records of a diversion pertaining to a child under this subchapter shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

Commentary by: Ryan Turner, TMCEC

Source: HB 3186

Effective Date: January 1, 2024

Applicability: Each justice and municipal court must implement a youth diversion plan under Subchapter E not later than January 1, 2025. Changes made by H.B. 3186 apply to an offense committed on or after January 1, 2025. An offense committed before January 1, 2025, is governed by the law in effect on the date the offense was committed. Former law is continued in effect for that purpose. To determine application, an offense was committed before January 1, 2025, if any element of the offense occurred before that date.

Summary of Changes: H.B. 3186 may be cited as the Texas Youth and Early Intervention Act.

Rather than reinventing the processes known to work in municipal and justice courts, H.B. 3186 provides for youth diversion in municipal and justice courts by supplementation, specifically, adding a new subchapter (Subchapter E) to Chapter 45 of the Code of Criminal Procedure.

According to the bill's legislative history, Subchapter E should be construed to accomplish the following objectives:

1. Reduce recidivism and the occurrence of problem behaviors through intervention without having to criminally adjudicate children in justice and municipal courts.
2. Identify at-risk youth, including youth with mental health needs, substance use disorders, or intellectual and developmental disabilities, and, where appropriate, make referral to early youth and intervention services under Subchapter D, Chapter 264 of the Family Code.
3. Authorize diversions of children charged with certain offenses punishable by imposition of a fine from criminal adjudication that emphasize accountability and responsibility of the

parent and the child for the child's conduct while also promoting community safety.

4. Increase collaboration between governmental, educational, and non-profit organizations in devising local and regional diversion strategies in rural and urban counties and municipalities.

A. Definitions. Article 45.301 contains definitions of terms that are used throughout Subchapter E. "Charge" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint or pending complaint. "Court" means a justice court, municipal court or other court governed by Chapter 45 of the Code of Criminal Procedure. "Diversion" means an intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child's actions. "Service provider" means a governmental agency, political subdivision (local governments, including a school district), open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families. Other terms defined include "offense," "parent," and "youth diversion plan."

B. Applicability. Article 45.302 limits the application of Subchapter E to a child alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense.

Note: "Offense" means a misdemeanor punishable by a fine other than a traffic offense. "Traffic offense" is defined in Section 51.03(1) of the Family Code, which parallels Section 8.07 (2) and (3) of the Penal Code (Age Affecting Criminal Responsibility).

C. Transfer to Juvenile Court Not Affected. Article 45.303 states that nothing in Subchapter E precludes a case from being referred, adjudicated, or disposed of as CINS under Title 3 of the Family Code or precludes a permissive or mandatory waiver of criminal jurisdiction and transfer from a municipal or justice court per Section 51.08 of the Family Code.

D. Diversion Eligibility. Current law contains neither a mandate for diversion nor uniform criteria for determining eligibility. Article 45.304 requires a child to be diverted from formal

criminal prosecution as provided by Subchapter E with the following exceptions: (1) a child is eligible to enter into a diversion agreement under this subchapter only once every 365 days; (2) a child is not eligible for diversion if the child has previously had an unsuccessful diversion under Subchapter E; (3) a child is not eligible for diversion if a diversion is objected to by the prosecutor; and (4) a court may not divert a child from criminal prosecution without the written consent of the child and the child's parent.

E. Diversion Strategies. Current law does not provide an inventory of diversion strategies that may be used by municipal and justice courts. Article 45.305 provides a robust non-exclusive itemization of strategies that may be adopted. Diversion strategies include: (1) requiring a child to participate in a court-approved teen court program operated by a service provider; a school-related program; an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program; a rehabilitation program; or a self-improvement program, including a program relating to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution; (2) referring a child to a service provider for services, including at-risk youth services; juvenile case manager services; work and job skills training, including job interviewing and work preparation; academic monitoring or tutoring, including preparation for a high school equivalency examination; community-based services; mental health screening and clinical assessment; counseling, including private or in-school counseling; or mentoring services; (3) requiring a child to participate in mediation or other dispute resolution processes; submit to alcohol or drug testing; or substantially comply with a course of treatment prescribed by a physician or other licensed medical or mental health professional; and (4) requiring a child, by court order, to pay restitution not to exceed \$100 for an offense against property; perform not more than 20 hours of community service; or perform any other reasonable action determined by the court.

A diversion strategy may be imposed in connection with (1) an intermediate diversion, (2)

a diversion by a justice or judge, or (3) a system of graduated sanctions for certain school offenses under Section 37.144 of the Education Code. A diversion strategy may not, however, be used to require a child who is a home-schooled student to attend an elementary or secondary school or to use an educational curriculum other than the curriculum selected by the parent.

Note: Many but not all the diversion strategies in Article 45.305 look familiar. A lot of them are conditions or requirements authorized as a part of a deferred disposition or one of its similar cousins. H.B. 3186 does not change these laws but rather allows the possibility for teen court, juvenile case management, or other strategies to be used prior to court without a criminal adjudication.

