Texas Municipal Courts Education Center

Legislative Update '11

LUBBOCK
August 10, 2011

HOUSTON
August 16, 2011

AUSTIN
August 19, 2011

Funded by a grant from the Texas Court of Criminal Appeals

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Texas Municipal Courts Education Center
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Texas Municipal Courts Education Center

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Texas Municipal Courts Education Center
Legislative Update 2011

8:00 – 9:00 a.m.	**Registration and Breakfast**
9:00 – 9:05 a.m.	**Welcome and Announcements** Course Director: Gary Bellair, Presiding Judge, Ransom Canyon
9:05 – 10: 20 a.m.	**Juvenile Justice and Issues Relating to Children** Eric Ransleben, Associate Judge, Town of Trophy Club Mark Goodner, Program Attorney & Deputy Counsel, TMCEC
10:20 – 10:35 a.m.	**Break**
10:35 – 12:00 p.m.	**Court Administration, Local Government and New Class C Misdemeanors** Edward Spillane, Presiding Judge, City of College Station Cathy Riedel, Program Director, TMCEC
12:00 – 1:00 p.m.	**Lunch**
1:00 – 2:15 p.m.	**Traffic Safety and Transportation Issues*** Stewart Milner, Presiding Judge, Arlington Katie Tefft, Program Attorney, TMCEC
2:15 – 2:30 p.m.	**Break**
2:30 – 4:00 p.m.	**Magistrate Issues and Changes in Procedural Law** Robin Ramsay, Presiding Judge, City of Denton Ryan Kellus Turner, General Counsel and Director of Education, TMCEC
4:10 – 5:00 p.m.	**Q&A** TMCEC Faculty
5:00 p.m.	**Adjournment**

* Denotes Municipal Traffic Safety Initiatives (MTSI) curriculum funded by a grant from the Texas Department of Transportation.

CLE Credit: 6.25 Hours = all sessions including the Question and Answer Session
5.5 Hours = all sessions excluding the Question and Answer Session
.25 Hours = Ethics

Introduction to Materials

FOREWARD

In the wake of historic economic hard times for the nation, the Texas 82nd Regular Legislature convened on January 11, 2011. The Texas Municipal Courts Education Center (TMCEC) tracked 796 bills, during the course of this session. 140 days later, only 187 of the bills tracked (or 23.5 percent) became law. While there was one Special Session, it had minimal implications on municipal courts. Notably, this is the first session in more than a decade in which no new court costs were created for municipal court cases. (In fact, one court cost was actually repealed!)

This publication contains 140 bill summaries divided into seven distinct categories: Juvenile Justice and Issues Relating to Children; Court Costs and Administrative Issues; Ordinance and Local Government Issues; Substantive Criminal Law; Magistrate Duties and Domestic Violence; Traffic Safety and Transportation Issues; and Procedural Law.

Within each category, we have further categorized bills as high and medium priority. While this structure is helpful in learning changes in the law, we are the first to admit that any attempt at prioritization is somewhat subjective. Accordingly, readers are encouraged to read all of the bill summaries (regardless if categorized high or medium priority) in order that you may ascertain local applicability. If you prefer to read bill summaries organized numerically, rather than by topic, an alternate version of the legislative issue of *The Recorder* is available online at www.tmcec.com.

The summaries contained in this publication were written during the months of May, June, and July. Thus, when a summary refers to "current law," it is referring to the law prior to the day of the legislative enactment. Most amendments, except where noted, are effective September 1, 2011.

TMCEC could not bring this compilation to you and maintain our educational mission without the assistance of the State of Texas, more specifically, the House Research Organization (HRO), the Senate Research Center (SRC), and the Legislative Budget Board (LBB). While in some instances we have made non-substantive edits and/or adaptations, the bill summaries contained in this compilation are derived from the work product of the State of Texas and the forenamed agencies. We are most appreciative for their efforts.

Many of the summaries are followed by commentary. The commentary is the collaborative efforts of the four TMCEC staff attorneys. Thanks to Mark Goodner, Cathy Riedel, and Katie Tefft for their contributions. I also want to thank Elizabeth Angelone and R. Christopher Baker, who both attend St. Mary's School of Law, Patty Thamez, Hope Lochridge, Jameson Crain, Cielito Apolinar, and the rest of the TMCEC staff for their commendable efforts in bringing this information to the courts and the people of Texas.

Finally special thanks to the Legislative Update faculty who volunteered their time and energy to make the Legislative Updates a reality: Stewart Milner, Robin Ramsay, Eric Ransleben, and Ed Spillane. Your service to our courts and to TMCEC's educational mission is much appreciated.

Ryan Kellus Turner
General Counsel & Director of Education, TMCEC
July 28, 2011

About the Speakers

MARK GOODNER

Mark Goodner is the Program Attorney and Deputy Counsel for the Texas Municipal Courts Education Center. Prior to joining the Center, he worked in civil litigation in Austin. Mr. Goodner graduated from the University of Texas, School of Law with a jurist doctorate and certification in the Graduate Portfolio Program in Dispute Resolution in May of 2007. While in law school, he worked in the mediation clinic, was a finalist in the Thad T. Hutcheson Moot Court Competition, and served on the executive board of Assault & Flattery.

STEWART W. MILNER

Stewart Milner is a graduate of the University of Texas at Arlington and the Oklahoma City University School of Law. He began his employment with the City of Arlington in 1992 as an Assistant City Attorney and became Chief Prosecutor for the City of Arlington in 1994. From 1997 to the present, he has served as the Chief Judge for the City of Arlington Municipal Court.

Judge Milner has taught classes for the North Texas Council of Governments, City of Arlington Police Academy, Texas Court Clerks Association, the Building Professional Institute, and the Texas Municipal Courts Education Center. Judge Milner currently serves as President of the Texas Municipal Courts Association.

ROBIN A. RAMSAY

Robin Ramsay is currently a licensed attorney and the Presiding Municipal Judge for the City of Denton. Judge Ramsay received his undergraduate degree from Southern Methodist University in Dallas and his law degree from Texas Tech University in Lubbock.

Prior to becoming a judge, Judge Ramsay served as Students' Attorney for the University of North Texas and as an Adjunct Professor of Business Law. After leaving the University of North Texas and prior to his current appointment, Judge Ramsay practiced law with the Hammerle Law Firm with offices in Lewisville and Denton.

Judge Ramsay has received his accreditation for the American Academy of Attorney Mediators and currently acts as a Mediator for both pre-litigation and litigated matters by assignment of court and at the request of the parties or their attorneys. Judge Ramsay also serves as alternate Mental Health Magistrate for Denton County at the assignment of the Denton County Probate Court.

Judge Ramsay is a past-president of the Texas Municipal Courts Association and currently serves as the 2nd Vice President.

ERIC RANSLEBEN

Eric G. Ransleben is an Associate Municipal Judge for the Town of Trophy Club and the Town of Westlake. He is also the City Prosecutor for the City of North Richland Hills. Judge Ransleben has been in private practice since 1996, and specializes in criminal and juvenile defense, and education law. He has been representing school age children in the public school system for over 10 years, with particular interest in special education law.

CATHY RIEDEL

Cathy Riedel is the Program Director for the Clerks Program at TMCEC. She graduated from Texas A&M University with a degree in Political Science and obtained her law degree from St. Mary's University. After graduating from law school, she worked for the Court of Criminal Appeals as a briefing attorney and research assistant. Her legal practice has focused

primarily on municipal law issues for the last 20 years. She has worked as City Attorney or assistant city attorney for the cities of Topeka, Georgetown, and Round Rock and served as municipal judge for the city of Liberty Hill for several years. Ms. Riedel taught trial advocacy and supervised third year law students in the Legal Clinic at Washburn University Law School.

EDWARD J. SPILLANE III

Edward Spillane is the Presiding Municipal Judge for College Station since May 2002. Prior to taking that position, he served as an Assistant District Attorney for Brazos County for eight years and as an associate for the law firm Fulbright and Jaworski for two years. Judge Spillane received his undergraduate degree from Harvard University and his law degree from the University of Chicago. He is the past president of the Texas Municipal Courts Association.

KATIE TEFFT

Katie Tefft is the Program Attorney for the Texas Municipal Courts Education Center. Prior to joining the Center, she worked as Project Attorney on the 7th edition of Dawson's *Texas Juvenile Law* under contract with the former Texas Juvenile Probation Commission (TJPC) and as a Drafting Attorney in the Attorney General's Open Records Division. Mrs. Tefft received her bachelor's degree with honors in Sociology and Economics from Southwestern University in Georgetown, Texas, and her jurist doctorate with honors in May of 2007 from Mercer University School of Law in Macon, Georgia. She also received a certificate in Legal Writing and Research from Mercer. While in law school, Mrs. Tefft clerked in the Narcotics Division of the Bibb County District Attorney's Office.

RYAN KELLUS TURNER

Ryan Kellus Turner is General Counsel and Director of Education for the Texas Municipal Courts Education Center. Prior to joining the Center, he served as Briefing Attorney for Judge Sharon Keller at the Texas Court of Criminal Appeals. Mr. Turner obtained his jurist doctorate from Southern Methodist University School of Law. He received his Bachelor's Degree in Psychology with highest honors from St. Edward's University, Austin, Texas, where he now teaches as an adjunct faculty member in the School of Behavioral and Social Sciences. In 2004 he received the School's Adjunct Teaching Excellence Award. Mr. Turner is currently Deputy City Attorney for the City of Dripping Springs and previously served as a Special Assistant County Attorney for Kendall County.

A native Texan, Mr. Turner was raised in the north Texas town of Vernon. He is the co-author of the book *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System*.

Table of Contents

Subject: Discharging Fines and Costs Assessed Against Juvenile Defendants Through Tutoring
H.B. 350
Effective: September 1, 2011

Data from the Office of Court Administration reveals that almost 300,000 Class C misdemeanors citations were issued in fiscal year 2009 to juveniles in Texas. Children as young as 10 years old have received Class C misdemeanors citations at school. The vast majority of such citations were written for low-level, nonviolent behavior.

Under current law, juveniles in Texas may receive Class C misdemeanor citations for behavior ranging from disrupting class to truancy. A juvenile and the juvenile's parents must appear in court to resolve a Class C misdemeanor by paying applicable fees and fines and are sometimes required to miss more school and work, respectively, by making such an appearance in court. There is currently no statutory language that expressly authorizes academic enrichment in satisfaction of a fine or in order to supplant any classroom instruction that may have been lost as a consequence of disciplinary proceedings.

Commentary: H.B. 350 is one of two bills to add Article 45.0492 to the Code of Criminal Procedure. Under the new law, in addition to allowing children convicted of Class C misdemeanors to discharge any fines and costs through community service, a judge may also allow a child to discharge the fines or costs through tutoring. This can only occur if a defendant younger than 17 years of age is assessed a fine or costs for a Class C misdemeanor that occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense. See the other new Article 45.0492 established by H.B. 1964.

Subject: Disciplinary Methods in Public Schools and the Prosecution of Children for School-related Offenses
H.B. 359
Effective: September 1, 2011

H.B. 359 amends current law relating to discipline in public schools including the use of corporal punishment and the prosecution of certain children for school-related offenses.

Currently, provisions for discipline and law and order relating to behavior management in the public school system leave corporal punishment policies to the discretion of the school district. In some districts, parents are not provided the opportunity to refuse the use of corporal punishment for their children—meaning the parents' only option is to remove a child from the school that administers corporal punishment without parental consent.

H.B. 359 seeks to remedy this situation by adding new requirements regarding the use of corporal punishment in the discipline of a student under Chapter 37 of the Education Code.

Commentary: In a little over two decades, a paradigm shift has occurred in the Lone Star State. The misdeeds of children—acts that in the recent past resulted in trips to the principal's office, corporal punishment, or extra laps under the supervision of a middle school or high school coach - now result in criminal prosecution, criminal records, and millions of dollars in fines and hefty court costs being imposed against children ages 10 through 16. This shift has been referred to as "passing the paddle." In the past year or two, efforts have mounted to reverse this trend so that fewer children will be treated as criminals for commonplace school misbehavior.

H.B. 359 creates "exceptions to the application" of the offenses of Disruption of Classes and Disruption of Transportation under Sections 37.124 and 37.126 of the Education Code if the person engaged in the prohibited conduct was a student in the sixth grade or lower at the time. Similar language is added to Section 42.01 of the Penal Code stating that five subsections describing types of Disorderly Conduct (involving language, gestures, odors, noise, and fights) "do not apply" if the person engaged in the conduct was a student in the sixth grade or lower at the time of the conduct and the conduct occurred at a public school during school hours. There is no similar exception for disorderly conduct offenses involving abuse, threats, and the discharging of a firearm.

Currently, municipal courts see children for Class C misdemeanors who are as young as 10. For offenses addressed in H.B. 359, municipal courts should not be seeing children who have not yet reached the seventh grade. It remains to be seen how these exceptions will work in reality. This bill poses many unanswered questions. Will peace officers observe the "pre-7th grade rule?" Will this necessitate more prosecutorial review? In absence of review by a prosecutor or a defense attorney, how are the exceptions to these offenses meaningful? Are they jurisdictional in nature and can they be raised by the court?

Subject: Confidentiality of Records of Certain Misdemeanor Convictions of a Child
H.B. 961
Effective: June 17, 2011

Commentary: In 2009, the Legislature passed S.B. 1056. The bill added Subsection (f-1) to Section 411.081 of the Government Code, requiring criminal courts to issue a non-disclosure order upon the conviction of a child for a fine-only misdemeanor offense. It has since become clear that the system for processing non-disclosure orders is not equipped to handle the volume of convictions involving children that occur in municipal and justice courts. Because the orders, which are supposed to be disseminated by the Department of Public Safety (DPS), are not being sent to necessary entities, children are not getting the protection intended by S.B. 1056.

Provisions in H.B. 961 are intended to correct the deficiencies in existing nondisclosure procedures (these provisions were originally filed as H.B. 3695, but were added to H.B. 961 to ensure passage this Session). What makes H.B. 961 different from the defunct S.B. 1056? H.B. 961 replaces procedures for *nondisclosure* with procedures that conditionally make particular criminal case records *confidential*. Additionally, DPS will no longer be involved in the process.

Section by Section Analysis:

Sections 1-2: Confidentiality of Records Related to the Conviction of a Child

H.B. 961 adds two new provisions to the Code of Criminal Procedure. Article 45.0217 provides that all records and files, including those held by law enforcement and all electronically stored information, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public. The language in Article 45.0217 parallels the language in Title 3 of the Family Code, which protects records relating to juvenile conduct when adjudicated through the juvenile courts.

Like nondisclosure orders, this new confidentiality protection only applies to cases in which a *conviction* is obtained. This means there is no confidentiality for records related to a case where a child defendant receives deferred disposition and the case is subsequently dismissed or where a child gets a dismissal from successful completion of teen court. Unlike nondisclosure, this new confidentiality does not attach to records until the judgment is *satisfied*. Nondisclosure orders were generated automatically upon conviction, and were problematic in the event the child did not pay the fine, attend an awareness class, or complete community service. Questions arose as to whether the court could turn the child over to collections, accept payment from a parent on a child's fine, or issue a capias pro fine and publicize that

fact when the child turned 17. However, H.B. 961 makes it clear that confidentiality does not apply until the child has satisfied the judgment.

H.B. 961 also makes clear that confidentiality does *not* apply to traffic offenses. This exclusion reflects the original intent behind S.B. 1056 but was not part of the plain language of the nondisclosure statute. Why are traffic offenses excluded? Because, unlike most other Class C misdemeanors, fine-only traffic offenses cannot be adjudicated in a juvenile court. The intent of this bill is to address only offenses that could have been, but were not, filed in juvenile court.

Article 45.0217 provides that the records are confidential and may not be released to the public, but provides a few exceptions. The information can be inspected by judges, court staff, a criminal justice agency for a criminal justice purpose, DPS, the defendant, the defendant's attorney, a prosecuting attorney, or the defendant's parent, guardian, or managing conservator. This is a rather significant change from the nondisclosure process where parents were not a permissible party to receive information about a child's case. This reflects the Legislature's intent to keep parents involved in their child's criminal cases. Law enforcement required to notify schools upon the arrest of the child under Article 15.27 of the Code of Criminal Procedure also has an exception from the confidentiality provision.

Similarly, H.B. 961 adds Article 44.2811 to the Code of Criminal Procedure, and addresses the confidentiality of records on appeal from a municipal or justice court. On appeal from a municipal court of non-record or justice court, confidentiality will apply under Chapter 44 only if the child is again convicted and satisfies the judgment. If the case is dismissed upon appeal or the child is acquitted, there will be no confidentiality. Likewise, confidentiality will only apply to records relating to a case appealed from a municipal court of record if the judgment is affirmed; if the judgment is reversed, there will be no confidentiality. In either case–appeal from a record or non-record court–confidentiality is only triggered upon satisfaction of the judgment. Article 44.2811 references Article 45.0217 for purposes of providing the same exceptions to confidentiality.

Sections 3, 5-7, 13: Sealing of Records in Juvenile Court

These sections amend provisions in the Family Code relating to the sealing and restricting of access to juvenile records of adjudications of delinquent conduct or conduct indicating a need for supervision by lowering the age at which a child can get records sealed.

Section 4: Confidentiality of Records Held by the Juvenile Court

The general confidentiality provision that governs the civil juvenile justice system, Section 58.007 of the Family Code, provides that records related to juvenile conduct are confidential and may not be released to the public, but expressly provides that the section does not apply to records held by municipal and justice courts. H.B. 961 adds Section 58.00711, which states, except as provided by Article 45.0217(b) of the Code of Criminal Procedure, all records and files relating to a child who is convicted of and has satisfied the judgment for a fine-only offense other than a traffic offense are confidential and may not be disclosed to the public.

Sections 8-12: Repeal of Nondisclosure

H.B. 961 repeals Sections 411.081(f-1) and (j) of the Government Code–the provisions added in 2009 by S.B. 1056 providing for nondisclosure. The bill also makes conforming changes by deleting all references to nondisclosure in the Government Code.

Section 14: Application of Effective Date

H.B. 961 applies to convictions before, on, or after the effective date of the act. Accordingly, cases subject to nondisclosure are now afforded confidentiality. This saves courts the headache of having to determine date of conviction to know whether the records can be released under the common-law right of inspection. All cases where the child has satisfied the judgment, other than traffic convictions, are now confidential as provided in Article 45.0217 of the Code of Criminal Procedure. All records related to cases in which no conviction was obtained are subject to the common-law right of inspection. All cases subject to an existing nondisclosure order will still be subject to the nondisclosure order.

Subject: Bullying in Schools
H.B. 1942
Effective: June 17, 2011

According to reports, a considerable percentage of students nationwide have fallen victim to bullying. Recent developments in technology have contributed to the rise of bullying by electronic means (cyberbullying). Interested parties contend that, with more than four million students in the state public education system, Texas should improve expectations for its schools in addressing this problem. H.B. 1942 seeks to take a preventative approach to reducing bullying in Texas public schools and provide a minimal framework for schools to use in adopting and implementing a bullying policy, while being cognizant of the local control independent school districts should have in developing policy reflective of their respective communities.

Commentary: Texas has not escaped the widespread and well-publicized tragedies that have come about due to bullying. H.B. 1942 takes a significant step towards curbing bullying. Section 21.451(d) of the Education Code, is amended so that staff development for teachers may include training in preventing, identifying, responding to, and reporting incidents of bullying.

In the past when bullying became an issue in our schools, it was often the victim of bullying who was shifted into a different classroom or to another campus. This shuffling of the victim potentially caused the victim to feel even more ostracized. Under the new Section 25.0342 of the Education Code, schools may now transfer the student who engaged in the bullying to another classroom or campus.

Section 37.0832 of the Education Code is also added to create a new definition of bullying and to require the board of trustees of each school district to adopt policies that prohibit bullying and retaliation against any person that provides information concerning an incident of bullying. District policies must also establish procedures for providing notice of bullying to parents and guardians of victims and bullies, establish actions a student should take in response to bullying, set out the available counseling options for students, establish reporting and investigation procedures for dealing with bullying, and prohibit the imposition of disciplinary measures on a student who is a victim of bullying on the basis of that student's use of reasonable self-defense in response to the bullying. These new policies and procedures must be included annually in the student and employee school district handbooks.

Subject: Discharging Fines and Costs Assessed Against Juvenile Defendants Through Community Service
H.B. 1964
Effective: September 1, 2011

H.B. 1964 amends the Code of Criminal Procedure to authorize a justice or judge to require a defendant younger than 17 years of age who is assessed a fine or costs for a Class C misdemeanor to discharge all or part of the fine or costs by performing community service. The bill authorizes such a defendant to discharge an obligation to perform community service by paying the fine and costs assessed at any time. The bill requires the justice or judge to specify, in the justice's or judge's order requiring the defendant to perform the community service, the number of hours of service the defendant is required to perform and prohibits the justice or judge from ordering more than 200 hours of service.

The bill exempts a sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal judge, or officer or employee of a political subdivision other than a county from liability for damages arising from an act or failure to act in connection with community service performed by the defendant if the act or failure to act was performed pursuant to a court order and was not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others. The bill authorizes a community supervision and corrections department or a court-related services office to provide the administrative and other services necessary for supervision of a defendant required to perform community service under the bill's provisions.

Commentary: Under current law, community service in satisfaction of fine and costs for fine-only misdemeanors is only available under Section 45.049 of the Code of Criminal Procedure, to a defendant who fails to pay or who has insufficient resources to pay. Under this new Section 45.0492, a judge may allow a child convicted of a Class C misdemeanor to discharge fine or costs without considering the child's resources and without waiting for a failure to pay. Under Section 12.41 of the Penal Code, any conviction obtained from a prosecution outside of the Penal Code is classified as a Class C misdemeanor if the offense is punishable by fine only.

Notably missing from this new article is the clause providing a minimum discharge of $50 for every eight hours worked that is included in two other articles dealing with community service in this chapter. Both H.B. 1964 and H.B. 350 create a new Article 45.0492. We should expect to see two versions in the Code of Criminal Procedure until the respective articles are combined or renumbered.

H.B. 1964 also amends Article 45.057 of the Code of Criminal Procedure, requiring that any special programs that rely on municipal funds must be approved by the governing body of the municipality before a municipal judge or justice of the peace may require a defendant who is a child to attend.

Subject: Juvenile Case Manager Training and Education
S.B. 61
Effective: June 17, 2011

S.B. 61 amends current law relating to juvenile case managers. The purpose of this legislation is to establish minimum training and educational standards for juvenile case managers. Although the use of juvenile case managers has grown since their authorization in 2001 and the creation of the juvenile case manager fund in 2005, the legislative intent behind the creation of these case managers has largely been unrealized.

Juvenile case managers are intended to serve as problem solvers by fostering interaction between defendants and the judge, integrating social services into the disciplinary process, and cooperating with the juvenile, his or her parents, schools, and courts in order to best serve the interests of the juvenile and the community. However, many juvenile case managers have been relegated to the role of a court clerk and collections agent.

Current Texas law does not establish any minimum standard of training or education for juvenile case managers. S.B. 61 seeks to establish minimum training and educational standards for juvenile case managers, including case planning and management; juvenile law; courtroom proceedings and presentation; law enforcement proceedings; local programs and services, including access procedures; code of ethics and disciplinary procedures; and detecting and preventing abuse, exploitation, and neglect of children. This training will create consistency across court systems and enable juvenile case managers to be more effective in their intended role as part court clerk, part probation officer, and part social worker.

Commentary: In addition to all of the new training and education standards, S.B. 61 also amends Article 102.0174 of the Code of Criminal Procedure, relating to the juvenile case manager fund. A juvenile case manager fund may now be used to fund training, travel expenses, office supplies, and other necessary expenses related to the position of a juvenile case manager. This is a substantial expansion of approved uses, which was previously limited to only paying salary and benefits of a juvenile case manager. This is one of three bills dealing with juvenile case managers. (See also, S.B. 209 and S.B 1489)

Subject: Communications from Juvenile Case Managers
S.B. 209
Effective: September 1, 2011

Current law allows certain courts to hire juvenile case managers to provide services in juvenile cases. While the use of juvenile case managers has grown since this authorization was granted, some believe the legislative intent behind the creation of these case managers has largely been unrealized. In some courtrooms, juvenile case managers report to clerks rather than the judge of the court and fill an administrative role instead of a problem-solving role. Requiring juvenile case managers to timely report to the appropriate judge may create a more effective management structure that will foster more interaction between the judge and juvenile case manager.

S.B. 209 requires juvenile case managers to timely report to the appropriate judge information or recommendations relevant to assist the judge in making certain decisions in the case and requires certain consultation between judges and juvenile case managers.

Commentary: The topic of juvenile case manager supervision has been a divisive topic during the last session. When initially filed, this bill was no different. By the time this bill cleared the House, the focus of the bill was no longer exclusively about juvenile case manager supervision. Rather, the bill began to focus more on the kind of information that should be shared with the judge by the juvenile case manager. Under the amended Article 45.056 of the Code of Criminal Procedure, juvenile case managers must report to the judge who signed the order or judgment relating to the case and, if requested, they may need to also report to the presiding judge or the judge assigned to the case**.** Judges assigned to juvenile cases must consult with the juvenile case manager regarding the child and the child's home environment, developmental status, prior record, and appropriate sanctions the court should consider. Notably, these reporting and consulting requirements do not apply to a part-time judge. The question remains—what is a part-time judge?

S.B. 209 also removes the specification that juvenile case managers be employed full-time and that a case manager work primarily on cases relating to Failure to Attend School and Parent Contributing to Non-Attendance. As amended, Article 45.056(e) provides that a case manager shall give priority to cases alleging Failure to Attend School and Parent Contributing to Non-Attendance.

This is the one of the three bills passed by the Legislature involving the role of juvenile case managers in municipal court (see also S.B. 61 and S.B. 1489).

Subject: Testimony of Children in Criminal Court
S.B. 578
Effective: September 1, 2011

Testifying in court is often stressful for children. Numerous studies document that children have very little, if any, understanding of legal processes. The confusing, often intimidating environment of a courtroom is exacerbated when judges and attorneys ask questions the child cannot understand. S.B. 578 protects children under 17 years of age from confusing, often intimidating practices while testifying and facilitates testimony that is fair and accurate.

S.B. 578 amends the Code of Criminal Procedure by adding Article 38.074 to enhance a child's rights during testimony in criminal cases. It requires the court to: administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth; ensure that questions asked of the child are stated in language appropriate to the child's age; explain to the child that the child has the right to have the court notified if the child is unable to understand any question and to have a question restated in a form that the child does understand; ensure that a child testifies only at a time of day when the child is best able to understand the questions and to undergo the proceedings without being traumatized; and prevent intimidation or harassment of the child by any party and, for that purpose, rephrase as appropriate any question asked of the child.

It also allows motions for the child to have a blanket, toy, or similar comfort item while testifying, or a support person in close proximity. The court shall grant such a motion if the court finds by a preponderance of the evidence that both the child cannot reasonably testify without possession of the comfort item or the presence of the support person, and granting the motion is not likely to prejudice the trier of fact in evaluating the child's testimony.

Subject: Exchange of Confidential Information Concerning Juveniles
S.B. 1106
Effective: June 17, 2011

State laws allow some information sharing relating to juveniles between the governmental entities that serve them. The sharing of information may prevent the duplication of services, improve the quality of services, provide a means to test the effectiveness of programs, and most importantly, lead to better outcomes for Texas children.

S.B. 1106 provides for increased sharing of a juvenile's information between governmental entities while preserving the individual's rights to privacy. S.B. 1106 amends current law relating to the exchange of confidential information among certain governmental entities concerning certain juveniles.

