

LEGISLATIVE UPDATE '09: Bill Summaries in Numerical Order

Table of Contents

Page	Bill	Subject
5	H.B. 55	New Class C Misdemeanor to Use Wireless Communication Device in School Crossing Zones
5	H.B. 72	Effect of Magistrate Order of Protection on Waiting Period for Divorce Decree
6	H.B. 148	Barratry
6	H.B. 205	State Restriction on "Leash Law" Ordinances
6	H.B. 319	Juror Exemption for Those with Custody of Children Under Age 15
7	H.B. 339	Driver's Education Courses; Restrictions on Teen Drivers
7	H.B. 348	Theft of Aluminum, Bronze, and Copper
8	H.B. 358	Seizure of Gambling Devices
8	H.B. 400	New Compliance Dismissal for Expired Disabled Parking Placard
8	H.B. 405	Animal Control Authorized to Possess a Bite Prevention Stick
9	H.B. 537	Class C Misdemeanors Relating to Safety Belts; No Children Under Five on a Motorcycle
9	H.B. 548	Mandatory Impoundment of Vehicle if Racing Results in Property Damage or Bodily Injury
10	H.B. 558	Public Intoxication of Children
10	H.B. 586	Period for Evidence of Financial Responsibility Needed to Release
11	H.B. 618	Exempts Certain Military Award Recipients from Payment of Parking Meter Fees
11	H.B. 670	Journalist Privilege to Not Testify in Criminal Proceedings
12	H.B. 671	Theft from a Nonprofit Organization
12	H.B. 796	Photographic Evidence in Property Crime Cases and Property Hearings
13	H.B. 857	Enhanced Penalties for Subsequent Burning Violations and the Burning of Certain Substances
13	H.B. 875	Attorney's Fees for Civil Sign Violations
13	H.B. 960	Criminal Background Records for SOB Permit Applicants
14	H.B. 1020	Firearms in School-Sponsored Programs
14	H.B. 1060	Transmittal of Complaints and Warrants
14	H.B. 1213	Golf Carts on Beaches
15	H.B. 1282	Theft of a Driver's License Now a Class B Misdemeanor
15	H.B. 1285	Persons Authorized to Administer an Oath
15	H.B. 1297	Flexible School Day Programs
16	H.B. 1343	Increased Penalties for Causing Injury to Blind or Disabled Pedestrians
16	H.B. 1357	Freestanding Emergency Medical Care Facilities
17	H.B. 1360	Application of the PIA to Information Disclosed to Defense by Prosecution
17	H.B. 1372	Definition of "Crime Victim" Expanded to Include Victims of Human Trafficking
18	H.B. 1468	Access to Cemeteries
18	H.B. 1506	Global Positioning Monitoring as a Condition of Release on Bond in Domestic Violence Cases
19	H.B. 1544	Deferred Disposition Special Expense Fee
19	H.B. 1544	Guilty Pleas by Mail
20	H.B. 1614	Increased Penalty for Criminal Mischief Involving Disruption of Public Service
21	H.B. 1659	Exception for Law Enforcement to Offense of Unlawful Installation of a Tracking Device
21	H.B. 1665	Contempt for Jurors
22	H.B. 1721	Offense of Taking a Weapon from a Correctional Facility Employee or Official
22	H.B. 1793	IDEA and Child Welfare Training for Municipal Judges and Justices of the Peace

22	H.B. 1802	Regulation of Mobile Food Vendors in Texas Cities with 1.5 Million People
23	H.B. 1805	Allowing the Use of Laser Sighting Devices by Hunters with Certain Disabilities
23	H.B. 1813	Tampering with Forensic Reports and Analyses
24	H.B. 1831	Temporary Claims Service Signs During Periods of Natural Disaster
24	H.B. 1861	Modification and Suspension of Court Rules During Disaster
25	H.B. 1949	Agriculture Warrants
25	H.B. 1965	Class C Misdemeanor for Parks and Wildlife Code Reporting Violations
25	H.B. 2002	Expunction for the Deceased
26	H.B. 2003	Creation of the Offense of Online Harassment
26	H.B. 2012	Enhanced Penalties for Driving on a Suspended License Without Maintaining Financial Responsibility
27	H.B. 2020	Parking Privileges for Out-of-State Disabled Veterans
27	H.B. 2031	Definition of "Sight Order" for the Purposes of Prosecuting Theft and Fraud
27	H.B. 2066	Assault of a Family Member by Strangulation
28	H.B. 2086	Anti-Gang and Graffiti Laws
28	H.B. 2240	New Criminal Offense of Continuous Violence
29	H.B. 2385	Increasing the Penalty for Certain Incest Offenses
29	H.B. 2467	Definition of Playgrounds
29	H.B. 2553	Recreational Off-Highway Vehicles and Golf Carts
30	H.B. 2571	Statewide Regulation of Towing Practices
31	H.B. 2609	Class C Criminal Trespass
31	H.B. 2647	Quasi-Judicial Enforcement of Certain Health and Safety Ordinances
32	H.B. 2664	Defense to Unlawful Carrying of a Handgun
32	H.B. 2682	Cities' Authority to Lower Speed Limits; Required Reports
32	H.B. 2730	Concealed Handgun Licenses
33	H.B. 2730	DPS Reporting
34	H.B. 2730	DPS Surcharge Program, Driver's License Requirements, and Other
35	H.B. 2730	New Offenses Relating to Driving Records and Fake IDs
36	H.B. 2840	Fraudulent Conduct in the Mortgage Lending Process
36	H.B. 3001	Authorizes General Law Cities to Provide Longevity Pay to City Employees
36	H.B. 3095	Disabled Parking Placards; Penalties for Parking in Spaces Designated for Persons with Disabilities
37	H.B. 3097	Creation of the Texas Department of Motor Vehicles (DMV)
38	H.B. 3128	Service of Process on Condo Unit Owners in City More than 1.9 Million
38	H.B. 3147	Offense of Taking a Weapon from an Employee or Official of a Correctional Facility
38	H.B. 3201	County Fire Marshals Designated as Peace Officers
39	H.B. 3224	Prosecution and Punishment of Arson Offenses
39	H.B. 3228	Prohibited Items in Correctional Facilities
40	H.B. 3389	New Court Cost on Moving Violation Convictions to Fund Civil Justice Fund
40	H.B. 3599	Rules Relating to New Three-Wheeled Passenger Vehicles ("Motorcycles")
41	H.B. 3638	New Defense to Prosecution for No Safety Belt Offense by Solid Waste Company Employees
41	H.B. 3751	Denial of Bail for Violation of Bond Where Child is Alleged Victim
42	H.B. 3866	Uniform Standards for Periodic Fire Safety Inspections
42	H.B. 4445	Licensing and Appointment of Court Interpreters
43	H.B. 4456	Definition of a Switchblade
43	H.B. 4464	Confidential Victim Information in Restitution Provision of a Judgment
43	H.B. 4529	Official Court Reporter Court Cost - El Paso
44	H.B. 4742	Use of Court Reporter in the Austin Municipal Court of Record
44	H.B. 4750	Municipal Court Magistrates for the City of White Settlement
45	S.B. 52	Penalties for Parking in Spaces Designated for Persons With Disabilities; Seizure of Disabled Parking Placards
45	S.B. 61	Child Safety Seats; Offense and Penalty
46	S.B. 61	Child Safety Seats; New Court Cost

46	S.B. 82	Family Violence Fees and Additional Fees
47	S.B. 129	35 mph Speed for Neighborhood Electric Vehicles
47	S.B. 281	Certain Judges' Spouses' Information Excepted from Public Disclosure
48	S.B. 328	Blood Draw Warrants
48	S.B. 328	Operating a Watercraft Under the Influence of Alcohol by a Minor
49	S.B. 333	Court Cost for Alcohol Breath Testing
49	S.B. 359	Theft Offenses in Disaster Area or Evacuated Area
50	S.B. 375	Public Availability of Crash Reports
50	S.B. 407	Part-Time Truancy Magistrates
51	S.B. 408	Appeal of Animal Cruelty Determinations
51	S.B. 410	Statute of Limitations in Class C Misdemeanors
52	S.B. 413	Mandatory Filing of Complaints upon Non Appearance
52	S.B. 414	Commitment Hearings for Capias Pro Fine by Electronic Means
53	S.B. 415	Magistrate Release Without Bail for Class C Misdemeanors and Order to Appear in Municipal or Justice Court
53	S.B. 420	Prohibition on Traffic-Offense Quotas
54	S.B. 446	Expanded Use for Child Safety Funds in Cities with Population Under 850,000
54	S.B. 449	Controlled Substance Penalty Group Classifications
55	S.B. 554	Dog Fighting Equipment
55	S.B. 589	New Class C Misdemeanor for a Window Tinter's Failure to Install Required Label
56	S.B. 633	Establishment of Regional Drug Courts
56	S.B. 743	Search Warrants for DNA
56	S.B. 820	Adoption and Amendment of Model Building Codes by Certain Municipalities
57	S.B. 828	Aggregation in the Prosecution of Abuse of Official Capacity
57	S.B. 926	No Red-Light Camera Civil Penalties for Owner of Emergency Vehicles
58	S.B. 935	Authority of Municipal Judges to Conduct Marriage Ceremony
58	S.B. 1016	Changes to Criminal Offenses in the Agriculture Code
59	S.B. 1056	Nondisclosure Orders in Cases Involving Children
60	S.B. 1093	Redefines Commercial Motor Vehicles; Exemption for Solid/Liquid Waste Vehicles
60	S.B. 1145	Instructions for Folding the Flag
61	S.B. 1152	Political Contributions in a Courthouse
61	S.B. 1163	Theft of Farm Animals
61	S.B. 1235	Temporary Vehicle Tags
62	S.B. 1236	Domestic Violence Admonishment on Citations for Class C Assault
62	S.B. 1273	New Offense of Interfering with Radio Frequencies
62	S.B. 1317	Driver's Education Courses; Restrictions on Teen Drivers
63	S.B. 1436	Judge's Right to Appeal Censure by State Commission on Judicial Conduct (SCJC)
63	S.B. 1448	Civil Remedies for Tenants of Substandard Residential and Commercial Properties
64	S.B. 1449	Utilizing Non-Profit Housing Organizations as Receivers in Civil Nuisance Abatement
64	S.B. 1504	Concurrent Jurisdiction in Municipal Courts Contiguous to Houston
64	S.B. 1506	Costs of Conditions of Bond
65	S.B. 1681	Corroboration of Testimony to Support a Criminal Conviction
65	S.B. 1945	Notice of Citation to Owner of Real Property
66	S.B. 1967	Motorcycle Awareness and Safety ("Share the Road Campaign")
67	S.B. 1970	Election Practices and Procedures
67	S.B. 1984	Physician Assistants Issuing Disabled Parking Placards in Certain Counties
67	S.B. 2153	Statewide Regulation of Booting Practices
68	S.B. 2379	Oyster Boat Crew Penalties
68	H.R. 257	Municipal Courts Week

Introduction to Materials

The 81st Regular Legislature convened on January 13, 2009. While last session we tracked 792 bills, during the course of this session, the Texas Municipal Courts Education Center (TMCEC) tracked a total of 887 bills. By the time the smoke cleared, 140 days later, only 184 of the bills we tracked (or 20.7 percent) became law.

For those of you familiar with the legislative process, we all now share in the responsibility of figuring out the practical realities of the Legislature's new "handiwork."

This publication contains 130 bill summaries divided into seven distinct categories: Substantive Criminal Law; Court Costs and Administrative Issues; Magistrate Duties and Domestic Violence Legislation; Juveniles and Minors; Traffic Safety and Transportation Code Amendments; Ordinance and Local Government Issues; and Procedural Law Changes.

Within each category, we have further categorized bills as high and medium priority. While we think that 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 low 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 bill's legislative enactment. Most amendments, except where noted, are effective September 1, 2009.

Creating a comprehensive compilation of bill summaries is no small task. Like most small organizations, TMCEC could not bring this compilation to you in such a short turnaround time or maintain our educational mission without the assistance of the State of Texas, more specifically, the House Research Organization (HRO) and the Senate Research Center (SRC). With slight adaptation, the bill summaries contained in this compilation are, except where noted, the work product of the HRO and the SRC. To the staff of the HRO and SRC, thank you.

Following each summary, you will see TMCEC Commentary. The commentary is the collaborative efforts of the four TMCEC staff attorneys. As we prepare to fire up the biennial road show (which is the Legislative Update) it will be, for many of you, your first opportunity to get to see, hear, and know the new cadre of attorneys: Mark Goodner, Cathy Riedel, and Katie Tefft. Each worked very hard on this project and consistently brings something different and desperately needed to the table. Appreciation is also shown to Patty Thamez, Samantha Ware, Jameson Crain, Hope Lochridge and the rest of the TMCEC staff for their efforts in making it all happen.

Finally, thank you to the Legislative Update faculty who volunteered their time and energy to this effort: Robin Smith, Lester Rorick, Ryan Henry, and Ross Fischer. Your service to our courts and the communities of our state is much appreciated.

Ryan Kellus Turner
General Counsel & Director of Education, TMCEC
July 21, 2009

House Bills

Subject: New Class C Misdemeanor to Use Wireless Communication Device in School Crossing Zones

H.B. 55

Effective Date: September 1, 2009

Bans on the use of wireless communication devices in active school zones are emerging across the state, beginning with a ban passed by the City of Highland Park in November 2007. At least 17 communities of varying size and population followed suit, creating a patchwork approach to safeguarding students and other pedestrians at critical times and places in communities throughout Texas.

H.B. 55 establishes a statewide approach to the bans to ensure consistency across communities while providing an important safeguard for our students and other pedestrians. H.B. 55 amends Section 545.425 of the Transportation Code to limit driver usage of a wireless communication device within an active school crossing zone, with certain exceptions related to operators of authorized emergency vehicles and operators licensed by the Federal Communications Commission. The bill also clarifies existing language relating to the use of a wireless communication device by a school bus operator when a minor is present on the bus by prohibiting the operator from using a wireless communication device under any circumstance unless the vehicle is stopped.

TMCEC Commentary: Drivers can use a hands-free device without committing an offense. Municipalities wanting to enforce this offense must post “warning” signs at the entrance to each school crossing zone (not having a sign is an affirmative defense to prosecution, along with using the phone to make an emergency call). This new law preempts city ordinances banning cell phone use in school zones. Therefore, whether or not your city currently has an ordinance banning cell phone use in a school zone, your city need only post the appropriate signs at the entrance to the school crossing zones in order to enforce this new state law offense starting September 1st. The bill also specifies that TxDOT shall allow these signs to be attached to existing signs at minimal cost to the city. Notably, this is the only cell phone or distracted driving bill (of at least 18 introduced) that passed.

Subject: Effect of Magistrate Order of Protection on Waiting Period for Divorce Decree

H.B. 72

Effective Date: Immediately

H.B. 72 amends Section 6.702 of the Family Code by eliminating the 60-day waiting period before a divorce is granted in cases when a spouse has been convicted of an act of family violence against the petitioner or the petitioner has obtained either an active protective order or active magistrate’s order for emergency protection against the other spouse for an act of family violence against the petitioner or a member of the petitioner’s household.

Subject: Barratry

H.B. 148

Effective Date: September 1, 2009

Currently, there exists a thriving telemarketing business focused on motor vehicle accident victims through information obtained from police reports. These victims are subjected to calls and callbacks from attorneys, chiropractors, physicians, surgeons, health care professionals, private investigators, and telemarketers soon after an accident, at a time when they are most vulnerable and often while they are impaired by pain medication.

H.B. 148 provides protection to the public from professional solicitation by prohibiting certain professionals from providing or knowingly permitting to be provided to an individual who has not sought the person's employment, legal representation, advice, or care a solicitation by telephone or in person of business relating to certain legal actions or matters, including personal injury matters before a certain date or indefinitely if the person has indicated a desire not to be contacted.

TMCEC Commentary: This bill makes some minor changes to the language of Section 38.12 of the Penal Code (Barratry). It should be noted that H.B. 3515, making failure to report barratry a Class C misdemeanor, was vetoed by the governor.

Subject: State Restriction on "Leash Law" Ordinances

H.B. 205

Effective Date: Immediately

Currently, many municipalities across Texas have some variation of a "leash law" to control dogs. Such ordinances require dogs to wear restraining devices when in the city limits. The majority of the ordinances do not account for dogs that are used for agricultural purposes, such as protection of a property owner's livestock.

H.B. 205 amends Section 251.005 of the Agriculture Code and changes the applicability of certain city requirements affecting the restraint of dogs on annexed or otherwise acquired property used for agricultural operations.

Subject: Juror Exemption for Those with Custody of Children Under Age 15

H.B. 319

Effective Date: September 1, 2009

Currently, a jury exemption can be provided for a person who has custody of a child under age 10 and whose service on the jury would require leaving the child without adequate supervision. However, under Texas law, a person with custody of a child can be punished for abandonment or endangerment of a child under age 15. The age discrepancy creates a burden on persons who are required to serve on a jury and who have custody of a child who falls within the age gap.

H.B. 319 authorizes a person to be exempt from jury service if the person has custody of a child younger than 15 who would be left without adequate supervision if the person was required to serve on a jury.

TMCEC Commentary: This bill amends Section 62.106 of the Government Code.

Subject: Driver's Education Courses; Restrictions on Teen Drivers

H.B. 339

Effective Date: September 1, 2009

Texas has one of the highest accident rates among teen drivers in the nation. Changes are needed to enhance the effectiveness of teen driver education programs. This bill increases the hours of behind-the-wheel driving instruction a teen receives, makes the qualifications for driving instructors more stringent, and requires DPS to conduct a driving test for each applicant under 18 years of age and to collect statistics to analyze the effectiveness of different methods of driver education.

TMCEC Commentary: This bill is titled the Less Tears More Years Act. As amended, Section 521.142(d) of the Transportation Code requires persons under the age of 21 to take a driver education course to apply for a driver's license. Upon successful completion of a course, the minor is not required to take the highway sign and traffic law parts of the driving test required under Section 521.161. The bill prohibits waiver of a driving test for anyone under the age of 18 (Section 521.165). Provisional licenses and instructional permits now expire on the person's 18th birthday.

H.B. 339 extends the restrictions on teen drivers under Section 545.424 to 12 months from the issuance of the license (up from six months). The bill prohibits the use of a wireless device, including a hands-free device, by a teen while operating a vehicle, except in case of an emergency. Furthermore, the Texas Education Agency shall require that information relating to the effects of using cell phones or engaging in other distracting behaviors be included in driver education and driving safety course curriculum.