F. Youth Diversion Plan. Article 45.306 states that a youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion. A youth diversion plan does not limit the types of diversion strategies that are authorized to be imposed under a diversion agreement under Article 45.308 (Diversion Agreement).

Article 45.306 requires each justice and municipal court to adopt a youth diversion plan. However, it also allows a youth diversion plan to be devised for a county or municipality or an individual court within a county or municipality.

To promote collaboration and the leveraging of resources, Article 45.306(d) authorizes local governments to enter into an agreement to create a regional youth diversion plan and collaborate in the implementation of Subchapter E per Chapter 791 of the Government Code (Interlocal Cooperation Contracts). Similarly, because local governments may not have adequate staffing resources, a youth diversion plan may include an agreement with a service provider to provide services for a diversion strategy.

May law enforcement be incorporated into a youth diversion plan? Yes, it is a possibility. H.B. 3186 provides maximum flexibility for local governments throughout Texas in devising a youth diversion plan in light of available resources and circumstances. Subchapter E is court focused. It primarily supplements processes and procedures pertaining to children that are already familiar to municipal and justice

courts. It does change procedures proscribed for law enforcement. Accordingly, Article 45.306(f) states that a youth diversion plan may contain guidelines for disposition or diversion of a child's case by law enforcement, but such guidelines are not mandatory.

Be ready for public inspection requests. Article 45.306(g) requires that a current youth diversion plan be maintained on file for public inspection in each justice and municipal court, including courts that collaborate with one or more counties or municipalities.

Because successful implementation of Subchapter E will require more than simply adopting a youth diversion plan, Article 45.306(h) authorizes a court or local government to adopt rules necessary to coordinate services under a youth diversion plan or to implement the subchapter.

G. Youth Diversion Coordinator. Who will be designated youth diversion coordinator in your local municipal or justice court? Article 45.307 authorizes a court to designate a youth diversion coordinator who assists the court in: (1) determining whether a child is eligible for diversion; (2) employing a diversion strategy authorized by Subchapter E; (3) presenting and maintaining diversion agreements; (4) monitoring diversions; (5) maintaining records regarding whether one or more diversions were successful or were unsuccessful; and (6) coordinating referrals to court.

The responsibilities of the youth diversion coordinator may be performed by: (1) a court administrator or court clerk, or a person who regularly performs the duties of court administrator or court clerk; (2) an individual or entity that provides juvenile case manager services under Article 45.056; (3) a court-related services office; (4) a community supervision and corrections department, including a juvenile probation department; (5) a county or municipal employee, including a peace officer; (6) a community volunteer; (7) an institution of higher education, including a public, private, or independent institution of higher education; or (8) a qualified nonprofit organization as determined by the court.

H. Diversion Agreement. A diversion agreement is a legally binding contract. Article

45.308 requires a diversion agreement to identify the parties to the agreement and the responsibilities of the child and the child's parent to ensure their meaningful participation in a diversion under Article 45.309 (Intermediate Diversion) or Article 45.310 (Diversion by Justice or Judge). Objectives in a diversion agreement must be measurable, realistic, and reasonable and consider the circumstances of the child, the best interests of the child, and the long-term safety of the community.

A diversion agreement has seven statutory requirements: (1) the terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner and identifying any offense or charge being diverted; (2) possible outcomes or consequences of a successful diversion and an unsuccessful diversion; (3) an explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion; (4) an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement; (5) the period of the diversion; (6) a verification that the child and the child's parent were notified of the child's rights, including the right to refuse diversion, and the child knowingly and voluntarily consents to participate in the diversion; and (7) written acknowledgment and acceptance of the agreement by the child and the child's parent.

Diversion agreements are not a one-size-fits-all proposition. They are intended to be customized. Article 45.308(d) states that the terms of a diversion agreement may vary depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used.

In addition to being a contract, there are other significant legal implications associated with a diversion agreement as it pertains to the initial criminal allegation. Under Article 45.308(e), a charge is prohibited from being filed against a child or, if filed, is required to be dismissed by the court if the child (1) does not contest the charge, (2) is eligible for diversion under Article 45.304, and (3) accepts the terms of the agreement. However, by the same token, entering into a diversion agreement under Article 45.308

extends the court's jurisdiction for the term of the agreement.

After entering into a diversion agreement, Article 45.308(g) requires the clerk of the court, a youth diversion coordinator, or a person specified by the youth diversion plan to provide a copy of the agreement to the child and the child's parent.

I. Intermediate Diversion vs. Diversion by a Justice or Judge. To avoid a one-size-fits-all approach, Subchapter E provides courts great latitude to custom configure a diversion plan that best fits the varying needs of cities and counties, both rural and urban. The focus on flexibility is reflected in the difference between intermediate diversion and diversion by a justice or judge.