Commentary: Section 37.084(a) of the Education Code is amended to now require, rather than authorize, a school district superintendent or the superintendent's designee to disclose information contained in a student's educational records to a juvenile service provider, rather than to a justice agency, if the disclosure is under an interagency agreement authorized by Section 58.0051 of the Family Code. Under the Section 58.0051, a municipal court is considered a juvenile service provider—as it is a court with jurisdiction over juveniles.

Under S.B. 1106, when a student is taken into custody under Section 52.01 of the Family Code, a municipal court, upon request, shall be entitled to receive confidential information from a school district regarding the student (e.g., information regarding special needs, educational accommodations, disciplinary records, and psychological diagnoses). In light of the 2009 change in law, requiring all municipal judges to receive training related to child welfare and the Individuals with Disabilities Education Act (IDEA), it is interesting to see this increased access to school records. Judges who received IDEA training in 2010 received instruction related to the very information to which, in some cases, they will now have access.

The exchange of the confidential information, however, does not affect the confidential status of the information being shared, and a juvenile service provider may establish internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept information. Under Section 58.0051 of the Family Code, juvenile service provider requestors shall pay a fee to the disclosing entity in an amount equal to that which is charged for providing public information under Chapter 552 of the Government Code, unless an agreement among the entities prohibits or provides an alternate method of assessing the fee, the fee is waived of the fee, or the disclosure is required by law.

Subject: Authorizing Certain Courts to Access Information in the Juvenile Justice Information System
S.B. 1241
Effective: September 1, 2011

Counties over two million in population are authorized to appoint magistrates to hear truancy cases. These truancy court magistrates are not currently authorized to access the state Juvenile Justice Information System (JJIS) to check on the history of the children they are working with.

S.B. 1241, amending Section 58.106 of the Family Code, will allow these magistrates, along with justice and municipal courts that exercise jurisdiction over a juvenile under Section 54.021 of the Family Code (County, Justice, or Municipal Court: Truancy), to have access to the state Juvenile Justice Information System. Having more data about a truant's background will allow a magistrate, justice of the peace, or municipal judge to make a more informed decision on the disposition of a truant's case.

Commentary: Information obtained through JJIS is distinct from other information that criminal courts are accustomed to having in case files. It cannot be emphasized enough that information obtained by municipal, justice, and county courts through the JJIS is confidential and should be managed accordingly to prevent unauthorized dissemination to unauthorized personnel and the public. (see also, S.B. 1489, Section 11, amending Section 58.106 of the Family Code).

Subject: Criminal Offenses Regarding the Possession or Consumption of Alcoholic Beverages by a Minor and Providing Alcoholic Beverages to a Minor
S.B. 1331/H.B. 3474
Effective: September 1, 2011

Observers express concern that young adults are increasingly engaging in hazing that involves the abuse of alcohol and results in alcohol poisoning. The observers suggest that providing limited immunity for a minor from prosecution of certain alcohol-related offenses could prevent such situations from occurring. S.B. 1331 seeks to provide that limited immunity. It also seeks to address additional community supervision requirements for a person who commits an offense relating to providing an alcoholic beverage to a minor at a gathering where participants were involved in certain alcohol abuse, including binge drinking or forcing or coercing individuals to consume alcohol.

H.B. 3474 and S.B. 1331 are identical bills that amend Sections 106.04 (Consumption of Alcohol by a Minor) and 106.05 (Possession of Alcohol by a Minor) of the Alcoholic Beverage Code. These bills provide an exception to the application of the offenses if the minor requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person; was the first person to make such a request for emergency medical assistance; and, if the minor requested emergency medical assistance for the possible alcohol overdose of another person, remained on the scene until the medical assistance arrived and cooperated with medical assistance and law enforcement personnel.

Commentary: Judges and prosecutors need to know that that these bills create a new “safe harbor” defense to two frequently filed minor alcohol offenses. They also create mandatory conditions as to when defendants receive deferred adjudication in county courts but it fails to mandate similar conditions for defendants who receive deferred disposition in a municipal or justice court.

Subject: Criminal Justice Responses to Truant Students; Juvenile Case Managers
S.B. 1489
Effective: September 1, 2011

Commentary: Like a rollercoaster ride, S.B. 1489 followed a rough and circuitous path all the way to the

Governor's desk. The bill began as an attempt to end the criminalization of truancy (i.e., the criminal offense, Failure to Attend School, which has only been on the books since 1995). Opposition to the initial bill resulted in a second version where cases involving truant children (age 10-16) were handled by the civil juvenile justice system under Title 3 of the Family Code, and students 17 and older would continue to be adjudicated in local criminal courts. The second version of the bill was also opposed. The third version of the bill would have maintained the criminalization of truancy but would have stripped municipal courts of jurisdiction to hear Failure to Attend School cases and the ability of municipalities to operate a juvenile case manager fund and utilize juvenile case managers. The third version of the bill faced the broadest amount of opposition. Opponents included municipal courts, juvenile case managers, municipalities, and some counties and justices of the peace.

The fourth version of S.B. 1489–the one that reached the Governor's desk–is the embodiment of compromise and incremental change.

Section by Section Analysis:

Sections 1-2: Age

S.B. 1489 adds an age requirement to the substantive elements of the offense Failure to Attend School (Section 25.094, Education Code). At trial, prosecutors will now have to prove beyond a reasonable doubt that the defendant was between the ages of 12 and 17 (inclusive) at the time of the offense. The intent of this amendment is two-fold: (1) truants younger than 12 years of age are not to be criminally prosecuted; such cases involving 10- and 11-year-olds may only be dealt with under Title 3 of the Family Code, and (2) students who are 18 or older may not be criminally prosecuted (even though they remain subject to compulsory school attendance under Section 25.085).

Section 3: Waiver

This section makes conforming changes to Section 54.021 of the Family Code.

Sections 4-5: Disposition Order Issued by Civil Courts

This section pertains to truancy related orders issued by courts governed by Title 3 of the Family Code and is inapplicable to municipal and other criminal courts.

Sections 6-7: Criminal Disposition Orders

These sections amend Article 45.054 of the Code of Criminal Procedure by adding Subsections (i) and (j) requiring the county, justice, or municipal courts to dismiss complaints alleging Failure to Attend School upon successful completion of conditions imposed by the court or upon earning a high school diploma or a high school equivalency certificate. It also allows the court to waive or reduce fees and court costs if they impose a financial hardship.

The amendment of Article 45.054 is problematic. Most courts are going to have to reconsider what constitutes "a finding" that an individual has committed the offense of Failure to Attend School. If a court relies on a conviction as its "finding," (which is currently the standard accepted practice) there will be a problem because this section requires the complaint to be dismissed (and a complaint cannot be dismissed once a final judgment is entered). Presumably the amendment of Article 45.054 will necessitate the court now take some action short of a final judgment and continue the case to see whether the defendant complies with the court's orders. This is similar to how municipal and justice courts handle driving safety course orders (Article 45.0511(l), Code of Criminal Procedure) and courses taken for alleged tobacco offenses (Section 161.253(f), Health and Safety Code). It creates a deferral-like process.

Why not just put the defendant on deferred disposition (Article 45.051, Code of Criminal Procedure) and have the order contain the conditions contained in Article 45.054? Because doing so would result in a conflict in expunction provisions. Changes to Article 45.055 of the Code of Criminal Procedure require municipal, justice, and county courts, to expunge the records of a criminal conviction of Failure to Attend School (regardless of whether the defendant has been previously convicted) if the defendant successfully complies with all conditions imposed by the court or presents, prior to turning 21,a high school diploma or high school equivalency certificate prior to turning 21. Expunctions of a deferred disposition are governed by Article 55.01, and occur in district court (Article 45.051(e)).

S.B. 1489 also makes some changes regarding juvenile case managers. Article 45.056 of the Code of Criminal Procedure is repealed, but a new version is in effect under S.B. 209 discussed earlier. Also, numerous changes to Chapter 102 of the Code of Criminal Procedure (specifically Sections 102.0174, 102.061, 102.081, 102.101, and 102.121) specify that only courts that employ a juvenile case manager may establish a juvenile case manager fund and collect a juvenile case manager fee, thus eliminating the possibility of creating a fund and collecting a fee, but never using the monies for their intended purpose.

Sections 8, 12-16: Collecting the Juvenile Case Manager Fee

When local governments were authorized by the Legislature to adopt the juvenile case manager fee in 2001, some governments passed ordinances and orders authorizing the collection of the fee and began saving the money until ample funds were accumulated to employ a case manager. However, some governments also began collecting the money but never hired a case manager. As amended, Article 102.0174 of the Code of Criminal Procedure prohibits a local government from collecting the juvenile case manager fee if they do not employ a juvenile case manager.

Sections 9-10: Truancy Prevention Measures

Sending children to court for not attending school should not be the first response of Texas public schools. Truancy prevention measures are intended to document school efforts to address school attendance prior to resorting to a legal response. Section 25.091 of the Education Code is amended to require peace officers as attendance officers to apply truancy prevention measures and an officer can only instigate court action if such measures "fail to meaningfully address the student's conduct."

Newly created Section 25.0915 of the Education Code provides that a school district shall adopt truancy prevention measures designed to (1) address student conduct related to truancy in the school setting; (2) minimize the need for referrals to juvenile court for conduct; and (3) minimize the filing of complaints in county, justice, and municipal courts for Failure to Attend School.

Under the new law, a complaint alleging Failure to Attend School cannot be filed with a court unless it is accompanied by a statement certifying that the school applied the truancy prevention measures and that the measures failed to meaningfully address the student's school attendance. Perhaps, more importantly, the certification must specify whether the student is eligible for or receives special education services. This is information that advocates for children with special needs have long wanted judges and prosecutors to know—but schools have not been obligated to provide. Advocates for children believe that the filing of criminal complaints by schools has become a substitute for providing parents and students with the procedural and substantive protections guaranteed to them under the Individuals with Disabilities Education Act (IDEA).

Section 11: Confidentiality of Information Obtained via the Juvenile Justice Information System

This is a conforming change made at the last minute in light of the passage of S.B. 1241 which will allow county statutory school attendance magistrates, along with justice and municipal courts that exercise jurisdiction over a juvenile under Section 54.021 of the Family Code (County, Justice, or Municipal

Court: Truancy), to have access to the state Juvenile Justice Information System (JJIS). Information obtained through JJIS is distinct from other information that criminal courts are accustomed to having in case files. Information obtained by courts through the JJIS is confidential and should be managed accordingly to prevent unauthorized dissemination to unauthorized personnel and the public.

Section 16: Case Priorities of Juvenile Case Managers

This amendment repeals Article 45.056(e) of the Code of Criminal Procedure stating that a juvenile case manager shall *work primarily on* cases alleging Failure to Attend School and Parent Contributing to Non-Attendance (emphasis added). This poorly drafted subsection has been the source of disagreement and consternation among judges and attorneys. In fact, some cities refused to create juvenile case manager programs because of its language. While this amendment repeals Article 45.056(e), another bill, S.B. 209, provides new language for the subsection stating that a case manager shall *give priority to* cases alleging Failure to Attend School and Parent Contributing to Non-Attendance (emphasis added).

Juvenile Justice and Issues Relating to Children — Medium Priority

Subject: Appointment of School Attendance Magistrates in Counties of a Certain Size
H.B. 734
Effective: September 1, 2011

Commentary: Dallas was the first urban county in Texas to receive permission from the Legislature to create, what can be best described as, a system of school attendance magistrates. These school attendance magistrates are authorized to hear Failure to Attend School and Parent Contributing to Nonattendance cases utilizing the procedures contained in Chapter 45 of the Code of Criminal Procedure. If the defendant is not satisfied with the decision of the school attendance magistrate, the matter can be reconsidered by a county judge who ultimately signs the judgment.

Truancy is a civil matter that can only be adjudicated in a juvenile court. Although school attendance magistrates do not have jurisdiction to hear truancy cases and are not judges of any particular court, they are commonly (albeit inaccurately) described as "judges" of "truancy courts."

Currently, school attendance magistrates are only authorized in counties with two million people. H.B. 734 allows the county judge of a county with a population of 1.75 million or more, with the consent of the commissioners court, to appoint a magistrate to hear Class C misdemeanors related to school attendance. The bill amends provisions of the Family Code, Government Code, and the Education Code to reflect the population change.

Subject: Notification of School District Personnel of Offenses Committed by Students
H.B. 1907
Effective: September 1, 2011

Currently, the superintendent of a school district must be notified when a student enrolled in the district is arrested for certain offenses. However, the notification of a school district employee who has direct supervisory responsibility for the student is not specifically required. H.B. 1907 amends current law relating to the notification requirements concerning offenses committed by students and to school district discretion over admission or placement of certain students.

Under the new Article 15.27 of the Code of Criminal Procedure, law enforcement authorities who have arrested a student are required to orally notify a school superintendent or designated official of such arrest. The changes enacted by this bill will require that oral notification, which previously could be made

either within 24 hours or during the next school day, must now be made by the earlier of 24 hours or before the commencement of the next school day. Once a superintendent or their designee receives oral notification of the arrest of a student who is currently attending school in that district, then the superintendent or designee must immediately notify those individuals who instruct or supervise the student of that arrest.

Within seven days of providing oral notification, law enforcement officials must mail a written notification of the arrest to the superintendent or the superintendent's designee describing the facts surrounding the arrest. Under previous law, the superintendent could only share this information with personnel who had instructional or supervisory responsibility for the student and only if such action was necessary for educational purposes or to protect the safety of individuals. This restriction is now eliminated. Although the revised statute permits the superintendent to share information freely, the statute retains administrative penalties for individuals who violate a student's confidentiality by inappropriately disseminating such information. The bill makes similar changes to the procedure of notification of the criminal conviction of, or the placement on community supervision for, a student.

New provisions added to the statute require a school board to report a failure of the superintendent to notify school personnel to the State Board of Educator Certification. Additionally, a superintendent who has learned that law enforcement authorities failed to report the arrest of a student must report that failure to the Commission on Law Enforcement Officer Standards and Education. Other duties to report notification failures are imposed on prosecuting attorneys and parole officers.

Subject: Appointment of Magistrates to Hear School Attendance Matters in Fort Bend County
H.B. 2132
Effective: September 1, 2011

H.B. 2132 seeks to provide consistency in dealing with criminal failure to attend school issues in Fort Bend County. By adding Subchapter JJ to the Government Code, a judge of a constitutional county court in a county that has as a population of more than 585,000 (i.e., Fort Bend County), and is contiguous to a county with a population of at least four million (i.e., Harris County), is authorized to appoint magistrates to hear criminal cases relating to school attendance.

Under the new Section 54.1954 of the Government Code, a magistrate must be a citizen who has served as a justice of the peace for at least four years or who has been licensed to practice law in Texas for at least four years prior to the date of appointment.

Commentary: See H.B. 734 for related commentary.

Subject: Restructuring of the Texas Youth and Juvenile Probation Commissions
S.B. 653
Effective: Transition to begin September 1, 2011 and be completed by December 1, 2011

The Texas Youth Commission (TYC) is responsible for operating institutional facilities that provide rehabilitative services to youthful offenders. The Texas Juvenile Probation Commission (TJPC) was established in 1981 to ensure access to juvenile probation services statewide, and it supports and oversees juvenile probation departments throughout Texas. In 2007, the Office on Independent Ombudsman (OIO) was created by the Legislature to investigate, evaluate, and secure the rights of children committed to TYC. As part of the ongoing Sunset Act review process, the TYC and TJPC are scheduled to be abolished on September 1, 2011 unless renewed. The OIO is reviewed on the same schedule, but is not subject to abolition. Together, these agencies comprise the bulk of the juvenile justice system in Texas. Working with other departments, they handle some 90,000 referred cases representing about 97% of the juvenile offenses that take place in the state.

In 2009, the Legislature continued the TYC and TJPC for two years in order to continue investigation and implementation of reforms for identified issues. Following extensive study, the Legislature has concluded that the best course of action is to consolidate these agencies into a single, more efficient, and fiscally responsible entity to further facilitate reforms and integrate initiatives aimed at diverting youthful offenders from incarceration and into community programs. S.B. 653 abolishes the TYC and TJPC and merges their functions, together with the oversight provided by the OIO, into a new Texas Juvenile Justice Department (TJJD).

Beginning September 1, existing rules, regulations, facilities, equipment, personnel, and authority will be transitioned from the existing departments into the new TJJD. The process is scheduled to be completed by December 1, 2011, at which time the TYC and TJPC will cease to exist. The new bill states that the purpose of creating a unified state juvenile justice agency is to promote public safety by providing a full continuum of effective support and services to youth that begins with their first contact and continues through the termination of supervision.

Subject: High School Equivalency Online Testing
S.B. 1094
Effective: September 1, 2011

S.B. 1094 amends the Education Code through the newly added Section 7.111(c) and requires the State Board of Education to provide for the administration of high school equivalency examinations through online testing.

In order to alleviate the burden of traveling to a designated testing center to take an equivalency examination, the Legislature has directed the board to develop rules and procedures which would permit individuals to take an online equivalency test in lieu of in-person testing while ensuring that such tests are taken by the identified individual. Standards are to be established for the 2011-2012 school year.

Court Costs and Administrative Issues — High Priority

Subject: Required Notice of Ineligibility to Vote on Written Juror Summons
H.B. 174
Effective: September 1, 2011

Current law defines a qualified voter as a United States citizen but does not require or provide a method for verifying and enforcing the requirements to vote, including the citizenship requirement. H.B. 174 addresses this problem by providing a way through which a deceased person and a person ineligible to vote due to citizenship status may be removed from a voter registration list.

Commentary: H.B. 174 amends Section 62.0142 of the Government Code to require that a written summons for jury duty, if it allows a person to claim a disqualification or exemption through the mail, must have a statement on the summons form notifying the person that by claiming a disqualification or exemption based on lack of citizenship, the person will no longer be eligible to vote if they fail to provide proof of citizenship. Section 62.0132 is also amended, requiring the Office of Court Administration (OCA) to amend their Official Uniform Model Jury Summons and Questionnaire to include the same notification. Municipal courts are not required to use the OCA Model Summons or Questionnaire, though TMCEC does include this in the TMCEC *Forms Book* as a sample for cities to adapt. OCA has updated their Model Summons and Questionnaire per H.B. 174, and cities can access it on the OCA website.

Subject: Authority for City to Enter into Agreement with Contiguous City to Establish Concurrent Municipal Court Jurisdiction
H.B. 984
Effective: May 19, 2011

A municipal court, in general, has jurisdiction only within its own city limits, does not share concurrent original jurisdiction on municipal matters with other municipal courts, and is unable to merge with other municipal courts. These circumstances may often result in multiple municipal courts, located in close proximity to each other that do not share jurisdiction. H.B. 984 allows contiguous municipalities to enter agreements to establish concurrent jurisdiction of certain cases for their respective municipal courts. Those participating municipalities may save money and improve court services by establishing such agreements.

H.B. 984 amends Section 29.003 of the Government Code and Article 4.14 of Code of Criminal Procedure to authorize two contiguous municipalities, or two municipalities with boundaries that are within one-half mile of each other, to enter into an agreement establishing concurrent jurisdiction for the municipal courts of either municipality in all cases in which the courts have original, concurrent, or appellate jurisdiction and in cases arising from offenses related to the seizure of cruelly treated animals or the failure to attend school. The bill specifies that a municipal court in either municipality has original jurisdiction in such a case.

Commentary: Neighboring municipalities that share a border or are very closely situated may now enter into agreements establishing concurrent jurisdiction. For cities that choose to enter into this type of agreement, a relationship will arise not unlike the one currently existing between municipal and justice courts where state fine-only misdemeanor cases may be brought in either court. These agreements will mark a new era in which cases can be filed in a municipality other than the one in which the offense was committed. This bill is intended to help municipalities save money and improve court services.

Subject: Using Revenue from Municipal Utility Companies for Purposes of the "30% Rule"
H.B. 1517
Effective: September 1, 2011

Many smaller municipalities with few revenue sources count on revenue from the disposition of traffic fines to support maintaining roads and bridges and enforcing highway safety laws.

To prevent municipalities from operating speed traps, the amount of revenue a municipality may retain from the fines is based on the municipality's other sources of revenue from the preceding fiscal year. This restriction has a negative impact on municipalities who are effectively deterring motorists who drive at speeds significantly over the speed limit. H.B. 1517 seeks to allow certain municipalities to count additional revenue as other revenue so that the municipality is not forced to choose between fulfilling its responsibility to keep roads safe or its financial well-being.

H.B. 1517 provides that municipalities with a population of more than 1,000 but less than 1,200 and whose boundary between two counties is at least partially a river, may include the revenue generated from services provided in the municipality by a utility company operating within the municipality as municipal revenue for a fiscal year.

Commentary: This bill amends Section 542.402 of the Transportation Code which currently caps how much revenue certain cities can make from traffic enforcement. Under current law, cities with a population of less than 5,000 may retain an amount no more than 30% of the municipality's revenue—commonly referred to as the "30% Rule."

While the amendment, Section 542.402(f), could possibly benefit municipalities similarly situated to the City of Martindale, it could also indirectly be construed to mean that other cities governed by Section 542.402 are precluded from considering the revenue generated from services in the municipality by a utility company operating in the municipality as municipal revenue. (Thus, perhaps it's a good thing that Section 542.402(f) expires on September 1, 2021.)
H.B. 1517 will also apply the "30% Rule" to counties with a population of less than 5,000. According to the State Comptroller of Public Accounts (CPA), the data from the April 2010 census indicates that 51 counties will now be subject to the same revenue restrictions as most Texas cities.

Subject: Record Retention Requirements for Court Documents Filed Prior to January 1, 1951
H.B. 1559
Effective: May 30, 2011

The existence of historic Texas court records is threatened because of the simple need to create space for more recent documents in Texas courthouses. These court documents contain valuable and irreplaceable information about the early days of Texas statehood. H.B. 1559 will preserve countless numbers of these written relics of Texas history currently at risk for destruction.

In 2009, the Texas Supreme Court, under the direction of Chief Justice Wallace Jefferson, established the Texas Court Records Preservation Task Force which is tasked with the preservation and appropriate distribution of these irreplaceable documents. H.B. 1559 is in line with the Supreme Court's wish that these documents be preserved so that all Texans can learn from the information these documents contain.

Currently, there is a state moratorium on shredding documents originating prior to 1860; however, documents dating from 1860-1950 are unprotected. H.B. 1559 amends Section 441.026 of the Government Code to give court documents filed, presented, or produced from 1860 to January 1, 1951, temporary protection from destruction until the Texas State Library and Archives Commission (TSLAC) adopts rules for the retention, storage, and destruction of records created within those dates.

Commentary: Many municipal courts have experienced the joys and challenges of record retention and destruction the hard way—especially those courts hit by Hurricane Ike in 2008. All courts are challenged to find the space for all of the records. Take heed and wait to hear from the TSLAC before you dispose of old records.

Subject: Time to Post Notice of Criminal Court Docket Setting and Requirement for Additional Information to Be Included in Expunction Petitions
H.B. 1573
Effective: September 1, 2011

This bill amends the Code of Criminal Procedure relating to certain pre-trial and post-trial procedures in a criminal case. The bill requires a clerk of a court that does not provide online Internet access to that court's criminal case records to post notice of a prospective criminal docket setting as soon as the court notifies the clerk of the setting.

H.B. 1573 amends Article 55.02 of the Code of Criminal Procedure, adding to the information required to be included, or an explanation for why it was not included, in an ex parte petition for an expunction of records filed in district court by a person entitled to the expunction or by the public safety director of the Department of Public Safety or the director's authorized representative on behalf of such person, the applicable physical or e-mail addresses of specified local and state entities and officials and of specified federal and private entities and officials that the petitioner has reason to believe have, or that are reasonably likely to have, information related to the person's criminal history records that are subject to expunction. After verifying the allegations, the attorney representing the state is required to include the

applicable physical or e-mail addresses of those specified entities and officials to the information that is forwarded to the appropriate district court.

Commentary: Of significance to municipal courts is the provision of the bill which amends Article 17.085 of the Code of Criminal Procedure, titled "NOTICE OF APPEARANCE DATE." Now, the clerk of a court that does not provide online Internet access to that court's criminal case records shall post in a designated public place in the courthouse notice of a *prospective* criminal court docket setting *as soon as the court notifies the clerk of the setting* rather than the existing language of "not less than 48 hours before the docket setting." This change raises interesting questions, such as: What occurs if the court does not notify the clerk until the day before the setting? Will the clerk be required to repeatedly change a posted docket as cases are moved around?

Subject: Refund of a Cash Bond in a Criminal Case
H.B. 1658
Effective: September 1, 2011

Article 17.02 of the Code of Criminal Procedure (defining "bail bond") is amended to require that any cash funds deposited as bail be receipted by the officer receiving the funds and, on order of the court, be refunded, after the defendant complies with the conditions of the defendant's bond, to: (1) any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant; or (2) the defendant, if no other person is able to produce a receipt for the funds.

Commentary: Under existing law, a defendant can claim the refund of a cash bond even when the defendant did not post the bond. This bill attempts to protect the financial interests of people who post bonds on behalf of defendants by providing that the money is refunded to the person who posted the bond and who holds the receipt for the bond. This is a good idea and long overdue. Nevertheless, under Article 17.02(2), it is unclear how long a person has to produce a receipt before it is determined by the court that the person is not able to and that the defendant is entitled to receive the funds.

Subject: Establishment of Special Courts Advisory Panel
H.B. 1771
Effective: June 17, 2011

The purpose of H.B. 1771 is to establish the Specialty Courts Advisory Council in the Governor's Criminal Justice Division to assist with the review and prioritization of grant applications from specialty courts such as drug courts. The proposed reductions in state grant funds and potential reductions in federal grant funds make it essential that funds be distributed in a manner that will maintain support in all areas of Texas.

Commentary: This bill amends Chapter 772 of the Government Code by adding Section 772.0061 which provides that the Governor shall establish the Specialty Courts Advisory Council within the Criminal Justice Division established under Section 772.006 to evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to the Criminal Justice Division. Cities with specialty courts, or that are contemplating the creation of a specialty court, should be become familiar with the contents of H.B. 1771. While currently only a county may establish a mental health court or a veterans court, a municipality may establish a drug court program (Section 469.002, Health and Safety Code). Urban municipalities, where most municipal specialty courts are located, are most likely to request the Legislature expand Chapter 772 so more municipal courts may also seek grant funding.

Subject: Juror Exemption for Those with Custody of Children Under Age 12
H.B. 2717
Effective: June 17, 2011

Section 62.106 of the Government Code previously allowed a person to be exempt from petit jury service if the person has custody of a child younger than 15 years of age and such service would leave the child without adequate supervision. H.B. 2717 decreases the maximum age of the child on which that exemption is based to 12 years.

Commentary: In 2007, the maximum age of the child was 10. In 2009, the Legislature increased the maximum age of the child to 15. With this amendment, a person can only establish an exemption from jury duty if they have custody of a child younger than 12 who would be left without adequate supervision if the person was required to serve on a jury.

Subject: Office of Court Administration Assumes Authority to Audit Under Collection Improvement Program from Comptroller; Retention of Service Fee by City
H.B. 2949
Effective: September 1, 2011

Municipal courts process more cases than all other courts in Texas. The current collection improvement model requires courts to collect and verify time pay applications from anyone entering into a plea if they are unable to pay in full at the time of the plea. All defendants, including those granted deferred disposition and a Driving Safety Course (DSC), must conform to the collection model developed by the Office of Court Administration (OCA). As a result of current legislation, one of the biggest burdens recognized is the requirement for court staff to verify payment application information submitted by defendants requesting deferred disposition via their attorney, and the court must then spend valuable staff hours verifying that application. The time spent on verifying the application of defendants seeking deferred disposition and driving safety courses places a substantial and unnecessary administrative burden on the courts. Removing deferred disposition and DSC cases from this verification process would allow courts to better allocate their resources.