Note: see S.B. 1317. Consult the Code Construction Act, Chapter 311 of the Government Code, to make sense of these two amendments.

Subject: Theft of Aluminum, Bronze, and Copper

H.B. 348

Effective Date: September 1, 2009

In recognition of the increasing number of thefts of aluminum, bronze, and copper wire and cable, the 80th Legislature enacted legislation increasing the punishment for this crime. Top prices are being paid for these metals and the increase in punishment has benefited law enforcement across Texas. However, aluminum, bronze, and copper metals are found in various forms, and the theft of these metals have expanded to include items such as air conditioner coils and lightning arrestor rods connected to telephone poles and buildings. Technically, the metal found in these items is not wire or cable, therefore, the increased penalty is inapplicable to the theft of these items.

H.B. 348 amends current law relating to the punishment for theft of certain aluminum, bronze, or copper materials.

TMCEC Commentary: This bill amends Section 31.03(e), Penal Code, making an offense a state jail felony if the value of the aluminum, bronze, or copper material stolen is less than \$20,000.

Subject: Seizure of Gambling Devices

H.B. 358

Effective Date: September 1, 2009

Law enforcement officials are charged with enforcing Texas' existing gambling laws, but are hindered in doing so because offenses related to the illegal use and operation of eight-liner machines require cumbersome investigations and costly storing of the machines, which are typically very large and heavy. Prosecutors and peace officers rely on local tax dollars to store and transport these machines.

H.B. 358 amends current law relating to the seizure of the circuit board of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia.

TMCEC Commentary: This bill adds Article 18.095 to the Code of Criminal Procedure, allowing an officer the option of seizing only the main circuit board of the gambling device as opposed to the entire machine.

Subject: New Compliance Dismissal for Expired Disabled Parking Placard

H.B. 400

Effective Date: September 1, 2009

Under current law, there is no grace period for a person cited for illegally parking a vehicle with an expired disabled parking placard to have the citation dismissed by obtaining a valid placard. H.B. 400 grants a person with a disability a grace period to have a citation for an expired disabled parking placard dismissed by remedying the defect.

TMCEC Commentary: H.B. 400 adds Section 681.013 to the Transportation Code. This new compliance dismissal parallels the compliance dismissal for expired inspection certificates (found in Section 548.605(b)). If the placard is expired for 60 days or less and the defendant remedies within 20 working days, the court shall dismiss the charge with up to a \$20 administrative fee. If the placard is expired for more than 60 days, the court has discretion to dismiss.

Subject: Animal Control Authorized to Possess a Bite Prevention Stick

H.B. 405

Effective Date: Immediately

Animal control officers in several jurisdictions throughout the state utilize a bite prevention stick; however, at least one district attorney has opined that because of the bite stick's similarity to a prohibited club under Section 46.01 (Definitions), Penal Code, an animal control officer carrying a bite stick would be committing a criminal violation under Section 46.02 (Unlawful Carrying Weapons), Penal Code.

H.B. 405 amends Section 46.15 of the Penal Code and authorizes animal control officers to carry clubs designed for protecting against the bite of an animal and to use such clubs in the performance of their official duties.

TMCEC Commentary: This bill also mandates that animal control officers receive training on the proper use of a bite prevention stick.

Subject: Class C Misdemeanors Relating to Safety Belts; No Children Under Five on a Motorcycle

H.B. 537

Effective Date: September 1, 2009

Under current law, a person commits an offense if the person operates a passenger vehicle equipped with safety belts and allows a child under the age of 17 who is not required to ride in a child safety seat to ride without being secured by a safety belt.

This bill amends current law to extend this offense to persons operating a passenger van designed to transport 15 or fewer passengers, including the driver.

This legislation also requires third-party transportation providers that contract with the state to have child safety seats when transporting a child to medical services under the Medical Transportation Program.

The bill also prohibits an operator of a motorcycle from carrying another person on the motorcycle unless the person is at least five years of age. A violation will be a Class C misdemeanor with a fine of \$100 to \$200. This provision applies only to motorcycles used on public roads and does not prohibit an operator from carrying a passenger younger than five seated in a sidecar attached to a motorcycle.

TMCEC Commentary: H.B. 537 removes the requirement that a person be sitting in the front seat to commit a no safety belt offense under Section 545.413(a) of the Transportation Code – so buckle up back seaters! The offense of operating a passenger van with a child under age 17 not secured by a safety belt is contained in new Subsection 545.413(b-1).

Subject: Mandatory Impoundment of Vehicle if Racing Results in Property Damage or Bodily Injury

H.B. 548

Effective Date: September 1, 2009

According to the U.S. Department of Transportation, excessive speed caused or contributed to 31 percent of fatal accidents in 2007, resulting in the loss of more than 13,000 lives. Speeding is a problem because it reduces the driver's control over the vehicle and makes it harder to react in time to hazards. Higher speeds translate to greater force in a crash, raising the likelihood of serious injury or death. Unfortunately, enforcement of criminal laws against street racing is inconsistent at best, in part because law enforcement officers cannot charge racers unless they are caught in the act.

H.B. 548 amends current law relating to the impoundment of certain motor vehicles involved in the commission of the offense of racing on a highway.

TMCEC Commentary: Section 545.420 of the Transportation Code is amended to require peace officers to impound a vehicle involved in a racing offense that results in property damage or personal injury. In 2003, the Legislature increased the penalties for racing to at least a Class B misdemeanor (higher if defendant had prior racing convictions, was racing while intoxicated or with an open container, or bodily injury resulted).

Subject: Public Intoxication of Children

H.B. 558

Effective Date: September 1, 2009

Currently, a child can be prosecuted in justice and municipal courts for purchasing, possessing, or consuming an alcoholic beverage. A child can also be prosecuted for operating a motor vehicle while having any detectable amount of alcohol in his or her system. But, a child cannot be prosecuted in those courts for appearing in a public place while intoxicated. State statutes do not give these courts jurisdiction over such cases. Instead, children taken into custody for public intoxication are referred to the juvenile court system. Unfortunately, due to heavy juvenile dockets in many counties, many juveniles are never charged with a crime and thus suffer no consequences for public intoxication.

In recent years, justice and municipal courts have increasingly been given more authority over juveniles charged with committing offenses. Additionally, these courts have the authority to employ juvenile case managers to assist the courts in supervising court orders in juvenile cases. As a result, the justice and municipal courts are able to require assessment and attendance at alcohol and drug abuse programs and other rehabilitative programs. If public intoxication is included in the jurisdiction of these courts, then it would increase the likelihood that children committing these offenses would be subject to rehabilitation services.

TMCEC Commentary: With the passage of this bill, municipal courts now have jurisdiction over the public intoxication of children under Section 49.02 of the Penal Code. The bill also amends Section 8.07 allowing persons who commit public intoxication under the age of 15 to be prosecuted for and convicted of the offense. Children may not be released by a peace officer or magistrate under Article 14.031, Code of Criminal Procedure, as adults may be. Children may, however, be released to a parent, guardian, custodian, or other responsible adult under Article 45.058, Code of Criminal Procedure. A law enforcement officer may, in lieu of taking a child into custody for public intoxication, issue a field release citation per Article 14.06 of the Code of Criminal Procedure only if the officer releases the child to a parent, guardian, custodian, or other responsible adult.

Subject: Period for Evidence of Financial Responsibility Needed to Release Impounded Vehicle

H.B. 586

Effective Date: September 1, 2009

Section 601.262, Transportation Code, currently provides that if a person is convicted of failure to maintain financial responsibility (FMFR) for a second or subsequent time the court must order the sheriff to impound the defendant's vehicle and the vehicle may not be released from impoundment unless the defendant provides evidence of financial responsibility covering a two-year period immediately following the date the defendant applies for the vehicle's release. Most insurance policies are written to cover a six-month period of time as opposed to a two-year time period. Accordingly, the typical defendant is unable to obtain the necessary insurance to allow for the release of his or her vehicle from impoundment.

H.B. 586 amends current law relating to the evidence required for the release of a motor vehicle after the impoundment of the vehicle for failure to maintain evidence of financial responsibility.

TMCEC Commentary: To get a car out of impoundment after a second or subsequent conviction for FMFR, a defendant has to produce evidence of financial responsibility for the next two years. This amendment requires the court, by order, to allow the defendant to show that evidence in increments of a period not less than six months. Section 601.267(1) provides that a sheriff shall release an impounded motor vehicle upon proof of an order of release from a court and payment of impoundment fee.

Subject: Exempts Certain Military Award Recipients from Payment of Parking Meter Fees

H.B. 618

Effective Date: Immediately

Under current law, a vehicle displaying disabled veteran license plates or license plates issued to honor former prisoners of war, Pearl Harbor survivors, and recipients of the Medal of Honor or Purple Heart is exempt 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, under certain conditions. However, vehicles displaying plates to honor recipients of the Air Force Cross or Distinguished Service Cross, the Army Distinguished Service Cross, the Navy Cross, the Medal of Honor, or the Legion of Merit medal are not included in this law.

H.B. 618 includes vehicles displaying "Legion of Valor" or "Legion of Merit" license plates in the exemption 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, under certain conditions.

TMCEC Commentary: H.B. 618 amends Section 681.008(b) of the Transportation Code. In addition to those honoree license plates listed above, this bill also exempts "Purple Heart" license plates. Note: see H.B. 2020, also amending Subsection 681.008(b).

Subject: Journalist Privilege to Not Testify in Criminal Proceedings

H.B. 670

Effective Date: Immediately

The purpose of this legislation is to foster the free flow of information about significant issues of public interest (such as government corruption, corporate malfeasance, etc.), to preserve a free and active press, while at the same time protecting the right of the public to effective law enforcement and the fair administration of justice. Currently, whistleblowers are hesitant to come forward to discuss matters of public concern (*e.g.*, issues at the Texas Youth Commission) because of fear of retribution.

As the law stands, a journalist can make no assurance that a whistleblower's identity or the information the whistleblower provides will be kept confidential without the journalist risking going to jail. Without the promise of confidentiality, information may not be provided to reporters and the public will suffer from the resulting lack of information, the continued "behind the scenes" malfeasance, and the inability to shine light on corruption that impacts society at large.

TMCEC Commentary: This bill has been a long time coming. By adding Article 38.11 and Article 38.111, it substantially increases the provisions contained in Chapter 38 of the Code of Criminal Procedure (Evidence in Criminal Actions).

Subject: Theft from a Nonprofit Organization

H.B. 671

Effective Date: September 1, 2009

A nonprofit organization's primary objective is to support an issue or matter of private or public concern for noncommercial purposes. The organization may be involved in a large range of areas such as the arts, charities, education, politics, religion, or sports. Currently the penalty for theft from a nonprofit organization is not distinguished from the penalty for other types of theft, with the degree of punishment determined by the value of the stolen property. Theft from a nonprofit organization adversely affects the organization as funds for nonprofit organizations are donated or grant-based. This bill increases the penalty for an offense of theft to the next higher category when the property is stolen from a nonprofit organization or by Medicare providers.

TMCEC Commentary: This amends Section 31.03 of the Penal Code elevating the penalty for theft from a nonprofit. Thus under the new law a person stealing a t-shirt from the hotel while attending a TMCEC seminar commits a Class C misdemeanor, while a person stealing a t-shirt from TMCEC at the seminar will be committing a Class B misdemeanor.

Subject: Photographic Evidence in Property Crime Cases and Property Hearings

H.B. 796

Effective Date: September 1, 2009

Under Article 38.34 of the Code of Criminal Procedure, a photograph of alleged stolen property is admissible as evidence, as is the property itself. "Property" is defined as any tangible personal property offered for sale or lease by a person engaged in the business of selling goods or services to buyers. Under Article 47.02 of the Code of Criminal Procedure, a judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property is pending may, upon hearing, direct property to be restored to a person, if it is proved to the judge that the person is a true owner of the property alleged to have been stolen, and it is in the possession of a peace officer. Upon written consent of the prosecutor, a magistrate with jurisdiction in the county in which the criminal action is pending may hold a hearing to determine the right of possession of property subject to the Certificate of Title Act of the Transportation Code, even if a criminal action is pending. Because photographs are allowed to be used as evidence only in some property crimes and only judges are permitted to oversee property hearings, a backlog exists, causing a lengthy wait for stolen property to be returned to owners.

H.B. 796 expands the definition of "property" in Article 38.34 to mean any tangible personal property, thereby allowing a photograph to be used as evidence in any property theft case. Upon written consent of the prosecutor, any magistrate with jurisdiction in the county in which a criminal action for theft or illegal acquisition of property was pending could hold a hearing to determine the right of possession of property, and direct the property to be restored to a person, if it was proved that the person was a true owner of the allegedly stolen property and that the property was under the control of a peace officer. The provision of Article 47.02 allowing a magistrate to oversee a hearing related to property subject to the Certificate of Title Act is eliminated.

Subject: Enhanced Penalties for Subsequent Burning Violations and the Burning of Certain Substances

H.B. 857

Effective Date: September 1, 2009

H.B. 857 creates more defined categories for outdoor burning violations and enhances the penalties for subsequent violations and the burning of certain substances.

TMCEC Commentary: This bill adds Section 7.187(b) to the Water Code. An individual who violates a rule adopted under the Clean Air Act by burning waste generated from their private residence commits an offense that is a Class C misdemeanor if it is a first violation not involving the burning of certain listed substances, a Class B misdemeanor for a second or subsequent violation on the same property, or a Class A misdemeanor if the violation involves the burning of certain listed substances.

Subject: Attorney's Fees for Civil Sign Violations

H.B. 875

Effective Date: Immediately

H.B. 875 amends current law relating to civil liability for erecting or maintaining certain outdoor signs or advertising. The bill authorizes a district attorney, county attorney, or municipal attorney to recover reasonable attorney's fees incurred in a civil action against a person who places or commissions the placement of a sign on the right-of-way of a public road, placement of which is not otherwise authorized by law.

TMCEC Commentary: In the 80th Legislature, Chapter 393 of the Transportation Code was amended by H.B. 413 to allow the imposition of "civil penalties" for illegally erecting an outdoor sign in a public right-of-way. This bill allows district, county, and city attorneys to each recover attorney's fees related to pursuing the imposition of such penalties. While municipal courts have the jurisdiction to hear certain criminal sign-related offenses, we know of no express authorization for municipal courts to impose civil penalties.

Subject: Criminal Background Records for SOB Permit Applicants

H.B. 960

Effective Date: Immediately

Currently, license applications for sexually oriented businesses (SOB) require a criminal background check. According to DPS, the Federal Bureau of Investigation will not grant municipalities or counties the authorization to access nationwide criminal history record information for the purpose of processing these license applications. As a result, if an applicant is convicted of a crime in another state that would prohibit the applicant from obtaining a license for operating a sexually oriented business in Texas, the municipality would not have access to that information.

H.B. 960, amending Section 411.122 of the Government Code, allows municipalities and counties access to the National Crime Information Center criminal history record information for sexually oriented business license applicants.

Subject: Firearms in School-Sponsored Programs

H.B. 1020

Effective Date: Immediately

The Education Code requires the expulsion of a student from school for the student's use, exhibition, or possession of a firearm on school property or while in attendance at a school-sponsored or school-related activity on or off school property. This provision effectively precludes a student's participation in school-sponsored shooting sports competition or other legitimately sanctioned shooting sports educational activities.

This bill, which amends Section 37.007, Education Code, prohibits the expulsion of a student solely on the basis of the student's use, exhibition, or possession of a firearm at an approved target range in the course of the student's participation in a school-sponsored shooting sports competition or a shooting sports educational activity sponsored or supported by the Texas Parks & Wildlife Department (TPWD) or by a sanctioning organization with TPWD.

Subject: Transmittal of Complaints and Warrants

H.B. 1060

Effective Date: September 1, 2009

When an arrest warrant is issued in one county, law enforcement officers in other counties have the ability to view the warrant information. However, to make an arrest of a person outside of the county in which a warrant is issued for that person's arrest, law enforcement officials in one county must transfer the warrant information to the law enforcement officials in the county where the arrest will be made. The means of transferring warrants for this purpose are provided for in Articles 15.08 and 15.09 of the Code of Criminal Procedure. Articles 15.08 and 15.09 of the Code of Criminal Procedure require that an arrest warrant be forwarded by telegraph. While this was the most modern and efficient technology when the statute was originally drafted, there are now more efficient methods for forwarding these documents.

H.B. 1060 amends the Code of Criminal Procedure to expand the methods by which complaints or warrants may be transferred to include secure facsimile transmission or other secure electronic means.

TMCEC Commentary: Seriously, does anyone still operate a telegraph? At the rate technology is changing, facsimile transmissions are hardly state of the art. Keep in mind, that the portion of this bill addressing the transmittal of "complaints" is referencing what is more commonly referred to as a "probable cause affidavit" and not the charging instrument described in Article 45.018 of the Code of Criminal Procedure.

Subject: Golf Carts on Beaches

H.B. 1213

Effective Date: Immediately

Some state policies regarding access to the public beaches of Texas are implemented through rules promulgated by the commissioner of the General Land Office in accordance with Section 61.011 of the Natural Resources Code. The legality of using golf carts on a beach is presently unclear and controversial. However, the use of golf carts is at times the only means by which a person with a physical disability may access the beach. By adopting rules regarding such use, the

commissioner may provide the guidance to local governmental authorities needed to address the issue of local beach access and dune protection.

H.B. 1213 requires the commissioner to promulgate rules on the use on a public beach of a golf cart for the transportation of a person with a physical disability.

TMCEC Commentary: Attention gulf coasters... stay tuned. There are no rules yet.

Subject: Theft of a Driver's License Now a Class B Misdemeanor

H.B. 1282

Effective Date: September 1, 2009

Given that driver's licenses or state identification certificates may soon be required in order for an individual to vote, it will be important that voters maintain possession of such identification cards. H.B. 1282 amends current law relating to the penalty for theft of a driver's license, commercial driver's license, or personal identification certificate.

TMCEC Commentary: Prior to this act, there was no special provision for theft of a driver's license or identification card in Section 31.03 of the Penal Code. Now, theft of a driver's license, commercial driver's license, or personal identification certificate is a Class B misdemeanor. Notably, the voter identification bill stalled in the House, killing a number of other bills.

Subject: Persons Authorized to Administer an Oath

H.B. 1285

Effective Date: Immediately

Current law authorizes a number of individuals who currently hold office in Texas to administer an oath. Only a retired judge has the ability to administer an oath after the judge's term has ended. There is a concern that while an incumbent of the office is authorized to administer an oath, a former state officer is unable to administer an oath once the former officer leaves office. This is disrespectful of the office and of the person who previously held office.