Intermediate diversion (Article 45.309) is only authorized if specified in a youth diversion plan (Article 45.306). It requires a youth diversion coordinator or juvenile case manager to advise the child and the child's parent before a case is filed that the case may be diverted for a reasonable period not to exceed 180 days if: (1) the child is eligible for diversion under Article 45.304; (2) diversion is in the best interests of the child and promotes the long-term safety of the community; (3) the child and the child's parent consent to diversion with the knowledge that diversion is optional; and (4) the child and the child's parent are informed that they are authorized to terminate the diversion at any time and, if terminated, the case will be referred to court. The terms of an intermediate diversion must be in writing and may include any of the diversion strategies under Article 45.305. The case of a child who successfully complies with the terms of a diversion agreement under Article 45.309 shall be closed and reported as successful to the court. A child who does not comply with the terms of the diversion agreement under Article 45.309 shall be referred to court under Article 45.311.

For a diversion by a justice or judge (Article 45.310), if a charge involving a child who is eligible for diversion is filed with a court, a justice or judge shall divert the case in one of two ways: (1) if the child does not contest the charge, a justice or judge is required to divert the case without the child having to enter a plea; or (2) if the child contests the charge, a justice or judge is required to divert the case at the conclusion of

trial on a finding of guilt without entering a judgment of conviction as provided by Article 45.041 (Judgment). A diversion by a justice or judge may not exceed 180 days. The terms of a diversion agreement under Article 45.310 are required to be in writing and may include any of the diversion strategies described by Article 45.305. The case of a child who successfully complies with the terms of a diversion agreement under Article 45.310 shall be closed and reported as successful to the court. A child who does not comply with the terms of the diversion agreement under Article 45.310 shall be referred to court for a hearing under Article 45.311.

Note: As reflected in Article 45.310, a legislative preference for youth diversion should not be construed by judges and court personnel as diminishing a child's right to trial. At the same time, it is important to stress that invoking the right to trial does not alleviate a judge's statutory obligation to divert at the conclusion of trial on a finding of guilt without entering a judgment of conviction.

J. Referral to Court. Article 45.311 requires a court to conduct a non-adversarial hearing for a child who does not successfully complete the terms of either an intermediate diversion (Article 45.309) or a diversion by a justice or judge (Article 45.310) and is referred to the court. The hearing is an opportunity for a justice or judge to confer with the child and the child's parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may be of assistance to the child or the court in determining what is in the best interests of the child and the long-term safety of the community.

After a hearing, per Article 45.311(c), a court may enter an order: (1) amending or setting aside terms in the diversion agreement; (2) extending the diversion for a period not to exceed one year from the initial start date of the diversion; (3) issuing a continuance for the hearing for a period not to exceed 60 days to allow an opportunity for compliance with the terms of the diversion; (4) requiring the child's parent to perform any act or refrain from performing any act as the court determines will increase the likelihood the child will successfully complete the diversion and comply with any other order of the court that is reasonable and necessary for the welfare of the

child; (5) finding the diversion successful on the basis of substantial compliance; or (6) finding the diversion unsuccessful and either transferring the child to juvenile court for alleged CINS under Section 51.08 of the Family Code (Transfer From Criminal Court) or referring the charge to the prosecutor for consideration of re-filing. The statute of limitations in Article 12.02(b) of the Code of Criminal Procedure is tolled during the diversion period.

Note: There is an important caveat regarding orders affecting parents. Orders against parents are enforceable by contempt (Article 45.311(e)). However, Article 45.311(d) prohibits such orders from having the substantive effect of interfering with a parent's fundamental right to determine how to raise the parent's child, unless the court finds that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health.

K. Local Youth Diversion Administrative Fee (LYDAF). Article 45.312 authorizes the clerk of a court to collect from a child's parent a \$50 administrative fee to defray the costs of the diversion of the child's case. The LYDAF may not be collected unless it is specified in the diversion agreement and accepted by the child's parent. However, after acceptance, if the fee is not paid after giving the parent an opportunity to be heard, the court shall order the parent, if financially able, to pay the fee to the clerk. An order to pay is enforceable by contempt. However, if the parent is indigent or does not have sufficient resources or income to pay, a court shall waive the fee. A court may adopt rules for financial hardship waiver of the LYDAF.

There are two additional important requirements in Article 45.312 relating to the LYDAF. First, the clerk of the court is required to keep a record of fees collected and shall forward the funds to the local government treasurer or person fulfilling the role of treasurer. Second, the fee shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under Subchapter E.

Article 45.312 also contains two important prohibitions. Except for the LYDAF, no additional fee may be assessed for a child diverted under Subchapter E. The diversion of a child may not be contingent on payment of the LYDAF.

Note: The LYDAF is different than most fees collected in municipal and justice courts typically associated with children accused of Class C misdemeanors. Its collection is not triggered by a judgment/conviction or a deferred disposition. There is no state mandate to collect the LYDAF. Rather, state law authorizes its collection, not from the child-defendant, but rather the child's parent, subject to the terms of the youth diversion agreement. (In contrast, parents are under no legal obligation to pay any cost assessed against a child in a criminal adjudication.) While 90 percent of state court costs in criminal cases are remitted to the state, the LYDAF, which is not a state criminal court cost, is 100 percent retained locally and can only be used to offset the cost of the operations of youth diversion programs under Subchapter E. Article 45.312 implicitly states that the LYDAF may not be collected without complying with the requirements of Subchapter E.