Current law does not provide an opportunity to remedy an assessment of noncompliance for purpose of retaining a service fee. If the comptroller determines that a court has violated any provision, the court must immediately begin turning the funds over to the comptroller. Often, the assessment could be the result of a miscommunication, administrative error, or an oversight that can be easily and quickly corrected. Modifying this process could help prevent unnecessary burden on courts that must give up much-needed fees with no ability to correct a defect in either the audit or the collection process.

H.B. 2949 amends Article 103.0033 of the Local Government Code to change several requirements of the Collection Improvement Program (CIP). This includes redefining eligible cases to exclude deferred dispositions and DSC cases; making the program voluntary for all counties; and transferring the CIP audit function from the Comptroller of Public Accounts (CPA) to OCA. It would also provide cities up to 180 days to reestablish compliance before imposing a penalty for non-compliance. If the OCA finds a city to be non-compliant under a CIP audit, it could no longer retain a service fee or 50 percent of the time payment fee.

The bill also transfers the auditing of the court-related CIP from the CPA to OCA.

The Transportation Code is also amended in Section 706.005(a) (relating to the Department of Public Safety (DPS) Omnibase Program) to require a political subdivision to *immediately* notify DPS that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous

failure to appear or failure to pay or satisfy a judgment ordering the payment of a fine and cost (emphasis added).

Commentary: This bill is the byproduct of two distinct things: (1) the frustration of local courts with the CIP, and (2) the frustration of lawyers who believe that some municipal and justice courts are not timely removing cases from the DPS Omnibase Program. The bill also amends Article 133.058 of the Local Government Code, removing the penalty for CIP non-compliance by counties of all population sizes; however, in the Special Session, in S.B. 1, the Legislature reinstated the mandatory requirement for all counties with a population of 50,000 or greater.

Subject: State Fiscal Matters; Repeal of Child Safety Seat Court Cost
S.B. 1 (1st Special Session)
Effective: September 28, 2011

Commentary: Deep in the bowels of this 271-page clean-up bill dealing with fiscal matters covering everything from school finance to petroleum industry regulation, the Legislature, in Article 69, has repealed the .15 cent court cost contained in Section 545.412 of the Transportation Code, assessed on conviction of the child passenger safety seat offense.

While many thought that at least one new court cost bill affecting municipal and justice courts would be passed during the Special Session, few would have guessed that an existing court cost would be repealed. Thank goodness this pesky issue is resolved! Or is it? Section 51.607 of the Government Code provides that when a court cost is imposed or *changed*, notwithstanding the effective date of the law changing the amount of the court cost, the imposition or change does not take effect until the following January 1. However, the bill provides that this change in law applies only to offenses committed on or after the effective date—which, because the bill received less than a 2/3 vote in the House, the bill takes effect the 91st day after the last day of the legislative session—i.e., September 28, 2011. Thus, only those offenses occurring before September 28 would require the .15 cent cost to be collected. Could the Legislature intend for courts to rely on Section 51.607's January 1st date and continue to collect money on the basis of a statute that does not exist? More likely than not, the answer is no.

S.B. 1 also dismantled the portion of H.B. 2949 which made participation in the Collection Improvement Program by counties with a population of 50,000 or more voluntary. In the final days of the Special Session, the Legislature reversed the actions of H.B. 2949 to make county participation mandatory.

Subject: Restriction on Prohibiting Employee Access to or Storage of Legally Possessed Firearms or Ammunition in Employee Vehicles
S.B. 321
Effective: September 1, 2011

Currently, a person who is lawfully authorized to possess firearms or ammunition may transport them in the person's motor vehicle. Some people do so to protect themselves in a lawful and responsible manner. Others routinely transport firearms or ammunition in their vehicles in anticipation of future hunting trips or visits to the local shooting range or gun club. Others hold concealed handgun licenses. Many companies in Texas have adopted a no-firearms policy that extends beyond the actual workplace to employee parking lots—areas that often are not secured. To comply with such a policy, employees must choose between protecting themselves when commuting to and from work and being subject to termination by their employer.

S.B. 321 prohibits a public or private employer from prohibiting an employee who lawfully possesses a firearm or ammunition from transporting or storing the firearm or ammunition in a locked, privately owned motor vehicle in a parking area the employer provides for employees, with certain exceptions.

Commentary: Several cities have personnel policies in place that prohibit employees from carrying weapons on city premises. As courthouses and courthouse parking lots are often city-owned property, and court personnel often drive city-owned vehicles on court business, these policies would extend to cover court personnel. S.B. 321 now prohibits these policies and should be noted by those cities with such policies in place and by court administrators that have imposed a similar policy on court employees.

Subject: New $20 Fee for Scofflaws
S.B. 1386
Effective: September 1, 2011 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2012)

Commentary: Chapter 702 of the Transportation Code allows municipalities to contract with the county in which they are situated or with the Texas Department of Motor Vehicles (TxDMV) to deny registration of a motor vehicle for owners who have failed to appear or failed to pay on a traffic law violation. S.B. 1386 amends Section 702.003 of the Transportation Code to provide that a municipality shall notify the TxDMV or the county assessor-collector, rather than the county, when there is no longer cause to deny vehicle registration under the Scofflaw program.

Furthermore, Section 702.003(e-1) authorizes a municipality that has a Scofflaw contract to impose an additional $20 fee to a person who has an outstanding warrant from the municipality for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law. The law provides that the additional fee may only be used to reimburse the TxDMV or the county assessor-collector for its expenses in providing services under the contract. Interestingly, this fee is not mandatory as the bill merely provides a municipality with the authority to impose the $20 fee. The bill gives no guidance on how or when this fee would have to be remitted to the county or TxDMV.

Subject: Expanded Uses Authorized for Municipal Court Building Security Fund
S.B. 1521
Effective: June 17, 2011

S.B. 1521 amends Section 102.017 of the Code of Criminal Procedure regarding the distribution of money appropriated from a municipal court building security fund. The bill adds Subsection 102.017 (d-1)(12) to the list of authorized items that the funds can be expended on to include warrant officers and related equipment.

Commentary: This will be good news for courts that have in-house warrant officers that are considered court staff; however, it could also exacerbate struggles with municipal law enforcement over the use of municipal court building security funds. Many municipal courts still lack the most rudimentary components of a secure court facility. Some fear that this bill may benefit law enforcement at the expense of court staff and members of the public. Will this bill prove to be a setback for courthouse security?

Court Costs and Administrative Issues — Medium Priority

Subject: Changes to Expunction Procedures and Eligibility in Chapter 55 of the Code of Criminal Procedure
H.B. 351; S.B. 462
Effective: September 1, 2011

H.B. 351 accomplishes two objectives: first, the bill allows the district or county attorney to represent a person who has been exonerated following a wrongful conviction in having the records of the arrest, indictment, and imprisonment expunged. Since the first DNA exoneration in 1989, 267 such exonerations

have taken place in the United States. The most recent figures show 42 exonerations have occurred in Texas; the most of any state. Although exonerated, the criminal records connected to the arrest, indictment, and conviction for the offense still exist. While an exoneration and pardon overturns the conviction and releases the subject from incarceration, an expunction is still needed to remove records of the offense from various national, state, and local criminal history records repositories. Presently, the expunction process that must take place through the court system must be handled by a private attorney or a legal representative working on the behalf of the exoneree. This can involve significant court costs and possible attorney fees. The second objective of H.B. 351 addresses the ability to expunge the records related to an offense where the case has been dismissed or no charges have been filed. This issue was also addressed within S.B. 462.

Current law and court decisions have made it increasingly difficult for a person who has certain criminal charges that have been dismissed receive an expunction. This was compounded by a July 2007 Texas Supreme Court ruling in *State vs. Beam*, 226 S.W.3d 392 (Tex. 2007), wherein the Court ruled that even a Class C misdemeanor that has been dismissed through completion of deferred adjudication (as the Class C was a lesser-included offense) could not be expunged until the statute of limitations for the offense has expired—note that the *Beam* case has now been superseded by the changes in H.B. 351 and S.B. 462, and is, therefore, no longer good law.

Texas law allows the records of criminal charges to be expunged only under a narrow set of circumstances. Those circumstances include when a case has resulted in acquittal, when a person has received a pardon, and when the charges are the result of mistaken or misused identity. The ramifications of this legal barrier have negative consequences for persons seeking employment when confronted with employers who now routinely conduct background checks. Both H.B. 351 and S.B. 462 amend Chapter 55 of the Code of Criminal Procedure to revise the conditions under which a person is entitled to have all records and files relating to an arrest expunged: (1) when the person has been placed under a custodial or noncustodial arrest for commission, (2) of a felony or misdemeanor, (3) released, (4) the charge has not resulted in a final conviction, (5) the charge is no longer pending, and (6) there was no court-ordered community supervision for the applicable offense, unless the offense is a Class C misdemeanor. Both bills now provide that a person is entitled to an expunction regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired on the condition that an indictment or information has not been presented at any time following the arrest and at least 180 days have elapsed from the date of arrest if the arrest was for an offense punishable as a Class C misdemeanor; at least one year has elapsed from the date of arrest if the arrest was for an offense punishable as a Class B or A misdemeanor; at least three years have elapsed from the date of arrest if the arrest was for an offense punishable as a felony; or the attorney representing the State certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person. Additionally, both bills provide that the entitlement also applies (1) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired on the condition that the presented indictment or information was dismissed or quashed and the court makes certain findings, or (2) if prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired. The bills remove the condition that the person has not been convicted of a felony in the five years preceding the date of the arrest.

The bills provide that a person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued for a violation of a condition of community supervision. Likewise, a person who intentionally or knowingly absconds from the jurisdiction after being released on bail following an arrest is not eligible for an expunction where such eligibility is based on the expiration of the applicable statute of limitations or the fact that a certain period has elapsed since arrest without the presentment of a charging document.

A court shall provide in an expunction order for a person still subject to conviction because if the statute of limitations has not run that the applicable law enforcement agency and prosecuting attorney are authorized to retain the arrest records and files of any person who becomes entitled to an expunction of those records and files based on the expiration of a period under the bill's provisions, but without the certification of the prosecuting attorney.

Commentary: Under current law, municipal court defendants can petition district courts for expunction under Chapter 55 if they were acquitted or upon the expiration of the statute of limitations (in Class C misdemeanors cases, two years from the date of offense) when no charging instrument is ever filed. H.B. 351 and S.B. 462 now provide that without regard for the statute of limitations, a person can secure an expunction if an *indictment* or *information* charging the person with the commission of a misdemeanor offense has not been presented and, in the case of a Class C misdemeanor, at least 180 days have elapsed from the date of arrest. On first glance, this change appears to attempt to circumvent the statute of limitations (although there is an exception allowing prosecutors and law enforcement to retain their records in case they want to bring charges after the 180 days but before the expiration of two years).

This bill does not, however, expressly contemplate complaints. An indictment is the charging instrument used in felonies. An information serves as the charging instrument in either a Class A or B misdemeanor. The charging instrument for a Class C misdemeanor is a complaint. The Court of Criminal Appeals has made clear that the indictment, information, and complaint are separate and distinct charging instruments. See, *Huynh v. State*, 901 S.W.2d 480 (Tex. Crim. App. 1995). In *Huynh*, the Court was unwilling to find legislative intent that statutory references to indictments and informations also contemplated complaints.

Subject: Person First Respectful Language Initiative
H.B. 1481
Effective: September 1, 2011

Language used in reference to persons with disabilities shapes and reflects society's attitude toward persons with disabilities. Certain terms and phrases traditionally used to refer to persons with disabilities are now considered by some to be demeaning and hurtful and can create barriers to the inclusion of persons with disabilities as equal community members.

Thirty-two states and the District of Columbia have current or pending laws, policies, or positions in support of the use of what has come to be called respectful language or language that places the word "person" before the word "disability." Recently, the federal government enacted legislation that requires the use of respectful language in certain federal policies. Many organizations, such as the World Health Organization, The Center for Disease Control and Prevention, the American Association of Intellectual and Developmental Disabilities, The Arc of the United States, the Special Olympics, and the President's Committee on Individuals with Intellectual Disabilities, have also adopted language that is respectful to persons with disabilities.

H.B. 1481 initiates the process of changing Texas statutes and rules to reflect important changes in our societal views toward persons with disabilities. The bill specifies preferred language for new and revised laws by requiring the use of terminology that places the person before the disability.

Commentary: The Texas Legislative Council and Legislature are directed to avoid using the following terms in enacting or revising statutes and resolutions: (1) disabled; (2) developmentally disabled; (3) mentally disabled; (4) mentally ill; (5) mentally retarded; (6) handicapped; (7) cripple; and (8) crippled. The replacement phrases are: (1) persons with disabilities; (2) persons with developmental disabilities; (3) persons with mental illness; and (4) persons with intellectual disabilities. The bill provides that a statute or resolution is not invalid solely because it does not employ a preferred phrase.

For nearly a decade, the National Center for State Courts has been encouraging trial courts to put people first and not their disabilities. The Respectful Language Initiative is something for judges, court administrators, and city attorneys to keep in mind in enacting human resources policies and for all court personnel to consider in communications with the public.

Subject: TexasOnline Renamed "State Electronic Internet Portal"
H.B. 1504
Effective Date: June 17, 2011

Currently, the official website, or Internet portal, for the State of Texas is Texas.gov. Operated by the Department of Information Resources and in partnership with a private vendor, Texas.gov replaced TexasOnline.com when the site was updated to reflect new website naming conventions. The purpose of H.B. 1504 is to replace statutory references to "TexasOnline" with the generic term "state electronic Internet portal" so that those references will not have to be changed if the site is renamed.

Commentary: Just as courts have become accustomed to referring to the "TexasOnline fee," when informing defendants about obtaining online copies of their driving records (see, Article 45.0511 of the Code of Criminal Procedure), the name of the fee is changed to the "Internet portal fee."

Subject: Creation of Municipal Court of Record in Mesquite
H.B. 1889
Effective: January 1, 2012

H.B. 1889 amends Chapter 30, Subsection YY of the Government Code to create a municipal court of record in the City of Mesquite, Texas. It also requires the presiding judge to adopt rules not inconsistent with provisions of state law or other law for municipal courts of record to provide efficiency, uniformity, and fairness in the conduct of the business of the courts. The bill authorizes the rules to address courtroom decorum and attire; address court protocol; govern the hearing of pleas, motions for continuance, motions to withdraw and for substitution, and pre-trial motions; establish procedures related to a defendant's failure to appear and a defendant's indigence or inability to pay fines; and address warrant procedures. The bill exempts the presiding judge of the municipal court of record in the City of Mesquite from certain provisions of general law relating to the duties of presiding judges in municipal courts of record.

Subject: Registered Agent for Civil Process
H.B. 2047
Effective: September 1. 2011

Under current law, civil papers served to a corporation must be personally served to a president, vice-president, or registered agent of the corporation. Many corporations and other entities elect to appoint a separate corporation as their registered agent to receive civil process on behalf of the corporation. However, if that service of process is challenged, some courts have held that the corporation was not properly served, since current law provides that process must be personally delivered to a person and not to a company. This situation creates confusion, lost time, additional costs in litigation, and backlogs in court. H.B. 2047 amends Section 5.201 of the Business Organizations Code to allow for process to be served on a corporation through the corporation's registered agent. A registered agent that is an organization must have an employee available at the registered office during normal business hours to receive service of process, notice, or demand. Any employee of the organization may receive service at the registered office.

Subject: Ownership of Wrecked, Abandoned, or Inoperable Vehicles, Watercraft, Aircraft, and Motors
H.B. 787
Effective: September 1, 2011

Currently, a law enforcement agency has the authority to take an abandoned motor vehicle, watercraft, or outboard motor into custody and provide for the public sale of the property if the current owner fails to claim the property. An abandoned aircraft, however, is not included among the motor vehicles authorized to be taken into custody. Like abandoned motor vehicles and watercraft, abandoned planes and other aircraft are nuisances and the sites on which the craft is located can become a junkyard if the vessel is not disposed of in a timely manner. These sites are often located near a residential community; consequently devaluing residential property.

H.B. 787 seeks to remedy this situation by adding "aircraft" to Section 683.011 of the Transportation Code, now authorizing law enforcement to take abandoned aircraft into custody. This bill also amends the "junked vehicle" definition to include aircraft and watercraft, and permits the public sale of an abandoned aircraft under Section 683.014. Section 683.012 is also amended to require a law enforcement agency to notify each lienholder of the abandonment. Before sending this notice, however, the law enforcement agency must attempt to identify the owner of the aircraft by contacting the Federal Aviation Administration or the Secretary of State for the aircraft. Further conforming changes are made in Section 683.014 adding aircraft to the list of vehicles that entitle law enforcement agencies to storage fees, and in Section 683.015 allowing agencies to recoup the cost of the auction; any towing, preservation, or storage fees; and the cost of required notice or publication.

This bill also amends the Texas Parks and Wildlife Code to authorize the Texas Parks and Wildlife Department to handle abandoned watercraft and vessels through the bonded title process.

Commentary: The bill adds the definition of “abandoned vessel or outboard motor” to Section 31.003 of the Parks and Wildlife Code. It additionally adds Section 31.0466, permitting a landowner who finds abandoned vehicles or motors on their property to post a bond and apply for a certificate of title which becomes final after three years if the original owner does not reclaim ownership.

The amended definition in the amended Section 683.071 of the Transportation Code harmonizes with the language in H.B. 1376, which provides a definition for junked vehicles.

Subject: Local Enforcement of TCEQ Idling Regulations
H.B. 1906
Effective: September 1, 2011

Interested parties observe that state regulatory law provides for local enforcement of heavy-duty idling limitations in any city or county that enters into a memorandum of agreement for that purpose with the Texas Commission on Environmental Quality (TCEQ). Critics of this arrangement observe that the state's heavy-duty idling regulation does not provide an adequate enforcement mechanism for county governments.

H.B. 1906 amends current law relating to the idling of motor vehicles and provides a criminal penalty. H.B. 1906 seeks to establish a reasonable penalty for locally enforced, heavy-duty vehicle idling violations in unincorporated areas in order to foster more efficient enforcement. Such enforcement can reduce ozone-forming emission, improve air quality, and benefits the citizens of Texas.

Commentary: This much is clear: this bill adds Section 7.1831 to the Water Code, creating a new Class C misdemeanor for violating a rule against vehicle idling adopted by TCEQ. Ostensibly, the Legislature's goal in enacting this new section is to make it easier for municipalities and counties to enter into agreements with TCEQ, whereby rules to prevent air pollution could be enforced by local law enforcement. Under the provision, TCEQ may enact a rule prohibiting the idling of certain heavy vehicles, and local officials will have authority to issue citations for violations.

What is less than clear is how this bill relates to the authority of municipalities to pass ordinances addressing the same subject matter. The preceding bill analysis makes references to "county governments" and "unincorporated areas." Yet, there is nothing in Section 7.1831 stating that it cannot be enforced by municipal governments in incorporated areas. Combine this bill with S.B. 493, which changes state law to allow vehicles meeting certain omission standards to be exempt from idling ordinances, and there is good reason to be uncertain of the authority of municipal governments to regulate the idling of motor vehicles.

Subject: Enforcement of Fire and Safety Standards at Child-Care Facilities
H.B. 3547
Effective: September 1, 2011

H.B. 3547 provides local officials the ability to inspect and enforce state law and rules regarding fire safety standards at a licensed group day-care home or registered family home. Additionally, the bill requires local officials to report any violations observed to the Health and Human Services Commission. The bill amends Subchapter C, Chapter 42 of the Human Resources Code, by adding Section 42.04431 to permit a municipality to enforce state laws and rules regarding fire safety standards and equipment in group day-care homes. The purpose of the changes is to prevent situations where local officials may be aware of violations of safety standards but lack the authority to enforce the standards. Under the new language, local authorities may enforce the state regulations and shall report any violations they find to the Health and Human Services Commission.

Subject: Municipal Courts Week 2011
H.R. 1486
Effective Date: May 19, 2011

Municipal courts are the courts most routinely experienced by Texans and could be said to constitute the area of government that is closest to the greatest number of Texas citizens. Our municipal courts provide a local forum where questions of law and fact can be resolved with respect to alleged state law and municipal ordinance violations. The municipal courts play a vital role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal action.

The Texas Legislature recognizes the important work of the Municipal Courts in our state and resolves that November 7–11, 2011 will be recognized as Municipal Courts Week.

Subject: Making a Nuisance Property Subject to Action in Rem
S.B. 173
Effective: September 1, 2011

Health and safety violations in multi-family and single-family rental properties have increased in recent years. Although many municipalities have increased enforcement actions against those properties that habitually violate habitability standards, loopholes within existing statutes have allowed property owners to avoid these penalties by transferring the property to other entities. S.B. 173 closes these loopholes by to ensure that actions required by a municipality to remedy code violations are not nullified upon sale.

Specifically, S.B. 173 amends Section 54.018 of the Local Government Code to authorize municipalities to pursue penalties for violations of municipal ordinances in rem (i.e., a lawsuit against the building itself, rather than a person), so that any court-ordered judgments pertain to the structure, not the property owner. It also expands the ability of a municipality to pursue the appointment of a receiver for those properties that habitually receive citations for violating municipal health and safety ordinances. Finally, S.B.173 aligns receivership provisions for all properties by allowing a court to appoint an individual or a nonprofit organization with a demonstrated record of rehabilitating properties as a receiver—similar to the current authority granted to municipalities for historic properties.

Subject: Idling of Oversize or Overweight Motor Vehicles
S.B. 493
Effective: June 17, 2011

Federal law requires commercial truck drivers to take periodic rest breaks. During many months of the year in Texas, it is impossible for a driver to get the rest he or she needs without air conditioning or heat. Trucks not equipped with auxiliary power units (APU) must idle in order to run these environmental systems.

Great strides are being made by the heavy-duty truck engine manufacturers to build cleaner engines. Some states, and the U.S. Environmental Protection Agency, are recognizing these efforts and are certifying some engines as "clean idle" engines if they emit no more than 30 grams of nitrogen oxide emissions per hour when idling. This standard is so rigorous that even California, home to the nation's most stringent air quality standards, allows trucks with clean idle engines to idle at any time. Moreover, the federal government allows a motor vehicle with an APU to carry an additional 400 pounds total in gross, axle, tandem, or bridge formula weight limits provided the APU is operational.

S.B. 493 amends current law by allowing the "clean idle" engines to idle as an exception to the rules relating to the idling of motor vehicles.

Commentary: This bill was necessary because Section 382.0191 of the Health and Safety Code relating to the idling of motor vehicles while using sleeper berths expired on September 1, 2009. This bill replaces the expired section. While municipalities have the authority to adopt ordinances relating to the abatement of air quality nuisances (see, Section 382.113 of the Health and Safety Code), such ordinances must be consistent with both administrative rules passed by the Texas Commission on Environmental Quality and state law. Cities with ordinances regulating the idling of motor vehicles while using sleeper berths will have to review such ordinances in light of the new Section 382.0191 and the amendment to Section 622.955 of the Transportation Code.

Ordinance and Local Government Issues — Medium Priority

Subject: Clarification of Definition of Junked Vehicle
H.B. 1376
Effective: September 1, 2011

H.B. 1376 amends current law relating to the definition of a junked vehicle for purposes of abatement of a public nuisance. Current statute concerning classifying a vehicle as "junk" is ambiguous and often interpreted differently by various municipalities. H.B. 1376 offers clarification to reflect what many municipalities already believe the intent of the law is by amending the language regarding the display or lack of a license plate or inspection certificate.

Commentary: It is once again time for your city to update its junked vehicle ordinance to track state law. This bill amends Section 683.071 of the Transportation Code to provide that a "junked vehicle" means a vehicle that is self-propelled and (1) displays an expired license plate or invalid motor vehicle inspection certificate or (2) does not display a license plate or motor vehicle inspection certificate.

Subject: Disposal of Demolition Waste from Nuisance Buildings by Cities with Population of 10,000 or Less
S.B. 1258
Effective: May 17, 2011

S.B. 1258 amends current law relating to the disposal of demolition waste from abandoned or nuisance buildings in certain areas.

Rural Texas communities are facing challenges dealing with a growing number of abandoned homes and buildings. These abandoned structures are an eyesore to communities and create opportunities for undesirable activities such as drug manufacturing. They also present health and safety concerns caused by pests and rodents, collapsing buildings, and possible fire dangers. Many of these communities would like to take action and demolish these structures. However, demolition of a structure is costly and results in debris that is regulated as municipal solid waste. This creates further challenges, including the cost of transportation to an approved landfill and the disposal of the waste.

S.B. 1258, amending Section 361.126 of the Health and Safety Code, grants the Texas Commission on Environmental Quality the authority to adopt rules to create a process for the issuance of a permit authorizing a city or county with a population of 10,000 or less to dispose of demolition waste from an abandoned building or building found to be a nuisance.

Subject: Authorizing Interlocal Agreements for More Than a Year
S.J.R. 26; S.B. 760
Effective: November 8, 2011, if constitutional amendment is approved by voters through referendum on that date

Texas Constitution, Article 11, Sections 5 and 7, have been interpreted in a manner that impedes the ability of cities and counties to jointly administer programs or provide services. Currently, a contract entered into by a local government that is longer than one year constitutes a debt, requiring the imposition of a tax and the creation of a sinking fund, i.e., a means of repaying funds that were borrowed through a bond issue. This has limited the ability of local governments to contract with each other for long-term projects such as the construction of infrastructure.

S.J.R. 26, in conjunction with the enabling legislation S.B. 760, would allow cities and counties to enter into contracts for longer than one year without that contract automatically constituting a debt. This would give local governments the flexibility to consolidate more projects and services, reduce duplication of efforts, and reduce costs to taxpayers.

Commentary: S.B. 760, a bill authorizing municipalities and county governments to enter into interlocal agreements for terms longer than a year, is dependent upon the outcome of this referendum. If the amendment is approved, then S.B. 760 will go into effect. Otherwise, local governments will still be required to renew interlocal agreements on an annual basis.

Subject: Prohibition Against Glass Containers near Certain Riverbeds
H.B. 218
Effective: September 1, 2011

If not properly disposed of, glass containers pollute river beds and put swimmers, anglers, paddlers, and campers at risk of suffering an injury caused by broken glass. H.B. 218, adding Section 365.035 to the Health and Safety Code, seeks to remedy this problem by establishing provisions relating to the possession of a glass container within the boundaries of certain riverbeds and providing criminal penalties in order to create a safer environment.

Commentary: While creating a Class C misdemeanor for possession of a glass container within the boundaries of a riverbed might be welcomed, the actual application of this bill is extremely limited. First, the bill itself only applies to certain counties located near the Mexican border that also contain at least four rivers. Second, several exceptions to the bill impair its usefulness to enforcing authorities. Besides the geographic jurisdictional restrictions, the bill does not apply to landowners whose properties are adjacent to the waterway—meaning that in addition to homeowners, businesses that sell or serve beverages in glass containers and own their land are not subject to penalty if their property lies along the riverway. Finally, the bill provides a defense to a person who does not transport a glass container into the riverbed boundary.

Subject: Confidentiality and Protective Orders for Victims of Trafficking of Persons Offenses
H.B. 2329
Effective: September 1, 2011

A recent report to the Legislature recommended certain statutory changes to provide a mechanism for protective orders to prevent interaction and contact between a victim of a trafficking of persons offense and the offenders, as well as restrictions on offenders and warnings for violations. H.B. 2329 amends current law relating to the confidentiality of certain information regarding victims of trafficking of persons and to the issuance and enforcement of protective orders to protect victims of trafficking of persons and provides penalties.