H.B. 1285, amending Section 602.002 of the Government Code, authorizes a former secretary of state, a former lieutenant governor, a former speaker of the House of Representatives, a former governor, or a former attorney general to administer an oath in Texas and issue a certificate of the fact.

Subject: Flexible School Day Programs

H.B. 1297

Effective Date: Immediately

Under current Texas law, if a student fails to meet minimum attendance requirements he or she may be required to repeat an entire course or school year. While research shows that students who repeat a grade have a higher risk of dropping out of school, there are no funds available for schools to provide students with the option to make up only the days needed to earn credit, rather than an entire course or school year.

H.B. 1297 aims to keep students on a forward-moving path toward graduation by allowing school districts to take advantage of the flexible school day option to serve students who do not meet minimum attendance requirements. Expanding eligibility for flexible school day programs provides districts with a funded opportunity to offer students enough make-up instruction to earn credit for a class without retaking the entire course or school year.

TMCEC Commentary: With this amendment to Section 29.0822, Education Code, a student can salvage credit by enrolling in a program offered during the school year or during the summer that allows the student to make up the number of days needed to satisfy minimum attendance requirements.

Subject: Increased Penalties for Causing Injury to Blind or Disabled Pedestrians

H.B. 1343

Effective Date: September 1, 2009

For many blind and disabled citizens of Texas, their primary means of transportation is walking. These pedestrians are at a higher risk of being involved in automobile accidents than pedestrians who have sight and monitor their surroundings. There are multiple reasons why blind and disabled citizens are becoming more prone to vehicular accidents. Motor vehicles have become quieter, making it more difficult for blind pedestrians to hear. Additionally, motorists often fail to yield the right of way.

Currently, a motor vehicle driver must take necessary precautions to avoid injuring or endangering a blind or disabled pedestrian. Failure to take the necessary precautions can result in the driver being charged with a Class C misdemeanor with a fine not to exceed \$200.

This bill increases the penalties incurred by motorists who cause serious bodily injury or death to blind pedestrians. This legislation raises awareness about blind pedestrians and, in turn, helps to decrease the number of vehicle-pedestrian accidents.

TMCEC Commentary: H.B. 1343 amends Section 552.003 of the Transportation Code (Pedestrian Right-of-Way at Crosswalk) to provide for a fine of not more than \$500 and 30 hours of community service (a portion to include sensitivity training) if it is shown at the trial that a collision resulted in serious bodily injury or death to a blind or disabled person. H.B. 1343 also adds Section 552.010 to the Transportation Code (by moving it from the Human Resources Code) providing the same penalty if a driver causes injury to a blind pedestrian guided by an assistance animal or carrying a white cane. As amended, a person could be charged under both sections for conduct arising from the same transaction. Notably, Section 552.010(a) provides that “no person may carry a white cane on a public street or highway unless the person is totally or partially blind.” Although it seems the Legislature intended to remove that as an offense in the Human Resources Code, Section 542.301 of the Transportation Code revives this as a Class C misdemeanor.

Subject: Freestanding Emergency Medical Care Facilities

H.B. 1357

Effective Date: September 1, 2009

Over the last decade, new types of medical facilities have been established to address a part of the health care market currently lacking services, namely freestanding emergency medical care. A

lack of regulation means there is no way of knowing how many of these facilities exist, although it is estimated there are approximately 40 in Texas. While these facilities are diverse in size and practice, none are currently regulated by the state in a manner consistent with other health care facilities. This has led to a recent Legislative Budget Board recommendation that freestanding emergency medical care facilities be regulated.

H.B. 1357 amends current law relating to the regulation of freestanding emergency medical care facilities, provides an administrative penalty, and creates an offense.

TMCEC Commentary: H.B. 1357 adds Chapter 254 of the Health & Safety Code. Although there are numerous exceptions (temporary clinics in disaster areas, clinics owned and operated by a manufacturing facility solely for the purpose of treating its employees and contractors, etc), a person may not establish or operate a freestanding emergency medical care facility without a license under Section 254.051. This license requirement takes effect September 1, 2009. A person who violates the license requirement commits a Class C misdemeanor under Section 254.204, and each day of a continuing violation constitutes a separate offense. Section 254.204 which creates the offense and penalty does not take effect until September 1, 2010.

Subject: Application of the PIA to Information Disclosed to Defense by Prosecution

H.B. 1360

Effective Date: Immediately

In Texas, records held by prosecutors related to a criminal case cannot be shared with the defense for fear that they might be subject to disclosure under the Public Information Act.

This information could be critical in criminal cases and could also jeopardize prosecution if it is in the public domain. There are also concerns that others named in reports related to a criminal investigation could also be put at risk. Potential jurors could also be influenced by media reports. A defendant who is eventually found innocent may also needlessly have damaging information made public causing harm to that person's reputation and future prospects.

The needs of justice in these instances are in conflict with the public's right to know. Sensitive records of a criminal investigation are of greater relevance in protecting public safety and the rights of innocent parties who may be affected.

H.B. 1360 allows information to be shared between prosecution and defense without the concern that the information may become public. The bill does not compel prosecutors to provide complete files to defense. It does, however, eliminate potential conflicts between the release of those files and the Public Information Act.

Subject: Definition of "Crime Victim" Expanded to Include Victims of Human Trafficking

H.B. 1372

Effective Date: September 1, 2009

Every year between 14,500 and 17,500 victims are trafficked into the United States from Asia, Central and South America, and Eastern Europe. Furthermore, a significant domestic component to human trafficking exists, whereby each year American citizens are forced into the sex and labor trade. Texas is a major corridor for human trafficking; nearly 20 percent of all human trafficking victims in the United States have been found in Texas.

The Texas Response to Human Trafficking report released by the Office of the Attorney General identifies protecting victims of human trafficking in Texas as a foremost goal for the 81st Legislature. The report expressly recommends that Chapter 56 (Rights of Crime Victims) of the Code of Criminal Procedure be amended to include victims of human trafficking.

The purpose of this bill is to include human trafficking victims in the existing definition of "victim" under Article 56.01(3), Code of Criminal Procedure, which will allow victims of human trafficking to be eligible for benefits and protections under the Victims' Bill of Rights and the Crime Victims' Compensation Act.

H.B. 1372 amends current law relating to the definition of victim in relation to certain crime victims' rights.

Subject: Access to Cemeteries

H.B. 1468

Effective Date: September 1, 2009

This bill adds Section 711.0521 of the Health and Safety Code making it a Class C misdemeanor to interfere with a person's reasonable right to access a cemetery or private burial grounds for which no public ingress or egress is available under Section 711.041. The owners of land surrounding such a cemetery or burial ground may designate the routes of access and reasonable hours of availability. A person who wishes to visit a cemetery at a time other than the designated hours must be allowed to do so if they provide written notice to the owners of surrounding lands not later than the 14th day before the visit and the time of the visit is reasonable.

Subject: Global Positioning Monitoring as a Condition of Release on Bond in Domestic Violence Cases

H.B. 1506

Effective Date: September 1, 2009

This bill grants a magistrate discretion in ordering a global positioning monitoring device to be issued to an offender at the time the offender is released on bond for an offense involving family violence or to an offender who is the cause of an order for emergency protection resulting from an offense involving family violence, sexual assault, aggravated sexual assault, or stalking.

Currently, if a person has been harmed as a result of domestic violence, there often is no way for the victim to know if the attacker is close enough to harm the victim until it is too late to escape.

TMCEC Commentary: This bill amends Article 17.292 of, and adds Article 17.49 to, the Code of Criminal Procedure. Though this legislation is prospective, this does not mean that the law prohibited global positioning monitoring as a reasonable condition of bond. It will be interesting to see how local governments develop guidelines for use of such technology. Cost to defendants was an issue in the floor debates on this bill. The final version of the bill reflects these concerns. This bill is narrower in scope than a similar bill, S.B. 1506.

Subject: Deferred Disposition Special Expense Fee

H.B. 1544

Effective Date: September 1, 2009

This bill amends Article 45.051, Code of Criminal Procedure, to authorize a municipal or justice court to collect the special expense fee prior to the end of the deferral period. Currently, there is no statutory authorization for a special expense fee to be collected until the end of the deferral period. In issuing the order of deferral, the judge may impose a special expense fee in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The special expense fee may be collected at any time before the date on which the period of probation ends. The judge may elect not to impose the special expense fee for good cause shown by the defendant. If the judge orders the collection of a special expense fee, the judge shall require that the amount of the special expense fee be credited toward the payment of the amount of the fine imposed by the judge.

TMCEC Commentary: In other words, this bill legitimizes what many municipal and justice courts have been doing for years without express statutory authority. Interestingly, a similar proposal, S.B. 365 would have mandated that a special expense fee be collected in all cases (no judicial discretion) and that the amount of the fee had to be equal to the amount of the suspended fine.

H.B. 1544 became a “leap pad” for a piece of legislation that appeared dead towards the end of Session: S.B. 412. S.B. 412 originated from a legislative proposal supported by the Texas Judicial Council. It merely allowed bond money during the deferral period to be applied to either the payment of the fine (*i.e.*, unsuccessful completion of the deferred disposition) or the special expense fee (*i.e.*, successful completion of the deferred disposition). H.B. 1544 is a compromise between proponents of S.B. 412 (which was judge-oriented and prosecutor friendly) and S.B. 365 (which was finance director-oriented and cash flow friendly). Thanks to actions by judges and prosecutors, in its final version, the special expense fee is still optional and cannot exceed the maximum amount that could have been imposed as punishment for an offense. However, the posting of the bond to secure the special expense fee is no longer in the bill. Why? Presumably, because under H.B. 1544, the special expense fee can now be “collected at any time before the date on which the period of probation ends.” (For those who understand the special expense fee to be something successful probationers pay at the conclusion of deferred disposition, this change in law may be a hard adjustment.) Inevitably, the new language begs the question: what happens if the special expense fee is not paid before the period of probation ends? Can the special expense fee not be collected afterwards?

Additionally, new language requires inference. Article 45.051(a), amended, states “If the judge orders the collection of a special expense fee, the judge shall require that the amount of the special expense fee be credited toward the payment of the amount of the fine imposed by the judge.” Such language fails to expressly state that this occurs upon default of the deferral order, though it can reasonably be implied. Note: Section 1 of this bill, detailed in Procedural Law, relates to the late entry of a plea by mail.

Subject: Guilty Pleas by Mail

H.B. 1544

Effective Date: September 1, 2009

Currently, it is necessary to expedite dockets in courts that hear misdemeanor cases by instituting the “mail box rule,” which allows a defendant to have a misdemeanor case disposed of without

having to physically appear in court. At any point until the trial on the merits of the case commences, a defendant can change his or her original pleading to guilty or nolo contendere and waive the right to a jury trial. The defendant can do so in person or by mail as long as the postmark on the envelope is dated before the date on which the trial commences.

H.B. 1544 requires the court, if the court receives a plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, to dispose of the case without requiring a court appearance by the defendant.

TMCEC Commentary: The preceding language does not tell the complete tale of H.B. 1544. As the story goes, a defendant received a citation for a traffic offense and failed to enter a plea by the appearance date stated on the citation. His plea was postmarked one day late. When the defendant contacted the court, he was informed that in order to enter a plea of guilty, he would have to make an appearance in court. One small problem, the defendant resided more than 200 miles from the location of the court. Round trip, that is six to seven hours in a car (if you are not speeding).

Under this amendment to Article 27.14 of the Code of Criminal Procedure, similarly situated defendants (*i.e.*, defendants who have received citations and have not availed themselves via the “mail box rule”) will be able to save some gas money. Likewise, judges will not be able to mandate road trips. In its initial version, a defendant could have dropped a plea of guilty in the mail the day before jury trial. This was not well received by courts or prosecutors. In its substitute version, the defendant’s plea of guilty or nolo contendere must be received at least five business days before the trial date. While some courts may still not like the final version of the bill, it is better than the initial version. Furthermore, there is nothing in this bill that suggests that such “tardy” defendants are immune from prosecution for either failure to appear or violate promise to appear. Nor does this amendment allow defendants who are summoned to court to avoid appearance by merely copping a plea.

Section 2 of this bill, detailed in Costs and Administration, relates to deferred disposition and the collection of the special expense fee.

Subject: Increased Penalty for Criminal Mischief Involving Disruption of Public Service

H.B. 1614

Effective Date: September 1, 2009

Current law provides that the penalty for the offense of criminal mischief is a Class A misdemeanor when the amount of pecuniary loss is less than \$1,500 and the actor caused disruption of a public service. There have been several instances in Texas and across the country in which the theft of certain items, such as copper wiring from telephone poles, endangered thousands of lives and required the expenditure of taxpayer dollars to remedy the situation. Such acts can create major safety concerns for areas that lose power and can have a devastating economic impact on businesses.

This bill, amending Section 28.03(b) of the Penal Code, makes the offense of criminal mischief a state jail felony if the pecuniary loss is less than \$20,000 and if the crime impairs or interrupts a public service, such as public transportation, a public gas supply, a public power supply, or public communications.

Subject: Exception for Law Enforcement to Offense of Unlawful Installation of a Tracking Device

H.B. 1659

Effective Date: September 1, 2009

The 76th Legislature (1999) created an affirmative defense to prosecution for the offense of unlawful installation of a tracking device for law enforcement officials that install tracking devices on vehicles in the course of criminal investigations or pursuant to a court order for the purpose of gathering information for a law enforcement agency. However, under this statute, it is possible that a law enforcement official acting appropriately in the line of duty can be prosecuted for such an act.

H.B. 1659, amending Section 16.06 of the Penal Code, removes the affirmative defense to prosecution for the offense of unlawful installation of a tracking device that the person committing the offense was a peace officer who installed the device in the course of a criminal investigation or pursuant to a court order to gather information for a law enforcement agency and provides that it is an “exception” to the application of the offense that the actor was such a peace officer.

Subject: Contempt for Jurors

H.B. 1665

Effective Date: September 1, 2009

Currently, the maximum penalty imposed on defaulting jurors is \$100. Many judges have voiced concern that this is not a sufficient amount to deter this behavior.

H.B. 1665 amends Section 62.111 of the Government Code to increase from \$10 to \$100 the minimum fine, and from \$100 to \$500 the maximum fine, for a lawfully notified petit juror who fails to attend court in obedience to the notice without reasonable excuse or files a false claim of exemption from jury service.

H.B. 1665 also amends Article 19.16 and Article 35.01 the Code of Criminal Procedure to increase from \$10 to \$100 the minimum fine, and from \$100 to \$500 the maximum fine, for a legally summoned juror who fails to attend without a reasonable excuse. The bill increases the fine for a summoned juror who is not present when a criminal case is called for trial and the parties have announced ready for trial by removing the provision that sets the maximum fine amount at \$50, and replacing it with an amount that may range from not less than \$100 or more than \$500.

TMCEC Commentary: H.B. 1665 does not, however, amend the specific provision in Article 45.027 of the Code of Criminal Procedure, which authorizes a fine not to exceed \$100 for juror contempt when a juror fails to appear for a municipal or justice court summons. Thus, there is a resulting disparity between the amount a juror can be fined for failure to appear in a county or district court and the amount a juror can be fined for failure to appear in a municipal or justice court. Nonetheless, Article 45.027 does not prescribe a penalty for filing a false exemption. The \$100 to \$500 fine in Section 62.111 of the Government Code, as amended by this bill, could arguably apply to a juror who files a false claim of exemption for municipal or justice court jury service.

Subject: Offense of Taking a Weapon from a Correctional Facility Employee or Official
H.B. 1721

Effective Date: September 1, 2009

Section 38.14, Penal Code, makes it unlawful for a person to take or attempt to take a weapon from a peace officer, parole officer, or community supervision and corrections department officer. Currently, the law does not include county jailers or detention officers that guard prisoners in jails and detention facilities. There are times when these officers are armed while guarding or transporting prisoners under their control. In order to protect these officers and prevent escape, it should also be unlawful for a person to try to disarm one of these officers.

H.B. 1721 relates to taking or attempting to take a weapon from an employee or official of a correctional facility.

TMCEC Commentary: See H.B. 3147 which also amends Section 38.14 of the Penal Code.

Subject: IDEA and Child Welfare Training for Municipal Judges and Justices of the Peace
H.B. 1793

Effective Date: September 1, 2009

Currently, municipal judges must complete 12 hours of judicial training per year, but there is no requirement as to the type of training they must complete. Often, children appearing before a municipal judge or a justice of the peace suffer psycho-social stressors in their home environments or have some form of disability, which may have led to the behavior that brought the child before the judge.

H.B. 1793 requires a judge who has jurisdiction over the cases of children charged with misdemeanor offenses punishable by fine only, excluding traffic offenses, public intoxication offenses, and violations of penal ordinances, to annually complete two hours of training specifically related to child welfare and the federal Individuals with Disabilities Education Act (IDEA).

TMCEC Commentary: Municipal judges will have to complete two hours of training related to child welfare and IDEA in every judicial academic year ending in 0 or 5. The Court of Criminal Appeals is required to adopt the rules necessary to provide for such training not later than March 10, 2010. While during Session this bill was couched in terms of education exclusively for the municipal judges and justices of the peace, the language of Section 22.1105 of the Government Code is actually broader, and includes all judges who may hear a complaint against a child alleging a fine only misdemeanor.

Subject: Regulation of Mobile Food Vendors in Texas Cities with 1.5 Million People
H.B. 1802

Effective Date: Immediately and January 1, 2010

Mobile food vendors are not required by state law to be regulated by the appropriate municipality. Registration and regulation of these mobile food vendors will provide for more oversight of their operation and food handling.

This bill requires certain municipalities to issue a medallion to mobile food vendors in the municipality and sets requirements for cities using the medallion. It applies to cities with a population of 1.5 million or more in a county with a population of 2.8 million or more to require a mobile food vendor (other than those who only vend pre-packaged or prepared food and do not prepare food) to obtain a time-stamp issued by the municipality certifying that the vendor is serviced daily. The time-stamp provisions will take effect January 1, 2010.

H.B. 1802 amends Section 437.0037 of the Health and Safety Code, relating to mobile food units in certain municipalities.

Subject: Allowing the Use of Laser Sighting Devices by Hunters with Certain Disabilities

H.B. 1805

Effective Date: Immediately

Current law does not prohibit a person, including a person with a physical disability, from hunting as long as the person has acquired a hunting license from the state and completed a hunter safety course. The Parks and Wildlife Code prohibits, with one exception, hunting with the aid of an artificial light, including a laser sighting device. The most common hunting method used by people with certain physical disabilities is to have a hunter's aide take position behind the hunter with a physical disability to help the hunter aim his or her weapon.