L. Diversion Records. Article 45.313 requires justice and municipal courts to maintain statistics for each diversion strategy authorized by Subchapter E. Such data can be used by courts and local governments for planning and gauging diversion efforts. However, all records generated under Subchapter E, other than statistical records, are confidential under Article 45.0217 (Confidential Records Relating to Charges Against or Conviction of a Child). All youth diversion records of a child under Subchapter E are required to be expunged, without a motion or request, on the child's 18th birthday.

Code of Criminal Procedure Art. 45.0215. PLEA BY MINOR AND APPEARANCE OF PARENT.

(a) Subject to the requirements of Subchapter E, this [This] article applies to a defendant who has not had the disabilities of minority removed and has been:

- (1) charged with an offense other than an offense under Section 43.261, Penal Code, if the defendant is younger than 17 years of age; or
- (2) charged with an offense under Section 43.261, Penal Code, if the defendant is younger than 18 years of age.

**Code of Criminal Procedure Art. 45.041.
JUDGMENT.**

(a-2) In a case involving a child who is eligible for diversion under Article 45.304 that results in a trial, if the court determines that the evidence presented in a bench trial would support a finding of guilt, or if a jury returns a verdict of guilty, the court shall provide the child and the child's parents the opportunity to accept placement in diversion, under Article 45.310, instead of entering an adjudication of guilt. If the child and the child's parents accept the opportunity for placement in diversion under Article 45.310, the court shall place the child in diversion. If the child and the child's parents decline the opportunity for placement in diversion under Article 45.310, the court shall find the child guilty and proceed to sentencing.

(b-3) If a diversion is not required under Subchapter E or Subsection (a-2), a [A] judge shall ~~may~~ allow a defendant who is a child, as defined by Article 45.058(h), to elect at the time of conviction, as defined by Section 133.101, Local Government Code, to discharge the fine and costs by:

- (1) performing community service or receiving tutoring under Article 45.049 [45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011]; or
- (2) paying the fine and costs in a manner described by Subsection (b).

**Code of Criminal Procedure Art. 45.049.
COMMUNITY SERVICE IN
SATISFACTION OF FINE OR COSTS.**

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article or Subchapter E to perform community service is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article or Subchapter E if the act or failure to act:

- (1) was performed pursuant to court order; and
- (2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(i) A community supervision and corrections department, a local juvenile probation department, or a court-related services office may provide the administrative and other services necessary for supervision of a defendant required to perform community service under this article.

**Code of Criminal Procedure Art. 45.056.
JUVENILE CASE MANAGERS.**

(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a juvenile case manager or contract for a juvenile case manager to provide services in cases involving:

(A) youth diversion under Subchapter E;

(B) children ~~[juvenile offenders]~~ who are before a court consistent with the court's statutory powers; or

(C) children who are referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians;

(2) employ or contract for the services of one or more juvenile case managers who:

(A) shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases; and

(B) may provide:

(i) prevention services to a child considered at risk of entering the juvenile justice system; and

(ii) youth diversion ~~[intervention]~~ services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses; or

(3) agree in accordance with Chapter 791, Government Code, with any appropriate governmental entity to jointly employ a juvenile case manager, jointly contract for juvenile case manager services, or ~~[to]~~ jointly contribute to the costs of a juvenile case manager or juvenile case manager ~~[employed by one governmental entity to provide]~~ services described by Subdivisions (1) and (2).

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for

reimbursement of all or part of the costs of employing one or more juvenile case managers or contracting for juvenile case manager services from funds appropriated to the governor's office or otherwise available for purposes of youth diversion ~~[that purpose]~~. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes in the entity's jurisdiction and a youth diversion plan under Article 45.306 that addresses the role of the juvenile case manager in that effort.

(c) An entity that jointly employs a juvenile case manager, jointly contracts for juvenile case manager services, or jointly contributes to the costs of a juvenile case manager or juvenile case manager services under Subsection (a)(3) employs a juvenile case manager for purposes of Chapter 102 of this code and Chapter 102, Government Code.

(d) The court or governing body may pay from the local youth diversion fund established under Section 134.156, Local Government Code:

(1) the salary and benefits of a juvenile case manager;

(2) the costs of contracting for juvenile case manager services; and

(3) the costs of training, travel, office supplies, and other necessary expenses relating to the position of the juvenile case manager and juvenile case manager services ~~[from the local truancy prevention and diversion fund established under Section 134.156, Local Government Code]~~.

(e) A juvenile case manager ~~[employed under Subsection (e)]~~ shall give priority to cases brought under Section [Sections] 25.093 [and 25.094], Education Code, Chapter 65, Family Code, and youth diversion under Subchapter E of this chapter.

(g) A [The employing] court or governmental entity under this article shall implement the rules adopted under Subsection (f).

(h) The commissioners court or governing body of the municipality that administers a local youth ~~[truancy prevention and]~~ diversion fund under Section 134.156, Local Government Code, shall require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (f).