The bill adds Chapter 7B, to the Code of Criminal Procedure applying specifically to victims of trafficking of persons offenses. The new chapter is similar to current Chapter 7A which provides for protective orders to be issued to victims of sexual assault. Under the new provisions, a victim, the guardian of a victim under 20, or the prosecuting authority may seek a protective order against a person accused of committing the offense of trafficking of persons regardless of any other relationship which may exist between the victim and the defendant. The provisions regarding the protective order are similar to those currently enacted in Chapter 7A, but with additional guidelines provided for post-trial protective order requirements and duration. The default duration of a protective order under this chapter is two years unless otherwise specified. A shorter duration may be specified and, if cause is shown for the necessity, may extend to the lifetime of the victim or offender.

The Code of Criminal Procedure is also amended by adding Chapter 57D providing a statewide mechanism by which victims of trafficking of persons offenses may opt to designate a pseudonym instead of their own name for use in all public documents pertaining to the judicial proceeding. Once a pseudonym is applied for and granted, then state officials must update all relevant records to reflect the change in identity and utilize the pseudonym to designate the victim in all future proceedings. The bill also makes it a Class C misdemeanor offense to knowingly disclose the true identity of a victim identified by a pseudonym.

Commentary: H.B. 2329 may impact municipal courts as it creates new Class C misdemeanors. Article 57D.03(d) of the Code of Criminal Procedure makes it illegal for a public servant or other person who has access to the name, address, or telephone number of a victim 18 years of age or older who has chosen a pseudonym to knowingly disclose that information to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction. Article 57D.03(d) also makes it a Class C misdemeanor for a public servant or other person who has access to, or obtains the name, address, or telephone number of a victim younger than 18 years of age to knowingly disclose that information to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction, unless the disclosure is required or permitted by other law. Court staff involved in the adjudication of these new offenses should take precautions to prevent unauthorized disclosure of information under this new law.

Subject: Creates Offense of Installation of Irrigation System Without a License
H.B. 2507
Effective: September 1, 2011

The bill amends Section 1903.256 of the Occupations Code by creating a new Class C misdemeanor for the act of installing an irrigation system without a license.

There is concern that lawn irrigation systems are being installed by unlicensed irrigation installers because they can offer the service more cheaply than a licensed installer. The concern is that unlicensed installers will contaminate the public water supply because they are not trained to prevent the non-potable water in lawn irrigation pipes from flowing into public water supply pipes that are opened during installation.

Concerned parties report that many municipal and county judges will not prosecute unlicensed irrigation installers because there is no clear punishment for the offense. H.B. 2507 addresses these concerns by creating the offense of Installing an Irrigation System Without a License, making it unprofitable for an unlicensed irrigator to continue practicing without a license.

Commentary: This is a new Class C misdemeanor offense of interest to municipal code enforcement officers and building inspectors. It may also pose preemption issues to some municipal ordinances.

Subject: Fraudulent Emissions Inspection of a Motor Vehicle
S.B. 197
Effective: September 1, 2011

Automotive emissions enforcement efforts in north central Texas have uncovered evidence of pervasive fraud among inspection stations in the region. S.B. 197 strengthens accountability and oversight of vehicle inspection stations and vehicle inspectors and requires a vehicle inspection station to post bond as a condition of certification.

Commentary: The bill amends the Transportation Code to permit the Texas Commission on Environment Quality (TCEQ) to impose an administrative penalty for certain violations related to motor vehicle inspection. The bill requires, in the new Section 548.4045 of the Transportation Code, applications for certification as a motor vehicle inspection station in certain counties to include a surety bond of $5,000. The bill also creates civil penalties under Section 548.6015 and administrative penalties in Section 548.3065 for certain violations committed by inspection stations and inspectors related to motor vehicle inspections. The bill increases the fee for certification under Section 548.506 as an inspector from $10 to $25 and increase the fee for certification under Section 548.507 as an inspection

station from $30 to $100. The bill also increases certain fees for certification as an inspection station if the inspection station had previously been convicted of certain violations.

The bill creates the new offense of Fraudulent Emissions Inspection of Motor Vehicle by adding Section 548.6035 of the Transportation Code. The offense is a Class B misdemeanor in all but one instance. It is a new Class C misdemeanor for a person to knowingly, in connection with a required emissions inspection of a vehicle, bypass or circumvent a fuel cap test.

Subject: Outlawing Synthetic Marijuana
S.B. 331
Effective: September 1, 2011

K2, also known as Spice, Genie, and Fire & Ice, is marketed as incense but is actually a product that has been sprayed with a chemical compound that mimics the effects of THC, the active ingredient in marijuana, and is being smoked to produce intoxicating effects. K2 is legal and it is being sold at gas stations and smoke shops across Texas—as well as online to Texans of all ages.

Unbeknownst to the user, smoking K2 can have dangerous consequences that put the user's health at great risk. The reported side effects include hallucination, severe agitation, elevated heart rate and/or blood pressure, chest pains, blackouts, tremors, seizures, and cardiac infarction. According to the Texas Poison Center Network, there were 555 K2-related calls in 2010 and the number increases with each passing month.

The problem is spreading across Texas and the use of K2 among people of all ages and all walks of life is increasing. S.B. 331 addresses the legal sale, manufacture, and possession of synthetic cannabinoids in Texas. Currently, there are three illegal synthetic cannabinoids in Penalty Group 2, but many other compounds are unregulated under Texas law.

S.B. 331 criminalizes the manufacture, sale, and possession of the unregulated compounds by broadly defining subclasses of synthetic cannabinoids, but explicitly listing compounds that have been identified in products currently on the market. The penalties for possession track those of marijuana where the compound has been sprayed onto an organic substance but differ when the substance is in its pure form. The penalties for manufacture and sale track those of Penalty Group 2.

S.B. 331 creates a new Penalty Group 2-A under Section 481.1031 of the Health and Safety Code designating certain synthetic cannabinoids as controlled substances under the Texas Controlled Substances Act, provides penalties, and establishes certain criminal consequences or procedures.

Commentary: Cities that have enacted local ordinances restricting or banning the use or sale of K2 will need confer with their city attorneys as such ordinances may be preempted by state law. Are you unfamiliar with K2? TMCEC recently featured an article that predicted that such ordinances could be "up in smoke." Read Cathy Reidel's article "K2: What is All the Buzz About?" *The Recorder* (January 2011).

Subject: Electronic Transmission of Certain Visual Material Depicting Minors ("Sexting")
S.B. 407
Effective: September 1, 2011

Under current law, the act of sending a sexually explicit text message may be prosecuted under adult pornography laws. This can lead to felony convictions and possible lifelong registration under the sex offender registration program. As a result, some prosecutors reportedly believe that they can either charge juveniles that engage in this behavior with crimes that carry overly harsh penalties or enter no charges at all.

S.B. 407 creates a new offense in Section 43.261 of the Penal Code for what is commonly known as "sexting." Under this new law, it is an offense for a minor (defined as under 18 years of age) to intentionally or knowingly: (1) *promote* by electronic means to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knew that another minor produced it, or (2) *possess* in electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knew that another minor produced it. Sexual conduct means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

The bill creates an affirmative defense for sexting between minor spouses or between minors within two years of age who were dating at the time of the offense. This mirrors an existing defense under the pornography statute, which is necessary because without the defense, two minors could legally have sex but could not "sext." The law also provides a defense to prosecution to protect an innocent recipient of an unsolicited sext if the minor recipient destroyed the sext within a reasonable time of receiving it.

S.B. 407 amends Section 51.08 of the Family Code to *require* a court in which there is a pending sexting complaint against a child (under 17 years of age) to waive its original jurisdiction and transfer the case to juvenile court. The bill also amends Section 51.03(b) to specify that a violation of this offense constitutes conduct indicating a need for supervision (CINS).

The bill requires the Texas School Safety Center to develop educational programs for use by school districts that address the legal aspects, other consequences, and effects of—and the connection between—sexting, bullying, cyber-bullying, and harassment.

For 17-year-old minors, both the promotion and possession offense is a Class C misdemeanor (maximum fine of $500), but the penalties are enhanced for repeat offenses (and capped at a Class A misdemeanor). A promotion offense is a Class B misdemeanor if the minor promoted the material with the intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another, and a Class A misdemeanor for repeat offenses. S.B. 407 added Article 45.061 to the Code of Criminal Procedure authorizing a court to order a minor convicted of sexting to attend and successfully complete an above-referenced educational program. If so ordered, either the defendant or defendant's parent must pay the cost of attending the program. The bill defines "parent" and specifies that the term does not include a parent whose parental rights have been terminated.

S.B. 407 provides that a court must allow discovery of sexting material in the same way discovery of material related to child pornography is allowed. A court may not disclose evidence to the public that is the basis of a sexting criminal prosecution.

Commentary: The new sexting offense presents a new framework for municipal courts. Courts must be concerned with the age of the defendant, as municipal courts cannot hear sexting cases against children, i.e., under 17 years of age. The bill creates a new mandatory transfer provision—under which a juvenile case manager program is *not* an exception—which *requires* the court to waive its original jurisdiction and transfer any complaint alleging a sexting offense against a child. Thus, municipal courts may only adjudicate sexting offenses against minors that are *not* children (i.e., 17-year-olds). However, as this offense has received much media attention, many in law enforcement will just know this as a Class C misdemeanor and file these charges against children in the municipal court. The municipal court must then waive jurisdiction and transfer the case to the juvenile court, even if the municipal court has a juvenile case manager.

Notably, the bill makes Article 45.0215 of the Code of Criminal Procedure requiring a child defendant to appear in open court with a parent, also apply to a 17-year-old defendant who has been charged with a sexting offense. The bill also makes the expunction provisions in Article 45.0216 apply to a 17-year-old

who was convicted only once of the sexting offense. For purposes of both expunction and enhancement of penalties, a finding by a juvenile court that the minor engaged in this offense as CINS is considered a conviction.

Subject: Offense of Theft of Services
S.B. 1024
Effective: September 1, 2011

Theft of wages occurs when employers fail to pay workers their promised wages. This is a frequent occurrence in Texas. In certain industries, such as construction, one in every five workers experiences wage theft. In addition, 50 percent of day laborers have experienced wage theft. The impact of this theft is widespread and has caused many workers to be unable to meet their family's basic needs.

S.B. 1024 addresses instances when workers receive periodic or partial payment of wages. The bill amends Section 33.02 of the Penal Code to provide that a person commits theft of service if, with intent to avoid payment, that person fails to make full payment after receiving notice demanding payment if the compensation was to be paid periodically. The intent to avoid payment for a service may be formed at any time during or before a pay period, and the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service.

Commentary: The penalty for an offense of theft of services is determined by the value of the services which were received and not paid for. The penalty for the offense ranges from a Class C misdemeanor to a first-degree felony.

Substantive Criminal Law — Medium Priority

Subject: Carrying Weapons in Watercraft
H.B. 25
Effective: September 1, 2011

Under current law, an individual may legally carry a firearm on their own property including in their own motor vehicle. This bill amends Sections 46.02 and 46.15(b) of the Penal Code, extending the protected scope of lawful possession of a firearm to include watercraft, as well as land-based vehicles, as long as a gun is not in plain view and the person is not engaged in criminal activity. For purposes of the Act, a watercraft is defined as any vessel used for or capable of transportation on the water, except for seaplanes.

Subject: Creating the Offense of Trafficking of Persons
H.B. 260
Effective: September 1, 2011

Smugglers have been unlawfully transporting people across international borders for decades. Recently, the crime has become more profitable since some smugglers have detained and then extorted additional money from the people they have already illegally transported into the United States. Due to the illegal nature of entry into the United States, fear of the smuggler, and fear of deportation, victims are less likely to report smugglers to law enforcement. Failure to comply with a smuggler's or transporter's additional demands often results in the smuggled person being beaten, raped, murdered, or sold into forced labor or the commercial sex trade. Concerned parties contend that Texas law relating to the offense of unlawful transport of a person does not provide adequate punishment for smugglers who subject victims to this unfortunate, life-changing situation, and thus this offense is rarely prosecuted by Texas authorities. According to those observers, most cases of smuggling are prosecuted by federal attorneys because

federal prosecutors can secure longer sentences for the crime. H.B. 260 seeks to remedy this situation by increasing the penalty for unlawful transport of a person.

Section 20.05 of the Penal Code is substantially amended to broaden its prohibitions on unlawful transport of individuals. The requirement that illegal transport be made for pecuniary gain is eliminated as is the knowledge requirement that the transportation is substantially likely to result in injury or death. In addition to the existing state jail felony penalty, enhancements are added to make the offense a third-degree felony under certain conditions and a new provision is added to make penalties under this section cumulative to other penalties which may be available.

Also, venue under Article 13.12 of the Code of Criminal Procedure, for prosecution of an offense of smuggling of persons, is established under the same principles as applied to kidnapping or false imprisonment; an offense may be prosecuted in any county where an offense initially occurred or a person was subsequently taken.

Commentary: H.B. 260 cleans up a couple of statutes that were muddied during the 81st Legislature. Section 71.02 of the Penal Code, dealing with organized criminal activity, had three different versions after the 81st Legislature, but H.B. 260 reenacts and amends the section and adds Section 20.05 to the laundry list of offenses that could constitute organize criminal activity. Article 59.01 also had multiple versions after the 2009 Session that are addressed in H.B. 260. The new Article 59.01 states that material which is used in the commission of the offense of smuggling of persons may be characterized as contraband.

Subject: Punishment for the Offense of Employment Harmful to Children
H.B. 290
Date: September 1, 2011

It is the state's responsibility to protect and prevent the exploitation of children. H.B. 290 creates a stronger penalty for employing a minor at a sexually-oriented business to reflect the serious nature of such employment.

Section 43.251(c) of the Penal Code is amended to provide that an offense under this section is a Class A misdemeanor. The offense is a state jail felony if it is shown at the trial that the defendant has been previously convicted one time of an offense under this section. It is a felony of the third degree if it is shown at the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section.

Subject: Offense of Funeral Service Disruption
H.B. 718
Effective: September 1, 2011

Section 42.055 of the Penal Code (Funeral Service Disruptions) prohibits an individual from picketing at a funeral service beginning one hour before the service begins and ending one hour after the service is completed. Often, services do not commence on time, especially when a soldier is laid to rest. H.B. 718 amends this section to change the time from one hour to three hours for both before the funeral service and three hours after the funeral service has been completed. A person who pickets within 1,000 feet of a facility or cemetery during a period of time before commencement of a funeral service, and extending until after the service is concluded, is subject to prosecution for a Class B misdemeanor.

Subject: Regulation of Athlete Agents
H.B. 1123
Effective: September 1, 2011

H.B. 1123 seeks to hold athlete agents accountable for their actions. This bill provides stricter administrative and criminal penalties for agents who violate certain regulations and by requiring an athlete agent to deposit a surety bond with the Secretary of State before contacting an athlete or entering into an agent contract with an athlete in Texas.

The bill establishes significant qualification, registration, and bonding requirements which must be completed before an individual may engage upon recruitment or representation activities. Section 2051.001 of the Occupations Code is amended to provide a clearer definition of athlete agent. Under the new definition, a person must be certified by a national professional sports organization in order to receive certification by the Secretary of State, unless no national organization exists for the sport in which the agent performs. If no national organization exists, the agent may seek certification as a limited agent. A revised Section 2051.101 of the Occupations Code states a person who has not been certified as a registered athlete agent by the Secretary of State generally may not register as a professional athlete agent, act as an athlete agent, or hold themselves out as one. Persons who are certified by the Secretary as an athletic agent must comply with annual registration and reporting requirements. The bill adds new language requiring the secretary to adopt rules ensuring that any contract used by an athletic agent conforms to standards approved by the national sports organization.

Also new is the requirement under Section 2051.151 of the Occupations Code that an athlete agent post a $50,000 bond before contacting an athlete or entering into a contract with an athlete. Previously, a $100,000 bond was required only if the parties were entering into a contract involving financial services. The bonds posted by an athlete agent must be maintained for two years following the cessation of agent activities in the state. An agent is also subject to administrative and criminal penalties or can be liable in a civil suit from the individual or an adversely affected institution of higher education following from a breach of duty or violation of the rules concerning dealings with athletes. The bill enumerates new professional obligations of athlete agents and specifies prohibited conduct.

Commentary: Of special interest to criminal courts is the change to Section 2051.501 of the Occupations Code dealing with criminal offenses. Previously, it was a Class A misdemeanor for an athlete agent to intentionally or knowingly violate the chapter or a rule under the chapter. The revised Section 2051.501 creates two new felonies of the third degree. Furnishing a thing of value to an athlete or a relative of the athlete before the completion of the last intercollegiate sports contest is a third degree felony. An athlete agent also commits a third degree felony if the agent commits an act, or causes a person to commit an act on the agent's behalf, which causes an athlete to violate a rule of the national association for promotion and regulation of intercollegiate athletics.

Subject: Unauthorized Acquisition or Transfer of Certain Financial Information
H.B. 1215
Effective: September 1, 2011

Recently, there has been a lot of publicity about tactics used by criminals to obtain personal financial data without the victim being aware at the time that the personal information is being stolen.

The use of sophisticated electronic and digital equipment and telephoto lenses has become so widespread that these devices can be accessed and used by almost anyone, without detection, to photograph or copy information from a person's check, ATM card, credit card, or debit card while paying for goods or services or conducting financial transactions. For instance, a person standing close enough to another person in a store checkout line could use a cell phone to surreptitiously take a photo of the person's credit or debit card or check. Some criminals install devices near or on an ATM machine to retrieve or capture information from the customer's use of an ATM card without the customer's knowledge and consent, thus compromising the integrity of the customer's account with the financial institution.

H.B. 1215 amends Chapter 31 of the Penal Code by adding Section 31.17 to create the offense of Unauthorized Acquisition or Transfer of Certain Financial Information. The bill makes it a Class B misdemeanor for a person to obtain the financial sight order or payment card information of another by use of an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial sight order or payment card information, knowing that the person is not entitled to obtain or possess the financial information. The bill makes it a Class A misdemeanor for a person to transfer to a third party a financial sight order or payment card information obtained in that manner, knowing that the person is not entitled to obtain or possess the information. The bill specifies that if conduct constituting the offense of unauthorized acquisition or transfer of certain financial information also constitutes an offense under another law, the actor may be prosecuted under either law.

Subject: Online Impersonation Offenses
H.B. 1666
Effective: September 1, 2011

Currently, Section 33.07(a) of the Penal Code penalizes only targeted harassing conduct committed on commercial social networking sites as defined under Section 33.07(f)(1). Although targeted online harassment can occur on other Internet websites, conduct committed on those websites is currently excluded from prosecution.

The purpose of H.B. 1666 is to retitle the former Online Harassment offense as Online Impersonation, expanding the scope of Section 33.07(a). This now includes targeted online harassment through impersonation committed not only on commercial social networking sites, but also on any other Internet website such as Craig's List.

Commentary: The bill makes it a third degree felony to impersonate another person without their permission on any website by posting information or sending messages with the intent to harm, defraud, threaten or intimidate any person. The purpose of the bill is to close a loophole created by the previous statute that applied to commercial social networking sites, but did not address other types of websites.

Subject: Prosecution and Punishment for the Offense of Tampering with a Witness
H.B. 1856
Effective: September 1, 2011

The purpose of H.B. 1856 is to provide a better level of protection to citizens who have witnessed and reported crimes.

Under the current Section 36.05 of the Penal Code, the intimidation or coercion of a witness is a state jail felony. As such, there is little to deter a defendant accused of capital murder or a first degree or second degree felony offense from intimidating a witness who can implicate the defendant in the offense.

Witnesses of violent crimes are already hesitant to come forward to tell the police what they know. This concern is increased when the crime involves gang violence or when the accused is released on bond.

The new punishment range in Section 36.05 of the Penal Code for tampering with a witness corresponds to the most serious criminal offense that is charged in the case and is the basis of the intimidation. In non-criminal witness tampering cases (e.g., divorce proceedings, probate proceedings, etc.), H.B. 1856 increases the offense to a third-degree felony. This punishment scheme creates a more effective deterrent for the offender and allows the State to better protect witnesses to criminal offenses. Additionally, H.B. 1856 specifies that if conduct that constitutes an offense under this section also constitutes an offense under any other law, the offender may be prosecuted under this section, the other law, or both.

Subject: Prevention, Prosecution, and Punishment of Trafficking of Persons, Compelling Prostitution, and Other Related Offenses
H.B. 2014
Effective: September 1, 2011

H.B. 2014 reflects the recommendations in the *2011 Human Trafficking Prevention Task Force Report* that identifies legislative changes that will push Texas forward in its efforts to combat human trafficking.

H.B. 2014 amends the Alcoholic Beverage Code, Code of Criminal Procedure, Government Code, and Penal Code provisions relating to certain criminal and civil consequences of trafficking of persons, compelling prostitution, and certain other related criminal offenses and to the prevention, prosecution, and punishment of those offenses.

Article 59.01(2) of the Code of Criminal Procedure is cleaned up after multiple revisions in the 81st Legislative Session. Property used to, or intended to be used to, facilitate trafficking of persons is added to the definition of contraband. If the defendant was arrested for, or charged with, trafficking of persons with the intent or knowledge that the victim would engage in sexual conduct (defined as sexual performance by a child under Section 43.25 of the Penal Code), information in the computerized criminal history system must include the age of the victim.

The Penal Code undergoes some changes as well with the passage of H.B. 2014. Section 25.08 specifies that the offense of Sale or Purchase of a Child is punishable as a felony of the second degree (as opposed to a felony of the third degree, generally) if the actor intended to commit an offense of sexual performance by a child or any of the newly added trio of trafficking of persons, prostitution, or compelling prostitution.

The punishment range for prostitution under Section 43.02 is amended to provide that an offense is: (1) a Class B misdemeanor generally; (2) a Class A misdemeanor for a second or third offense; (3) a state jail felony for a fourth or subsequent offense; (4) a felony of the third degree if a solicited person is between age 14 and 18; and (5) a felony of the second degree if the solicited person is younger than 14 years of age.

Section 43.251(c), regarding Employment Harmful to Children, is amended to increase the penalty from a Class A misdemeanor to a felony of the second degree or a felony of the first degree if the child is younger than 14 when the offense is committed.

Commentary: This is one of several bills from this session that deal with human trafficking (see also, H.B. 2329, H.B. 3000, and S.B. 24).

Subject: Addition of Synthetic Compounds ("Bath Salts") to the Texas Controlled Substances Act
H.B. 2118
Effective: September 1, 2011

H.B. 2118 amends Section 481.103 of the Health and Safety Code to add certain synthetic compounds to Penalty Group 2 of the Texas Controlled Substances Act.

The bill expands the list of substances included under Penalty Group 2 of the Texas Controlled Substances Act to include compounds and derivatives of 2-aminopropanol—a synthetic alkaloid not marketed for human consumption, but is increasingly found in products marketed as bath salts. These salts, sold under various names for prices in the range of $300/oz., are subsequently inhaled or injected by users to induce hallucinations. The product also has numerous side effects which can cause paranoia and psychosis. Users may also exhibit violent outbursts of behavior and suffer suicidal ideations. By adding this compound, and any chemical derivatives to the list of controlled substances, the Legislature is

attempting to eliminate commercial trade in these products by making their manufacture, distribution, possession, and use a punishable offense in Texas.

Commentary: S.B. 331 added Penalty Group 2-A to the Act—banning synthetic cannabinoids (commonly referred to as K2) and imposing identical criminal penalties as Group 2. Both S.B. 331 and H.B. 2118 reflect the ongoing struggle to combat synthetic versions of illegal substances as they are developed and popularized. It is becoming en vogue in modern drug culture to abuse substances that are generally considered innocuous. Many of your grandmothers used bath salts. Until modern times, it was unheard of to smoke bath salts. By banning all chemically similar or derivative products, the Legislature is attempting to head off the development of chemically distinct, but effectively identical, substitute products in a uniform manner. In cities where the use or sale of "bath salts" has been prohibited by ordinance, city officials will need to consult with their city attorney. Likewise, those cities that have passed K2 ordinances should consult with their city attorneys to determine whether the ordinance is valid.

Subject: Continuous Trafficking of Persons
H.B. 3000
Effective: September 1, 2011

Texas acknowledges the severity of human trafficking and acknowledges that human trafficking is frequently reported to be the second largest criminal industry in the world. Texas first passed legislation that criminalized human trafficking in 2003, making it one of the first states to do so.

H.B. 3000 adds Section 20A.03 to the Penal Code creating the offense of Continuous Trafficking of Persons. The punishment for this offense is a felony of the first degree. This will apply to offenders who commit the offense of Human Trafficking two or more times during a 30 day or more period of time.

Article 12.01 of the Code of Criminal Procedure is also amended to add continuous trafficking of persons to the list of felony indictments that may be presented with no limitation, except as provided in Article 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, and Organized Criminal Activity).

H.B. 3000 amends Section 12.35(c) of the Penal Code to specify that an individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown at trial that they have been previously convicted of continuous trafficking of persons.

Articles 17.03 and 17.091 of the Code of Criminal Procedure are amended to prohibit the release of a defendant on personal bond by a judge or magistrate before whom the case is pending and requires notice of bail reductions.

An amended, Section 411.1471 of the Government Code requires an indicted person to provide to a law enforcement agency one or more specimens for the purpose of a DNA record.

This bill also adds Continuous Trafficking of Persons to the list of crimes in Section 12.42 of the Penal Code that are eligible for automatic life without parole sentencing for subsequent convictions. Furthermore, an inmate now charged with human trafficking is *not* eligible for: (1) mandatory community supervision under Section 508.149, (2) intensive supervision programs under Section 499.027, or (3) diversion to a halfway house under Section 508.151(a) of the Government Code.

Under Section 508.145 of the Government Code, an inmate charged with an offense under Section 20A.03 of the Penal Code, is not eligible for parole until the actual calendar time served equals the lesser of one-half the sentence or 30 years. Before an inmate convicted of Continuous Trafficking may be released on parole, an extraordinary vote under Section 508.046 of the Government Code is required—meaning that all members of the parole board must vote on the release with at least two-thirds voting in

favor. Furthermore, a member of the board may not vote unless they have received a copy of a written report on the probability that the inmate would commit an offense after release.

Commentary: Other important bills relating to human trafficking include H.B. 2014, H.B. 2329, and S.B. 24.

Subject: Offense of Breach of Computer Security
H.B. 3396
Effective: September 1, 2011

A breach of computer security may include obtaining personal identifiers from a computer system, which is often a precursor to the crime of identity theft, obtaining access to credit card sales logs or employment applications, and obtaining access to a governmental computer network. It is often difficult to prove the amount of actual monetary damages resulting from a network intrusion. H.B. 3396 seeks to address this issue by providing enhanced penalties for Breach of Computer Security offenses that involve computers owned by the government or certain public and private utilities considered to be critical infrastructure facilities.

H.B. 3396 adds definitions of "Critical Infrastructure Facility" and "Identifying Information" to Section 33.01 of the Code of Criminal Procedure for the purpose of prosecuting breaches of computer security.

Under the current Section 33.02 of the Penal Code, the offense of breaching computer security is a Class B misdemeanor, but is enhanced to a state jail felony if the target of the breach fits the provided definition of a critical infrastructure facility, is owned by the government, or if the offender has previously been convicted of the same offense on two or more occasions. The new Section 33.02 creates new penalty ranges for a person who accesses a computer system or network with the intent to defraud or harm another or alter, damage, or delete property without consent. A person has committed: a state jail felony if the amount is less than $20,000; a felony of the third degree if the amount is $20,000 or more but less than $100,000; a second degree felony if the amount is $100,000 or more and less than $200,000, if the amount is less than $200,000 and the system is owned by the government or a critical infrastructure facility, or if the actor obtains the identifying information of another by accessing only one computer system or network; a felony of the first degree if the aggregate amount is $200,000 or more or the actor obtains the identifying information of another by accessing more than one computer system or network. The bill also creates an exception in Section 33.02 to the offense for breaches committed as part of legitimately authorized law enforcement operations.