Hunting with a laser sighting device could improve the accuracy of a hunter with a physical disability, increasing the effectiveness of the shot and reducing the likelihood that the targeted game is only wounded.

H.B. 1805 authorizes a person with a documented permanent physical disability to use a laser sighting device while hunting during lawful hunting hours in open seasons when assisted by a person who is not a person with a physical disability, has a hunting license, and is at least 13 years of age. The bill requires a hunter who is a person with a physical disability to carry proof of being physically disabled.

TMCEC Commentary: This bill amends Section 62.005 (Hunting with Light) of the Parks and Wildlife Code, adding an exception in Section 62.0056. Generally, an offense under Chapter 62 is a Class C misdemeanor, but an offense under Section 62.005 is a Class A Parks and Wildlife Code misdemeanor, unless the defendant has one or more prior convictions under the section in which case it is a state jail felony.

Subject: Tampering with Forensic Reports and Analyses

H.B. 1813

Effective Date: September 1, 2009

Section 37.10, Penal Code, addresses crimes relating to tampering with governmental records. Although certain enumerated types of governmental records are treated as third degree felonies, there have been occasions where records of forensic testing and reports of inspection and maintenance of instruments used to test physical evidence have been tampered with. In these severe cases, a suspect can only be charged with a state jail felony offense.

H.B. 1813 provides that tampering with forensic, medical, chemical, toxicological, and ballistic reports, as well as reports of certification, inspection, or maintenance of instruments used to examine or test physical evidence, is a third degree felony.

Subject: Temporary Claims Service Signs During Periods of Natural Disaster

H.B. 1831

Effective Date: September 1, 2009

This bill amends Section 418.016 of the Government Code to allow the Governor to suspend certain procedural laws and rules during periods of natural disaster.

The bill suspends the application of a city's on-premise outdoor sign ordinance, pursuant to Chapter 216 of the Local Government Code during a declared disaster, to allow licensed or admitted insurance carriers to erect temporary signs to provide information regarding claims service.

TMCEC Commentary: The portion of interest to municipal courts is Section 1.03a of the bill. This provision did not appear in either the House or Senate version of the bill, but was agreed to in conference committee. While it does prevent enforcement of municipal sign ordinances for potential as many as 30 days, it also prescribes the size and height of a "temporary claims service sign" and prohibits their placement in the right-of-way.

Subject: Modification and Suspension of Court Rules During Disaster

H.B. 1861

Effective Date: Immediately

Over the last two years natural disasters have greatly impacted Texas. In the aftermath of Hurricane Ike, 2.5 million people lacked power, basic communications were halted, and an emergency evacuation was in order for many areas. Under these circumstances, courts had difficulty maintaining schedules and meeting certain statutory deadlines.

H.B. 1861 amends current law relating to the operation and administration of the judiciary in the event of a disaster.

TMCEC Commentary: This bill amends Section 22.0035 of the Government Code. It authorizes the Texas Supreme Court to modify or suspend court procedures during a disaster. If the disaster prevents the Supreme Court from acting, the Chief Justice of the Supreme Court may act on behalf of the Court. If the Chief Justice cannot act, because of the disaster, the Texas Court of Criminal Appeals may act on behalf of the Supreme Court. The bill also amends Section 74.093(c), Government Code, allowing for a coordinated response for the transaction of essential judicial functions in the event of a disaster. A similar bill, H.B. 4068, was vetoed by the Governor.

Subject: Agriculture Warrants
H.B. 1949
Effective Date: September 1, 2009

The Texas Department of Agriculture (TDA) currently does not have the authority to enter premises to inspect plants over the objections of the owner. In situations where TDA has reason to believe a plant pest or disease is present in an area, access to physical areas and plants is crucial in the fight to control the pest, disease, or the spread thereof.

H.B. 1949 adds Section 71.0083 of the Agriculture Code to authorize TDA to seek an agriculture warrant from a magistrate with respect to a plant disease or pest identified in the application of the warrant for the purposes of conducting inspections of items likely to contain plant pests or plant diseases, to conduct testing of plants, to trap insects, and to treat plant diseases and pests.

Subject: Class C Misdemeanor for Parks and Wildlife Code Reporting Violations
H.B. 1965
Effective Date: Immediately

The overpopulation of white-tailed deer has caused an unknown amount of damage to cash crops in Texas. Legislation was developed in previous sessions to address the problem; however, applying for a permit to control wildlife causing harm to Texas agriculture producers is time-consuming for applicants, counties, and the Texas Parks and Wildlife Department. A pilot program was created specifically for Tom Green County to develop a model for the program and to identify the challenging statutes in order to simplify the process.

This bill would change the permitting process for controlling protected wildlife that is causing serious harm to commercial agricultural, horticultural, and aquicultural interests, or that is a threat to public safety.

TMCEC Commentary: Generally, a violation of Section 43.157 of the Parks and Wildlife Code is a Class B misdemeanor, but this bill creates a new Class C misdemeanor by carving out an exception to Section 43.157 for a person who violates a reporting requirement adopted under the subchapter. Any reporting requirements would presumably be the result of the newly created Section 43.1515 of the Parks and Wildlife Code which grants the Texas Parks and Wildlife Commission the authority to adopt rules governing reports that must be submitted to the department by a person who holds a permit to control protected wildlife.

Subject: Expunction for the Deceased
H.B. 2002
Effective Date: Immediately

Recently it was discovered that Tim Cole was wrongly convicted and imprisoned for rape. After suffering from medical problems, he died in prison after serving 13 years. DNA evidence proved his innocence in 2008, and his family is now seeking the right to expunge his records to clear the family name of that wrongful conviction.

The purpose of H.B. 2002 is to allow immediate family members or close relatives of the deceased person to reinstate that person's good name.

H.B. 2002 authorizes a close relative of deceased person who, if not deceased, would be entitled under Article 55 of the Code of Criminal Procedure to expunction of records and files relating to an arrest, through the filing of an *ex parte* petition for the expunction of the deceased person's records. The bill requires a court that finds that the deceased person would be entitled to expunction of any record that is the subject of the petition, to enter an order directing expunction.

Subject: Creation of the Offense of Online Harassment

H.B. 2003

Effective Date: September 1, 2009

The increase of technological communication and social networking has increased online harassment and fraud. Online harassment occurs when a perpetrator assumes the identity of another and sends false, harassing, or threatening electronic messages to the victim or a third party who is unaware of the perpetrator's true identity. Online harassment has resulted in suicide, threats of physical and mental abuse, and more, but current Texas law does not provide a means of prosecuting some of the most egregious of these acts.

H.B. 2003 creates the offense of online harassment to deter and punish such offenders.

TMCEC Commentary: This bill adds Section 33.07 to the Penal Code, under which an offense is a Class A misdemeanor or third degree felony.

Subject: Enhanced Penalties for Driving on a Suspended License Without Maintaining Financial Responsibility

H.B. 2012

Effective Date: September 1, 2009

Currently, failure to maintain financial responsibility and driving without a valid driver's license are Class C misdemeanors. In late 2008, three pedestrians were struck by a car and seriously injured after participating in a half marathon at White Rock Lake in Dallas. One of the injured, Eric Nelson, works as an editor for the *Dallas Morning News* and is the reason why this legislation is known as Eric's Law. Although speed was not a factor, the driver lost control of the car before striking the individuals. After the accident, it was discovered that the driver was driving without a valid insurance card or a valid driver's license.

H.B. 2012 creates two new punishment enhancements: a Class B misdemeanor if a person drives with a *suspended* license and without insurance; and a Class A misdemeanor if the person driving without insurance or a valid driver's license has an accident and someone is seriously injured or dies as a result of that accident.

TMCEC Commentary: This bill amends Section 521.457 of the Transportation Code (Driving While License Invalid). It may be a good idea to inform your city's peace officers of this new enhancement provision so they know of their ability to file these citations in county court.

Subject: Parking Privileges for Out-of-State Disabled Veterans

H.B. 2020

Effective Date: September 1, 2009

According to the Transportation Code, all vehicles displaying in-state or out-of-state "disabled" license plates are eligible for handicap parking privileges. However, only vehicles displaying in-state "disabled veteran" license plates are eligible for those same privileges. This bill grants handicap parking privileges to out-of-state vehicles displaying "disabled veteran" license plates.

TMCEC Commentary: H.B. 2020 amends Subsections 681.008(a) and (b) of the Transportation Code, allowing for vehicles with out-of-state disabled veteran plates to park in handicap spaces and to be exempt from meter fees. Note: see H.B. 618, also amending Subsection 681.008(b).

Subject: Definition of "Sight Order" for the Purposes of Prosecuting Theft and Fraud

H.B. 2031

Effective Date: September 1, 2009

An increasing number of rental unit tenants pay their rent online with credit cards and the automated clearinghouse (ACH) debit system. The ACH, being an automated electronic system, is treated differently under the law than a signed bank check, and when there is not sufficient money in the account from which ACH attempts to draw money, there is no penalty under the law. Although Chapters 31 (Theft) and 32 (Fraud) of the Penal Code reference sight orders, there is no definition.

This bill adds the definition of "sight order" to the Penal Code for the purposes of prosecuting these offenses under Chapter 31 and Chapter 32.

TMCEC Commentary: This bill adds Subdivision (46-a) to Section 1.07(a) of the Penal Code defining "sight order." A "sight order" is a written or electronic instruction to pay money and includes a check, an electronic debit, or an automatic bank draft. By bringing the Penal Code into the technology age, law enforcement will be better able to prosecute offenses (including Class C theft).

Subject: Assault of a Family Member by Strangulation

H.B. 2066

Effective Date: September 1, 2009

In domestic violence cases, strangulation is statistically correlated with an increased risk of lethality. Ten percent of violent deaths in the United States are due to strangulation, with six female victims to each male. Where strangulation does not lead to death, it is an act that serves as a statistical indicator that the perpetrator is more likely to commit future acts of aggression against the victim. In fact, a domestic violence victim who has been strangled is nine times more likely to eventually be killed than one who has not.

TMCEC Commentary: H.B. 2066 amends Section 22.01 of the Penal Code elevating a Class A misdemeanor offense to a felony of the third degree if the offense is committed against a family member and involves strangulation or to a felony of the second degree if it is a second or subsequent offense committed against a family member and involves strangulation.

Subject: Anti-Gang and Graffiti Laws

H.B. 2086

Effective Date: Immediately and September 1, 2009

The bill does the following: (1) creates the crime of soliciting or directing street gang crime; (2) allows a city to use a map of gang-free zones as evidence at trial; (3) makes a member of a street gang or the gang itself liable to a city injured by the violation of a temporary or permanent injunction; (4) authorizes a city attorney to sue the gang or gang member for actual damages, court and attorneys costs, and a civil penalty not to exceed \$20,000; (5) requires that the money collected from such a suit be deposited in the neighborhood and community recovery fund with the attorney general to be used only for the benefit of the community or neighborhood injured; (6) allows a city to retain its sovereign immunity when bringing such a suit; (7) authorizes a city to pass an ordinance requiring a business to lock up aerosol paint behind a counter; (8) allows a city to pass an ordinance requiring removal of graffiti by a property owner if the city offers to remove the graffiti free of charge and the owner refuses; (9) allows a city to remove graffiti from a property if a property owner fails to remove graffiti on or before the 15th day after the city gives the owner sufficient notice; (10) allows a city to assess expenses against a property owner on whose property the city had to remove graffiti after the owner refused to do so; (11) creates an anti-gang competitive grant program; and (12) creates a public corruption unit at the Department of Public Safety to investigate allegations of participation in organized criminal activity by peace officers, and requires local cooperation with the unit.

TMCEC Commentary: The preceding analysis by the Texas Municipal League does a great job of trying to make this 41 page bill comprehensible. It amends multiple statutes in the Penal Code, Education Code, Code of Criminal Procedure, Local Government Code, and Government Code. In recent years, there has been a notable trend toward using civil process at the local level to deter gang activity. This bill builds upon this trend while substantially broadening the scope of criminal offenses that may also be pursued by law enforcement and prosecutors.

Subject: New Criminal Offense of Continuous Violence

H.B. 2240

Effective Date: September 1, 2009

Current law considers each instance of domestic violence as a separate offense, each of which is usually punishable as a misdemeanor. A victim of domestic violence is likely to drop the charges or to be unwilling to testify against the offender due to the repercussions awaiting the victim when the perpetrator is released.

H.B. 2240 treats a recurring pattern of domestic violence as a pattern of criminal behavior. The bill provides that two or more domestic violence offenses occurring in a 12-month period are aggregated into a continuous violence against the family offense, punishable as a third degree felony.

TMCEC Commentary: This legislation adds Section 25.11 to the Penal Code and will likely alter the prosecution of family violence in Texas. Magistrates should be aware of this new offense. Notably, however, the offense involves two or more assaults resulting in bodily injury. Accordingly, the types of family violence punishable as Class C misdemeanors cannot be used as the basis of alleging serial domestic violence.

Subject: Increasing the Penalty for Certain Incest Offenses

H.B. 2385

Effective Date: September 1, 2009

Under current law, an incest offense is a third degree felony, except when an actor engages in sexual intercourse or deviate sexual behavior with his or her cousin. In that case, the penalty is a second degree felony. Thus, the punishment for an individual engaging in sexual intercourse with the individual's cousin is actually more severe than if an individual performed the same activity with the individual's mother, father, stepchild, or sibling. This is clearly not the original legislative intent of the law.

H.B. 2385, amending Section 25.02(c) of the Penal Code, increases from a third degree felony to a second degree felony the penalty for engaging in sexual intercourse or deviate sexual intercourse with the actor's ancestor or descendent by blood or adoption.

Subject: Definition of Playgrounds

H.B. 2467

Effective Date: September 1, 2009

The definition of a "playground" has become outdated under current law. As it stands, a playground must consist of at least three separate apparatus intended for the recreation of children, such as slides, swing sets, and teeterboards. On many modern playgrounds, however, the activity centers are adjoined and thus not considered to be separate apparatus. This impedes the ability to fully prosecute crimes that take place on modern playgrounds. The definition of "playground" is the basis for restrictions placed on sexual predators. The outdated definition could allow sexual predators to find a loophole in the law that the Legislature did not intend.

H.B. 2467 redefines "playground" in Section 481.134 of the Health and Safety Code for purposes of offenses and penalties that occur in drug-free zones.

Subject: Recreational Off-Highway Vehicles and Golf Carts

H.B. 2553

Effective Date: September 1, 2009; September 1, 2011

Many of the references to off-highway vehicles in Texas statute are outmoded and outdated. In recent years, consumer demand has prompted off-highway vehicle manufacturers to develop innovative machines that have both recreational and utility purposes, as well as standard accessories that increase versatility and safety. The new factory-added features and accessories are calculated in vehicles' legal weight and dimensions, resulting in new production models that do not conform to statutory definitions in several states.

In addition, TxDOT registers 21 million vehicles and processes six million vehicle titles annually. There are more than 1,600 fees associated with this process, which is confusing for consumers and inefficient. The process should be streamlined to clarify the system for consumers and increase its efficiency.

H.B. 2553 amends current law relating to the registration and operation of certain motor vehicles.

TMCEC Commentary: This bill amends Section 29.011 of the Parks and Wildlife Code, requiring that safety belts be used in some off-highway vehicles if equipped with them. H.B. 2553 also provides the definitions of “all-terrain vehicle” and “recreational off-highway vehicle” in Section 502.001 of the Transportation Code. Under Section 502.006, municipalities can register recreational off-highway vehicles for operation on a highway or a public or private beach to maintain public safety and welfare.

This bill also adds Subchapter F to Chapter 551 on golf carts. There is no registration for golf carts (Section 502.0071 is repealed). Under Section 551.403, golf carts may be operated in a master planned community, on a public or private beach, or on a public highway with a 35 mph or less speed limit if operated during the day and either within two miles from where it is usually parked or to/from a golf course. A city can allow for use, under Section 551.404, on a highway with a posted speed limit of 35 mph or less anywhere within the city limits without these restrictions; and on the flip side, a city can prohibit use on a public highway if necessary in the interest of safety. Golf carts must display a slow-moving vehicle emblem if going 25 mph or less on a public highway. Golf carts also must have headlamps, taillamps, reflectors, a parking brake, and mirrors.

The bill also adds recreational off-highway vehicles to the requirements and prohibition in Chapter 663, pertaining to all-terrain vehicles.

Note: H.B. 2553 also contains provisions on registration fees for different categories of vehicles and replacement insignias, as well as fees for license plates and replacement license plates. These provisions do not go into effect until September 1, 2011.

Subject: Statewide Regulation of Towing Practices

H.B. 2571

Effective Date: September 1, 2009 and September 1, 2010

Towing companies and vehicle storage facilities take advantage of current towing laws that do not enforce or provide incentives to run clean practices. This bill cracks down on illegal and malicious towing practices to protect victims from unlawful tows, exorbitant fees, and tough vehicle recovery. This legislation amends Section 2308.002 of the Occupations Code to protect vehicle owners and penalize towers who disobey the law, while not punishing respectable towing companies.

TMCEC Commentary: A violation of regulations under this chapter is a Class C misdemeanor punishable by a fine of not less than \$500 or more than \$1,500 unless it is shown on trial that the person knowingly or intentionally violated the chapter, in which case it is a Class B misdemeanor. The Texas Commission on Licensing and Regulation shall also adopt rules for denying a tow company or operator license upon a guilty or no contest plea to a felony, misdemeanor punishable by jail time, or a fine exceeding \$500 (including prior convictions for towing violations).

Subject: Class C Criminal Trespass
H.B. 2609
Effective Date: September 1, 2009

Section 30.05, Penal Code, currently provides that when a person trespasses onto residential property a peace officer's only recourse is to arrest the trespasser. There are some cases where this is not the best use of the officer's time and issuing a ticket would be sufficient.

H.B. 2609 makes trespass on residential land, agricultural land, a recreational vehicle park, or a building a Class C misdemeanor where the trespass is committed on agricultural land within 100 feet of the boundary of the land or on residential land within 100 feet of a protected freshwater area. The bill creates an affirmative defense to the prosecution of the offense that the actor was an employee of an electric or gas utility or other entity that has authorization to enter the land and the actor is performing a duty within the scope of the actor's employment.

TMCEC Commentary: The City of New Braunfels requested this change as it experiences a large number of visitors who tube the river and trespass on residential property when exiting the river. Instead of arresting the trespasser, officers will now be able to issue citations to the defendants.