Commentary by: Ryan Turner, TMCEC

Source: HB 3186

Effective Date: January 1, 2024

Applicability: Each justice and municipal court must implement a youth diversion plan under Subchapter E not later than January 1, 2025. Changes made by H.B. 3186 apply to an offense committed on or after January 1, 2025. An offense committed before January 1, 2025, is governed by the law in effect on the date the offense was committed. Former law is continued in effect for that purpose. To determine application, an offense was committed before January 1, 2025, if any element of the offense occurred before that date.

Summary of Changes: The addition of Subchapter E (Youth Diversion) to Chapter 45 of the Code of Criminal Procedure required making conforming amendments in other Subchapters of Chapter 45. Some of these changes are substantive.

A. Plea by Minor and Appearance by Parent. Article 45.0215(a) is amended to reflect that the provisions in present law pertaining to a plea and appearance must be read in conjunction with the general statutory directive in Subchapter E to divert children after its effective date.

B. Judgment. H.B. 3186 amends Article 45.041 adding Subsection (a-2) and making conforming changes to Subsection (b-3).

Youth diversion does not negate the right to trial. Subsection 45.041(a-2) provides that if a child who is eligible for diversion under Article 45.304 goes to trial, and if the court determines that the evidence presented in a bench trial would support a finding of guilt, or if a jury returns a verdict of guilty, the court must provide the child and the child's parents the opportunity for diversion per Article 45.310 (Diversion by Justice or Judge). If the child and the child's parent decline the diversion, the court shall find the child guilty and proceed to sentencing.

If a diversion is not required, who chooses how a child defendant shall discharge the judgment? Subsection 45.041(b-3), as amended, states that if a diversion is not required under Subchapter E or Subsection (a-2), a judge *must allow a defendant who is a child* to elect at the time of conviction to discharge the fine and costs either by: (1) performing community service or receiving tutoring under Article 45.049 (Community Service in Satisfaction of Fine or

Costs) or (2) pay the fine and costs per Article 45.041(b). Under current law, a judge may, but is not required to, allow a child to make such an election.

Note: While H.B. 3186 expressly excludes traffic offenses from the scope of statutory diversion under Subchapter E, in terms of electing how a child discharges a judgment, the amendment to Article 45.041 makes no similar exclusion. Accordingly, even children convicted of traffic offenses must be allowed to elect how they will discharge the judgment. Under changes to Article 45.041(b-3), these elections should be carefully documented by courts. It is also important to remember that a defendant may discharge the obligation to perform community service at any time by paying the fine and costs assessed.

C. Community Service. Article 45.049(f) specifies the circumstances that certain government actors are not liable for damages arising from community service. The amendment to Article 45.049(f) extends such protections to community service performed as part of a diversion under Subchapter E. Because in some parts of Texas it is anticipated that juvenile probation departments may take on an increased role under Subchapter E, amended Article 45.049(i) includes local juvenile probation departments among the entities authorized to supervise community service.

D. Sections 6-8. Juvenile Case Management

In 2018, the Texas Judicial Council's Juvenile Justice Committee recommended that the legislature amend the law to clarify and expand the use of juvenile case managers in Texas.

Article 45.056 of the Code of Criminal Procedure authorizes local governments to employ a juvenile case manager to assist in administering cases involving children. As conceptualized by University of Texas Law Professor, Robert O. Dawson, juvenile case managers generally operate as several positions rolled into one: an innovative problem-solver that is part court clerk, part probation officer, and part social worker.

In 2011, the legislature, in commentary to S.B. 61, stated that although their roles vary, juvenile case managers are intended to serve as problem solvers by fostering interaction between youth

and judges, integrating social services into the disciplinary process, and cooperating with children, parents, schools, and courts to best serve the interests of children and the community. The commentary also stated that despite the increased use of juvenile case managers since first authorized in 2001, and the creation of the juvenile case manager fund in 2005, the legislative intent behind the creation of these case managers remains largely unrealized.

Although the exact number of juvenile case managers is unknown, in 2018 it was estimated that there were only 170 juvenile case managers throughout Texas. Most juvenile case managers operate in or near urban and suburban areas, leaving rural areas underserved. Although Article 45.056 has long authorized shared employment of juvenile case managers, there is little evidence to show that rural areas use case managers on a regional basis. Some courts and local governments cannot afford to hire a juvenile case manager and others do not have enough juvenile case filings to warrant hiring a juvenile case manager. Consequently, under current law, only local governments who can afford to hire a juvenile case manager have a juvenile case manager.

H.B. 3186 aims to increase the juvenile case manager services throughout Texas by encouraging collaboration between governmental, educational, and non-profit organizations in devising local and regional diversion strategies in rural and urban counties and municipalities.

It does this in multiple ways:

- Article 45.056(a)(1), as amended, is expanded to authorize contracting (and joint contracting) for juvenile case manager services to comply with the requirements of youth diversion under Subchapter E.
- Article 45.056(b), as amended, is expanded to allow local entities to jointly apply to the Criminal Justice Division of the Office of the Governor for reimbursement of all or part of the costs of employing one or more juvenile

case managers or contracting for juvenile case manager services for purposes of youth diversion. To be eligible for reimbursement, an application must be presented to the governor's office with a comprehensive plan to reduce juvenile crimes and a youth diversion plan under Article 45.306 that addresses the role of the juvenile case manager in youth diversion efforts.