Subject: Trafficking of Persons and Compelling Prostitution
S.B. 24
Effective: September 1, 2011

Human trafficking is the illegal trade of human beings and is a modern-day form of slavery. Human trafficking is a criminal enterprise frequently cited as the second-largest criminal industry in the world.
In 2009, the Texas Legislature created a statewide Human Trafficking Prevention Task Force (task force) housed in the Office of the Attorney General (OAG) to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes.

The 2011 *Texas Human Trafficking Prevention Task Force Report* was released by the OAG and included legislative recommendations agreeable to all 47 task force members.

S.B. 24 amends current law relating to the prosecution, punishment, and certain criminal and civil consequences of offenses involving or related to the trafficking of persons and to certain protections for victims of those offenses.

Commentary: S.B. 24 is a lengthy bill consisting of seven articles spanning 60 pages. A very brief summary of the pertinent articles follows.

Article 1 of S.B. 24 amends Chapter 20A (Trafficking of Persons) of the Penal Code by adding or altering the definitions of "child," "sexual conduct," and "traffic" and redefining "forced labor or services" in Section 20A.01. Section 20A.02 (Trafficking of Persons) of the Penal Code is expanded to include many new ways to commit the crime of Trafficking of Persons. Generally, an offense under Section 20A.02 is a felony of the second degree, but the new subsections (5)-(8), relating to trafficking with the intent that the child engage in forced labor or services or trafficking that causes a child to engage in or become the victim of prohibited sexual conduct, are first degree felonies. Under the amended Section 43.05 of the Penal Code, the penalty for compelling prostitution of a child is increased to a first degree felony.

Article 2 makes changes to Chapter 7A of the Code of Criminal Procedure allowing a parent or guardian, acting on behalf of a minor who is a victim of human trafficking, to file for a protective order against the trafficker. No changes are made to magistrates orders for emergency protection.

Article 3 adds a tool to combat traffickers by adding human trafficking offenses to the list of common nuisances in Section 125.0015 of the Civil Practice and Remedies Code.

Article 6 amends Section 3.03 of the Penal Code allowing sentences for human trafficking offenses to be stacked at the discretion of a judge. Section 15.031 of the Penal Code is amended to include Compelling Prostitution and certain types of Trafficking of Persons to the list of intended crimes that can lead to Criminal Solicitation of a Minor. Article 6 also amends Section 21.02(c) of the Penal Code expanding the scope of an "act of sexual abuse" to include Trafficking of Persons under Section 20A.02(a)(7) or (8), and Compelling Prostitution under Section 43.25(a)(2). Finally, the offense of Aggravated Sexual Assault (a felony of the first degree) is amended in Section 22.021 to incorporate many of the newly added Trafficking of Persons crimes.

Subject: Prosecution of Stalking
S.B. 82
Effective: September 1, 2011

S.B. 82 seeks to protect victims of stalking by modifying the statutory definition in Section 42.072 of the Penal Code. This change also acknowledges that stalking is not limited to one type of repeated stalking behavior, but that offenders use a number of tactics to induce fear in their victims. For example, many stalkers target their victim's intimate partner and S.B. 82 incorporates this type of behavior in the definition of stalking. S.B. 82 preserves the requirement that a court must determine that an alleged stalking offender intended to cause fear to a victim regardless of the stalking behavior.

Under Section 42.072 of the Penal Code, an individual commits the offense of stalking by engaging in a "scheme or course of conduct" on more than one occasion, that the actor knows or reasonably believes will cause the victim fear of bodily injury to the victim or to the victim's family or of damage to the victim's property.

A first stalking offense is a third degree felony and any repeat conviction is a second degree felony. Stalking convictions in other states or under federal law are not currently addressed in current law, but S.B. 82 amends Section 42.072 of the Penal Code to provide that a conviction of an offense under the laws of another state, the laws of a federally recognized Indian tribe, the laws of a territory of the United States, or federal law that is substantially similar to a Texas stalking offense will count as a prior conviction.

Current law does not guarantee victims the right to offer court testimony about their relationship with the alleged offender. As a result, juries and judges do not always have a clear picture of why a certain course

of conduct caused the alleged victim fear. Article 38.46 of the Code of Criminal Procedure is amended to ensure that stalking victims are permitted to give testimony in court about his or her relationship with an alleged perpetrator. S.B. 82 makes clear that the testimony allowed "shall not be construed to allow character evidence that would otherwise be inadmissible" under the state and federal Rules of Evidence. Since stalking behavior can often seem innocuous to a juror unless placed in the context of a victim's history with a stalker, this testimony is critical in seeking a stalking conviction.

Subject: Fraudulent or Unlawful Obtaining, Delivering, Dispensing, Distributing, or Diverting of a Controlled Substance
S.B. 158
Effective: September 1, 2011

The abuse of prescription drugs is a serious public health issue and the increasing diversion of prescription drugs is a cause for concern. One of the causes of diversion is doctor shopping. Doctor shopping is typically defined as a patient actively seeking doctors who will prescribe certain types of medications, usually opiates, depressants, and stimulants. Fifteen other states currently have legislation that specifically addresses the problem.

S.B. 158 amends Section 481.129 of the Health and Safety Code making it either a felony or a Class A misdemeanor for patients who visit multiple practitioners to not disclose that they are already receiving controlled substances. In other words, a person commits an offense if they have intent to obtain controlled substances—that are not medically necessary for the person—using misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact.

S.B. 158 also amends Section 481.1285 of the Health and Safety Code making it an offense applicable to registrants, dispensers, and certain other people who have access to controlled substances by virtue of their profession. Those with such access commit a state jail felony if they convert the controlled substance to their own use or benefit and a felony of the third degree if the substance is diverted to the unlawful use or benefit of another person.

Subject: Altering Capital Offense Status for the Murder of a Child
S.B. 377
Effective: September 1, 2011

To bring Texas closer in line with other states that have an age-based trigger for capital murder charges, S.B. 377 amends Section 19.03(a)(8) of the Penal Code to raise the threshold age of the victim that supports a capital murder charge. The prior age of six is raised so that the murder of a child whose age is less than 10 automatically qualifies as capital murder.

Subject: Evading Arrest or Detention by Watercraft
S.B. 496
Effective: September 1, 2011

The Texas Penal Code states that evading arrest by use of a watercraft carries a maximum penalty of a Class A misdemeanor, while evading arrest through use of a motor vehicle is a state jail felony offense under Section 38.04 of the Penal Code.

In the last two years, the Texas Parks and Wildlife Department reported 17 instances of evading arrest through use of a watercraft within the state's waterways. There is concern among law enforcement that differing penalties for similar crimes have created a perception of an acceptable risk for offenders considering evading arrest. The reality is that the risks posed to law enforcement, as well as the public, are no less lethal when a criminal offender chooses to run from law enforcement through use of a watercraft, rather than through the use of a motor vehicle.

S.B. 496 amends Section 38.04 of the Penal Code relating to the punishment for evading arrest or detention by contemplating the use of a watercraft during evasion. Using a watercraft to evade arrest is now treated in the same manner as using a vehicle to evade arrest.

Subject: Creating the Offense of Theft of an ATM
S.B. 887
Effective: September 1, 2011

Automated teller machine (ATM) theft, a relatively new crime, is increasing in frequency around the state. There were more than 100 instances in Texas in the past year alone. It is also a crime that may typically involve more than one person because of its labor intensity. Because of the way this crime is committed, the perpetrator(s) may be charged with a variety of offenses. For example, the perpetrator could be charged with criminal mischief due to significant property damage or be charged with the theft of the money from the ATM. S.B. 887 seeks to remedy the offense's inconsistencies related to this crime by making any ATM theft under Section 31.03 of the Penal Code, including theft of its contents and components, at least a second degree felony.

Commentary: The stated intent of the bill's author is to create uniformity to the prosecution of the offense of ATM theft. Apart from creating a specific definition of a device and imposing a specific penalty, the bill's language has the effect of operating as a penalty enhancement for offenses directed at an ATM. The offense of ATM theft is chargeable as a second degree felony where the value of the item is less than $200,000 but no lower limit is set on the offense. ATM-related thefts which previously may only have constituted a misdemeanor or a lesser felony offense must now be charged as felonies of the second degree. Since the statute also applies to theft of the contents or components of an ATM machine, it is possible that an offender, who previously might have faced a Class C misdemeanor charge, will now be subject to a far harsher penalty. In the event that a theft is valued at more than $200,000, there is no language restricting the offender from being charged with first-degree theft.

Subject: Criminal Penalty for the Discarding of Certain Burning Materials
S.B. 1043
Effective: September 1, 2011

Drought conditions increase the risk for wildfires, and extreme fire seasons have been designated in Texas in the last several years. Human factors also contribute significantly to the number of wildfires according to the Texas Forest Service. Wildfires pose a grave danger to residential areas, and interested parties note that highway and roadside areas are also particularly susceptible to fire and human misconduct. According to the Texas Department of Insurance, smoking materials and discarded matches caused nearly 3,000 outdoor fires in 2008 alone. A wildfire can start and spread quickly after a person discards a burning match or cigarette.

S.B. 1043 seeks to address these issues by creating a criminal penalty for the discarding of lighted litter (e.g., a match, cigarette, or cigar) under Section 365.012 of the Health and Safety Code.

Commentary: This bill amends the existing offense of Illegal Dumping. However, as amended, if a fire is ignited as a result of a person discarding lighted materials, the person commits the offense of Discarding Lighted Materials and faces a fine not to exceed $500, confinement in jail for up to 30 days, or both (i.e., it is a Class B misdemeanor). If no fire ignites as a result of dropping lit materials, the defendant can only be prosecuted for Illegal Dumping. The bill also mandates that if an offense can be prosecuted as either Discarding Lighted Materials or Illegal Dumping, the case must be prosecuted as Discarding Lighted Materials. Does this push the boundaries of separation of powers? Supporters of prosecutorial discretion and criminal defendants who set things ablaze need not fret. If conduct constitutes Discarding Lighted Materials or Arson, the defendant can be prosecuted under either law, but not both.

Subject: Creating the Offense of Possession of a Tire Deflation Device
S.B. 1416
Effective: September 1, 2011

Recently, when in pursuit of suspects, law enforcement officials in South Texas have had to deal with suspects throwing "tire deflation devices" at law enforcement officials' vehicles—evading arrest as a result. These home-made tire spikes are a threat to law enforcement and the general public, but the possession of such devices is currently not against the law.
S.B. 1416 amends Section 46.01 (Definitions) of the Penal Code, adding Subdivision (17) to define a "tire deflation device." It makes "tire deflation device" a prohibited weapon under Section 46.05 (Prohibited Weapons) of the Penal Code. It also amends current law relating to the creation of the offense of possession, manufacture, transportation, repair, or sale of a tire deflation device and provides criminal penalties.

Commentary: Notably, S.B. 1416 exempts traffic control devices that are commonly used in parking lots and visibly marked with warning signs from the scope of the offense. Under Section 46.05 of the Penal Code, possession, manufacture, or sale of tire-deflating devices is punishable as a state jail felony. Section 38.04 of the Penal Code (Evading Arrest or Detention) is amended to make the use of such a device in an attempt to evade law enforcement a third-degree felony. Where death or serious bodily injury results from the use of a tire-deflating device, it is a second-degree felony.

Traffic Safety and Transportation Code Amendments High Priority

Subject: Duty to Report Collision with a Structure
H.B. 42
Effective: September 1, 2011

Currently, a motor vehicle operator who damages a structure (e.g., a building, house, or fence) on the side of a highway and who leaves the scene of the accident is not criminally liable. Furthermore, an operator who damages such property is not required to give or leave the operator's contact information.

H.B. 42 makes it a criminal offense to damage a structure adjacent to a highway and leave the scene without locating or notifying the owner of the damaged property and providing contact information. If the damage is less than $200, failure to comply with the bill's provisions is a Class C misdemeanor. If the damage is $200 or more, it is a Class B misdemeanor.

Commentary: In addition to the previously covered fixture or landscaping legally on or adjacent to a highway, this bill adds language to Section 550.025 of the Transportation Code, and now also covering damage to a structure adjacent to a highway.

Subject: Lowering Speed Limits at Accident Reconstruction Sites
H.B. 109
Effective: September 1, 2011

H.B. 109 allows municipalities and counties to temporarily lower speed limits at accident reconstruction sites without Texas Department of Transportation (TxDOT) approval. TxDOT is required to develop safety guidelines with which municipalities and counties must comply and notice must be given to TxDOT. H.B. 109 adds Section 545.3561 to the Transportation Code, which contains the process to use, and requires that a short-term speed limit sign be posted, a permanent sign be concealed, and all signs returned to normal once the investigation is complete.

Subject: Texting While Driving Offense; Reckless Driving Penalty
H.B. 242
Effective: VETOED BY GOVERNOR

Section 7 of H.B. 242 amended the reckless driving statute (Section 545.401 of the Transportation Code) to provide that if the offense resulted in serious bodily injury to or the death of another, it was a Class B misdemeanor punishable by a fine of up to $2,000 and/or up to 180 days confinement (compared to the current reckless driving punishment of a fine of up to $200 and/or up to 30 days confinement).

Furthermore, the convicting court could order a minimum 30-day driver's license suspension and require the defendant to complete a driving safety course.

Section 8 of the bill amended Section 545.425 of the Transportation Code, which includes the cell phone offenses. Added Subsection (c-1) provided that an operator may not use a hand-held wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle was stopped. Text-based communication was defined to include text messages, instant messages, and emails. Reading a phone number or name for purposes of making a phone call, using voice commands or hands-free devices to send a message, and using GPS navigation did not constitute an offense. The bill did not include a penalty for the texting offense; thus, the general penalty provision found in Section 542.401—a fine of not less than $1 or more than $200—would apply to the new offense.

Commentary: H.B. 242 received a great deal of publicity when it passed; however, much of the media attention incorrectly reported the offense to be a Class B misdemeanor if the texting driver caused a crash that resulted in serious bodily injury to or death of another. This was inaccurate as that penalty was associated with the reckless driving offense in Section 7 of the bill and not with the texting offense in Section 8. Despite attempts to correct this misrepresentation, many still believed that the Legislature made texting while driving a jailable offense.

On June 17, 2011, Governor Rick Perry vetoed H.B. 242 with the following statement:

> Texting while driving is reckless and irresponsible. I support measures that make our roads safer for everyone, but House Bill 242 is a government effort to micromanage the behavior of adults. Current law already prohibits drivers under the age of 18 from texting or using a cell phone while driving. I believe there is a distinction between the overreach of House Bill 242 and the government's legitimate role in establishing laws for teenage drivers who are more easily distracted and laws providing further protection to children in school zones.
>
> The keys to dissuading drivers of all ages from texting while driving are information and education. I recommend additional education on this issue in driving safety and driver's education courses, public service ads, and announcements, and I encourage individuals and organizations that testified in favor of the anti-texting language included in this bill to work with state and local leaders to educate the public of these dangers.

To recap, while we expect similar texting bills to be introduced next session and that more Texas cities will ban texting while driving, H.B. 242 did not become law. State law does not prohibit texting while driving. The penalty for reckless driving remains unchanged.

Subject: Passing a Stationary Tow Truck
H.B. 378
Effective: September 1, 2011

Tow truck operators are often the first ones at an accident scene and are often the only responders at an

incident scene such as a break-down or flat-tire. Towing professionals know too well the dangers of being on the side of the road as traffic drives by. Tragically, an average of one tow operator is killed each week in the United States while providing service to a motorist.

H.B. 378 amends Section 545.157 of the Transportation Code to make provisions relating to passing an authorized emergency vehicle applicable to a stationary tow truck using authorized equipment. The bill makes provisions relating to stopping, standing, or parking a vehicle outside a business or residence district inapplicable to such a tow truck. The bill also adds a tow truck to the list of vehicles with a warning lamp that are exempt from provisions relating to restrictions on the use of lights.

Commentary: The law requires vehicle operators approaching an emergency vehicle or stationary tow truck that is stopped alongside a road to vacate the lane nearest the emergency vehicle or reduce speed by 20 miles per hour if no other lane exists. The bill also adds a definition of tow truck for application purposes.

Subject: Advance Payment of Driver Responsibility Program Surcharges
H.B. 588
Effective: September 1, 2011

Currently, under the Driver Responsibility Program, there is no option for advance payment of a surcharge, which is assessed over 36 months. Coupled with the change from H.B. 2730 (81st Regular Legislature, effective September 1, 2011), requiring a person to pay a $500 surcharge in no less than 36 months, license holders assessed surcharges cannot get out from under the surcharge program before the duration of that payment plan period (at a minimum of one year). Notifying the person of the amount they will owe over the 36-month period, together with an advanced payment option, would provide an opportunity for the person to make an informed decision about making a single up-front payment. H.B. 588 adds Section 708.159 to the Transportation Code, providing for the advance payment of surcharges under the Driver Responsibility Program.

Commentary: The up-front payment option applies to total surcharge amounts owed by a person for a 36-month period regardless of whether the initial surcharge was assessed before, on, or after September 1, 2011. H.B. 588 also amends Section 708.157 of the Transportation Code, mandating a compliance incentive program, requiring DPS to offer incentives, including reduction of surcharges or decreases in the length of an installment plan. The law does not specify what the incentives must be.

During this session, two bills were filed that would have repealed the entire Driver Responsibility Program, as the amount of uncollected surcharges far surpasses the amount of revenue that has been generated since the program took effect in 2003. Neither bill passed. Only two bills relating to the Driver Responsibility Program will become law (H.B. 588 and H.B. 2851).

Subject: Exception to Stopping Requirement at Dark Pedestrian Beacons and Freeway Entrance Control Signals
H.B. 885
Effective Date: June 17, 2011

This bill allows for the uniform installation of pedestrian crossing lights and freeway entrance control signals by changing current law that requires motorists to stop at any dark traffic signal display (as if it were a stop sign). Motorists are still required to stop at other dark traffic signals, but the law provides an exception for pedestrian hybrid beacons and also similar signals at freeway entrance points. Pedestrian beacons and freeway entrance control signals are currently being utilized in 21 states, and there are pilot projects in Austin and various other Texas cities. A pedestrian hybrid beacon is similar to a traffic light and flashes yellow and then turns red so pedestrians can safely cross. Once the pedestrian has crossed, the light dims allowing traffic to continue as normal. The beacons are especially helpful on busy streets

where it is tough for pedestrians to cross. They also increase a motorist's awareness of pedestrians who are crossing the road.

The device has been vetted by organizations such as the Federal Highway Administration, the Transportation Research Board, and many others, but the Texas Department of Transportation is unable to include the beacons in its *Manual on Uniform Traffic Control Devices* due to conflict with current statute. H.B. 885 amends current law relating to the operation and movement of a vehicle when certain traffic-control signals do not display an indication.

Commentary: It is an offense under Section 544.007 of the Transportation Code for an operator to fail to stop when facing a traffic-control signal that does not display an indication. Prior to the passage of this bill, Section 544.007 required a motorist to come to a complete stop at a blank freeway entrance ramp or pedestrian beacon—even when the freeway entrance ramp traffic did not need regulation or no pedestrian was trying to cross the roadway. This contributed to increased traffic congestion and car accidents. H.B. 885 makes conforming changes to allow these traffic control signals to safely be installed and operated.

Subject: Licensing and Inspection of Street Rods and Custom Vehicles
H.B. 890
Effective: September 1, 2011

For many vehicle enthusiasts in Texas, building, maintaining, and enjoying their vehicles is a favorite pastime. These vehicles are the same crowd pleasers that participate in exhibitions and as parade vehicles and whose owners regularly contribute to charities and civic events.

H.B. 890 requires the owner, on initial registration of a custom vehicle or street rod, to provide proof that the custom vehicle or street rod passed a safety inspection approved by the Texas Department of Motor Vehicles, which is charged with creating a safety inspection process. The bill amends Section 548.052 of the Transportation Code to make these vehicles exempt from the compulsory inspection requirement. Thus, once a vehicle has been certified as roadworthy and received a custom or street rod designation, it will be exempt from annual inspections.

The bill defines "custom vehicle" to mean a vehicle that (1) is at least 25 years old and of a model year after 1948 or manufactured to resemble a vehicle that is at least 25 years old and of a model year after 1948, and (2) that has been altered from the manufacturer's original design or has a body constructed from materials not original to the vehicle. The bill defines "street rod" to mean a vehicle that (1) was manufactured before 1949 or after 1948 to resemble a vehicle manufactured before 1949, and (2) has been altered from the manufacturer's original design or has a body constructed from materials not original to the vehicle.

The bill establishes specialty license plates for custom vehicles and street rods, and provides that a vehicle eligible to receive the specialty license plate is not required to be equipped with any piece of equipment unless it was required by statute in the year listed as the model year on the certificate of title.

Subject: Eligibility of Certain Municipalities to Enforce Commercial Motor Vehicle Safety Standards
H.B. 1010
Effective: September 1, 2011

Under Section 644.101 of the Transportation Code, there are certain municipalities whose police officers are eligible to apply for certification to enforce federal commercial motor vehicle safety standards. However, many municipalities of certain populations and certain locations are not eligible to apply for this certification. H.B. 1010 amends current law to provide that, additionally, a police officer of the following described municipalities is eligible to apply for certification under this section: (a) a police

officer from a municipality that is located within 25 miles of an international port, is in a county that does not contain a highway that is part of the national system of interstate and defense highways, and is in a county adjacent to a county with a population greater than 3.3 million; or (b) a police officer in a municipality with a population of less than 8,500 that is the county seat and contains a highway that is part of the national system of interstate and defense highways.

Commentary: Police officers certified under Section 644.101 are also considered weight enforcement officers for purposes of enforcing Sections 621.402 through 621.410 of the Transportation Code.

Subject: Sale and Use of Radar Interference Devices
H.B. 1116
Effective: September 1, 2011

Current law does not restrict the use of Lidar/radar jamming devices. Different than a traditional radar detector, these jamming devices emit a radio frequency signal that interferes with the operation of police Lidar/radar by saturating its receiver with noise or false information. This interference may damage police equipment and hinders the ability of police officers to measure the speed of not only the vehicle equipped with the device, but also other speeding vehicles in the vicinity. More than 25 states already have laws that prohibit radar jamming devices.

Commentary: A radar interference device is defined as a device, mechanism, instrument, or piece of equipment that is designed, manufactured, used, or intended to be used to interfere with, scramble, disrupt, or otherwise cause to malfunction a radar or laser device used to measure the speed of a motor vehicle. They may be called radar jamming devices, jammers, scramblers, or diffusers. They are not radar detectors.

H.B. 1116 makes it an offense to use, attempt to use, install, operate, or attempt to operate a radar interference device in a motor vehicle operated by a person. It is also an offense to purchase, sell, or offer for sale a radar interference device to be used in a motor vehicle operated by a person. This new offense, codified in Section 547.616 of the Transportation Code, is a "Rules of the Road" offense, but is punishable as a Class C misdemeanor carrying a fine not to exceed $500. Note that this new offense does not criminalize the mere possession of a radar interference device.

Subject: Texas Transportation Commission Authority to Raise Speed Limits to 85
H.B. 1201
Effective: September 1, 2011

H.B. 1201 removes all remaining references in state law to the Trans-Texas Corridor. With the Texas Department of Transportation (TxDOT) having already announced the cessation of all efforts to construct the Trans-Texas Corridor, and given the significant public opposition to the plan, it is important to reconcile state law with state policy. Two provisions struck in the deleting of the Trans-Texas Corridor are replaced: TxDOT's authority to implement higher speed limits on new roads specifically engineered with those higher speeds in mind (if a safety study supports the higher speed limit), and TxDOT's authority to authorize higher weight limits on exclusive lanes (if engineering and safety studies support that higher weight limit).

Commentary: H.B. 1201 authorizes the Texas Transportation Commission, in Section 545.353 of the Transportation Code, to establish a speed limit not to exceed 85 miles per hour on a part of the state highway system, if the portion of the road is designed to accommodate that high of a speed and, after an engineering and traffic investigation, the commission determines the higher speed is reasonable and safe for that portion of the highway. This is one of two bills (see the commentary for H.B. 1353) where the Legislature felt the need…the need for speed. Cities and courts should be aware that this state agency now has the authority to raise speed limits in parts of Texas to a whopping 85 miles per hour.

Subject: Authority to Increased Speed Limits; Removal of Nighttime or Heavy Truck Speed Limits
H.B. 1353
Effective: September 1, 2011

According to the National Conference of State Legislatures, Texas is the only state with different day and night speed limits on rural and urban interstates. Currently, lawful speed limits are 60 or 70 miles per hour in daytime or 55 or 65 miles per hour in nighttime. Texas is also one of the few states that has mandated a different, lesser speed limit for trucks along rural and urban interstates. Currently, heavy trucks and trailers are required to reduce speeds to 60 miles per hour in daytime and 55 miles per hour in nighttime outside an urban district.

Speed limits should be set to the safest maximum speed under normal road conditions. Difference in vehicle speeds can contribute to accidents. H.B. 1353 seeks to minimize the number of accidents that can occur when cars and trucks change lanes or pass or tailgate slower-moving vehicles.

H.B. 1353 amends Chapter 545 of the Transportation Code by establishing the same speed limit for daytime and nighttime and raising the speed limit to 75 miles per hour on state highways or U.S. highways outside an urban district. It also removes the different, lesser speed limit for heavy trucks.

Commentary: H.B. 1353 also amends Section 545.352 to require that any entity (including a municipality) that establishes or alters a speed limit to establish the same speed limit for daytime and nighttime. The bill also provides in Section 545.356 that a municipality may establish a speed limit of not more than 75 miles per hour (up from 60), provided it does not violate the maximum speed limits established in Section 545.351(a). Importantly, the city must still conduct the engineering and traffic investigation study in order to establish a higher prima facie speed limit. TxDOT is charged with concealing or removing and replacing speed limit signs that prescribe a lower nighttime or truck speed as soon as practicable after the effective date.

Subject: Altering a Disabled Parking Placard
H.B. 1473
Effective: September 1, 2011

In 2003, Section 681.0111 of the Transportation Code (Manufacture, Sale, Possession, or Use of Counterfeit Placard) was enacted, making it an offense to manufacture, sell, possess, or display a counterfeit disabled parking placard. Under current law, only placards that are "similar" to genuine parking placards are considered counterfeit. The law has a slight loophole on the issue of legally issued placards that have expired and been altered to give the appearance of being legal.

Commentary: H.B. 1473 amends current law by creating the offense of altering a genuine disabled parking placard—which is punishable as a Class A misdemeanor. A person who knowingly parks a vehicle displaying an altered placard in a parking space or area designated specifically for persons with disabilities commits a Class C misdemeanor offense (punishable by a fine of up to $500).

Subject: Posting of Signs for Cell Phone Use in School Zone and Throughout Municipality
H.B. 1899
Effective: September 1, 2011

Section 545.425 of the Transportation Code currently requires political subdivisions that wish to enforce the prohibition against the use of wireless communication devices while operating a vehicle within a school zone to post signs at the entrance of each school crossing zone.

The City of El Paso, a home-rule municipality, adopted Ordinance 17286 on March 9, 2010, which banned the use of wireless communication devices within the city limits, effective April 1, 2010. At the

time of the adoption, the City of El Paso had not completed installing signs at each school crossing zone entrance. The requirement that such signs be installed was an unfunded mandate from the State, and the City of El Paso was unable to fund the installation at all school sites. (The average estimated cost of installation was approximately $1,273.78 per school.) The consequence of the budget shortfall was that school crossing zones—where there were no signs posted—were the only place within the City of El Paso where the El Paso Police Department could not issue citations for the use of wireless communication devices while driving.