Subject: Quasi-Judicial Enforcement of Certain Health and Safety Ordinances
H.B. 2647
Effective Date: September 1, 2009

Subchapter A (Dangerous Structures), Chapter 214 (Municipal Regulation of Housing and Other Structures), and Subchapter C (Quasi-Judicial Enforcement of Health and Safety Ordinances), Chapter 54 (Enforcement of Municipal Ordinances), Local Government Code, provide municipalities with means to address substandard and dangerous buildings. Cities are authorized to take certain actions such as ordering that dangerous buildings be repaired or demolished, assessing a civil penalty for failure to make repairs, and imposing a lien against the property in the event that the municipality incurs the cost of making ordered repairs or the costs of demolition.

Chapter 214 provides the municipality with certain remedies for enforcing its actions with regard to regulating housing and other structures. For example, if the city allows an owner more than 90 days to make repairs and the owner owns property within the municipality with a value in excess of \$100,000, the city is authorized to require the owner to post a bond or other security. Chapter 214 also specifies that if affected buildings are not vacated, secured, repaired, removed or demolished within the allotted time, the municipality is authorized to perform those actions at its own expense, and in doing so, is authorized to impose a privileged lien against the subject property. Chapter 54 does not specifically include these same enforcement provisions.

H.B. 2647 provides that a municipality that operates under the authority of Subchapter C, Chapter 54, Local Government Code, relating to quasi-judicial enforcement of health and safety ordinances, has the same enforcement remedies as a municipality operating under the authority of Subchapter A, Chapter 214, Local Government Code, relating to municipal regulatory authority regarding substandard buildings and other dangerous structures.

Subject: Defense to Unlawful Carrying of a Handgun

H.B. 2664

Effective Date: September 1, 2009

Under Section 46.035, Penal Code, a concealed handgun licensee can be charged with a Class A misdemeanor for carrying the concealed handgun into an establishment that derives 51 percent or more of its income from the sale of alcoholic beverages even if the establishment has failed to post the statutorily required notice that the establishment derives 51 percent or more of its income from the sale of alcoholic beverages.

H.B. 2664 provides a defense to prosecution for a concealed handgun licensee who violates the prohibition on carrying a concealed handgun into an establishment that derives 51 percent or more of its income from the sale of alcoholic beverages if that establishment has failed to post the statutorily required notice.

Subject: Cities' Authority to Lower Speed Limits; Required Reports

H.B. 2682

Effective Date: Immediately

Current law allows municipalities to lower speed limits within an urban district under the prima facie limit of 30 miles per hour (mph) when the roadway is 35 feet or less in width and does not prohibit parking on one or both sides.

The current design codes of many municipalities require new urban district roadways to be a minimum of 42 feet. Under these standards, no new roadways within a municipality would be eligible to lower the prima facie limit to less than 30 mph. Additionally, many older roadways found within a city that would meet the maximum size standard of the legislation would likewise be disqualified based upon parking restrictions.

TMCEC Commentary: Cities will now have the authority, under Section 545.356 of the Transportation Code, to lower speed limits on two-lane, undivided highways, which are not part of the state highway system, to not less than 25 mph. In doing so, a city must post on the internet and submit to TxDOT a report comparing 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: Concealed Handgun Licenses

H.B. 2730

Effective Date: September 1, 2009

H.B. 2730 relates to the continuation and functions of DPS.

TMCEC Commentary: Section 411.187 of the Government Code relates to DPS suspension of a concealed handgun license if a person is arrested for an offense involving family violence and is the subject of a magistrate's order for emergency protection. Article 11 of the bill amends this statute to *require* that DPS suspend the license in this situation. Furthermore, Article 17.292 of the Code of Criminal Procedure is amended to

require a magistrate to suspend a license to carry a concealed handgun held by the defendant in an order for emergency protection.

Article 12A also amends Section 411.187, relating to DPS suspension, by removing a person's failure to display a concealed handgun license as required by Section 411.205 of the Government Code as a ground for license suspension. An offense under Section 411.205 is currently a Class B misdemeanor if the holder is carrying a handgun and fails to display the license upon demand by a magistrate or peace officer. Under this amendment, failure to display a license is no longer an offense, just a requirement, and thus cannot be prosecuted after September 1st. Pending prosecutions on September 1st are dismissed. However, the amended text of Section 411.187 in this article of the bill retains DPS' discretion in suspending the license; whereas, the amendment discussed in the preceding paragraph provides that DPS shall suspend the license. Consult the Code Construction Act, Chapter 311 of the Government Code, to make sense of these conflicting amendments.

H.B. 2730 also amends provisions of the Government Code that relate to a judge's ability to obtain a concealed handgun license. Judges currently are not required to submit a handgun proficiency certificate to obtain or renew a concealed handgun license. With this amendment, judges no longer have that exemption; rather, judges may obtain from an approved handgun proficiency instructor a sworn statement that the judge has demonstrated proficiency with the handgun. (Sections 411.1882 and 411.201.)

See more of H.B. 2730 detailed in Costs and Administration, Substantive Law, and Traffic Safety and Transportation Law.

Subject: DPS Reporting

H.B. 2730

Effective Date: September 1, 2009

H.B. 2730 relates to the continuation and functions of DPS.

TMCEC Commentary: Article 17 of this 242-page bill amends the time deadlines for reporting certain convictions to DPS. Section 543.203 of the Transportation Code is amended to require the magistrate, judge, or clerk to submit to DPS, not later than the *seventh* day after a conviction or bail forfeiture, the written record of a case involving a violation of a law regulating the operation of a vehicle on a highway. H.B. 2730 makes the same change to Section 543.204, requiring a judge who has placed a defendant on deferred disposition and subsequently enters an adjudication of guilt under Article 45.051, Code of Criminal Procedure, to submit the record to DPS not later than the *seventh* day after adjudication. (The law currently allows courts 30 days to submit these reports.)

Interestingly, this bill also amends Section 522.061, requiring a commercial driver's license (CDL) holder, who is convicted in another state of violating a state law or local ordinance relating to motor vehicle traffic control, to notify DPS by the seventh day after the date of conviction. The CDL holder must also notify their employer within seven days of any in or out-of-state

convictions. How often did CDL holders report these convictions to begin with when they had 30 days from the date of conviction to report?

See more of H.B. 2730 detailed in Magistrate Duties, Substantive Law, and Traffic Safety and Transportation Law.

Subject: DPS Surcharge Program, Driver's License Requirements, and Other

H.B. 2730

Effective Date: Immediately; September 1, 2009; September 1, 2011

H.B. 2730 relates to the continuation and functions of DPS.

TMCEC Commentary: Among its 242 pages and 23 articles, this bill makes several amendments to the Transportation Code. The bill adds Section 521.1426 and Subsection 521.101(j) providing that DPS may not issue a driver's license or personal identification certificate to a person who has not established a domicile in Texas. Additionally, the bill provides that post office boxes are not valid addresses; applicants for a license must provide a physical residential address. To identify and verify unique addresses and domiciles on applications, DPS shall establish a new internal verification system. Section 521.029 of the Transportation Code is amended to provide new residents 90 days to obtain a Texas driver's license, an increase over the 30 days currently allowed by law. These provisions are effective immediately.

Effective September 1, 2009, federal or state judges and their spouses can use their courthouse address as their residence address on their driver's license. Note: municipal judges are not considered state judges for purposes of this amendment. Further note: this amendment was also made in H.B. 598. Moving from judges to inmates, the bill provides that DPS must accept an inmate or offender identification card issued by the Texas Department of Criminal Justice as satisfactory proof of identity in an application for a driver's license only if the applicant also provides supplemental verifiable records that aid in establishing identity.

Article 16 of H.B. 2730 pertains to automatic suspension of a driver's license and adds as a ground for automatic suspension a conviction for driving while intoxicated with a child passenger (Penal Code, Section 49.045). Article 18 of the bill also adds a conviction for transporting, concealing, or harboring an alien, when a motor vehicle was used in the commission of the offense, to the list of convictions resulting in a CDL holder being disqualified for life from driving a commercial motor vehicle, if the conviction is final after September 1st (Transportation Code, Section 522.081).

Article 15A of H.B. 2730 provides that effective September 1st, the presumption that a driver is operating a vehicle in violation of the requirement to maintain financial responsibility does not apply if a peace officer determines through Texas Sure that financial responsibility has been established for the vehicle. The bill repeals the version of Chapter 601, Subchapter N that was added in 2003, leaving only the 2005 version.

Article 15 of H.B. 2730 contains many provisions relating to the DPS Driver Responsibility Program. Under Section 708.157(c) of the Transportation Code, DPS shall establish an indigency program for those license holders with surcharges. This amendment was included in two sections of this bill (in Article 15 and also in Section 6.10) – and removed DPS' discretion in establishing an indigency program. Amended Section 708.151 provides that DPS shall send at least three notices to the holder when a surcharge is assessed and provides requirements for the notices.

Section 708.152 provides that a license may not be suspended before the 105th day after the date the surcharge was assessed.

Currently, under Section 708.153, DPS cannot establish rules that would permit a person to pay a surcharge over a period of more than three years. H.B. 2730 amends this section to provide minimum time periods to holders to pay a surcharge. DPS may not require a person to pay surcharges of \$500 or more over a period of less than 36 consecutive months; surcharges of \$250 - \$499 over a period of less than 24 consecutive months; or surcharges of \$249 or less over a period of less than 12 consecutive months. Further, if a person currently skips an installment payment, DPS can either reestablish the installment plan or declare the remaining amount of the unpaid surcharge due immediately. With this amendment, if a person misses a monthly payment, upon payment of at least the amount missed, the holder can return to the installment plan, and DPS can no longer declare the remaining amount due immediately.

Moreover, H.B. 2730 adds Section 708.158 to the Transportation Code and provides that DPS shall waive all surcharges for a person who is indigent. The new section also provides a procedure for finding indigency. The bill also adds Section 708.056, providing that DPS shall establish a procedure to deduct one point accumulated by a license holder to account for each year the person does not accumulate more points – kind of like the Allstate commercials where it pays to not have any accidents. The amendments will lessen the burden of the surcharge program on license holders. However, note that the provisions in Article 15 are not effective until September 1, 2011, leaving plenty of time in the next legislative session to amend or repeal them!

Note that Article 12 of this bill contains many of the same provisions as H.B. 339 (the Less Tears More Years Act), pertaining to driver education for minors.

See more of H.B. 2730 detailed in Costs and Administration, Magistrate Duties, and Substantive Law.

Subject: New Offenses Relating to Driving Records and Fake IDs

H.B. 2730

Effective Date: Immediately and September 1, 2009

H.B. 2730 relates to the continuation and functions of DPS.

TMCEC Commentary: Among its 242 pages, this bill creates two new offenses. Section 6.07 of the bill adds Section 521.060 to the Transportation Code, implementing a driver record monitoring pilot program. For one year, DPS can contract with employers or insurers to provide driver record monitoring services. Effective September 1st, it is a Class B misdemeanor for a person with whom DPS has contracted to directly or indirectly disclose certain information received from DPS under this contract.

H.B. 2730 also adds Section 521.4565 (Conspiring to Manufacture Counterfeit License or Certificate) to the Transportation Code. An offense under this section is a state jail felony, unless committed by a public servant, in which case an offense is a third degree felony. Someone really wanted this provision to pass as it was included in the bill twice, once under Section 6.08, with an effective date of September 1st, and again in Section 13.06, effective immediately.

See more of H.B. 2730 detailed in Costs and Administration, Magistrate Duties, and Traffic Safety and Transportation Law.

Subject: Fraudulent Conduct in the Mortgage Lending Process

H.B. 2840

Effective Date: September 1, 2009

The 80th Legislature (2007) enacted H.B. 716 to address rising concerns regarding fraud in the residential mortgage arena. The effects of mortgage fraud on the residential lending industry range from monetary losses incurred by financial companies to criminal and administrative actions. Consumers consequently suffer higher loan rates and fees, stolen identities, and, quite possibly, impaired credit ratings. These losses increase the cost of financing for consumers and increase the risk to all participants in the mortgage process. This bill seeks to provide law enforcement and the Texas Department of Housing and Community Affairs (TDHCA) additional tools to fight fraudulent conduct in the mortgage lending process.

H.B. 2840 adds TDHCA to statutes relating to reporting, sharing information on, and investigating fraudulent activity. The bill makes it an offense to intentionally or knowingly make a false or misleading written statement in providing a property appraisal for compensation.

TMCEC Commentary: This bill amends Section 32.32 of the Penal Code, but an offense could only be a Class C misdemeanor if the value of the property or amount of credit is less than \$50.

Subject: Authorizes General Law Cities to Provide Longevity Pay to City Employees

H.B. 3001

Effective Date: Immediately

Currently, many cities, including general law municipalities, have ordinances that allow cities to provide longevity pay. However, a 1990 Attorney General Letter Opinion (LO-90-14) found no law giving a general law municipality the authority to provide such pay.

H.B. 3001 provides, by adding Section 141.010 of the Local Government Code, that a Type A or B general law municipality may consider longevity and cost of living in setting the salaries of municipal employees.

Subject: Disabled Parking Placards; Penalties for Parking in Spaces Designated for Persons with Disabilities

H.B. 3095

Effective Date: September 1, 2009

H.B. 3095 modifies laws governing the administration and use of handicapped placards for parking. The blue placards would be issued exclusively for a person with a permanent disability, while red placards would be issued exclusively for a person with a temporary disability. An application for a permanent handicapped placard would be exempted from the \$5 application fee.

TMCEC Commentary: H.B. 3095 amends Sections 681.002, 681.003, and 681.009 of the Transportation Code. H.B. 3095 also increases the penalties for parking in spaces designated for persons with disabilities under Section 681.011:

	Current Law	H.B. 3095
First offense	\$250 - \$500 fine	\$500 - \$750 fine
One prior conviction	\$300 - \$600 fine	\$550 - \$800 fine and 10 hrs CS
Two prior convictions	\$300 - \$600 fine and 10-20 hrs CS	\$550 - \$800 fine and 20-30 hrs CS
Three prior convictions	\$500 - \$1,000 fine and 20-50 hrs CS	\$800 - \$1,100 fine and 50 hrs CS
Four prior convictions	\$1,000 fine and 50 hrs CS	\$1,250 fine and 50 hrs CS

CS = community service.

Note: see S.B. 52, which also increases the penalties under section 681.011 – to a different extent. Consult the Code Construction Act, chapter 311 of the Government Code, to make sense of these two amendments.

Subject: Creation of the Texas Department of Motor Vehicles (DMV)

H.B. 3097

Effective Date: September 1, 2009; September 1, 2010

TxDOT has historically been an agency whose main function has been to build roads. However, over time, other divisions have been created within TxDOT that are primarily customer service related and vehicle related. These divisions include the Motor Carrier Division (MCD), the Automobile and Burglary Theft Prevention Division (ABTPA), the Motor Vehicle Division (MVD), and the Vehicle Titles and Registration Division (VTR). Maintaining these divisions under the TxDOT umbrella does not allow TxDOT to focus on its core mission of financing and building Texas's transportation infrastructure.

H.B. 3097 amends current law relating to the creation, organization, governance, duties, and functions of the Texas Department of Motor Vehicles, including the transfer of certain duties to the Texas Department of Motor Vehicles and the Texas Department of Licensing and Regulation, and provides penalties.

TMCEC Commentary: This bill transfers authority over the registration and title of vehicles, including the Scofflaw program, to the new DMV, effective November 1, 2009. TxDOT will continue to oversee these divisions until the transfer is complete. H.B. 3097 also adds Chapter 2309 to the Occupations Code regulating “used automotive parts recyclers” and creates a new Class C misdemeanor in Section 2309.254 for violating the new licensing requirements, effective September 1, 2010.

Subject: Service of Process on Condo Unit Owners in City More than 1.9 Million

H.B. 3128

Effective Date: September 1, 2009

When a city files suit for the authority to demolish a large condominium complex, the city must sue and serve each defendant. Such defendants are usually individual property owners. Very often, this process is time consuming, expensive, and allows the substandard and often dangerous conditions to continue while the city struggles to obtain service on each owner. Without a mechanism allowing for the efficient and timely service of owners of condominium complexes, a city's ability to act for the health and safety of its citizens is compromised.

The bill affects only cities with a population of more than 1.9 million and provides a vehicle whereby condominiums that are considered substandard may be served in a more expeditious manner in order to abate the substandard conditions in a timely manner.

TMCEC Commentary: Under this bill, service of process may be served to the unit owner's last known address on file with the appraisal district. It amends multiple sections in Chapter 82 of the Property Code and Section 214.001 of the Local Government Code.

Subject: Offense of Taking a Weapon from an Employee or Official of a Correctional Facility

H.B. 3147

Effective Date: September 1, 2009

Private security officers commissioned under the Private Security Act, and regulated by the Department of Public Safety, protect public and private interests throughout Texas. Recently, the number of attacks against security has increased. Several officers have been beaten or shot with their own weapons, and many more have been overpowered and had their weapons stolen. Currently, the only available penalty for this offense is punishment for theft.

H.B. 3147 amends current law relating to taking or attempting to take a weapon from a commissioned security officer.

TMCEC Commentary: H.B. 3147 is one of two bills that (see H.B. 1721) amend Section 38.14, Penal Code, and make the penalty for the offense of attempting to take or taking a weapon from a commissioned security officer the same as that of attempting to take or the taking of a weapon from a peace officer, parole officer, or a community supervision and corrections department officer.

Subject: County Fire Marshals Designated as Peace Officers

H.B. 3201

Effective Date: Immediately

County fire marshals, as currently defined by Chapter 352 (County Fire Protection), Local Government Code, undertake responsibilities that are law enforcement related. These responsibilities include imposing criminal penalties based on fire code or outdoor burning violations, criminal code enforcement, and various other responsibilities as assigned by a commissioner's court.

This bill adds fire marshals and any related officers, inspectors, or investigators commissioned by a county for purposes of county fire protection to the list of persons who are designated as peace officers under state law.

TMCEC Commentary: Though some cities have designated certain individuals with the title “fire marshal,” this bill speaks only to the statutory county fire marshal. As we have noted in our past discussion of issues relating to the issuance of citations, as fire marshals were not included in the statutory list of peace officers, they (like municipal code enforcement personnel) could not write citations under *state* law (emphasis added). H.B. 3201 expands the list of officials who may write citations to include county fire marshals.

Subject: Prosecution and Punishment of Arson Offenses

H.B. 3224

Effective Date: September 1, 2009

The purpose of H.B. 3224 is to clarify what constitutes the offense of arson and to provide a penalty that will allow an appropriate standard of proof that will discourage prosecutors from pleading to a lesser charge while providing an appropriate penalty for the offense. This bill makes it a state jail felony for a person to intentionally start a fire or cause an explosion that either recklessly damages a building of another or recklessly causes serious bodily injury or death to another person.