- Article 45.056(c), as amended, provides that an entity that jointly employs a juvenile case manager, jointly contracts for juvenile case manager services, or jointly contributes to the costs of a juvenile case manager or juvenile case manager services under Subsection (a)(3) "employs" a juvenile case manager for purposes of Chapter 102 of the Code of Criminal Procedure (Costs, Fees, and Fines Paid by Defendants) and Chapter 102 of the Government Code.
- Article 45.056(d), as amended, is expanded to authorize a court or governing body to pay the costs of contracting for juvenile case manager services under the renamed Local Youth Diversion Fund (currently Local Truancy Prevention and Diversion Fund in Section 134.156 of the Local Government Code).
- Article 45.056(e), as amended, states that a juvenile case manager, rather than a juvenile case manager "employed under Subsection (c)," give priority to cases brought under Section 25.093 of the Education Code (Parent Contributing to Nonattendance), Truancy Court Proceedings (Chapter 65 of the Family Code), and youth diversion under Subchapter E.
- Article 45.056(g), as amended, requires a court, rather than an "employing" court, or governmental entity to implement the rules adopted under Subsection (f) (which requires a governing body to adopt reasonable rules for juvenile case managers).

- Article 45.056(h), as amended, requires the commissioners court or governing body of the municipality that administers a Local Youth Diversion Fund (currently Local Truancy Prevention and Diversion Fund) under Section 134.156 of the Local Government Code to require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (f).

Note: Changes made to the Code of Criminal Procedure, Local Government Code, and Government Code reflect a shift toward youth diversion with a focus that includes but is broader than truancy prevention. As further discussed below, changes made to Article 45.056(b) not only increase the scope for which the governor's office can reimburse costs associate with juvenile case management but also increase the number of municipal and county governments who may apply individually or jointly for reimbursement funding. This could prove to be a much needed boon for rural Texas counties and cities who have historically been ineligible for reimbursement because Article 45.056 only contemplated reimbursement for cities and counties who employed juvenile case managers.

Code of Criminal Procedure Art. 102.014. FINES FOR CHILD SAFETY FUND [~~IN MUNICIPALITIES~~].

(g) In a municipality with a population less than 850,000 according to the most recent federal decennial census, the money collected under this article in a municipal court case must be used for a school crossing guard program if the municipality operates one. If the municipality does not operate a school crossing guard program or if the money received from fines from municipal court cases exceeds the amount necessary to fund the school crossing guard program, the municipality may:

- (1) deposit the additional money in an interest-bearing account;
- (2) expend the additional money for programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention, youth diversion, and drug and alcohol abuse prevention; or
- (3) expend the additional money for programs designed to enhance public safety and security.

(h) Money collected under this article in a justice, county, or district court shall be used to fund school crossing guard programs in the county where they are collected. If the county does not operate a school crossing guard program, the county may:

- (1) remit fine revenues to school districts in its jurisdiction for the purpose of providing school crossing guard services;
- (2) fund programs the county is authorized by law to provide which are designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention, youth diversion, and drug and alcohol abuse prevention;
- (3) provide funding to the sheriff's department for school-related activities;
- (4) provide funding to the county juvenile probation department; or
- (5) deposit the money in the general fund of the county.

**Code of Criminal Procedure Art. 102.0171.
FINES: JUVENILE DELINQUENCY
PREVENTION FUNDS.**

(a) A defendant convicted of an offense under Section 28.08, Penal Code, in a municipal court, justice court, county court, county court at law, or district court shall pay a fine of \$50 for juvenile delinquency prevention and graffiti eradication.

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

- (1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;
- (2) provide educational and intervention programs and materials, including printed educational materials for distribution to primary and secondary school students, designed to prevent individuals from committing offenses under Section 28.08, Penal Code;
- (3) provide to the public rewards for identifying and aiding in the apprehension and prosecution

of offenders who commit offenses under Section 28.08, Penal Code;

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

(5) provide funding for local teen court programs;

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

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

(8) provide funding for youth diversion under Subchapter E, Chapter 45.

(e) The municipal juvenile delinquency prevention fund shall be administered by or under the direction of the governing body of a municipality.

**Local Government Code Sec. 133.102.
CONSOLIDATED FEES ON CONVICTION.**

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) crime stoppers assistance account 0.2427 percent;

(2) breath alcohol testing account 0.3900 percent;

(3) Bill Blackwood Law Enforcement Management Institute account 1.4741 percent;

(4) Texas Commission on Law Enforcement account 3.4418 percent;

(5) law enforcement and custodial officer supplement retirement trust fund 7.2674 percent;

(6) criminal justice planning account 8.5748 percent;

(7) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 0.8540 percent;

(8) compensation to victims of crime account 24.6704 percent;

(9) emergency radio infrastructure account 3.6913 percent;

- (10) judicial and court personnel training account 3.3224 percent;
- (11) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center account ~~[Account]~~ 0.8522 percent;
- (12) fair defense account 17.8857 percent;
- (13) judicial fund 12.2667 percent;
- (14) DNA testing account 0.1394 percent;
- (15) specialty court account 1.0377 percent;
- (16) statewide electronic filing system account 0.5485 percent;
- (17) jury service fund 6.4090 percent;
- (18) youth ~~[truancy prevention and]~~ diversion account 2.5956 percent; and
- (19) transportation administrative fee account 4.3363 percent.