H.B. 1899 was intended to cure this problem by removing the requirement for the signs to be posted in communities that adopt a city-wide ban within their jurisdiction. It is redundant and unnecessary for signs to be posted at school crossing zones when there is a city-wide ban, and removing the requirement will save the taxpayers hundreds of thousands of dollars.

Commentary: During the 81st Regular Legislature H.B. 55 made it a criminal offense to use a cell phone in school zone. Section 545.425(b-1) states that municipalities that enforce the section shall post warning signs at the entrance to each school crossing zone. The lack of a posted sign is an affirmative defense to prosecution under Subsection (d)(2).

H.B. 55 posed problems, as it appeared to grant cities discretion in enforcing a state law. However, H.B. 55 preempted city ordinances and home-rule cities like El Paso found themselves in a difficult situation. H.B. 1899 aims to correct this problem, but not without creating new ones.

Section 545.425(b-2), added by H.B. 1899, states that a municipality that prohibits use of a wireless communication device while driving must post similar "warning" signs at each point at which a state, U.S., or interstate highway enters the political subdivision. (It does not, however, provide express authorization for general law cities to pass such prohibitions.) Signs posted under (b-2) must be readable to an operator traveling at the applicable speed limit, and messages must also be displayed on any dynamic message sign operated by the city located on any state, U.S., or interstate highway within the city limits.

Furthermore, H.B. 1899, adds Subsection (d-1), which provides that the affirmative defense of no posted sign at the entrance to a school crossing zone is not available for an offense alleging use of a cell phone in a school zone if the school zone is in a municipality or county that complies with the new requirements in Subsection (b-2).

H.B. 1899 attempts to make clear that Section 545.425 preempts local ordinances except for those ordinances prohibiting the use of a wireless communication device while operating a motor vehicle throughout the jurisdiction of the city when the city posts warning signs at each point at which a state, U.S., or interstate highway enters the political subdivision and on any dynamic message signs operated by the city.

Subject: Vehicle Registration Deadlines and Procedures
H.B. 2017
Effective: September 1, 2011

H.B. 2017 is a "clean-up bill" designed to implement an array of changes needed to update the governance, organization, duties, and functions of the current structure of Texas Department of Motor Vehicles (TxDMV) that was created during the 81st Legislature.

Commentary: Section 502.002 of the Transportation Code currently requires an owner to apply for registration but does not impose a time deadline. Section 24 of H.B. 2017 imposes a 30-day deadline on an owner to apply for vehicle registration upon purchasing a vehicle or becoming a resident of this state.

Section 25 of the bill amends the registration procedures found in Section 502.151 and requires TxDOT to deny the registration of a commercial motor vehicle, truck-tractor, trailer, or semitrailer if the applicant, among other reasons for denial, has a business operated, managed, or otherwise controlled or affiliated with a person who is ineligible for registration or whose privilege to operate has been suspended, including the applicant entity, a relative, a family member, a corporate officer, or a shareholder.

Although not much is found in the legislative history behind this amendment, it appears that a person who has a CDL suspended because of a traffic violation would not be able to get a commercial motor vehicle registered—thereby committing a separate offense. Worse yet, when given a strict reading of the amendment, a person who owns a business would be denied registration if they have a family member who has a suspended CDL.

Section 22 of the bill addresses a motor vehicle owner's requirement to apply for a title from the county assessor-collector in the county where the owner is domiciled or where the motor vehicle is purchased. In light of natural disasters such as Hurricane Ike, and in a time where state agencies are growing increasingly concerned with emergency preparedness and disaster planning, the bill provides that if the county in which the owner resides has been declared a disaster area by the Governor, the owner must apply to the county assessor-collector in one of the closest unaffected counties as long as their county continues to be an inoperable disaster area.

The bill also repeals specialty license plates for state and federal judges, federal administrative law judges, and Texas constables—although county judges can still get them.

Subject: Recodification of Motor Vehicle Titling, Registration, and License Plate Statutes
H.B. 2357
Effective: January 1, 2012

The motor vehicle statutes were codified in 1995, but there has not been a complete reorganization of substance since before that time. This bill directly addresses the problem of the statutes being outdated in regard to automation and organization.

Commentary: In 261 pages, H.B. 2357 reorganizes and renumbers much of Chapters 501 (titling of vehicles), 502 (registration of vehicles), 504 (license plates), and 520 (miscellaneous provisions), of the Transportation Code. These non-substantive changes affect procedures, requirements, fees, prohibitions, and offenses.

Section 502.002 of the Transportation Code currently requires an owner to apply for registration but does not impose a time deadline. H.B. 2017, also passed this Session, imposes a 30-day deadline on an owner of a vehicle, trailer, or semitrailer to apply for registration upon purchase or becoming a resident of this state. Section 78 of H.B. 2357 imposes the same 30-day deadline, but re-designates Section 502.002 as Section 502.040.

H.B. 2357 also affects two other changes made by H.B. 2017. Like H.B. 2017, Section 81 of H.B. 2357 requires TxDOT to deny the registration of a commercial motor vehicle, truck-tractor, trailer, or semitrailer if the applicant, among other reasons for denial, has a business operated, managed, or otherwise controlled or affiliated with a person who is ineligible for registration or whose privilege to operate has been suspended, including the applicant entity, a relative, a family member, a corporate officer, or a shareholder. However, H.B. 2357 renumbers the affected section (Section 502.151) to be Section 502.043

Unlike H.B. 2017, which repeals specialty license plates for state and federal judges, federal administrative law judges, and Texas constables, H.B. 2357 retains these specialty license plates, but amends the statutes to provide that they no longer be issued without charge and only one set may be

issued to each eligible person (as opposed to the three sets currently allowed under law). The Code Construction Act provides that when amendments affecting the same statute are enacted in the same session, latest in date of enactment prevails (see, Chapter 311 of the Government Code). However, because H.B. 2017 takes effect September 1, 2011, and H.B. 2357 does not take effect until January 1, 2012, the question remains as to when, if ever, these plates would be repealed. Could the Legislature intend for the plates to not be available just for the remainder of 2011? Probably not.

H.B. 2357 makes non-substantive changes to the offenses for no, wrong, fictitious, altered, or obscured license plates and insignia. Sections 157 and 159 of the bill isolate insignia offenses by removing all reference to license plate offenses. Section 502.404 (Operation of Vehicle Without License Plate or Registration Insignia) is renumbered as Section 502.473; and Section 502.409 (Wrong, Fictitious, Altered, or Obscured License Plate) is renumbered as Section 502.475 and will only apply to insignia. License plate offenses are moved into the new Subchapter L of Chapter 502; however, the offenses and compliance dismissals pertaining to license plates remain substantively unchanged. Sections 221 and 223 of the bill add Sections 504.943 and 504.945, which contain the offenses and compliance dismissals for operating a vehicle without two plates, with plates assigned for the wrong registration period, or with obscured plates.

Finally, Section 102 of H.B. 2357 provides that power sweepers, motorized mobility devices, electric personal assistive mobility devices, and electric bicycles cannot be registered for operation on a public highway. Section 239 of the bill adds a definition of a utility vehicle to Chapter 551 of the Transportation Code, but does not include any provision disallowing registration of utility vehicles as Section 551.402 does for golf carts.

Subject: Requirements for Licensing and Restricted Driving for Minors
H.B. 2466
Effective: September 1, 2011

H.B. 2466 amends current law relating to the licensing and operation of motor vehicles by minors. An amendment to Section 521.204(a) of the Transportation Code provides that the Department of Public Safety (DPS) may only issue a Class C driver's license to a person under 18 if their parent or guardian gives written permission for a school administrator or law enforcement officer to notify the department in the event the person has been absent from school for at least 20 consecutive instructional days.

The bill also repeals the requirement in Section 521.271(a-1) that DPS and the Texas Education Agency enter into a memorandum of understanding to allow DPS to access student enrollment records in order to comply with federal privacy laws.
Finally, the bill renumbers Section 545.424 of the Transportation Code. This change did nothing substantively, only renumbered the current law that a person under 18 (17 years of age on a motorcycle or moped) may not use a wireless communication device while driving, unless in case of emergency.

Commentary: The original version of this bill attempted to tie school attendance into driver's licensing laws. It would have added a provision requiring DPS to revoke the license of a student under the age of 18 if the student's parent or guardian reported to DPS that the student had been absent from school for 10 consecutive days, or if a school administrator or law enforcement officer notified DPS that the student had been absent for 20 consecutive days. However, the Senate stripped the proposed revocation out of the bill. (Note, though, that a reference to this stripped statute remained in amended Section 521.204.) After the Senate's modification, the bill contains very little substance. All H.B. 2466 appears to do is renumber an existing law, repeal a law that was in violation of federal law, and require parents to give permission for something that won't have any impact on minor licensing laws.

Subject: Cities' Authority to Lower Speed Limits
H.B. 2596
Effective: June 17, 2011

Dangerous conditions may exist on one-lane public roads in Texas that are used for two-way traffic. Interested parties observe that current law allows a municipality to lower the speed limit on certain roads to 25 miles per hour, but that authority does not extend to one-lane roads. To promote public safety, H.B. 2596 grants municipalities the authority to lower the speed limit on certain one-lane roads.

Commentary: The 81st Legislature granted municipalities the authority under Section 545.356(b-1) of the Transportation Code to lower speed limits on two-lane, undivided highways, that are not part of the state highway system, to not less than 25 mph. H.B. 2596 adds Subsection (b-3) to provide municipalities with a population of 2,000 or less the authority to lower speed limits on a one-lane highway used for two-way access which is not an officially designated or marked highway or road of the state highway system, to not less than 10 mph. The governing body of the municipality must still determine that the prima facie speed limit is unreasonable and unsafe, and must publish on the Internet and submit a report to TxDOT that compares the number of speeding citations and warnings issued and the number of accidents resulting in injury or death occurring on that road before and after the speed limit change.

Subject: Deferral of Surcharges for Deployed Military Personnel
H.B. 2851
Effective: September 1, 2011

Under the Driver Responsibility Program, surcharges must be paid within a certain timeframe to prevent the suspension of driving privileges. Driving privileges remain suspended until the person establishes an installment agreement or pays in full all surcharges and related costs.

H.B. 2851 provides for the deferral of surcharge payments for active duty military personnel deployed outside of the continental United States.

Commentary: The bill adds Section 708.106 to the Transportation Code and only pertains to surcharges assessed for Driving Without a Valid License, Driving While License Invalid, or Failure to Maintain Financial Responsibility. The provision will toll the 36-month period and defer assessment of the surcharges until the date the person is no longer deployed.

Subject: Person Riding in a Boat or Personal Watercraft Drawn by Vehicle
H.B. 2981
Effective: September 1, 2011

Under current law, it is permissible for motor vehicle operators to allow persons of any age to travel as passengers in or on a towed watercraft. This is dangerous and inconsistent with the restrictions imposed on motor vehicle operators with respect to passengers in the bed of a truck or towed trailer.

H.B. 2981 amends current law making it an offense to operate on a highway or street a motor vehicle that is drawing a boat or personal watercraft in or on which a child younger than 18 years of age is riding.

Commentary: This new offense was added in Section 545.4145 of the Transportation Code and is a "Rules of the Road" offense. As no penalty is prescribed, the offense carries the general penalty of a $1 to $200 fine. It is a defense to prosecution if the person operates the motor vehicle that is towing the watercraft on a beach, in a parade, or in case of emergency.

Subject: New Class C Misdemeanor for Failure to Pay Penalty for Improper Exit, Entrance, or Operation in an HOV Lane
S.B. 990
Effective: September 1, 2011

Under current law, regional transportation authorities created under Chapter 452 of the Transportation Code, e.g., Dallas Area Rapid Transit and the Fort Worth T, are responsible for enforcing laws relating to high occupancy vehicle (HOV) lanes. These laws include such things as regulation of proper entrance into or exit from HOV structures and observation of vehicle occupancy requirements. To accomplish enforcement, the transportation authorities are authorized to issue citations to drivers who violate traffic laws in HOV lanes, which are then filed in the courts. Consequently, funds collected from fines related to HOV lane violations are not directed to the transportation authorities—who nevertheless must bear the burden of funding enforcement efforts.

S.B. 990 authorizes by resolution, an executive committee to provide that violations regarding improper entrance into, exit from, or vehicle occupancy in HOV lanes operated, managed, or maintained by the authority incur an administrative penalty not to exceed $100. The bill also provides that a person commits a criminal offense if the person fails to pay any designated penalty on or before the 30th day after the date the authority notifies the person that the person is required to pay a penalty for: (1) exiting or entering an HOV lane at a location not designated for exit or entrance or (2) operating a vehicle in or entering an HOV lane with fewer than the required number of occupants. The bill provides that the notice required by Section 452.0613(d) of the Transportation Code may be included in a citation issued to the person by a peace officer in connection with an offense relating to improper use of an HOV lane. The offense is a Class C misdemeanor.

Subject: Special Driving Safety Course for Defendants Under 25 Years of Age
S.B. 1330
Effective: September 1, 2011

Recent studies suggest that teenage driving accidents account for a significant amount of all teenage deaths. The statistic becomes more alarming considering how many new teenage drivers take to the roads each year. In addition to lack of experience with driving, teenagers face distractions such as talking and texting on cell phones and dealing with young, inexperienced passengers who sometimes behave inappropriately. The influence of drugs and alcohol is another factor in teenage driving accidents. In this environment, learning the skills of safe, defensive driving becomes that much more important. Several programs have been developed to address the youthful driver and the issues specific to that demographic, including "Alive@25," which was developed by the National Safety Council. Such programs target younger drivers ages 15-24 and focus on improving safety awareness and eliminating districting behaviors common to this group. Such programs have been very successful; in fact, a number of states include a youth driver safety program in their graduated driver's license, defensive driving, or points reduction curricula.

In Texas, driving safety course curriculum does not include specific instruction on the unique challenges faced by young drivers. S.B. 1330 changes this and amends Section 45.051(b-1) of the Code of Criminal Procedure relating to youth driver safety courses for individuals younger than 25 years of age receiving deferred disposition for moving violations.

Commentary: It is important to emphasize that this does not relate to a driving safety course (DSC) ordered pursuant to Article 45.0511, Code of Criminal Procedure. Rather, it relates to what is sometimes referred to as "mandatory DSC as a condition of deferred." Under Article 45.051(b-1), judges are already required to order a defendant younger than 25 charged with a moving violation to take a driving safety course as a condition of deferred disposition. With this new amendment, judges now have the option, but are not required, to order the defendant to complete an additional driving safety course specifically

designed for drivers younger than 25. (This option will apply only to offenses committed on or after January 1, 2012.) While it may take some time before the Alive@25 curriculum is available statewide, it is likely be welcomed by municipal judges and justices of the peace who desire a live and interactive option when dealing with youthful, at-risk, drivers.

The Texas Education Agency will design the minimum curriculum and educational materials to be used in these youth driving safety courses. The bill provides that the course must be a four-hour live, interactive course and must require a written commitment by the student to their family and friends that they will not engage in dangerous driving habits. The course must include instruction in alcohol and drug awareness; Texas traffic laws; statistics on crashes and fatalities for drivers under 25; issues commonly involved in youth crashes, such as poor decision-making, risk-taking, peer pressure, impaired driving, distraction, speed, failure to wear a safety belt, driving at night, failure to yield the right-of-way, and using a cell phone while driving; the effects of poor decision-making on family, friends, school, and community; and the importance of taking control of potentially dangerous driving situations both as a driver and passenger.

Subject: Failure to Carry and Display Driver's License Without Maintaining Financial Responsibility
S.B. 1608
Effective: September 1, 2011

More than two years ago, three pedestrians were struck by a car and seriously injured after participating in a half marathon near Dallas. It was discovered after the accident that the driver, who had lost control of the car, was driving with neither a valid insurance card nor a valid driver's license. S.B. 1608 addresses the issue of an individual who operates a motor vehicle without a driver's license and in violation of the motor vehicle liability insurance requirement and causes, or is at fault, in a motor vehicle accident resulting in death or serious bodily injury to another person.

Commentary: In 2009, the Legislature enacted H.B. 2012 in response to the above described accident. That bill made the offense of Driving While License Invalid (DWLI) a Class B misdemeanor if it is shown at trial that, at the same time, the driver was also in violation of the requirement to maintain financial responsibility. It is a Class A misdemeanor if the driver caused a crash resulting in serious bodily injury to or death of another person.

Why another bill? H.B. 2012 only addressed drivers with an invalid license, not drivers who have no license. S.B. 1608 attempts to correct this. Section 521.025 of the Transportation Code provides that a person commits an offense if they are required to hold a driver's license and fail to have it in their possession while driving and fail to display it on demand of a peace officer, court officer, or magistrate. S.B. 1608 creates a new enhancement under Section 521.025. If it shown at trial that at the time of the offense the driver was also in violation of the requirement to maintain financial responsibility and caused a crash resulting in serious bodily injury to or death of another person, the offense is a Class A misdemeanor. This enhancement only applies to offenses committed on or after the effective date. Unless there is serious bodily injury or death, drivers who drive without their license and without insurance will still receive two separate charges, both fine-only offenses that can be handled in municipal court. Note that this enhancement only applies to offenses under Section 521.025 (License to Be Carried and Exhibited on Demand), not Section 521.021 (License Required).

Subject: Mandatory Suspension of a Hardship Driver's License
H.B. 90
Effective: September 1, 2011

H.B. 90 amends Section 521.223(f) of the Transportation Code to require, rather than authorize, the Department of Public Safety (DPS) to suspend a hardship license if the holder of the license is convicted of two or more moving violations committed within a 12-month period. The bill also repeals Section 521.223(d) which authorized DPS to waive the driver training course requirement and issue a temporary license under certain circumstances. The bill provides a short title, Aaron's Act, for purposes of citing its provisions.

Commentary: The bill was originally intended to prevent injuries and deaths due to vehicle crashes by providing that teens applying for a hardship license had adequate driver training. Earlier versions of the bill would have increased the age and driver education requirements for a hardship license.

Interestingly, the original version of H.B. 90 would have prevented DPS from issuing any license to a person younger than 24 years old that had not yet obtained a high school diploma or GED; those persons would have only been eligible for restricted licenses allowing travel to and from school, work, school-sponsored extracurricular activities, community service or volunteer activities, religious services, seeking emergency medical attention, or completing household duties. Earlier versions also contained a provision making the new mandatory suspension applicable only to hardship licenses obtained after the effective date. The enrolled version, which omitted this language, assumedly makes the new mandatory suspension applicable to all holders of hardship licenses, those yet-to-be and already issued.

Subject: Exempts Bronze Star Medal Recipients from Payment of Parking Meter Fees
H.B. 559
Effective: September 1, 2011

Bronze Star Medal recipients have demonstrated extraordinary service in the performance of exceptionally meritorious conduct and achievement. H.B. 559 recognizes the exemplary service of Bronze Star Medal recipients by providing for the issuance of specialty license plates and other benefits.

Commentary: H.B. 559 includes vehicles displaying these Bronze Star Medal license plates in the exemption, under certain conditions, from the payment of a parking fee collected through a parking meter charged by a governmental authority other than a branch of the federal government. In doing so, H.B. 559 amends Section 681.008(b) of the Transportation Code and cleans up the two versions passed last Session in H.B. 618 and H.B. 2020. However, in creating the Bronze Star Medal license plate, we now have two versions of Section 504.315(a) of the Transportation Code (see the summary for S.B. 1755).

Subject: Circling a Motorboat Around a Personal Watercraft or Person Waterskiing
H.B. 596
Effective: June 17, 2011

Section 31.099 of the Parks and Wildlife Code currently prohibits the operation of a motorboat in a circular course around a person fishing in another boat or any person swimming. H.B. 596 amends Section 31.099 to prohibit the operation of a motorboat in a circular course around a personal watercraft, water-skier (or person engaged in similar activity), as well as any person swimming. The prohibition does not apply to retrieving a downed or fallen water-skier.

Commentary: There is much confusion over whether municipal courts in Texas have jurisdiction over Class C Parks and Wildlife Code misdemeanors (punishable by a fine only of not less than $25 or more than $500). Some argue that municipal courts do not have jurisdiction of such offenses and that the Parks and Wildlife Code only contemplates prosecution in the justice or county court. Moreover, Section 12.106 of the Parks and Wildlife Code states that a peace officer who arrests a person for a violation of the code may release the violator with a written notice to appear before the justice court, county court, or another court having jurisdiction of the offense. However, Article 4.14 of the Code of Criminal Procedure grants concurrent jurisdiction with justice courts to municipal courts over all state law criminal cases that occur within the territorial limits of the city and are punishable by fine only.

While under Article 4.14, municipal courts may have jurisdiction of Class C Parks and Wildlife Code misdemeanors, Chapter 31 of the Parks and Wildlife Code (known as the Water Safety Act) is different. Section 31.125 provides that a written notice to appear shall order the violator to appear before the justice court (it does not include another court having jurisdiction of the offense as an option), and Section 31.126 specifically provides for venue in Water Safety Act violations to be in the justice court or county court having jurisdiction where the offense was committed.

Thus, under the specific provisions of Chapter 31, it is clear that municipal courts do not have jurisdiction over Water Safety Act violations. The changes made by H.B. 596 affect a Water Safety Act violation, and the circular course offense would therefore not be filed in a municipal court.

Subject: Requirements to Operate Personal Watercraft and Certain Boats
H.B. 1395
Effective: June 17, 2011

An advisory panel on recreational boating safety was recently created to study the current state of recreation safety on public waters in Texas and to make recommendations for improving safety. The panel recommended to the Legislature the adoption of a phase-in approach to the requirement that all operators of recreational boats complete a boater education course.

H.B. 1395 follows this recommendation by making the requirement applicable to all boat operators born on or after September 1, 1993. Some exemptions apply. Conversely, H.B. 1395 lowers the minimum age required, from 16 to 13 years of age, to operate a personal watercraft or motorboat powered by a motor with a manufacturer's rating of more than 15 horsepower, so long as the driver is supervised by another person who is at least 18 years old, who can lawfully operate the watercraft and is on board the watercraft when underway.

The bill also mandates a court to dismiss a charge of failure to possess a document required for boaters under 18 if the person produces a valid document. Additionally, a person charged with this offense may request to take a boater education court and have proceedings deferred for 90 days.

Commentary: Municipal courts do not have jurisdiction over Chapter 31 of the Parks and Wildlife Code (the Water Safety Act; see commentary for H.B. 596). Accordingly, this bill will only impact justice courts tasked with implementing related procedures for the newly created offense.

Subject: Driver's License Endorsement for Military Veterans
H.B. 1514
Effective: September 1, 2011

Many businesses, organizations, and events provide certain benefits to veterans. The veteran must often present discharge paperwork as proof of military service. Some veterans have pointed out that it is cumbersome to constantly carry this paperwork with them. Adding a veteran designation to their driver's license would allow veterans to more easily provide proof of service.

H.B. 1514 adds Section 521.1235 to the Transportation Code requiring the Department of Public Safety (DPS) to include the designation "VETERAN" in an available space either on the face or the reverse side of a driver's license. The veteran must request the designation and provide proof of his or her military service in, and honorable discharge from, the United States Armed Forces or the Texas National Guard. The bill requires an application for an original license to provide space for the applicant to voluntarily list any military service that may qualify the applicant to receive a license with a veteran's designation and space to include proof required by DPS to determine the applicant's eligibility to receive the designation.

Subject: Permitting Homeowner's Associations to Install Speed Feedback Signs
H.B. 1737
Effective: June 17, 2011

A speed feedback sign is an electronic device which measures the speed of approaching vehicles. It displays the vehicle's speed on an electronic panel to create driver awareness regarding the posted speed limit. The signs are often requested by local organizations in areas where drivers routinely travel faster than the posted speed limit allows, creating hazardous conditions for pedestrians and residents. While popular, the signs are also expensive to install and maintain. Consequently, it can take years for a municipality to appropriate the funds needed to install a sign at a location with an identified need.

With the addition of Section 430.002 to the Transportation Code, a property owner's association may install a speed feedback sign on a road, highway, or street within its jurisdiction. The property owner's association must obtain the consent of the governing body of the political subdivision, and is responsible for the expense for both installation and maintenance of the sign.

Subject: Physician Assistants Issuing Disabled Parking Placards in All Counties
H.B. 2080
Effective: June 17, 2011

Physicians often practice in a team model wherein a physician supervises and delegates to physician assistants (PAs) and advance practice nurses (APNs). Under the Occupations Code, licensed PAs and APNs act as the agent of the physician. In many physician practices, the patient may only see their PA or APN, especially in medically underserved areas. Like a prescription for medication, a prescription for a handicap parking placard is for some patients, a medical necessity.

Last session, S.B. 1984 amended the Transportation Code to allow PAs and APNs operating under the delegated prescriptive authority of a licensed physician to write handicapped parking placards in rural counties with a population of 125,000 or less. In urban counties, Texas law still bars PAs and APNs from writing handicapped parking "prescriptions." S.B. 1984 helped patients in rural settings, but not those in medically underserved urban areas.

According to the U.S. Department of Health and Human Services, Bexar, Harris, Dallas, Tarrant, and El Paso counties are all prime examples of medically underserved urban counties. H.B. 2080 extends the authority to prescribe handicapped parking placards to PAs and APNs acting as the agent of a licensed physician in Texas regardless of population. By extending the authority to prescribe handicap parking placards, the Transportation Code is simply being updated to conform to the Physician-PA/APN practice laws. This will ensure that patients of PAs and APNs in a Physician-PA/APN practice model will not be delayed in receiving their medically necessary handicap parking placard.

Commentary: This authority for PAs and APNs to issue such placards, found in Section 681.003(f) of the Transportation Code, is still limited to the first application for a disabled parking placard submitted by a patient.

Subject: Memorial Sign Program for Victims of Motorcycle Crashes
H.B. 2469
Effective: June 17, 2011

Motorcycle safety awareness for both riders and drivers is an important tool in preventing motorcycle crashes. Certain citizens have worked to initiate programs to educate motorists regarding the importance of watching for motorcyclists, including a program to place crosses on the roadside where fatal motorcycle crashes have occurred. H.B. 2469 expands these efforts by creating a memorial sign program at the Texas Department of Transportation (TxDOT) for victims of motorcycle crashes.

Commentary: According to TxDOT, the number of motorcycles registered in Texas has more than doubled over the last decade. The number of motorcyclists killed on Texas roadways has also more than doubled over the last decade to 434 in 2009. A motorcyclist is 39 times more likely than a motorist to die in a crash, and 66 percent of motorcycle crashes injure or kill the motorcyclist. Last session, the Legislature tasked TxDOT with launching a public education campaign aimed at making Texas drivers more aware of motorcyclists.

Building on that campaign, this new program authorized in Section 201.911 of the Transportation Code, creates the memorial sign program for anyone killed in a highway crash while operating or riding on a motorcycle. The Texas Transportation Commission has been charged with establishing and administering a program that allows a person to request a sign be posted by making application to TxDOT and submitting a yet-to-be determined fee. The sign designed by TxDOT must be a red cross that displays the phrase "In Memory Of" and up to one line with the name of the victim(s) and the date of death. The sign shall be posted for one-year and then given to the person who requested it. Nothing in this bill authorizes TxDOT to remove an existing privately funded memorial that conforms to state law and TxDOT rules.

A related bill, H.B. 1486, expands an existing memorial sign program, found in Section 201.909, for innocent victims killed in impaired driving crashes. These "Please Don't Drink and Drive" memorial signs will remain posted for a period of two years, rather than one.