This bill amends the Texas Penal Code to revise and reduce the penalty for arson from a third degree felony to a state jail felony. Under current law, this type of arson is a third degree felony. As such, the burden of proof is raised in a manner that inclines prosecutors to seek a lesser charge. Many times this causes pleading down to a lesser charge of criminal mischief, which is punishable as a Class C misdemeanor. The new law will accommodate the appropriate burden of proof for that penalty class.

TMCEC Commentary: An offense under the newly amended Section 28.02 of the Penal Code will only require a person to intentionally start a fire or explosion and to recklessly cause damage or injury. The current version of the offense requires the actor to intentionally start a fire with the intent to cause damage to a building or with the intent to injure any person (and to recklessly cause damage or injury).

Subject: Prohibited Items in Correctional Facilities

H.B. 3228

Effective Date: September 1, 2009

The 78th Legislature (2003) enacted legislation relating to prohibited substances and items in correctional facilities or on property of the Texas Department of Criminal Justice (TDCJ). The intent of the legislation was to make it a third-degree felony offense for an inmate of a correctional facility operated by or under contract with TDCJ to possess a cellular telephone. The law has been amended by subsequent legislatures, but the offense of possessing a cellular telephone remains applicable only to a narrow definition of a TDCJ correctional facility that does not include certain local facilities such as a county jail.

This bill expands the definition of "correctional facility," in which it is a crime for a person held in lawful custody to possess a prohibited substance or item, including a cellular telephone or other wireless communication device or a component of one of those devices.

TMCEC Commentary: H.B. 3228 amends Section 38.11, Penal Code, and, in addition to expanding the definition of a "correctional facility," provides a broad definition of "component" which includes a SIM card, portable memory chip, a battery or battery charger, and minutes purchased for a cellular contract.

Subject: New Court Cost on Moving Violation Convictions to Fund Civil Justice Fund

H.B. 3389

Effective Date: September 1, 2009 (Pursuant to Section 51.607 of the Government Code, costs in this Act take effect January 1, 2010)

The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. TCLEOSE licenses and certifies qualified individuals as peace officers, county jailers, and telecommunicators; approves and evaluates training providers; develops and maintains basic training and continuing education courses; and takes disciplinary action against licensees to enforce statute and rules.

The Sunset Advisory Commission found that Texas has a clear and ongoing need to train and regulate law enforcement and county corrections personnel, but that changes are needed to improve TCLEOSE's operations and the accountability of TCLEOSE's current responsibilities. This bill outlines those changes and adds a court cost.

TMCEC Commentary: This bill requires TCLEOSE to develop a method to track and analyze complaints made to law enforcement agencies. At the last minute, someone must have realized there was no means to fund this mandate, thus the committee amendment was adopted, adding Article 102.022, establishing a "Civil Justice Fee" in the Code of Criminal Procedure and amending Section 102.121 of the Government Code, to add a ten cent (.10) civil justice fee on each moving violation. The amendment is contained in Section 30 of the bill. The court clerk is required to collect the cost and keep a separate record of the funds. The good news is that the city may retain one cent of each fee if the funds are remitted to the Comptroller in a timely fashion.

Subject: Rules Relating to New Three-Wheeled Passenger Vehicles ("Motorcycles")

H.B. 3599

Effective Date: September 1, 2009

A new breed of hybrid vehicles are emerging in the United States due to consumer interest in fuel efficient and clean-fuel vehicles, and some of these vehicles fall under the definition of a motorcycle rather than an automobile because they have three wheels instead of four. However, these roadworthy vehicles are more similar to automobiles than motorcycles in regard to safety features, such as enclosed cabs, steering wheels, seat belts, and windshields. Regardless of these safety features and because these vehicles are officially classified as motorcycles, their drivers are currently required to obtain a Class M motorcycle driver's license, which entails learning to drive a two-wheeled motorcycle and taking a driver's test on a motorcycle. While these vehicles share some similarities to a motorcycle, the three wheels give the driver more stability than a motorcycle, and the cab is fully enclosed, like most automobiles.

H.B. 3599 provides a definition for a motorcycle that is an enclosed three-wheeled passenger vehicle and incorporates Federal Motor Vehicle Safety Standards into that definition to ensure adequate safety features. The bill allows drivers of these vehicles to operate them with a Class C driver's license, clarifies current law that drivers and riders of these vehicles are not required to wear helmets, and ensures that enclosed three-wheeled vehicles as described in the bill join traditional motorcycles in having the use of preferential lanes.

TMCEC Commentary: H.B. 3599 adds a specific definition of this type of "motorcycle" to Subsection 521.001(6-a) of the Transportation Code and amends Section 521.085 to provide that one does not need a Class M license to operate it. It is a motorcycle. It is an automobile. Perhaps we should call it a "motormobile" or an "autocycle." Whatever it is, this bill attempts to clarify what rules govern it.

Under Chapter 661 of the Transportation Code, though drivers and riders do not have to wear a helmet, they do have to wear a seatbelt. They can drive in preferential lanes (*i.e.*, HOV lanes); but they still have to pay tolls.

Subject: New Defense to Prosecution for No Safety Belt Offense by Solid Waste Company Employees

H.B. 3638

Effective Date: September 1, 2009

Currently, a person whose official job duties require frequent entry and exit from a vehicle is exempted from having to wear a seatbelt while performing his job. These jobs include United States Postal Service employees, utility company employees (meter reading), and newspaper delivery personnel.

Recently, a solid waste company employee was ticketed for failing to fasten his seatbelt while driving a solid waste truck through a neighborhood picking up trash at the curb. After further investigation, it was found that this has happened on several occasions. The job duties of solid waste pickup employees require frequent stops and repeated entry and exit from the vehicle, in many cases much more than those jobs currently exempt under the law.

H.B. 3638 amends current law relating to the use of safety belts by the operator of or a passenger in a motor vehicle used exclusively to transport solid waste.

TMCEC Commentary: This defense to prosecution will apply to offenses committed before, on, or after the effective date and only to offenses committed under subsection 545.413(a).

Subject: Denial of Bail for Violation of Bond Where Child is Alleged Victim

H.B. 3751

Effective Date: September 1, 2009

H.B. 3751 amends Articles 17.41 and 17.153 of the Code of Criminal Procedure to authorize the taking into custody and the denial of release on bail pending trial of a defendant who is charged with a sexual offense or an offense involving prohibited sexual conduct or sexual performance by a child, who violates a condition of bond, and whose bail in the case is revoked for the violation, if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that

the defendant violated a condition of bond related to the safety of the victim of the offense or the safety of the community.

The bill requires a magistrate, if the magistrate finds that the violation occurred, to revoke the defendant's bond and order that the defendant be immediately returned to custody. The bill establishes that once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. The bill establishes that such a discharge from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond. The bill makes its provisions regarding denial of bail and revocation of bond applicable to a defendant charged with such a felony offense committed against a child younger than 14 years of age.

Subject: Uniform Standards for Periodic Fire Safety Inspections

H.B. 3866

Effective Date: September 1, 2009

Many state agencies and local governments, as part of their oversight process, require licensed facilities or regulated entities to undergo periodic fire safety inspections. However, most directives do not specify who can perform these inspections and to what standard they are to be inspected. As a result, many facility operators contract with inspectors who have no specific training or expertise in the fire safety inspection process, and often there is no written standard to guide the property owner or the inspector.

H.B. 3866, amending Section 419.908 of the Government Code, requires a state-mandated fire inspection to be performed by a certified fire inspector and requires that the inspection meet either the most recent local fire code or the most recent state fire code, which is the National Fire Protection Agency's Life Safety Code, NFPA 101. The bill exempts state agency personnel who conduct a life safety code survey of a building or facility in connection with issuing or renewing certain licenses from the bill's provisions.

Subject: Licensing and Appointment of Court Interpreters

H.B. 4445

Effective Date: September 1, 2011

H.B. 4445 amends current law relating to the licensing and appointment of certain court interpreters.

TMCEC Commentary: This was a divisive bill. Some municipal judges were understandably taken aback by the notion that all courts should not have interpreters with equal qualifications. Such judges have argued the problem is not with the law; it is with the test itself. The law contemplates that there will be one exam, but those achieving a certain designated score will be designated masters.

This bill amends Chapter 57 of the Government Code and creates two designated levels of court interpreters: a basic level and a master level. As Section 57.043 is amended, an interpreter with a basic designation will be permitted to interpret court proceedings in justice courts and municipal courts that are not courts of record, unless the judge is acting as a magistrate. A master level interpreter will be permitted to interpret in all courts of the state.

Subject: Definition of a Switchblade

H.B. 4456

Effective Date: September 1, 2009

The Texas Penal Code defines an illegal switchblade as any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that opens automatically with the press of a button and the assistance of a spring or centrifugal force. This definition has been in the statute since 1974. In recent years, knife manufacturers have begun production of knives designed to be opened by one handed operation. They are called "one handed openers" or "assisted openers." Used frequently by emergency response personnel, hunters, and fishermen, these knives require the user to exert force on the blade of the knife to overcome a mechanism holding the blade closed, typically using their thumb to push against a small post or indentation on the knife's blade.

Several states have recently passed legislation amending their definition of switchblade knife to exclude these one-handed openers and clarify that these knives are legal. Hunters and fishermen from other states often carry these knives with them when they travel to Texas, and many Texas residents currently carry such knives, as they are sold at all major retailers around the state. A lack of consistent court rulings in the past on the definition of "illegal knife," and a lack of specificity in the Penal Code, has resulted in otherwise law abiding citizens running the risk of prosecution for having an "illegal knife."

H.B. 4456 amends Section 46.01 of the Penal Code by exempting one handed openers and assisted openers from the definition of switchblade knife.

Subject: Confidential Victim Information in Restitution Provision of a Judgment

H.B. 4464

Effective Date: September 1, 2009

This bill is intended to eliminate the situation in which court clerks are generally required to list the name and address of a crime victim who is to receive restitution in the criminal judgment only to then have to redact the victim's name and address from the judgment before allowing the public to see the judgment. By eliminating this situation, the workload of the clerks would be reduced and the clerk's court records would be more readily accessible by the public.

H.B. 4464 amends current law relating to crime victim information in a criminal judgment.

Subject: Official Court Reporter Court Cost - El Paso

H.B. 4529

Effective Date: Immediately

Current law requires the clerk of each court that has an official court reporter to collect a court reporter fee of \$15. This fee is to finance court reporter services and to assist in the payment of court reporter-related services. These services may include maintaining an adequate number of court reporters to provide services to the courts, obtaining court reporter transcription services, closed-caption transcription machines, Braille transcription services, or other transcription services to comply with state or federal laws.

H.B. 4529 requires the clerk of each court that has an official court reporter and that serves a county located on the Texas-Mexico border that contains a municipality with a population of 500,000 or

more, notwithstanding Subsection (a) (relating to the requirement of certain court clerks to collect a court reporter fee), to collect a court reporter service fee of \$30 as a court cost in each civil case filed with the clerk to maintain a court reporter who is available for assignment in the court.

TMCEC Commentary: This bill adds to Section 51.601 of the Government Code. It appears that this increase in court reporter court cost in civil cases applies only to El Paso. Thus, it could possibly impact the El Paso Municipal Court in the limited instances where municipal courts have civil jurisdiction.

Subject: Use of Court Reporter in the Austin Municipal Court of Record

H.B. 4742

Effective Date: Immediately

Current law specific to Austin requires the Municipal Court to use court reporters to record trials and does not allow the court to use the general law which permits trials to be recorded by an electronic recording device. Due to the limited number of court reporters available, cases scheduled for trial are often reset two to three times. This negatively impacts police officers, victims, and litigants.

It also requires greater expenses because of the cost of hiring court reporter contractors. This bill would give the Austin Municipal Court the option to use recording equipment instead of court reporters at trials. Court reporters would still be used to transcribe the recordings and the recordings would still be kept until all appeals deadlines have passed.

TMCEC Commentary: This bill repeals Section 30.00737 of the Government Code.

Subject: Municipal Court Magistrates for the City of White Settlement

H.B. 4750

Effective Date: Immediately

H.B. 4750 amends the Government Code by adding Section 30.01137 to authorize the governing body of the City of White Settlement to appoint one or more magistrates to act on behalf of a municipal court of record or a municipal court in the City of White Settlement. The bill provides that a magistrate is not required to possess all the qualifications necessary to be a municipal court of record judge, and prohibits a magistrate from presiding over the court or hearing contested cases. The bill authorizes a magistrate to conduct an arraignment, hold an indigency hearing, accept a plea, sign a judgment, set the amount of a bond, and perform other functions set out in the Code of Criminal Procedure regarding duties of a magistrate.

Senate Bills

Subject: Penalties for Parking in Spaces Designated for Persons With Disabilities; Seizure of Disabled Parking Placards

S.B. 52

Effective Date: September 1, 2009

Surveys conducted in major Texas cities indicate that between 30 and 65 percent of vehicles parked at meters or in accessible parking spots designated for persons with disabilities at any given time are illegally parked. This not only inconveniences persons with disabilities, but also has the potential to result in harm to such persons. Among other provisions, S.B. 52 increases the penalty for a second, third, fourth, and fifth offense relating to misuse of disabled parking placards or spaces.

TMCEC Commentary: S.B. 52 adds Subsection (a-1) to Section 681.012 of the Transportation Code, allowing peace officers to seize placards they determine upon inspection do not contain the first four digits of a driver’s license or personal identification number of either the driver or a passenger of the vehicle.

H.B. 3095 also increases the penalties for parking in spaces designated for persons with disabilities under Section 681.011:

	Current Law	S.B. 52
First offense	\$250 - \$500 fine	Same as current law
Second offense	\$300 - \$600 fine	\$500 - \$800 fine and 10 hrs CS
Third offense	\$300 - \$600 fine and 10-20 hrs CS	\$550 - \$800 fine and 20 hrs CS
Fourth offense	\$500 - \$1,000 fine and 20-50 hrs CS	\$800 - \$1,100 fine and 30 hrs CS
Fifth offense	\$1,000 fine and 50 hrs CS	\$1,250 fine and 50 hrs CS

CS = Community Service

Note: see H.B. 3095, which also increases the penalties under Section 681.011 – to a different extent. Consult the Code Construction Act, Chapter 311 of the Government Code, to make sense of these two amendments.

Subject: Child Safety Seats; Offense and Penalty

S.B. 61

Effective Date: September 1, 2009

Each year nearly 1,600 children die in motor vehicle accidents. Motor vehicle accidents are the leading cause of unintentional injury-related death among children ages 14 and younger. Unrestrained children are more likely to be injured, to suffer more severe injuries, and to die in motor vehicle crashes than children who are restrained.

This legislation aims to strengthen current child passenger safety protections by providing that children younger than eight years old, unless they are four feet, nine inches in height, are to be properly secured in a child passenger safety seat system in accordance with the instructions of the manufacturer of the safety seat system while riding in a passenger vehicle. It also provides for a temporary grace period to inform Texas drivers about the new measure.

TMCEC Commentary: The language of this bill lends to conflicting interpretations. What is clear is the bill amends the age requirement for children to be in safety seats – from under five to under eight years of age – found in Section 545.412 of the Transportation Code. S.B. 61 also amends the fine amount from a range of \$100 to \$200 to not more than \$25 for a first conviction and not more than \$250 for a second or subsequent conviction. The bill provides that an offense under this amended version that would not have been an offense under the old version cannot be prosecuted until June 1, 2010 – allowing a warning period to educate drivers of the new requirements.

See S.B. 61 in Costs and Administration for the new court cost associated with this offense.

Subject: Child Safety Seats; New Court Cost

S.B. 61

Effective Date: September 1, 2009 (Pursuant to Section 51.607 of the Government Code, costs in this Act take effect January 1, 2010)

This legislation aims to strengthen current child passenger safety protections by providing that children younger than eight years old, unless they are four feet, nine inches in height, are to be properly secured in a child passenger safety seat system in accordance with the instructions of the manufacturer of the safety seat system while riding in a passenger vehicle.

TMCEC Commentary: S.B. 61 adds a new 15 cent court cost on conviction of an offense under Section 545.412 of the Transportation Code. The bill provides that this court cost be sent to the Comptroller monthly (not quarterly) and then distributed to TxDOT to purchase child safety seats for low-income families. The bill also adds Section 102.122 to the Government Code as an additional court cost on conviction in a municipal court.

See S.B. 61 in Traffic Safety and Transportation Law for amendments to the offense.

Subject: Family Violence Fees and Additional Fees

S.B. 82

Effective Date: September 1, 2009 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2010)

Under current Texas law, a judge may order an offender convicted of family violence to pay up to \$100 to a family violence shelter center as a condition of community supervision. Family violence centers are struggling to provide services as federal grants and charitable donations decline.

As proposed, S.B. 82 makes the current fee authorized to be imposed as a condition of community supervision for an offense involving family violence mandatory and allows non-residential family violence centers, in addition to family violence residential shelters, to receive funding generated by that fee. S.B. 82 also adjusts the amounts of other fees including fees for copies of driving records, pretrial intervention programs, teen court programs, a supervision fee, and adds a pretrial intervention administrative fee.

TMCEC Commentary: Section 2 of this bill amends Section 103.021 of the Government Code by raising or amending fees and court costs. The cost that the court can charge for a copy of the driving record has been changed from \$10 to an “amount equal to the sum of the fee established

by Section 521.048, Transportation Code (\$10), and the TexasOnline fee.” A request fee for teen court program costs \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10.

Subject: 35 mph Speed for Neighborhood Electric Vehicles

S.B. 129

Effective Date: September 1, 2009

Currently, drivers of neighborhood electric vehicles (NEVs) are allowed to drive at a maximum speed of 25 miles per hour on roads with a posted speed limit of 35 miles per hour. NEVs have up to a 245 mile range on the electrical equivalent of a single gallon of gas, at an average cost of one to two cents per mile. Such fuel efficient vehicles travel 30 to 50 miles on a single electric charge even while using optional air conditioning. As they produce no emissions, widespread usage of NEVs could potentially reduce auto emissions in urban and suburban areas. Presently, the following eight states allow NEVs to operate at speeds up to 35 miles per hour: Georgia, Kansas, Kentucky, Maine, Montana, Oklahoma, Tennessee, and Washington.

TMCEC Commentary: S.B. 129 amends Sections 551.301 and 551.303 of the Transportation Code. NEVs can now attain a maximum speed of 35 mph, and can be operated on streets with a posted speed limit of up to 45 mph (but can still only drive at 35 mph).