**Local Government Code Sec. 133.125.
ALLOCATION OF FEES TO YOUTH
~~[TRUANCY PREVENTION AND]~~
DIVERSION ACCOUNT.**

- (a) The youth ~~[truancy prevention and]~~ diversion account is a dedicated account in the general revenue fund. The account consists of money allocated to the account under Section 133.102(e).
- (b) The legislature may appropriate money from the youth ~~[truancy prevention and]~~ diversion account only to the criminal justice division of the governor's office for distribution to local governmental entities for youth diversion ~~[truancy prevention and intervention]~~ services.
- (c) A local governmental entity may request funds from the criminal justice division of the governor's office for providing youth diversion ~~[truancy prevention and intervention]~~ services. The division may award the requested funds based on the availability of appropriated funds and subject to the application procedure and eligibility requirements specified by division rule.

**Local Government Code Sec. 134.103.
LOCAL CONSOLIDATED FEE ON
CONVICTION OF NONJAILABLE
MISDEMEANOR.**

- (b) The treasurer shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the

account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

- (1) the courthouse security fund or municipal court building security fund, as appropriate 35 percent;
- (2) the local youth ~~[truancy prevention and]~~ diversion fund 35.7143 percent;
- (3) the justice court technology fund or municipal court technology fund, as appropriate 28.5714 percent; and
- (4) the county or municipal jury fund, as appropriate 0.7143 percent.

**Local Government Code Sec. 134.156.
LOCAL YOUTH ~~[TRUANCY PREVENTION AND]~~ DIVERSION FUND.**

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

- (a-1) In a county or municipality that does not employ or contract with a juvenile case manager, the governing body of the county or municipality, in consultation with the court, may direct money described by Subsection (a) to be used for the support of a local mental health authority, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designed to

prevent or reduce the number of juvenile referrals to the court.

Commentary by: Ryan Turner, TMCEC

Source: HB 3186

Effective Date: January 1, 2024

Applicability: Each justice and municipal court must implement a youth diversion plan under Subchapter E not later than January 1, 2025. Changes made by H.B. 3186 apply to an offense committed on or after January 1, 2025. An offense committed before January 1, 2025, is governed by the law in effect on the date the offense was committed. Former law is continued in effect for that purpose. To determine application, an offense was committed before January 1, 2025, if any element of the offense occurred before that date.

Summary of Changes: In addition to the Local Youth Diversion Administrative Fee (LYDAF) in Article 45.312 and broader eligibility for reimbursement under Article 45.056(b), described above, H.B. 3185 recalibrates, expands, and adds to existing funding sources for the purposes of youth diversion under Subchapter E.

A. Child Safety Fund. Under current Article 102.014 of the Code of Criminal Procedure, monies collected for the Child Safety Fund are used by municipalities and counties to pay for school crossing guard programs. If a municipality does not operate a school crossing guard program or if the money received from fines from municipal court cases exceeds the amount necessary to fund the school crossing guard program, a municipality may expend the additional money for programs designed to enhance child safety. Similar provisions exist for counties where money is similarly collected in justice, county, and district courts. As amended, youth diversion is added to the list of ways a municipality or county may expend additional child safety funds.

B. Juvenile Delinquency Prevention Funds. In 2015, graffiti (Section 28.08 of the Penal Code) became a Class C misdemeanor if the alleged pecuniary loss in property damage is less than \$100. However, Article 102.0171 of the Code of Criminal Procedure (Juvenile Delinquency Prevention Funds) was never amended to allow municipal or justice courts to collect \$50 per conviction authorized for other trial courts. As amended, municipal and justice courts are added

to the trial courts authorized by Article 102.0171(a) to collect \$50 per conviction for graffiti and deposit the fines in a municipal juvenile delinquency prevention fund. Funding for youth diversion under Subchapter E is added to the enumerated eight-item list for which the governing body of a municipality and a commissioners court may expend juvenile delinquency prevention funds.

C. State and Local Youth Diversion Funds.

One way the costs of implementing Subchapter E will be defrayed is by renaming and expanding the use of state and local funds currently earmarked for truancy prevention and diversion. Both state and local funds are renamed. As amended, Section 133.125 of the Local Government Code provides that money in the state general revenue fund shall be appropriated from the legislature to the governor's office for purposes of distribution to local government entities for purposes of youth diversion. (See previous discussion of Article 45.056 of the Code of Criminal Procedure.)