Subject: April 2011 is Distracted Driving Awareness Month in Texas
H.C.R. 114
Effective: April 7, 2011

Commentary: In keeping with the national campaign to name April as Distracted Driving Awareness Month, the Legislature declared April 2011 to be Distracted Driving Awareness Month in Texas. Following studies that indicate that at least 16 percent of fatal crashes are a result of distracted driving, and that at any given moment, almost 10 percent of drivers are using a phone or other device which impairs their ability to focus on driving conditions, the Legislature appealed to all Texans to increase their awareness of the dangers of distracted driving and improve motorist safety. The Legislature appeared to be especially concerned by findings that over 70 percent of young drivers between 18 and 24 had reportedly used text communication devices while driving, which was the likely impetus in the passage of H.B. 242—ultimately vetoed by the Governor.

Subject: Toll Collection and Enforcement by Regional Tollway Authorities
S.B. 469
Effective: September 1, 2011

With advancements in electronic tolling, using toll roads has become more convenient for many Texas residents. As a result, an average invoice contains a significant number of transactions; however, bills arrive in the mail days or weeks after a toll road transaction, and payments have been known to be missed. Interested parties have expressed concern that, although violators should be held accountable, the

current penalty structure allows fines and fees to accumulate to the point that drivers are unable to afford them, as an average invoice could cost a driver thousands of dollars for missing a payment.

S.B. 469 amends the Transportation Code to require a regional tollway authority, as an alternative to requiring payment of a toll at the time a vehicle is driven or towed through a toll assessment facility, to use video recordings, photography, electronic data, transponders, or other tolling methods to permit the registered owner of the nonpaying vehicle to pay the toll at a later date. The bill requires the authority to send three notices of nonpayment of an assessed toll, rather than only a single notice, and authorizes the third notice to require payment of the amount included in the second notice plus any third-party collection service fees incurred by the authority. S.B. 469 also authorizes, rather than requires, the citing of the owner for nonpayment of a toll.

Commentary: It has been said, like it or not, toll roads are the future of Texas transportation. Section 366.178 of the Transportation Code provides that a court of the local jurisdiction in which the unpaid toll was assessed may assess and collect a fine of not more than $250 for each unpaid toll, in addition to any court costs. The court shall also collect and remit to the authority the unpaid tolls, administrative fees, and third-party collection service fees incurred by the authority. S.B. 469 changes the amount the authority may impose in administrative fees and provides that the court may only waive payment of the unpaid tolls, administrative fees, and third-party collection service fees if the court finds the registered owner of the vehicle is indigent. Section 366.178, in effect, makes a court a collection agency for the authority (see the summary for S.B. 959 for similar provisions for state highway toll projects).

Subject: Alternative Toll Collection and Enforcement by State Highway Toll Projects
S.B. 959
Effective: June 17, 2011

The Texas Department of Transportation (TxDOT) currently offers video billing to its customers, which allows customers to drive on a toll road without paying the toll at the time the road is used. A photograph of the vehicle's license plate is captured and a bill is sent to the registered owner of the vehicle at a later date. Under current law, TxDOT is required to mail violation notices to the registered owner of the vehicle at the primary address shown in the Department of Motor Vehicle's registration records; however, many of those addresses are inaccurate and some are the addresses of a previous owner of the vehicle. S.B. 959 amends Chapter 228 of the Transportation Code to authorize TxDOT to send notices of nonpayment to an alternate address provided by the owner or derived through other reliable means.

Further, TxDOT charges a separate administrative fee for each unpaid toll transaction. During one trip on a toll facility, a customer may pass through multiple tolling points. Even though unpaid toll transactions are ultimately grouped together for collection purposes, TxDOT does not have the authority to charge a single administrative fee that covers multiple events of nonpayment. S.B. 959 expressly authorizes TxDOT to impose one administrative fee that covers multiple events of nonpayment.

Commentary: Section 228.054 of the Transportation Code provides a fine-only misdemeanor offense for failure or refusal to pay a state highway toll; S.B. 959 provides an exception to that offense if the toll collection facility utilizes “pay by mail” technology. If the registered owner (or lessee in the case of a rental car) fails to pay the proper toll when notified by mail, TxDOT can impose an administrative fee in addition to the toll amount. Failure to timely pay the proper toll and administrative fee upon notice of nonpayment is a separate fine-only misdemeanor offense under Section 228.055. The adjudicating court is tasked with remitting the proper toll and administrative fee in addition to any imposed fine and court costs. Courts should be aware of TxDOT’s new authority to impose a single administrative fee rather than a separate $100 fee per nonpayment occurrence.

Subject: Alternate Address on Peace Officer Driver's Licenses
S.B. 1292
Effective: September 1, 2011

Under current law, a law enforcement officer must provide the Department of Public Safety (DPS) with his or her home address when applying for a driver's license. This requirement can be problematic if someone wishing to do harm to the officer, the officer's home, or the officer's family, requests to see an officer's license. S.B. 1292 allows law enforcement officers to provide DPS with an alternative address to include on their driver's license to further ensure their personal safety.

Commentary: DPS will still have a record of the officer's home address; however, an alternative address within the officer's municipality or county will appear on the driver's license. This could be problematic to municipal courts that have pending cases against law enforcement officers and are relying on the address listed on the defendant's driver's license for service of process or mailings. These alternate addresses are becoming a trend; a similar provision was passed last session in H.B. 2730 allowing state and federal judges, but not municipal judges, to use their courthouse address in lieu of their home address on their Texas driver's license.

Subject: Reauthorization of the Texas Department of Transportation (TxDOT)
S.B. 1420
Effective: September 1, 2011

The Sunset Commission concluded that TxDOT has worked diligently to address many of the Commission's previous recommendations, but also determined more time is needed to judge the depth and effect of the changes before trust and confidence in TxDOT is fully restored. This legislation continues the agency and contains several additional statutory modifications that seek to address the demand for more transparency, accountability, and responsiveness from TxDOT. Among other provisions, the bill replaces the Texas Transportation Commission with a single appointed Commissioner of Transportation and continues TxDOT for only four years to ensure that needed changes have occurred.

Commentary: This 134-page bill makes several changes, very few of which are relevant to municipal courts. One possible exception relates to erection of signs along a state highway. Currently, Chapter 394 of the Transportation Code, part of the Highway Beautification Act, requires a person who erects or maintains an off-premises sign on a rural road to first obtain a permit. Erecting or maintaining the sign without a permit is a misdemeanor offense. Section 49 of S.B. 1420 adds a second requirement that the person also obtain a license to erect or maintain an off-premises sign on a rural road, and failure to do so is an offense punishable by a fine of not less than $500 or more than $1,000, with each day constituting a separate offense. As Chapter 394 only governs off-premise signs on rural roads located in an unincorporated area, it is unclear if this offense will ever be seen in a municipal court.

Subject: Seat Belts for School Buses
S.B. 1610
Effective: September 1, 2011

In 2007, the Legislature passed H.B. 323 which required the installation of three-point, lap shoulder seat belts on all new school buses purchased on or after September 1, 2010. The law was to be effective only if the Legislature appropriated state funds to reimburse school districts for expenses incurred in complying with the law. In 2009, the Legislature created the Texas School Seat Belt Program, appropriating $10 million to reimburse school districts for the expense of installing the seat belts. The Texas Education Agency (TEA) was appointed to administer the reimbursement plan.

Section 547.701(f) of the Transportation Code (relating to additional equipment requirements for school buses and other buses used to transport schoolchildren) was added in 2009 to reassert that this is a state-

funded reimbursement program. Rather than clarifying intent, this section has been a source of confusion to school districts and TEA. S.B. 1610 clarifies and simplifies this reimbursement provision. S.B. 1610 reverts back to the original language passed in 2007 and states that school districts are required to comply with the seat belt provisions only to the extent that the Legislature has appropriated money to reimburse school districts for expenses incurred in complying with the mandate.

Subject: Specialty License Plate for Distinguished Service Medal Recipients
S.B. 1755
Effective: September 1, 2011

S.B. 1755 amends the Transportation Code and requires the Texas Department of Motor Vehicles (TxDMV) to issue specialty license plates for recipients of the Distinguished Service Medal. Distinguished Service Medal license plates, and disabled veteran plates, can now also include one emblem of which the veteran is entitled from other military decoration license plates.

Commentary: This is the second version of Section 504.315(a) of the Transportation Code (see the summary for H.B. 559). Thanks to an amendment in H.B. 559, these new Distinguished Service Medal license plates, under certain conditions (see, Section 681.008(b) of the Transportation Code), are also exempt from paying certain parking fees collected through a parking meter charged by a governmental authority other than a branch of the federal government.

Magistrates Issues and Domestic Violence — High Priority

Subject: Operation and Administration of and Practice and Procedures in Courts
H.B. 79 (1st Special Session)
Effective: Generally, January 1, 2012

Beginning in the latter half of the 20th Century, the Texas Legislature began creating quasi-judicial positions with varying names (e.g., criminal law hearing officers, masters, referees, and magistrates in certain counties who often serve at the pleasure of the district judges). The menagerie of these titles has long caused confusion within the judiciary, among local governments, scholars, and attorneys.

Municipal judges and justices of the peace, like all judges in Texas, are "magistrates" as defined in the Code of Criminal Procedure. Unlike "magistrates" under Chapter 54 of the Government Code, however, they are not quasi-judicial officers, employees at will, or subordinates of judges from other courts.

A portion of this bill attempts to quell related confusion by purging the hodgepodge of titles used in Chapter 54. Specifically, the bill repeals most of the provisions of Chapter 54 of the Government Code related to "masters," "magistrates," and "referees" and creates a new Chapter 54A with uniform provisions for different types of "associate judges." Despite its broad caption, the majority of this bill which was passed in special session pertains predominantly to courts with civil jurisdiction. Topics addressed range from the abolition of small claims courts (such cases will be transferred to justice courts where local rules and increased training standards shall be implemented) to addressing the overlapping (and consequently, confusing) jurisdiction between some district and county courts at law.

The bill also authorizes the Office of Court Administration to provide grants to counties for initiatives to enhance court systems via a Judicial Committee for Additional Resources and the Permanent Judicial Committee for Children, Youth, and Families.

Subject: Requesting a Warrant or Summons by Electronic Broadcast System
H.B. 976
Effective: June 17, 2011

H.B. 976 amends Article 15.03 of the Code of Criminal Procedure by adding Subsections (c), (d), (e), and (f), authorizing the use of technology to more quickly obtain an arrest warrant or summons by enabling a person to appear before and communicate with a magistrate through an electronic broadcast system. The bill requires that a recording of the appearance be preserved until the defendant is either acquitted of the offense or all appeals relating to the offense have been exhausted.

Commentary: In 2009, H.B. 1060 authorized an arrest warrant or a probable cause affidavit to be forwarded by any method that ensures the transmission of a duplicate of the original warrant, including secure facsimile or other secure electronic device. This bill continues the gradual move of the Code of Criminal Procedure into the digital age.

While the language of this amendment is clear and concise, the implications of requesting a warrant or summons by electronic broadcast raise many questions. For example, what effect, if any, does this amendment have on the "four corners" rule (providing that a magistrate is to determine probable cause solely from the content of the sworn affidavit and not from any other source)? While the plain language of this bill appears to merely allow the electronic broadcast to substitute for an actual physical appearance before the magistrate, what legal implications arise when a magistrate, after reviewing an affidavit, asks a question to the requesting peace officer? Would it constitute an impermissible supplementation? What happens if the electronic broadcast is lost? Criminal defense lawyers are certain to raise these questions. Until appellate courts have an opportunity to answer them, magistrates who utilize electronic broadcast systems should conform their conduct in anticipation of possible new scrutiny.

Subject: Protective Orders for Stalking Victims and Admissibility of Hearsay Statements by Children in Applications for Protective Orders
H.B. 1721
Effective: September 1, 2011

H.B. 1721 provides stalking victims and child victims the same protection as family violence victims. The bill adds provisions to Chapters 6 and 7 of the Code of Criminal Procedure to facilitate protection of children and other victims of family violence. Chapter 7A of the Code, governing victims of sexual assault, is amended through the addition of Article 7A.035, which specifically permits a hearsay statement by a victim under 14 to be admissible in an application hearing for a protective order if the hearsay statement describes the offense against the child.

The bill also extends the protective authority of the court by adding Article 6.09 which grants individuals the right to request a protective order if they are a victim of stalking, as that offense is defined under Section 42.072 of the Penal Code. The procedure used for requesting a protective order under this section is described in Title 4 of the Family Code. This new section also contains language stating that this procedure is intended to be applied to the fullest extent practicable. This should be interpreted to mean that all of the associated procedures, requirements, processes, limitations, and exclusions intended to apply to the Family Code are equally applicable here and should prevail over conflicting provisions.

Commentary: While this bill marks important changes to procedures relating to family violence and courts that issue protective orders, it does not relate to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure.

Subject: Withdrawal of Security by Bail Bondsmen
H.B. 1822
Effective: September 1, 2011

H.B. 1822 amends Section 1704.210 of the Occupations Code relating to the withdrawal of security by a bail bond surety. It authorizes a partial release of security when the amount of security remaining would meet certain requirements.

In counties where bail bonds business is regulated under the Occupations Code, an individual or an insurance company may obtain a license to write bail bonds. Each license holder may be required to place a security deposit with the county and then write bonds on a prescribed ratio to the value of that security deposit. The release of this security can become an issue when an individual stops conducting business. Although an attorney general's opinion concluded that a bail bonds board had the authority to enact local rules governing a partial release of security, according to interested parties (i.e., bail bondsmen), such boards across Texas have not been uniform in recognizing this right, setting up local rules authorizing the right, or establishing procedures for the release of partial security.

Subject: Authority of Persons to Execute Bail Bonds
H.B. 1823
Effective: September 1, 2011

H.B. 1823 changes the authority of certain persons to execute bail bonds and act as sureties under Chapter 17 (Bail) of the Code of Criminal Procedure, in order to harmonize provisions of that law with related provisions under the Occupations Code.

Article 17.07 currently requires a corporation to file a power of attorney designating the agents who are authorized to act on its behalf before it may serve as a surety. The bill adds a provision that permits the power of attorney to contain restrictions on the scope of the authority conveyed to the agent.

Article 17.10 outlines which individuals are disqualified from acting as a surety for a bail bond. This section is amended by adding the limitation that persons convicted of felonies and misdemeanors involving moral turpitude may not receive compensation for acting as a surety. These individuals may still provide bond for personal interests—just not for a profit.

Subject: Physician Request for Emergency Detention Warrant by E-Mail
H.B. 1829
Effective: September 1, 2011

H.B. 1829 amends Section 573.012 of the Health and Safety Code to allow an applicant who is a physician to present an application for emergency detention by e-mail with certain specifications, and allows a judge or magistrate to transmit a warrant electronically or by e-mail with certain specifications to an applicant who is a physician.

Commentary: Similar to H.B. 976, relating to requests for summons and arrest warrants, this bill attempts to further use technology to enhance efficiency, specifically by allowing applicants to make request for mental health warrants by e-mail using attachments in portable document format (PDF). The PDF file format, created in 1993 by Adobe Systems, began as a proprietary format. The format became so ubiquitous and accepted as a standard that Adobe allowed the file format to become open format in 2008.

Subject: Execution of a Search Warrant for Data Contained in or on Certain Electronic Devices
H.B. 1891
Effective: September 1, 2011

H.B. 1891 amends Article 18.07 of the Code of Criminal Procedure by adding Subsection (c) relating to

the execution of a search warrant for data or information contained in or on a computer, disk drive, flash drive, cell phone, or other electronic, communication, or data storage device.

Law enforcement generally has only three days to execute a certain type of search warrant signed by a magistrate. In cases that rely on digital evidence, such as child pornography, officers usually seize computers when executing a search warrant. In such cases, it can take weeks, or even months, to fully analyze a computer or electronic storage device that has been seized for collection of the contraband evidence. H.B. 1891 provides law enforcement additional time to search for digital evidence that is stored on a computer or other electronic storage device that has been lawfully seized within the three days as a result of a search warrant.

Subject: Protective Orders in Family Violence Cases
S.B. 116
Effective: June 17, 2011

S.B. 116 allows third parties to apply for a protective order against their current or former significant other's ex-partner. The bill also allows third parties to apply for a protective order against their current or former significant other's family or household members.

The principal changes made by the bill expand the scope of Section 71.0021 of the Family Code (Dating Violence) to make it applicable to victims who were targeted because of their partner's current or former relationship with the actor as well as victims who were targeted due to their prior relationship with the actor. Under the amended and augmented language of Section 71.0021, if an actor commits an offense against a victim because of the victim's current or former relationship with a person with whom the actor currently or formerly had a relationship, then the offense qualifies as "dating violence."

Section 82.002 of the Family Code is likewise amended to permit a party to a marriage, as well as a dating relationship, to apply for a protective order to protect themself as well as the victim of an act of family violence. This change recognizes that family violence is not merely caused by spouses of victims. Any adult who is currently married to or in a dating relationship with the victim of family violence has standing to apply for a protective order on their behalf.

Commentary: While this bill marks important changes to procedures relating to family violence and courts that issue protective orders, it does not relate to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure.

Subject: Inclusion of Pets in Protective Orders
S.B. 279
Effective: September 1, 2011

S.B. 279, amending Section 85.021 of the Family Code, allows a judge to prohibit a person from removing a pet, companion animal, or assistance animal from the possession of a party protected by a protective order. Moreover, the judge can prohibit a person from harming, threatening, or interfering with the care, custody, or control of a pet or assistance animal belonging to a person protected by a protective order.

Commentary: While this bill marks important changes to procedures relating to family violence and courts that issue protective orders, it does not relate to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure.

Subject: Verifying Incarceration of Defendants for Purpose of Discharging a Surety's Liability on a Bail Bond
S.B. 877
Effective: May 19, 2011

Currently in Texas, when a bail bond is written to obtain the release of a defendant from custody, the surety may end its liability on the bond if the principal is rearrested for another offense, as set out in Article 17.16 of the Code of Criminal Procedure (Discharge of Liability; Surrender or Incarceration of Principal Before Forfeiture). However, this article is not uniformly followed across Texas. Some sheriff's offices refuse to follow it because of the lack of a mechanism to place a hold on, or to timely get a warrant for, the principal before he or she is released from other jurisdictions. The purpose of S.B. 877 is to address these concerns and to ensure that Article 17.16 is being applied and uniformly followed across Texas. S.B. 877 amends current law relating to a verification of the incarceration of an accused person in a criminal case for the purpose of discharging a surety's liability on a bail bond.

Commentary: When an individual is released on bond, the bond supersedes a commitment order. Until now, there has been no mechanism for reinstating the grounds of initial detention when an individual is later arrested for another offense and sureties want to surrender the principal. S.B. 877 provides such a procedure, notice requirements, and is intended to expedite the discharge of liability among sureties.

Subject: Probation Revocation Warnings by Magistrates
S.B. 1681
Effective: September 1, 2011

S.B. 1681 amends provisions in the Code of Criminal Procedure relating to the appointment of counsel and the rights of an accused and other requirements for the purposes of appellate proceedings or community supervision revocation proceedings.

The bill clarifies that the Fair Defense Act (FDA) applies to attorney appointments for probation revocations and appeals. It clarifies procedures for withdrawal of trial counsel and appointment of appellate counsel. It expressly authorizes any magistrate to provide warnings on rights to defendants arrested for motions to revoke probation.

The FDA requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation, an alternative appointment program, or a public defender. Currently, some jurisdictions believe that FDA requirements apply to attorney appointments for appeals and probation revocation hearings, while others do not. This bill clarifies that these requirements do apply to those proceedings.

This legislation also requires trial counsel to advise a defendant of his or her right to file a motion for new trial or appeal, and to help the defendant request appointment of replacement counsel if the defendant wishes to pursue either remedy, before being permitted by the court to withdraw representation.

An amendment to Article 42.12 of the Code of Criminal Procedure, which is of importance to municipal judges performing magistrate duties, authorizes any magistrate to give required warnings, including about the right to counsel, to persons on motions to revoke probation, while not permitting magistrates to release such persons on bail. It requires that the warnings be provided within 48 hours of arrest, as they are when a person is arrested for a new offense.

Current law requires these defendants to be brought back before the judge overseeing their probation, which may result in long delays in rural parts of the state where judges must sit in multiple counties. Magistrates already provide such warnings if the arrest is for a new offense and, in some areas,

they also provide the warnings to probation revocation arrestees. This bill provides the magistrates clear authority to provide such warnings.

Subject: Information Provided by a Peace Officer Before Requesting a Specimen to Determine Intoxication
S.B. 1787
Effective: September 1, 2011

S.B. 1787 amends Section 724.015 of the Transportation Code to require that a peace officer inform a DWI suspect orally and in writing that the officer is authorized to apply for a warrant authorizing a specimen to be taken from the person if the person refuses to submit to the taking of a breath or blood specimen.

Many incidents of DWI result in the arresting officer applying for a warrant authorizing the taking of a blood or breath specimen from the person suspected of committing the offense. Currently, there is doubt as to whether it constitutes coercion for a police officer to inform a person that if he or she refuses to submit to the taking of a specimen, the police officer may apply for a warrant to do so. S.B. 1787 removes this doubt by adding to the information that an officer under those circumstances is required to provide before requesting that the person submit to the taking of a specimen.

Magistrates Issues and Domestic Violence — Medium Priority

Subject: Protective Orders for Victims of Sexual Assault
H.B. 649
Effective: September 1, 2011

Under current law, in order for a victim of sexual assault or rape to be granted a protective order, the victim must show evidence of an original assault. If the victim is over the age of 18, the victim must also prove there is the threat of further harm by the alleged offender. H.B. 649 amends Articles 7A.03 and 7A.07 of the Code of Criminal Procedure allowing protective orders for victims of sexual assault without requiring the victim to show a threat of further harm by the assailant.

Commentary: The bill removes the requirement that the victim of a sexual assault show evidence of a future threat in order to obtain a protective order against their attacker. The bill also eliminates any distinction between adult victims and minor victims. It does not, however, relate to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure.

Subject: Admissibility of Hearsay Statements by Children in Hearings for Protective Orders
H.B. 905
Effective: September 1, 2011

Section 104.006 (Hearsay Statement of Child Abuse Victim) of the Family Code provides that statements describing alleged abuse made by a child 12 years of age or younger may be admissible under certain circumstances in suits affecting the parent-child relationship.

H.B. 905 adds a provision to Chapter 84 of the Family Code allowing statements made by a child 12 years of age or younger that describe alleged family violence against the child to be admissible whether or not the statements would otherwise be inadmissible as hearsay if the court finds that the statements are otherwise reliable. The bill strengthens protections for abused children and makes the law regarding testimony of a child in an application for a protective order consistent with the law in suits affecting the parent-child relationship.

Subject: Bexar County Magistrates
H.B. 994
Effective: May 27, 2011

Currently, under Chapter 54 of the Government Code, a Bexar County magistrate may accept only a plea of guilty for a misdemeanor from a defendant charged with both misdemeanor and felony offenses. This legislation allows all Bexar County magistrates to accept a plea of guilty or nolo contendere for all charges.

Subject: Release on Bond of Certain Persons Arrested for a Misdemeanor Without a Warrant in Certain Counties
H.B. 1173
Effective: September 1, 2011

H.B. 1173 amends Article 17.033 of the Code of Criminal Procedure by adding Subsection (a-1), which allows counties with a population of three million or more (i.e., Harris County) to hold a person arrested without a warrant for 36 hours, rather than the current 24 hours, before having to be released on bond. If a magistrate does not determine the existence of probable cause for the offense for which the person was arrested within 36 hours, the person is to be released on a bond not to exceed $5,000.

Harris County reports having difficulty meeting the 24 hour probable cause hearing deadline prescribed by Article 17.033. This is generally due to the computers of law enforcement agencies being down or a large volume of traffic through the county systems slowing the necessary preparation of paperwork.

The bill adds Article 17.0331 to require a county with a population of three million or more to conduct an impact study to determine the effect of Article 17.033(a-1) on the county's ability to control and process the county's misdemeanor caseload, including specific criteria, and to file the study not later than October 15, 2012. This article expires September 1, 2013.

Commentary: As the most populous county in Texas, it is easy to imagine the logistical problems that accompany attempting to timely magistrate such a large volume of people on a daily basis. This bill also raises an important question: Will Texas appellate courts hold that such logistical issues that accompany a large population justify additional detention or does it create an impermissible double standard?

Subject: Admissibility of Statements by Children in Criminal Proceedings
H.B. 2337
Effective: September 1, 2011

H.B. 2337 amends Section 51.095 of the Family Code to specify the admissibility of a statement made by a child. The statement is not precluded if, and without regard to whether the statement stems from a certain custodial interrogation of the child, the statement is recorded by an electronic recording device and is obtained in another state, in compliance with the laws of that state, the laws of Texas, or obtained by a federal law enforcement officer in Texas or another state in compliance with federal laws.

Subject: Authorizes Creation of Teen Dating Violence Court Program
H.B. 2496
Effective: September 1, 2011

H.B. 2496 adds Section 54.0325 to the Family Code and amends the Government Code to authorize the creation of a teen dating violence court program that must be approved by the court and commissioners court of the county, and would include the processes and procedures for implementation of the program. The new program allows a court to defer adjudication proceedings for a first-time offender who committed a misdemeanor level dating violence offense. That child would be required to complete the

teen dating violence court program and make a court appearance once a month. H.B. 2496 creates a 12-week teen dating violence court program designed to educate teens and encourage them to refrain from dating violence. The program would provide counseling and referrals and explain the juvenile justice system to teen dating violence victims. If the child successfully completes that program, the court would dismiss the case with prejudice, which means the plaintiff cannot bring forth the same claim.

After dismissal, the court can impose a fee not to exceed $10 to cover administrative costs of the program to be deposited into the county treasury where the court is located. In addition, the court can require a $10 fee to cover the cost of the teen dating violence court program operations, but cannot assess a child more than $20. The court is required to track the number of children ordered to participate in the teen dating violence program, the percentage of victims meeting with the teen victim advocate, and the compliance rate of children in the program.

Commentary: This bill will not have a direct impact in municipal courts as it only applies to cases filed in juvenile court under the Family Code.

Subject: Family Violence Reports Involving Military Personnel
H.B. 2624
Effective: September 1, 2011

H.B. 2624 seeks to ensure that military officials are informed about circumstances involving family violence and other criminal conduct by military personnel. By amending Section 85.042 of the Family Code and Chapters 5 and 42 of the Code of Criminal Procedure, the bill creates a requirement that a peace officer who investigates family violence in which an active military service member is a suspect, must generate a written report to be filed with military justice officials for the purpose of providing notification to the suspect's commanding officer.

The bill also adds the obligation for the clerk of the court to provide a copy of a protective order entered against the service member, notice of the vacancy of any protective order, and written notice of any conviction or entry of deferred adjudication to the same military authorities.

Commentary: It is unclear if the Legislature is aware that Class C assault can be alleged as an act of family violence. While this bill marks important changes to procedures relating to family violence and to courts that issue protective orders, it does not pertain to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure. It also does not impose any similar duty on municipal or justice courts in the context of Class C assault (even when there is a finding of family violence) upon either conviction or deferred disposition. The amendment to Article 5.05 of the Code of Criminal Procedure may, however, be construed to impose a duty on peace officers to notify military officials of suspected Class C family violence assault.

Subject: Protective Orders for Stalking Victims
S.B. 250
Effective: September 1, 2011

Prior to S.B. 250, only victims who were related to the alleged stalker could qualify for a protective order without proof of an arrest. S.B. 250 amends Chapter 7A of the Code of Criminal Procedure allowing victims of stalking to apply for temporary and regular protective orders without regard to the relationship between the applicant and the alleged offender.