Note: S.B. 129 also contains the same provisions found in H.B. 3599 pertaining to the three-wheeled “motorcycle.”

Subject: Certain Judges’ Spouses’ Information Excepted from Public Disclosure

S.B. 281

Effective Date: September 1, 2009

The 80th Legislature (2007) prohibited the publication of federal and state judges' residential information in public records such as voter registration applications, voter rolls, and property appraisal records to protect such judges from retaliation from offenders whom they sentenced. However, such a judge's spouse is not given the same protection under law.

S.B. 281 amends Section 13.0021 of the Election Code to extend provisions excepting home address information of certain federal judges and state judges from certain public records and related provisions to the spouses of such judges. The bill extends this exception in provisions relating to additional voter registration information from certain federal and state judges, the recording and disclosure of certain information by a voter registrar, providing notice of federal judge or state judge status to a registrar, prohibition from including residence information on a suspense list, the form and contents of voter registration lists, and the availability of statewide computerized voter registration list information.

TMCEC Commentary: Municipal judges and their spouses are not entitled by this bill to have this information deemed confidential.

Subject: Blood Draw Warrants
S.B. 328
Effective Date: September 1, 2009

S.B. 328 adds the Nicole "Lilly" Lalime Act to amend provisions of the Alcoholic Beverage Code, Code of Criminal Procedure, and Transportation Code relating to operating a motor vehicle or watercraft while intoxicated or under the influence of alcohol. The bill amends Article 18.01 of the Code of Criminal Procedure authorizing any magistrate who is a licensed Texas attorney to issue a search warrant to collect a blood specimen from a person who is arrested for a certain intoxication or alcohol offense and refuses to submit to a breath or blood alcohol test. The bill also modifies the circumstances under which a peace officer must require the taking of the specimen of a person's blood or breath and amends certain provisions regarding liability for purposes of the taking of a blood specimen.

TMCEC Commentary: While there were multiple bills expanding the number of judges who in their capacity as magistrates can issue evidentiary search warrants for blood, such bills seemed dead toward the end of Session. This amendment to the status offense of "boating under the influence," flew under the radar of many gallery watchers. Historically, an evidentiary or "mere evidence" search warrant could, for the most part, only be issued by an attorney judge of a court of record. Many have questioned the relevance of the requirement that a judge be of a court of record, since such warrants are issued by the judge in their capacity as a magistrate. While most municipal courts are not courts of record, more than half of municipal judges are attorneys. As a consequence of this bill, it is easy to imagine that these attorney judges may be asked to issue blood draw warrants.

The bill also amends Section 724.012 of the Transportation Code by addressing the three courses of action for peace officers when an arrested person refuses to submit to the taking of a specimen and providing civil immunity for individuals taking the blood specimen.

Subject: Operating a Watercraft Under the Influence of Alcohol by a Minor
S.B. 328
Effective Date: September 1, 2009

Currently, individuals operating a watercraft who refuse to submit to a breath or blood alcohol test are subject to an administrative license revocation, which results in a driver's license suspension. However, if the person operating the watercraft submits to a breath or blood alcohol test which results in a blood alcohol content level of .08 or greater, current statute does not provide for an administrative license revocation. Furthermore, the offense of operating a watercraft under the influence of alcohol does not apply to minors. Current statute provides for stricter driver's license penalties for minors who commit the offense of driving under the influence, but it does not clearly state that stricter suspension penalties should still apply to the offender if they reach the age of 21 or over while awaiting trial. Consequently, many offenders are able to postpone trial until the age of 21, then receive the less harsh suspension penalty associated with the offense of driving while intoxicated.

S.B. 328 amends Chapter 524 (Administrative Suspension of Driver's License for Failure to Pass Test for Intoxication), Transportation Code, to include a driver's license suspension for individuals who fail a breath or blood alcohol test while operating a watercraft and by clearly defining the suspension period for an individual who was under the age of 21 at the time the offense of boating under the influence or driving under the influence of alcohol occurred. The bill

amends Section 106.041 (Driving Under the Influence of Alcohol by Minor), Alcoholic Beverage Code, to create the offense Operating Watercraft under the Influence of Alcohol by a Minor.

TMCEC Commentary: The bill makes several changes to provisions regarding the suspension and revocation of driver's licenses for intoxication or minor alcohol offenses. Most changes involve the felony of Driving While Intoxicated with a Child Passenger, but Section 524.012 of the Transportation Code is amended to require DPS to suspend a driver's license if it determines that a minor operated a watercraft with any detectable amount of alcohol in the minor's system. Conforming changes to include boating under the influence are also made to Section 524.035 regarding license suspension or revocation hearings.

Subject: Court Cost for Alcohol Breath Testing

S.B. 333

Effective Date: September 1, 2009 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2010)

Currently, no amount of DWI court fees and fines are retained by courts to account for cost of maintaining a breath alcohol testing program. The 78th Legislature, in 2003, inadvertently removed authorization needed by counties that do not use services of DPS technical supervisor forensic scientists, but instead employ their own, to retain a portion of the breath alcohol fee.

This bill amends Article 102.016 of the Code of Criminal Procedure, to authorize the custodian of a municipal or county treasury in a county that maintains a certified breath alcohol testing program but does not use services of DPS to defray the costs of maintaining and supporting a certified breath alcohol testing program, by retaining \$22.50 of each court cost collected under Section 133.102 (Consolidated Fees on Conviction) of the Local Government Code, on conviction of an offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, other than an offense that is a Class C misdemeanor.

TMCEC Commentary: Despite references to municipalities in the bill, this court cost does not apply to offenses that are Class C misdemeanors and, thus, will not be collected by municipal courts.

Subject: Theft Offenses in Disaster Area or Evacuated Area

S.B. 359

Effective Date: September 1, 2009

This bill addresses punishment levels for the offense of theft committed in evacuated areas or disaster areas. After Hurricane Ike, local officials brought to light the problem of looting in abandoned or evacuated areas. Section 31.03(f) of the Penal Code lists several specific theft offenses for which penalties are increased to the next higher category of offense.

S.B. 359 adds Section 12.50 to the Penal Code, to provide that the punishment for an offense is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that the offense was committed in an area that is considered to be a disaster by certain government officials.

Subject: Public Availability of Crash Reports

S.B. 375

Effective Date: Immediately

TxDOT maintains information about motor vehicle accidents in a database referred to as the Crash Records Information System (CRIS). The information contained in the database is derived from accident reports generated in connection with motor vehicle accidents. Current law provides that all information related to a report of a motor vehicle accident that is maintained by TxDOT or any other governmental entity is privileged and authorized to be used only for accident prevention purposes. That law, however, requires records related to a particular accident to be released to certain governmental entities or a nongovernmental entity that can provide certain identifying information about the accident.

The Texas Attorney General was asked to determine whether the CRIS database was privileged and confidential in the same manner that accident reports are privileged under state law. The Attorney General determined that the CRIS database is not an accident report and therefore is not privileged or confidential. Therefore, information contained in the CRIS database about specific accidents is currently available to the public, as is the entirety of the information contained in the database.

S.B. 375 makes the CRIS database and information contained in the CRIS database privileged in the same manner that accident reports are privileged under state law. The bill authorizes TxDOT or a governmental entity to make statistical information derived from the CRIS database available to the public at the department's discretion.

TMCEC Commentary: This statistical information from CRIS might be good information to use for Municipal Courts Week (November 2-6, 2009) activities or traffic safety programs.

Subject: Part-Time Truancy Magistrates

S.B. 407

Effective Date: Immediately

Dallas County is the only county that uses the truancy magistrate court that was made available by law in 2003. Unfortunately, the original authorization for the use of truancy magistrates only allowed for the use of full-time magistrates.

Dallas County currently employs four full-time magistrates, but in the case of an absence a temporary magistrate cannot be appointed, which can potentially shut the court down. This highlights the need to grant county judges the authority to appoint temporary part-time or full-time magistrates.

S.B. 407 would grant county judges in certain counties the authority to appoint part-time or full-time magistrates as needed.

TMCEC Commentary: Counties will now have more flexibility in appointing and using magistrates for the purpose of adjudicating criminal complaints alleging Failure to Attend School and Parent Contributing to Nonattendance cases as Section 54.1172, Government Code, now allows the appointment of part-time magistrates. Despite the misnomer, such magistrates do not have jurisdiction to hear civil petitions alleging Truancy as contemplated in the Family Code.

Subject: Appeal of Animal Cruelty Determinations

S.B. 408

Effective Date: September 1, 2009

Section 11 of this bill, amending Section 821.025, Health and Safety Code, (1) allows a determination of animal cruelty and divestment of ownership by a municipal or justice court to be appealed to a county court; (2) requires that the municipal or justice court provide a transcript of the court's proceeding regarding the divestment of ownership to the county court within five days of receiving notice of an appeal; and (3) requires the county court to dispose of the appeal within 10 days of receiving the transcript from the city.

TMCEC Commentary: In the final days of Session, S.B. 408 became a popular landing pad for bills desperately in need of a home. The content is a smorgasbord of court and jurisdiction issues. However, what else would you expect with a bill with the following broad caption: relating to jurisdiction, venue, and appeals in certain matters, including the jurisdiction of and appeals from certain courts and administrative decisions and the appointment of counsel in certain appeals.

Subject: Statute of Limitations in Class C Misdemeanors

S.B. 410

Effective Date: September 1, 2009

Article 12.02 (Misdemeanors), Code of Criminal Procedure, is the only Texas statute that addresses the statute of limitations in misdemeanor cases. The statute states that an indictment or information for any misdemeanor must be presented within two years from the date of the commission of the offense. Indictments and information serve as charging instruments in Class A and Class B misdemeanor cases. The charging instrument in Class C misdemeanor cases, however, is the complaint. The statute does not create a statute of limitations for an action initiated by a complaint.

Currently, the prevailing view is that despite the statute's failure to include complaints, Class C misdemeanor cases are subject to a two-year statute of limitations.

S.B. 410 amends current law relating to the statute of limitations for a misdemeanor.

TMCEC Commentary: Alas, may any long-held, lingering question of doubt about the answer to this legal question rest in peace. The majority position (supported, albeit by old case law) is that only a complaint (read "charging instrument") can stop the statute of limitations in a Class C misdemeanor. Citations, which act both as a substitute for a full custodial arrest and a limited duration quasi-charging instrument for a defendant not wanting to contest the charges, do not toll the statute of limitations.

An earlier version of the bill required that the complaint had to be filed by "the proper officer." That language, to the relief of many, was subsequently removed.

This bill should be read in conjunction with S.B. 413.

**Subject: Mandatory Filing of Complaints upon Non Appearance
S.B. 413**

Effective Date: September 1, 2009

The charging instrument in Class C misdemeanor cases is the complaint, the filing of which tolls the statute of limitations. However, complaints are not filed in most Class C cases because defendants may enter a plea to a citation or fail to appear in response to a citation for the offense, therefore not entering a plea. Consequently, from this failure to appear, the statute of limitations is not tolled. Once the generally accepted two-year statute of limitations period has run, the Class C offense can no longer be prosecuted.

Only when a defendant pleads "not guilty" to the citation is the state required, under the Code of Criminal Procedure, to prepare and file a complaint. Requiring a complaint when a defendant fails to appear and enter a plea will toll the statute of limitations and permit prosecutions for Class C offenses more than two years after the date of the offense.

TMCEC Commentary: This bill amends Article 27.14 of the Code of Criminal Procedure. In the age of automation, implementing this bill should not be difficult. In theory, this amendment over a period of time should decrease the number of cases that must be disposed of because of the statute of limitations. As many courts already file complaints when a defendant does not appear pursuant to the terms of the citation, this is another bill that makes the law conform to common practice.

This bill should be read in conjunction with S.B. 410.

**Subject: Commitment Hearings for Capias Pro Fine by Electronic Means
S.B. 414**

Effective Date: September 1, 2009

A defendant arrested pursuant to a capias pro fine, which is a writ for collecting a fine, must be brought for a hearing before the court that issued the capias pro fine. Ideally, the defendant is to be brought before the court immediately after the arrest. If this is not possible, the defendant is to be placed in jail until the next business day at which time he or she is to be brought before the court.

The law requires that the hearing on the capias pro fine must be held before the judge of the court that issued the capias. The hearing may not be conducted by a judge acting as a magistrate. Often, getting the defendant to the judge's courtroom for the required hearing presents a logistical challenge because some courtrooms are located many miles away from the jail where the defendant is located. This difficulty discourages some judges from issuing capias pro fine writs.

S.B. 414 authorizes defendants to be brought before the court in person or by means of an electronic broadcast system.

TMCEC Commentary: This bill amends Articles 43.03 and 45.046 of the Code of Criminal Procedure. You may recall that in the 80th Regular Legislative Session, H.B. 3060, among other things, laid the ground work for clearing up years of confusion surrounding various writs (capias, warrants, and capias pro fine). You may also remember that there were some amendments to the original version of the bill that mandated commitment determinations (and a "hearing") occur by the next business day, and that commitment orders had to be done in writing. While well-

intended, these amendments ignored the reality that most municipalities do not have their own jail. Furthermore, with the price of gasoline escalating, the last minute changes effectively strapped Texas cities (especially in rural areas) with the cost of either transporting prisoners to the court or transporting the judge to the jail. With high speed internet becoming more available statewide and video conferencing software becoming more affordable, this bill should meet the needs of all judges who utilize the *capias pro fine*. This will be an ideal expenditure of the municipal court technology fund.

Please note, however, this bill does not authorize taking pleas from jail via electronic means. Nor should this law be confused with existing law authorizing similar technology to be used by magistrates pursuant to Article 15.17 of the Code of Criminal Procedure.

Subject: Magistrate Release Without Bail for Class C Misdemeanors and Order to Appear in Municipal or Justice Court

S.B. 415

Effective Date: September 1, 2009

Article 15.17 (Duties of Arresting Officer and Magistrates), Code of Criminal Procedure, sets forth the duties that a magistrate is to perform when an individual is arrested. The process of performing these duties is informally known as magistration. Article 15.17(b) specifically instructs the magistrate to release an accused person without bond and then order him or her to appear at a later date for arraignment "in the county court or statutory county court." This language is problematic because Subsection (b) applies only to persons charged with misdemeanors punishable by fine only, which are heard in justice and municipal courts as opposed to county-level courts.

S.B. 415 authorizes a magistrate to release the accused person without bond and order the accused to appear at a later date for arraignment in the applicable justice court or municipal court, rather than in the county court or statutory county court.

TMCEC Commentary: It is amazing that it took this long for the Legislature to amend Article 15.17(b). With all due respect, Article 15.17(b) is so miswritten that most criminal law practitioners either just ignored it or pretended that it actually said something else. As municipal and justice courts have original jurisdiction of Class C misdemeanors, the notion of releasing arrested individuals and ordering them to appear at a specific time in a court that does not have jurisdiction is amusing at best and confusing at worst.

Without doubt this amendment will be put to good use by magistrates who do not want to set bail in Class C misdemeanor arrests and will be appreciated by municipal and justice courts throughout the state. Ideally, it will help reduce the number of bail bonds seen in municipal and justice courts.

Subject: Prohibition on Traffic-Offense Quotas

S.B. 420

Effective Date: Immediately

Section 720.002, Transportation Code, prohibits a political subdivision or agency of the state from establishing or maintaining, formally or informally, a plan to evaluate, promote, compensate, or discipline certain judges based on the amount of money collected by that judge from traffic offenses. However, the existing law permits municipalities to consider the amount of

money collected from a municipal court or a municipal court of record when evaluating the performance of a judge employed by that municipality. This law clearly presents a conflict of interest since judges are paid through the municipality. In striving for an independent judiciary, it is difficult to judge neutrally when these funds are sought after by the municipalities.

TMCEC Commentary: This bill repeals Section 720.002(c) of the Transportation Code, which has undermined one of the primary purposes of the statute: specifically, prohibiting municipal governments from using revenue as a basis for reappointing municipal judges.

Subject: Expanded Use for Child Safety Funds in Cities with Population Under 850,000

S.B. 446

Effective Date: Immediately

A municipality with a population less than 850,000 must use money collected from certain municipal court costs for a school crossing guard program. If the municipality does not operate a school crossing guard program, or if the money received exceeds the amount necessary to fund such a program, the municipality must either deposit the additional funds in an interest bearing account or use the funds for programs designed to enhance child safety, health, or nutrition.

S.B. 446 amends a provision of the Code of Criminal Procedure relating to the authorized uses for the money a municipality collects from court costs from municipal court cases. If the municipality does not operate a school crossing guard program, which otherwise would receive such funds, or the money received exceeds the amount necessary to fund such a program, this bill authorizes the municipality to expend the additional money for programs designed to enhance public safety and security.

TMCEC Commentary: This bill substantially expands the scope of Article 102.014, Code of Criminal Procedure, by allowing municipalities with a population less than 850,000 more discretion in the expenditure of the Child Safety Fund. Now, if such a city does not have a school crossing guard program or has funds in excess of what is needed for that fund, the city may expend the additional money on programs designed to “enhance public safety and security.”

Subject: Controlled Substance Penalty Group Classifications

S.B. 449

Effective Date: September 1, 2009

The Texas Commissioner of Health (commissioner), who oversees the Texas Department of State Health Services, places individual prescription and non-prescription drugs on one of five administrative lists or "schedules" based on their propensity to create user dependence. Propensity for a drug to create dependence increases with decreasing schedule numbers. For example, Schedule 1 drugs may not be legally administered or dispensed, and include heroin, LSD, and marijuana.

Drugs are categorized under statute into four distinct "penalty groups" based on their schedule designation. These statutory penalty groups are located in the Controlled Substances Act (Chapter 481, Subchapter D, Health and Safety Code). Sections 481.102 through 481.130 of the Controlled Substances Act create criminal offenses based on the penalty group designation of a given drug.

S.B. 449 amends the statutory penalty groups to include a number of drugs that have been listed in schedules by the commissioner but which have not been codified into a penalty group.

Subject: Dog Fighting Equipment

S.B. 554

Effective Date: September 1, 2009

Currently, no law exists that provides that it is a criminal offense to possess dog-fighting equipment.

S.B. 554 amends Section 42.10, Penal Code, to make it a Class A misdemeanor to own or possess dog-fighting equipment. It also establishes, under Chapter 59, Code of Criminal Procedure, that such equipment and property where dogs are found to be engaged in dog fighting is contraband and subject to forfeiture. S.B. 554 also makes the offenses under Section 42.10 subject to the elevated penalties authorized in Section 71.02(a), Penal Code, to deter organized criminal activity.