Since 2019, state law has required local governments to collect a consolidated fee on conviction of nonjailable misdemeanors (Section 134.103 of the Local Government Code). The local consolidated fee is \$14, and 35.7143 percent (\$5.00) is presently allocated to the Local Truancy Prevention and Diversion Fund. Under current law, these funds can only be used to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager employed under Article 45.056 of the Code of Criminal Procedure. As previously described, under the amended renamed Local Youth Diversion Fund, "hire" will also mean employing a juvenile case manager, joint contracting for juvenile case manager services, or joint contributing to the costs of a juvenile case manager or juvenile case manager services.

But what if a local government does not need or want juvenile case management as part of its youth diversion plan? For the last three years, local governments have been required to collect \$5.00 per case per conviction in all Class C misdemeanors. Many municipal and justice courts, particularly in rural Texas, presently have no way to spend money in the Local Truancy Prevention and Diversion fund because of current

limitations in Article 45.056. H.B. 3186 helps remedy this bottleneck. As part of the re-monikered Local Youth Diversion Fund, Section 134.156 (a-1) of the Local Government Code, as amended, authorizes the governing body of a county or municipality that does not employ or contract with a juvenile case manager (as now authorized by the amended Article 45.056), in consultation with a court, to direct money in the Local Youth Diversion Fund to support local mental health authorities, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designed to prevent or reduce the number of juvenile referrals to court.

Note: By amending Article 45.056 and Section 134.156 of the Local Government Code, it is clearly the primary intent of the legislature to expand the use of juvenile case managers by making juvenile case management not just a job, but a service that can be contracted on an as-needed basis or that can be shared between courts in municipalities and counties. Alternatively, it is good to know that local governments without juvenile case management services will be able to use the Local Youth Diversion Fund to support a local mental health authority and other programs and projects designed to prevent or reduce the number of juvenile referrals to court.

Family Code Sec. 264.302. EARLY YOUTH INTERVENTION SERVICES.

(e) The department shall provide services for a child and the child's family if a contract to provide services under this section is available in the county and the child is referred to the department as an at-risk child by:

- (1) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59;
- (2) a law enforcement officer or agency under Section 52.03; or
- (3) a justice or municipal court under Article 45.057, 45.309, or 45.310, Code of Criminal Procedure.

Commentary by: Ryan Turner, TMCEC

Source: HB 3186

Effective Date: January 1, 2024

Applicability: Each justice and municipal court must implement a youth diversion plan under Subchapter E not later than January 1, 2025.

Changes made by H.B. 3186 apply to an offense committed on or after January 1, 2025. An offense committed before January 1, 2025, is governed by the law in effect on the date the offense was committed. Former law is continued in effect for that purpose. To determine application, an offense was committed before January 1, 2025, if any element of the offense occurred before that date.

Summary of Changes: Under current law, Section 264.302(e) of the Family Code (Early Youth Intervention Services) requires the Department of Family and Protective Services (DFPS) to provide services for a child and the child's family if a contract to provide services under that section is available in the county and the child is referred to DFPS as an at-risk child by: (1) a juvenile court or probation department as part of progressive sanctions, (2) a law enforcement officer or agency under Section 52.03 of the Family Code (Disposition Without Referral to Court), (3) a municipal or justice court under Article 45.057 of the Code of Criminal Procedure (Offenses Committed by Juveniles).

H.B. 3186 amends Section 264.302(e)(3), adding referrals of children and parents as part of an intermediate diversion (Article 45.309) or a diversion by a justice or judge (Article 45.310).

Notes: Increasingly, public welfare depends on municipal and justice courts understanding their role in referring children and their families to early youth intervention services. Under H.B. 3186, for interventions to occur courts must act. This requires developing both a working knowledge of local service providers and channels of communication.

Government Code Sec. 22.1105. JUDICIAL INSTRUCTION RELATED TO CERTAIN ALLEGED CHILD OFFENDERS.

(a) Each judge of a court with jurisdiction to hear a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only, other than a traffic offense or public intoxication or a violation of a penal ordinance of a political subdivision other than a traffic offense, shall complete a course of instruction related to youth diversion and understanding relevant issues of child welfare, including issues related to mental health and children with disabilities, ~~[and the Individuals with Disabilities Education Act (20~~

~~U.S.C. Section 1400 et seq.}]~~ every judicial academic year that ends in a 0 or a 5.

Commentary by: Ryan Turner, TMCEC

Source: HB 3186

Effective Date: January 1, 2024

Applicability: Each justice and municipal court must implement a youth diversion plan under Subchapter E not later than January 1, 2025. Changes made by H.B. 3186 apply to an offense committed on or after January 1, 2025. An offense committed before January 1, 2025, is governed by the law in effect on the date the offense was committed. Former law is continued in effect for that purpose. To determine application, an offense was committed before January 1, 2025, if any element of the offense occurred before that date.

Summary of Changes: Under current law, Section 22.1105(a) of the Government Code requires judges, including municipal judges and justices of the peace, to complete a course of instruction relating to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1400 et seq.) in judicial academic years that end in 0 or 5.

As amended, Section 22.1105(a) broadens the criteria to a course of instruction relating to youth diversion and understanding relevant issues of child welfare, including issues related to mental health and children with disabilities.in judicial academic years that end in 0 or 5.