Commentary: Victims of stalking can now circumvent the Family Code requirement that the victim be related to the stalker by blood or marriage or if they have ever lived together, or have a child in common. Such a requirement has been problematic for victims who are targets of threats but are not related to the perpetrators.

While this bill marks important changes to procedures relating to family violence and to courts that issue protective orders, it is important to note that it does not relate to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure.

Subject: Creation of a Task Force to Study Links Between Domestic Violence and Child Abuse or Neglect
S.B. 434
Effective: June 17, 2011

While child protective services caseworkers are trained to recognize family violence, state law does not establish a specific protocol for handling these types of issues. Recently, an informal workgroup composed of representatives from the Department of Family and Protective Services, the Health and Human Services Commission, Child Protective Services, and members of the child abuse, sexual assault, and domestic violence advocacy community began meeting to examine this issue and related state policies. By adding Subchapter W to Chapter 531 of the Government Code, S.B. 434 codifies the mission of the existing informal workgroup by establishing a task force to address these issues. The task force is charged with delivering a report on its findings by September 1, 2012. The task force's commission will expire September 1, 2013.

Subject: Authority of Tarrant County Magistrates Under Chapter 54 of the Government Code
S.B. 483
Effective: September 1, 2011

S.B. 483 amends Chapter 54 of the Government Code to authorize a district judge in Tarrant County to refer additional tasks to Chapter 54 magistrates, including matters pertaining to an agreed order of expunction, an asset forfeiture, an agreed order of nondisclosure, and a hearing on a motion to revoke probation. Under this amendment, a magistrate is not authorized to hear a jury trial on the merits of a bond forfeiture. The bill authorizes a magistrate to enter a ruling related to a negotiated plea on a probation revocation, conduct a contested probation revocation hearing, and sign a dismissal in a misdemeanor case. Finally, the bill amends Article 18.03 of the Code of Criminal Procedure to authorize "a magistrate with jurisdiction over criminal cases serving a district court" to issue search warrants.

Subject: Enforcement of Protective Orders by Non-Issuing Courts with Jurisdiction
S.B. 819
Effective: September 1, 2011

S.B. 819 amends Chapters 81, 82, and 83 of the Family Code to provide that any court in Texas with jurisdiction over protective orders and family violence may enforce a protective order rendered by another court in the same manner as the issuing court. The bill also extends protections to minors by allowing them to apply for a protective order for dating violence and by allowing a minor's signed statement to be valid in an application for a temporary ex parte protective order.

Commentary: While this bill marks important changes to procedures relating to family violence and courts that issue protective orders, it does not relate to a magistrate's order of emergency protection issued pursuant to Article 17.292 of the Code of Criminal Procedure.

Subject: Compulsory Installment Payments of Fines and Costs by Defendants Who Are Unable to Pay the Fines and Costs
H.B. 27
Effective: September 1, 2011

H.B. 27 amends Articles 42.15 and 45.041 of the Code of Criminal Procedure by ensuring that defendants unable to immediately pay a fine and costs are allowed to make payments in specified portions at designated intervals.

The author and the sponsor of the bill state that payment options for a person unable to pay court fines and costs are limited and that payment can easily become a heavy burden for individuals with low incomes. The author and the sponsor believe that H.B. 27 will increase the likelihood of defendants paying off the full amount of the fine in a more efficient and timely manner.

Commentary: Without the aid of the Code Construction Act (particularly, Section 311.023 of the Government Code), this bill can be misinterpreted. If Article 45.041 of the Code of Criminal Procedure is read in isolation, this amendment can be misconstrued to mandate payment plans to the exclusion of discharge by community service. The legislative history is clear; however, the language of the bill is less so. This bill is not intended to impede or prohibit a court from allowing a defendant to discharge fines and costs by performing community service. Rather, it is intended to guarantee that once a judge makes the determination that a person is unable to immediately pay, the defendant is guaranteed a payment plan. Ostensibly, this amendment prevents judges from committing such defendants to jail who are unable to immediately pay. This amendment is, however, inapplicable to instances where the judge finds that that defendant is capable of payment and orders payment at some later date. The amendment only applies to offenses committed on or after the effective date.

Subject: Costs and Appeals in Civil Cruelly-Treated Animal Hearings
H.B. 963
Effective: September 1, 2011

Commentary: One of the lessons learned in the wake of the City of Arlington seizing of approximately 27,000 cruelly-treated animals (the case against U.S. Global Exotics, reported to be the largest animal seizure in the nation's history) is that current Texas law (found in Chapter 821 of the Health and Safety Code) is deficient when it comes to assigning related costs following a determination of animal cruelty in a municipal or justice court.

H.B. 963 amends Section 821.023 to clarify that when setting an appellate bond, costs can be ordered at the conclusion of a civil cruelly-treated animal hearing and that a court can consider the costs that an animal shelter or nonprofit animal welfare organization is likely to incur during an appeal. The bill creates a new formula in calculating the amount of the appeal bond and provides that the appeal bond must be either be cash or a surety bond (personal bonds are not authorized).

Earlier this year, TMCEC featured an article on cruelly-treated animal hearings in Texas and posed a series of unanswered questions that judges, attorneys, and animal rights advocates have long wished the Legislature would answer (see, Katie Tefft, "Give a Dog a Bone: The Criminal and Civil Side of Animal Cruelty" *The Recorder* (January 2011)). Many of the questions posed in the article relate to the generally amorphous nature of animal cruelty hearings and the absence of clear procedures and standards in Texas law.

While Section 821.025 already authorizes appeals from animal cruelty hearings, H.B. 963 ostensibly attempts to ensure that no law is construed by any court as barring an appeal from either a municipal or justice court to county court for reasons similar to those stated in *In re Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008) (holding, albeit in the context of dangerous dog determinations, that county courts are without jurisdiction to hear appeals from municipal courts, except in criminal cases).

H.B. 963 clarifies that appellants are not required to first file a motion for new trial to perfect an appeal (presumably because the matter is a "hearing" and not a "trial.")

Whether there is right to a jury trial in civil animal hearings has been a matter of contention. H.B. 963 expressly provides that, once a hearing has been appealed to a county court, a party to the appeal may request a jury trial (Section 821.025(d)). The Legislature, however, created no similar provision for a jury trial in either a municipal or justice court.

Under H.B. 963, all appeals from cruelly-treated animal hearings shall be considered de novo by county courts regardless if the hearing was initially conducted in a municipal court of record. With no explanation in the legislative history, the bill replaces the term "transcript" with "clerk's record." This is likely a conforming change intended to denote that there is no longer a need for a "reporter's record" (see, Section 30.00019, Government Code; Rule of Appellate Procedure 34.6), if the case originates in a municipal court of record. The change, however, may cause confusion in non-record courts where the term "clerk's record," defined in Section 30.00017 of the Government Code and Texas Rule of Appellate Procedure 34.5, are not utilized.

Subject: Taking of a Defendant's Bail Bond by County Jailers
H.B. 1070
Effective: June 17, 2011

While sheriffs and other peace officers are authorized by Article 17.20 of the Code of Criminal Procedure to take a bail bond of a defendant held in a jail on a misdemeanor charge, such peace officers do not typically work in the jail.

To increase efficiency and reduce overcrowding, H.B. 1070 creates Article 17.025 and amends Article 17.20 of the Code of Criminal Procedure to allow a jailer to take a defendant's bail bond in a misdemeanor case.

H.B. 1070 also establishes that a county jailer licensed by the Texas Commission on Law Enforcement Officer Standards and Education is considered to be an officer for the purposes of taking a bail bond and discharging any other related powers and duties under provisions of law regarding bail.

Commentary: Though it dates back to as early as the 1880s, the legal authority for individuals who are not members of the judiciary to set and take bail is a source of criticism (particularly by judges who routinely preform magistrate duties). Critics question whether most peace officers (and now jailers) know what is required under the Constitution and are property trained to apply the rules for setting bail contained in Article 17.15 of the Code of Criminal Procedure.

Subject: Appeals from Municipal Courts of Record / Recusal and Disqualification of Municipal Judges / Timely Reporting of Certain City Officials to OCA
S.B. 480; H.B. 3475
Effective: June 17, 2011

While S.B. 480 began as a narrow piece of legislation addressing an opinion from the 3rd Court of Appeals (Austin), by the end of session it became a conglomerate of three important pieces of legislation relating to municipal courts.

Section by Section Analysis:

Sections 1 and 4: Jurisdiction of the Court of Appeals in Regard to Cases Beginning in Municipal Courts of Record

Section 1 amends Article 4.03 of the Code of Criminal Procedure relating to the jurisdiction of the courts of appeal. Section 4 amends Subsection (a) of Section 30.00027 of the Government Code which deals with cases originating in a municipal court of record and allows an appeal only if the fine imposed in the municipal court exceeds $100. The 3rd Court of Appeals held in *Alexander v. State*, 240 S.W.3d 75 (Tex. App.—Austin 2007) that because of the plain language of the previously referenced statutes, it had no jurisdiction to consider a constitutional challenge to either an ordinance or state law when the fine did not exceed $100 and the case began in a municipal court of record.

The Court of Appeals in *Alexander* invited the Legislature to revisit and amend the applicable statutes. Although it has been four years since the invitation was made, the Legislature has accepted. S.B. 480 provides for jurisdiction in the courts of appeal for misdemeanor offenses in which the penalty imposed is a fine of $100 or less, provided that the sole issue being appealed is the constitutionality of the statute or ordinance that was the basis for the conviction.

Section 2: Procedures Governing Recusal and Disqualification of Municipal Judges

In 1999, the Legislature passed into law Section 29.012 of the Government Code. Titled "Sitting for Disqualified or Recused Judge," it provides that when a municipal judge is disqualified or recused, a judge from another municipal court located in an adjacent municipality may sit for that judge. Under this provision, however, a municipal judge may not sit in a case for another judge if either party objects in writing before the first pre-trial hearing or trial over which the judge is to preside. Critics claimed that Section 29.012 left too many important questions unanswered and that its gross lack of procedures is inconsistent with procedures used in other Texas trial courts. See, Ana M. Otero and Ryan Kellus Turner, "Removal of Judges from Texas Cases: Distinguishing Disqualification and Recusal," *The Recorder* (July 2010).

Last summer the Texas Municipal Courts Association passed a resolution requesting that Section 29.012 of the Government Code be amended in a manner that resolves a perceived conflict in law. In 2011, the Texas Judicial Council passed a similar resolution.

The Chair of House Criminal Jurisprudence, Pete Gallego (Alpine), filed the bill in the house (H.B. 3475). To increase chances of passage, the bill was attached in the House to S.B. 480. While H.B. 3475 was also passed into law (effective September 1, 2011), it is important to note that S.B. 480 became effective immediately upon the Governor's signature on June 17, 2011.

S.B. 480 repeals Section 29.012 and replaces it with a comprehensive series of procedures located in Subchapter A-1 of Chapter 29 of the Government Code. These rules, adapted from Texas Rule of Civil Procedure 18A, are designed to accommodate all sizes of municipal courts, and strike a balance between uniformity in application of the law and judicial efficiency. They can be used in any kind of criminal or civil case in which a municipal court has jurisdiction.

Section 29.051 (DEFINITIONS). It is critical that judges, court personnel, and litigants know the definitions of "active judge," "presiding judge," and "regional presiding judge" located in this section. Failure to distinguish between the three various judges defined in the section is a sure-fire recipe for confusion when attempting to properly apply the provisions in Subchapter A-1 of Chapter 29. A "presiding judge" refers to the presiding judge of the municipal court. Chapter 29 of the Government Code contains a cacophony of various municipal judge titles. This bill assumes that in courts with more

than one municipal judge, that one is designated as "presiding judge." The term "regional presiding judge" refers to one of nine presiding judges of the administrative judicial regions who are appointed by the Governor. (For more information and to ascertain who is the regional presiding judge for your part of the state, go to: http://www.courts.state.tx.us/courts/ajr.asp.)

As you read the following sections, do not confuse the presiding judge with the regional presiding judge.

Section 29.052 (MOTION FOR RECUSAL OR DISQUALIFICATION). A party in a municipal court or municipal court of record may file a sworn motion with the clerk of the court stating the grounds for the recusal or disqualification of a judge. The motion must state the alleged grounds for recusal with particularity and be based upon either the personal knowledge of the affiant or based upon specifically stated grounds for belief in the truth of the allegations. A motion for recusal or disqualification must be filed at least 10 days before the date of a hearing or trial, except that if a judge is assigned to the case less than 10 days before the hearing or trial, then the motion must be filed at the earliest practicable time.

Section 29.053 (NOTICE). Copies of the motion must be served on all other parties or their counsel, along with a notice that the movant expects the motion to be heard three days after filing, unless there is a ruling otherwise.

Section 29.054 (STATEMENT OPPOSING OR CONCURRING WITH MOTION). Parties may file statements with the clerk of the court that oppose or concur with the motion for recusal at any time prior to the motion being heard.

Section 29.055 (PROCEDURE FOLLOWING FILING OF A MOTION; RECUSAL OR MOTION WITHOUT MOTION). Upon receiving a motion for recusal or disqualification, a municipal judge shall either immediately recuse himself or herself or request that the regional presiding judge assign a judge to hear the motion. (The judge who is the subject of a timely motion does not have the option of either denying or ignoring the motion. The only option is to grant the motion or refer the matter to the regional presiding judge who can assign an active judge to hear the motion.)

- A municipal judge, with or without a motion, may enter an order of recusal or disqualification. If the municipal judge is not the presiding judge, the judge shall ask the presiding judge to assign another municipal judge to hear the case.

- If the recusing judge is the presiding judge for the municipality, or the only judge in the municipality, then the judge shall ask the regional presiding judge to assign a judge from another municipality in the same county.

- If a judge recuses himself or herself, then the judge must take no further action in the proceeding after requesting assignment of a replacement judge. If a judge does not voluntarily recuse himself or herself, then the judge shall take no further action in the case until a recusal hearing is held. The only exceptions are for actions taken for good causes that are specifically stated in the order for the action. What constitutes a good cause is not defined, but actions following recusal or a motion for recusal should be reserved for situations requiring a compelling necessity of immediate action. Any action taken following a motion for the recusal of a judge is subject to charges of improper conduct, and any action taken following the disqualification of a judge is also legally invalid.

Section 29.056 (HEARING ON MOTION). A regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify shall (1) immediately set a hearing before himself or herself, an "active judge" (i.e., either a district or statutory county judge), or a judge eligible for assignment under Section 74.055 of the Government Code; (2) give notice to the parties; and (3) enter necessary interim orders. The judge who hears the matter may also consider any amended or

supplemented motion. If there is no objection, the hearing may be conducted by telephone. (This is intended to expedite matters and reduce costs.)

At this step in the procedure, in a manner similar to Texas Rule of Civil Procedure 18A, the matter and decision-making process is completely removed from the sphere of the local trial court and municipal government.

Section 29.057 (PROCEDURES FOLLOWING GRANTING OF MOTION). If after a hearing per Section 29.056, the motion is denied, the case resumes before the municipal judge who was the subject of the recusal/disqualification challenge. If the motion is granted, the judge who heard the motion shall enter an order. Unless the motion was against the presiding judge, the presiding judge shall assign any other judge of the municipality. If the motion was against the presiding judge, the regional presiding judge shall select another judge of the municipality to hear the case. If the municipality has no other municipal judge, the regional presiding judge shall assign another municipal judge from the same county. If there are no other municipal judges in the county, or if all of the other municipal judges are recused/disqualified or otherwise unavailable, then the regional presiding may assign a municipal judge from an adjacent county.

Section 29.058 (APPEAL). After a municipal court of record has rendered a final judgment, a party may appeal an order that denies a motion for recusal or disqualification as an abuse of discretion. A party may not, however, appeal an order that grants a motion for recusal or disqualification.

Section 29.059 (CONTEMPT). If a party files a motion to recuse or disqualify under this subchapter and it is determined by the judge (i.e., a regional presiding judge, an active judge, or judge eligible for assignment under Section 74.055 of the Government Code) hearing the motion, at the hearing and on motion of the opposing party, that the motion to recuse or disqualify is brought solely for the purpose of delay and without sufficient cause, the judge may in the interest of justice find the party filing the motion in contempt under Section 21.002(c) of the Government Code (i.e., three days in jail and/or a fine not to exceed $100).

Section 29.060 (COMPENSATION). This section states that an active judge who is assigned to hear a motion to recuse or disqualify a municipal judge is not entitled to additional compensation other than travel expenses, and it entitles a judge assigned to hear such a motion who is not an active judge to compensation of travel expenses and $450 per day of service, prorated for any day for which the judge provides less than a full day of service. The amendment entitles a municipal judge assigned to hear a case on the recusal or disqualification of a municipal judge in a court other than the one in which the assigned judge resides or serves as compensation provided by law for judges in similar cases and travel expenses. The amendment requires the municipality in which a municipal judge recusal or disqualification case is pending to pay the compensation and travel expenses due or incurred under statutory provisions relating to the recusal or disqualification of municipal judges.

Section 3: Mandatory and Timely Reporting of Certain City Officials to the Office of Court Administration

This amendment repeals Section 22.073(c) of the Local Government Code (relating to the powers and duties of the secretary of a municipality) and replaces it with Section 29.013 of the Government Code. The amendment requires the secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, or clerk of a municipal court and each person who vacates any such office. The amendment requires the secretary or employee to notify the council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office.

Commentary: While state law requires that certain general law municipalities provide the name of its mayor, municipal judge, and clerk to the Texas Judicial Council, there is no general requirement that all Texas municipalities provide such information. Consequently, the State of Texas has no way of knowing the identity of individuals acting as either a judge or clerk in its municipal courts. (The identity of mayors is also important because under Texas law they are authorized to act as magistrates.) Not only should the identities of individuals acting in such capacities be available to the public, it is important that state agencies, such as the Office of Court Administration and State Commission on Judicial Conduct have up-to-date information as to the identity of such individuals. Similarly, such information is important to ensure that municipal judges comply with the Rules of Judicial Education promulgated by the Court of Criminal Appeals. The lack of an official and public registry makes it easier for perpetrators to impersonate public servants and can result in the improper expenditure of Judicial Court and Personnel Training Funds. This amendment makes the provisions currently applicable only to Type A aldermanic general law municipalities applicable to all municipalities that have a municipal court. It improves upon existing law by also requiring that the State of Texas be informed when such public servants no longer serve in such capacity.

It is particularly important that the State of Texas have a complete and accurate list of municipal judges, especially in light of the other provisions in S.B. 480 relating to the authority of the regional presiding judges to appoint municipal judges in certain instances relating to disqualification and recusal.

The Texas Judicial Council has the authority per Section 71.035 of the Government Code to request that the Office of the Attorney General enforce statutorily mandated reporting of pertinent information by means of mandamus.

Subject: Time to File Motion for New Trial
S.B. 519
Effective: September 1, 2011

Under current law, a defendant who is convicted in a municipal court (excluding a municipal court of record) or a justice court of a criminal offense has but a single day in which to file a motion for a new trial. This contrasts with the five days permitted for civil petitions in justice court or the 30 days granted to defendants in other criminal courts.

Amending Article 45.037 of the Code of Criminal Procedure, S.B. 519 provides some uniformity to the court process by extending the window for filing a motion for new trial from one to five days following rendition of judgment. The change will be effective with judgments entered after September 1, 2011.
According to the Office of Court Administration (OCA), the change will result in an increase in the number of motions for new trials filed in justice and municipal courts, but the increase is not expected to appreciably increase the workload of these courts. No significant fiscal impact is anticipated.

Subject: Execution of Lawful Process by County Jailers
S.B. 604
Effective: September 1, 2011

Currently, the only individuals authorized to serve or execute subpoenas, attachments, and warrants are peace officers. Occasionally, it is necessary to serve or execute various types of process, writs, subpoenas, and attachments on individuals confined to a detention facility. For example, an inmate may be detained in jail when additional charges are brought against him or her. The common practice is that a new warrant with its own bond set will be issued and must be served on the inmate for the new, alleged offense. Presently, only deputies may execute these warrants. When service is required, it is necessary to call a deputy in from the field (or his or her area of patrol or primary duty) to perform the ministerial duty of serving or delivering the warrant on the inmate.

S.B. 604 amends current law relating to the execution of lawful process by county jailers by adding Article 2.31 to the Code of Criminal Procedure. Article 2.31 authorizes a jailer who has successfully completed a training program provided by the sheriff and is licensed under Chapter 1701 (Law Enforcement Officers) of the Occupations Code. It authorizes jailers to execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail at which the jailer is employed to the same extent that a peace officer is authorized to execute process under Article 2.13(b)(2) (relating to requiring the officer to execute all lawful process issued to the officer by any magistrate or court), including: (1) a warrant under Chapter 15 (Arrest Under Warrant), 17 (Bail), or 18 (Search Warrants); (2) a capias under Chapter 17 or 23 (The Capias); (3) a subpoena under Chapter 20 (Duties and Powers of the Grand Jury) or 24 (Subpoena and Attachment); or (4) an attachment under Chapter 20 or 24.

Procedural Law — Medium Priority

Subject: Photograph and Live Lineup Identification Procedures in Criminal Cases
H.B. 215
Effective: September 1, 2011

Mistaken eyewitness identification is the leading cause of wrongful convictions in Texas and the United States. H.B. 215 adds Article 38.20 to the Code of Criminal Procedure with the purpose of improving the accuracy and reliability of eyewitness identification.

H.B. 215 requires all Texas law enforcement agencies to adopt written eyewitness identification policies based on best practices (i.e., proven effective by scientific research) by September 1, 2012. This bill requires the Bill Blackwood Law Enforcement Management Institute of Texas to develop and disseminate a model policy and training materials regarding eyewitness identification to local law enforcement agencies.

Eyewitness identification procedures must address the following topics: (1) the selection of photograph and live lineup filler photographs or participants; (2) instructions that will be given to a witness before conducting a photograph or live lineup identification procedure; (3) documentation and preservation of lineup procedures; (4) procedures for administering lineups to illiterate persons or persons with limited English proficiency; (5) procedures for assigning a lineup administrator who is unaware of the suspect in a lineup or photo array; and (6) any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous identifications and enhance the objectivity and reliability of eyewitness identifications.

Subject: Disqualification of a District or County Attorney Who is Under Investigation
H.B. 1638
Effective: September 1, 2011

H.B. 1638 amends Article 2.08 of the Code of Criminal Procedure. A district or county attorney shall be disqualified from representing the State if the district or county attorney is the subject of an official criminal investigation. Currently, there is no statutory means to prosecute a district or county attorney for a criminal act committed within the district or county attorney's jurisdiction. This bill would address cases within a district or county attorney's jurisdiction and would not impact criminal allegations in another district attorney's jurisdictions. A disqualifier under this bill applies only to the attorney's access to the criminal investigation pending against the attorney and to any prosecution of a criminal charge resulting from that investigation.

Subject: Video Teleconferencing in Certain Criminal Proceedings
H.B. 2847
Date Effective: September 1, 2011

Commentary: This legislation amends Article 102.017(d-1) of the Code of Criminal Procedure to expressly authorize the purchase of video teleconferencing systems out of court costs deposited into a courthouse security fund, municipal court building fund, or a justice court building fund. As a cost-saving and security measure, the Legislature greatly enhanced the use of video technology in grand jury and trial proceedings through the addition of several provisions to the Code of Criminal Procedure. While the bulk of this bill is aimed at grand jury proceedings, municipal and justice courts that have ample security funds indirectly benefit from this legislation.

Last summer, TMCEC published an article pertaining to the frequently occurring, yet seldom written-about dynamics surrounding the taking of jail house pleas in Class C misdemeanors (see, Ryan Kellus Turner, *Jail House Pleas: Is Rothgery a Tap on the Shoulder or a 'Fly in the Ointment' of Local Trial Court Expediency*, *The Recorder* (August 2010)). This article postulated that Article 27.18 of the Code of Criminal Procedure was not intended for Class C misdemeanors (because of the absence of prosecutor and defense consent) and observed that absent an amendment by the Legislature, it did not authorize municipal judges to take pleas from behind bars via closed circuit video teleconferencing. H.B. 2847 also does not authorize municipal and justice courts to take pleas via video conferencing. In fact, H.B. 2874 amends Article 27.18 to now make the defendant's appearance over a video system merely part of the court reporter's record and not something that must be recorded.

So, barring future legislation authorizing the taking of pleas on Class C misdemeanors via teleconferencing, what utility, if any, does H.B. 2847 have on municipal and justice courts? Probably the best answer is found in Code of Criminal Procedure Article 15.17(a) (Duties of Arresting Officer and Magistrate) and Article 45.046(c) (Commitment). Article 15.17(a) clearly contemplates the use of an electronic broadcast system in lieu of taking an arrested person before a magistrate. Similarly, Article 45.046 contemplates the use of an electronic broadcast system for conducting the required commitment hearing following arrest on a capias pro fine. With rising gas prices and budget restraints, H.B. 2847 may provide a way to pay for a teleconferencing system that can provide local governments long term costs savings and allow municipal judges and justices of the peace more efficient use of their time.

Subject: Asset Forfeiture in Criminal Cases
S.B. 316
Effective: September 1, 2011

Commentary: In response to reports of abuse of asset forfeiture provisions when property is seized in connection with a controlled substance offense, the Legislature has provided stricter guidelines for the use of funds obtained through forfeiture actions and added language to close a loophole regarding the forfeiture process.

Current language prohibits a peace officer from obtaining a waiver of interest in seized property at the scene of a roadside stop. However, the language is inapplicable to attorneys representing the State. S.B. 316 amends Article 59.03 of the Code of Criminal Procedure extending the prohibition against obtaining a waiver of property interest prior to the filing of a civil forfeiture action to such attorneys. Notably, under Article 59.01 "attorney representing the State" includes city attorneys acting in a forfeiture procedure.

Subsections added to Article 59.06 of the Code of Criminal Procedure provide guidance on permissible uses for forfeited property and procedures for the disposition of such property. Under the new provisions, 40 percent is to be allocated to the seizing department, 30 percent to the prosecuting attorney's office, and 30 percent to the general revenue fund. A list of prohibited uses is added to the article and includes:

donations and political contributions, training and travel expenses, the purchase of alcoholic beverages, and payment of salaries for prosecutorial or law enforcement employees.

The bill also sets forth accountability procedures, including audits, designed to ensure the appropriate handling and use of seized assets. The Office of the Attorney General is authorized to seek injunctive relief and/or civil penalties not to exceed $100,000 per violation of Article 59.06.

Detailed reporting requirements concerning the use of forfeiture funds and an auditing process are also added to the Code. The new regulations will be effective on assets seized and expenditures made after the act becomes effective September 1, 2011.

Subject: Entering Pleas in Certain Criminal Cases
S.B. 1522
Effective: September 1, 2011

Currently, under Article 27.19 (Plea by Certain Defendants) of the Code of Criminal Procedure, a court is required to accept a plea of guilty or nolo contendere from a defendant who is confined in a penal institution if the plea is made in accordance with the procedures established by Article 27.18 (Plea or Waiver of Rights by Closed Circuit Video Teleconferencing) or in writing. S.B. 1522 expands this section to include accepting a plea if it is delivered by U.S. Mail or secure electronic or facsimile transmission.

Commentary: Some have asserted that Article 27.19, in conjunction with Article 27.18, provides a statutory framework that can be construed to authorize the taking of pleas in Class C misdemeanors via video teleconferencing (see, TMCEC Commentary for H.B. 2847). However, newly added references to "indictment or information"—without any reference to a Class C misdemeanor charging instrument ("complaint")—only further undermine such an assertion.