Subject: New Class C Misdemeanor for a Window Tinter's Failure to Install Required Label

S.B. 589

Effective Date: September 1, 2009

Currently, the provisions of the Transportation Code relating to restrictions on windows require that at least 25 percent of light pass through a windshield. The total percentage includes the light transmission of the original window and any changes due to tinting. Law enforcement will give a person a citation of a Class C misdemeanor offense if light transmission through the person's vehicle windows is less than 25 percent. By DPS rule, however, a vehicle is authorized to pass a state vehicle inspection with 20 percent light transmission. Therefore, a discrepancy exists in the law between what level of tint is an offense subject to law enforcement citation and what level of tint will not pass a state vehicle inspection. Window tint that is too dark is a detriment to public safety if law enforcement officers cannot see into a vehicle. Automobile windows that have been tinted are required to be labeled. The labels, however, are not required to disclose whether the tint meets currently existing statutory standards for safety.

S.B. 589 requires that a vehicle equipment safety compliance label be placed on a windshield, side, or rear window stating that the light transmission is consistent with the appropriate provisions of the Transportation Code. The bill provides that a person in the business of placing or attaching transparent material that alters the color or reduces the light transmission to a windshield, side, or rear window of a motor vehicle commits a misdemeanor punishable by a fine not to exceed \$1,000 if the person places or attaches such material on the windshield or window and does not install the required label.

TMCEC Commentary: Sections 547.609 and 547.613 of the Transportation Code are amended. However, the discrepancy between the 25 percent offense and 20 percent regulation was not fixed. This bill targets window tint installers who install illegal tint.

Subject: Establishment of Regional Drug Courts

S.B. 633

Effective Date: Immediately

According to the National Association of State Alcohol/Drug Abuse Directors, drug court programs have a positive, productive impact on offenders and have reduced the rate of recidivism by up to 44 percent. Unfortunately, drug court programs are unavailable to a significant portion of the population of Texas.

S.B. 633 authorizes small Texas counties to partner with other small counties to establish a drug court program in the counties' region. It amends the Health and Safety Code to reduce from three to two the minimum number of counties or municipalities necessary to establish a regional drug court program.

TMCEC Commentary: This bill amends Section 469.0025 of the Health and Safety Code, to provide that two rather than three municipalities may elect to establish a regional drug court program. While this bill contemplates that municipalities may band together to create a drug court, it is not readily apparent that the Legislature intends for such courts to be municipal courts.

Subject: Search Warrants for DNA

S.B. 743

Effective Date: September 1, 2009

Currently, under Article 18.07, Code of Criminal Procedure, a law enforcement officer has three days to execute a search warrant, excluding the day of issuance and the day of execution. Quite often, when a law enforcement officer is issued a warrant for a biological sample, the suspect is able to evade the officer until the warrant expires. Consequently, the officer must go back to court to obtain another warrant. The requirement that search warrants be executed within three days is meant to ensure that law enforcement does not hold the warrant until there is probable cause. However, when a law enforcement official is issued a warrant for a biological sample, probable cause is already established.

S.B. 743 extends the period of time allowed to execute a warrant from three to 15 days, if the warrant is issued solely to obtain DNA evidence from a specific person.

TMCEC Commentary: This bill begs the question: how is a search warrant for DNA classified under Article 18.02 of the Code of Criminal Procedure? Who can issue such a warrant? Presumably, like a blood draw warrant, DNA is “mere evidence” and the magistrate must be an attorney judge of a court of record, unless the request occurs in a part of the state that is described in (i), sometimes referred to as the “rural parts” exception.

Subject: Adoption and Amendment of Model Building Codes by Certain Municipalities

S.B. 820

Effective Date: Immediately

Currently, the process Texas municipalities utilize to adopt new or modify existing model codes lacks sufficient transparency to minimize costs and ensure compliance by affected parties.

S.B. 820 requires the governing body of a municipality with a population of more than 100,000 to publish notice of a proposed action to review and recommend the adoption of or amendment to a national model building code and to encourage public comment from affected persons.

The bill, amending Chapter 214 of the Local Government Code, requires a municipality that adopts an ordinance or national model code provision to delay implementing and enforcing the ordinance or code to allow sufficient time for compliance by the affected parties unless the delay would cause imminent harm to the public's health or safety.

Subject: Aggregation in the Prosecution of Abuse of Official Capacity

S.B. 828

Effective Date: September 1, 2009

Current law regarding the offense of abuse of official capacity does not allow for the aggregation of the amounts of separate transactions committed in such an offense for purposes of increasing the penalty for the offense. Thus, the degree of the crime actually committed may not be accurately reflected in the charge or punishment. Allowing a series of offenses to be aggregated to accurately reflect the degree of the offense results in a punishment that more appropriately fits the crime.

S.B. 828 enables the aggregation of the value involved to affect the punishment of an offense of abuse of official capacity when government property, services, personnel, or anything of value belonging to the government is used in conduct that constitutes the offense.

TMCEC Commentary: Under Section 39.02 of the Penal Code, abuse of official capacity is a Class C misdemeanor if the value of the thing misused is less than \$20.

Subject: No Red-Light Camera Civil Penalties for Owner of Emergency Vehicles

S.B. 926

Effective Date: September 1, 2009

Owners of emergency vehicles have received red light camera citations for going through red lights while operating in the line of duty.

S.B. 926 adds Section 707.0021, Transportation Code, and prohibits a local authority from imposing or attempting to impose a civil penalty on the owner of an authorized emergency vehicle for a violation recorded by a photographic traffic signal enforcement system. The bill provides that an employer is not prohibited from taking disciplinary action against an employee who operated the vehicle in violation of a rule or policy of the employer.

TMCEC Commentary: This bill is a great reminder of the delicate balance of power between state law and local ordinances regulating red light cameras. Yes, you must have an ordinance to utilize a red light camera system. However, state law now governs many of the parameters of their use.

Subject: Authority of Municipal Judges to Conduct Marriage Ceremony
S.B. 935

Effective Date: September 1, 2009

Current law grants the authority to conduct a marriage ceremony to an officer of a religious organization, a justice of the peace, and almost all federal, state, and county judges, except for municipal judges. The inclusion of municipal judges would provide citizens with more availability and choice in a marriage ceremony.

S.B. 935 amends Section 2.202 of the Family Code to include a judge of a municipal court as a person authorized to conduct a marriage ceremony.

TMCEC Commentary: Congratulations to the Texas Municipal Courts Association for a job well done. The passage of this bill has been more than 30 years in the making. It marks a substantial milestone in the history of Texas municipal judges. It is a milestone that some thought would never ever come to pass. The evolution of this particular issue is an excellent case study in politics and, more importantly, in perseverance.

In light of the passage of this legislation, TMCEC has begun to consider the practical, legal, and ethical implications of municipal judges being authorized to conduct marriages. This legislation will inevitably raise a host of new questions.

Subject: Changes to Criminal Offenses in the Agriculture Code
S.B. 1016

Effective Date: September 1, 2009

The Texas Department of Agriculture (TDA) encompasses all phases of modern agriculture, agricultural businesses, and consumer protection. To fulfill its mission of making Texas the leader in agriculture, TDA promotes Texas agricultural products; promotes economic development in rural communities; regulates pesticides, measuring devices, and agricultural commodities; controls destructive plant pests and diseases; and administers federal nutrition programs for children and adults.

TDA is subject to the Sunset Act and will be abolished on September 1, 2009 unless continued by the Legislature. The bill contains the Sunset Commission's recommendations to continue TDA for the standard 12-year period. The Sunset Commission also found opportunities to redirect several of TDA's programs to ensure they meet the needs of today's agriculture industry and the state as a whole, as well as to allow the Commissioner of Agriculture to place his stamp on the agency. The bill includes several changes in law to reflect the Sunset Commission's recommendations and other changes made in the Senate and House committees.

TMCEC Commentary: S.B. 1016 boasts 140 pages and 11 articles. Article 5 of the bill amends Chapter 101 of the Agriculture Code expanding the scope of the current Class C misdemeanor offenses under Section 101.020 that can be committed by perishable commodities handlers to include not just licensed persons but also persons who are required to be licensed. This will close a current loophole in the statute. Additionally, a person who acts as a license holder without first paying the required annual fee will be committing a Class B misdemeanor (currently the offense is a fine-only misdemeanor).

Article 5 also changes the law concerning cash dealers. The bill amends Sections 101.003 and 101.004 by removing the requirement of persons to register as cash dealers (persons who purchase perishable commodities and pay in U.S. currency before or at the time of delivery) and specifically excepting cash dealers from licensing requirements. Two Class C misdemeanor offenses related to cash dealers are also removed from Section 101.020.

Article 9 of S.B. 1016 makes the commercial use of citrus budwood that is not certified or does not come from a designated foundation grove a Class C misdemeanor. The use is also subject to administrative penalties.

Article 10 of the bill creates Chapter 80 of the Agriculture Code establishing the Texas Citrus Pest and Disease Management Corporation. This was attempted in two other bills (H.B. 4578 and S.B. 1779) that ultimately died. The corporation's goal is the control and suppression of the insect known as the Asian citrus psyllid and the disease known as citrus greening. A violation of the chapter or a rule adopted under the chapter is a Class C misdemeanor.

Subject: Nondisclosure Orders in Cases Involving Children

S.B. 1056

Effective Date: Immediately

S.B. 1056 amends Section 411.081 of the Government Code to require a court convicting a child for a certain misdemeanor offense punishable by fine only to immediately issue an order prohibiting criminal justice agencies from disclosing criminal history record information related to the offense, except to another criminal justice agency, specified noncriminal justice agencies or entities, or a person who is the subject of the order.

TMCEC Commentary: This provision in S.B. 1056 is the content of another bill (S.B. 2224) that appeared dead toward the end of Session but was resurrected in the form of a friendly amendment. It adds Subsection 411.081(f-1) and mandates that criminal courts immediately issue a nondisclosure order on the conviction of a child for a misdemeanor offense punishable by fine only. It is important to note that this amendment only pertains to the conviction of a "child" (defined by Section 51.02 of the Family Code as a person at least 10 and less than 17 years of age). Thus, it does not apply to any defendant who is 17-20 years old and convicted of a fine-only offense. Nor does it apply to a child who successfully completes a form of probation pursuant to Chapter 45 of the Code of Criminal Procedure (*i.e.*, deferred disposition, completion of teen court, commitment of chemically dependent persons, or a driving safety course).

Although this bill creates more work for all courts that adjudicate cases involving children accused of fine-only misdemeanors, it is intended to provide parity to children in the juvenile justice system. Most conduct that results in a child being adjudicated of a fine-only offense can be filed as a civil matter in juvenile court. Records of a child in juvenile court are already confidential, and this amendment extends that confidentiality to criminal court records (which until now were subject to the common-law right of inspection just like adult records). Some courts have already consulted their software providers to set up an automatic nondisclosure order in cases involving children. "Criminal justice agencies," as defined in Section 411.082 of the Government Code, can still access the records despite the nondisclosure order for purposes of enhancements or similar acts.

The bill provides that a child convicted of a fine-only misdemeanor before the effective date may still petition the court for a nondisclosure order, which the court shall issue upon petition.

Attention court clerks: Subsection 411.081(g) already provides that the clerk shall send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested or by secure e-mail or fax to DPS not later than the 15th business day after the order is issued.

The bill also amends provisions of the Public Information Act to reflect that information subject to a nondisclosure order is protected from disclosure.

Subject: Redefines Commercial Motor Vehicles; Exemption for Solid/Liquid Waste Vehicles

S.B. 1093

Effective Date: September 1, 2009

Currently, statute defines a commercial vehicle as any vehicle that has a maximum allowable weight of 26,001 pounds or more, which includes a towed unit with a maximum allowable weight of more than 10,000 pounds. People are circumventing the law by using non-commercial vehicles which exceed the weight limits, such as a car with a trailer attached, in order to transport commercial goods. This practice creates a safety hazard due to people driving vehicles that weigh as much as a commercial motor vehicle without the appropriate license and training.

S.B. 1093 redefines "commercial motor vehicle" in Section 522.003, Transportation Code, to mean a motor vehicle or combination of motor vehicles used to transport passengers or property that has a gross combination weight or a gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight or a gross vehicle weight rating of more than 10,000 pounds, or that has a gross vehicle or a gross vehicle weight rating of 26,001 or more pounds. The bill also reenacts Section 522.072(a), Transportation Code, relating to certain circumstances under which an employer may not permit a person to drive a commercial motor vehicle.

TMCEC Commentary: On another note, this bill amends Section 545.301 of the Transportation Code (Stopping, Standing, or Parking Outside a Business or Residence District), providing an exemption for solid or liquid waste vehicles in certain situations.

Subject: Instructions for Folding the Flag

S.B. 1145

Effective Date: September 1, 2009

S.B. 1145 amends the Government Code to specify that the Texas flag should be folded as follows: fold the flag in half lengthwise with the red stripe facing upward; fold the flag in half lengthwise once more, concealing the red stripe on the inside of the fold; position the flag with the white star facing downward and the blue stripe facing upward; fold the corner with the white stripe to the opposite side of the flag to form a triangle; continue folding the corners over in triangles until the resulting fold produces a blue triangle with a portion of the white star visible; and secure all edges into the folds.

S.B. 1145 specifies that a folded Texas flag should be presented or displayed with all folded edges secured and with the blue stripe and a portion of the white star visible. The bill specifies

that a folded Texas flag should be stored or displayed in a manner that prevents tearing or soiling of the flag.

TMCEC Commentary: Courts that pride themselves on court decorum may want to be familiar with this bill. It adds Section 3100.073 of the Government Code.

Subject: Political Contributions in a Courthouse

S.B. 1152

Effective Date: September 1, 2009

Under the current law, a courthouse is not included under the provision that prohibits contributions in certain public buildings and provides for penalties for contributions made in certain public buildings.

S.B. 1152 prohibits a person from knowingly making or authorizing a political contribution to a candidate for or officeholder of certain judicial offices, certain political committees, or a person acting on behalf of such a candidate, officeholder, or political committee while in a courthouse, prohibits those individuals and committees from knowingly accepting a political contribution in a courthouse, and requires them to refuse a political contribution that is received in a courthouse.

TMCEC Commentary: S.B. 1152 amends Section 253.039 of the Election Code, making this a Class A misdemeanor.

Subject: Theft of Farm Animals

S.B. 1163

Effective Date: September 1, 2009

The theft of cattle and livestock has become increasingly problematic recently, especially along the border of the Texas Panhandle.

S.B. 1163, amending Section 31.03(e) of the Penal Code, makes the theft of cattle, horses, exotic livestock or fowl, sheep, swine, or goats a state jail felony if the stolen property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$20,000, and a felony of the third degree if the property stolen is cattle, horses, or exotic livestock stolen during a single transaction and having an aggregate value of less than \$100,000 or 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000.

Subject: Temporary Vehicle Tags

S.B. 1235

Effective Date: September 1, 2009

Automobile dealers are currently required to use cardboard products for temporary vehicle tags. Allowing new products to be introduced into the industry will relieve TxDOT from having to write rules around the definition of cardboard. Extending the temporary buyer's vehicle tag and eliminating the blue supplemental tag will make it easier for law enforcement to identify counterfeit vehicle tags.

S.B. 1235 eliminates the requirement that temporary tags be made of cardboard and provides that a temporary tag is valid until the 60th day, rather than 21st day, following the date of purchase.

Subject: Domestic Violence Admonishment on Citations for Class C Assault

S.B. 1236

Effective Date: September 1, 2009

Section 42.0131 of the Code of Criminal Procedure requires the court to notify a person convicted of a misdemeanor involving family violence that it is unlawful for the person to possess or transfer a firearm or ammunition.

This bill amends Article 14.06 and Article 27.14 of the Code of Criminal Procedure to authorize federally mandated language on a citation to be issued to persons charged with committing a Class C misdemeanor assault (domestic violence) regarding the possible loss of their right to possess or purchase a firearm if they are convicted of certain offenses.

TMCEC Commentary: This bill was necessary to ensure that Texas remains eligible for federal money aimed at deterring family violence. In the 80th Regular Legislative Session, S.B. 1470 was intended to bring Texas into compliance with federal expectations. S.B. 1470 neither acknowledged Class C assault against family members nor contemplated how federally mandated admonishments would be given to those who received citations. (See related article, Andria Brannon, "Domestic Violence: Admonishment in Misdemeanor Convictions" *The Recorder*, Vol. 16, No. 5 (Summer 2007). Our message to law enforcement: we hope you have not recently printed new citations and that your citations have ample space for more print.

Subject: New Offense of Interfering with Radio Frequencies

S.B. 1273

Effective Date: September 1, 2009

S.B. 1273 adds Section 38.152 to the Penal Code establishing a Class A misdemeanor offense for the intentional interruption, impediment, jamming, or interference of radio frequencies licensed by the Federal Communications Commission and used by law enforcement agencies, fire departments, or emergency medical service providers. The offense is a state jail felony if it is committed with the intent to facilitate the commission of another offense or interfere with the ability of emergency responders or a law enforcement agency to respond to an emergency.

Subject: Driver's Education Courses; Restrictions on Teen Drivers

S.B. 1317

Effective Date: March 1, 2010

In 2007, Texas issued about 170,000 driver's licenses to first time applicants 18-24 years of age. While applicants under 18 years of age are statutorily mandated to complete a comprehensive driver education training of nearly 50 hours, applicants over 18 years of age have no driver education requirement except passing a DPS administered written test on traffic rules and signs and a basic 10 to 15 minute behind-the-wheel skills test prior to a license being issued. Data shows that in each year from 2000 to 2005, the rate of deaths by motor vehicle accident for Texans 15-24 years of age was about 50 percent higher than that of Texans 25-34 years of age and 60 percent higher than the overall Texas average. This bill seeks to establish basic driver

training instruction for driver's license applicants 18-24 years of age that is based on research that has identified issues most commonly associated with motor vehicle accidents involving new drivers, such as risk taking, impaired driving, speed, driving at night, and using a wireless communication device while operating a vehicle.

S.B. 1317 creates a six-hour driver education course required for applicants 18 years of age or older. The bill authorizes the course to be provided online and requires DPS to waive the requirement for the written knowledge exam on highway signs and traffic laws for any applicant who successfully completes the six-hour course and passes the required exit exam.

TMCEC Commentary: Section 521.142(d) of the Transportation Code requires persons under the age of 25 to take a driver education course to apply for a driver's license. Look at H.B. 339. Call it the teen driver bill on steroids, and S.B. 1317 is the bill on a diet. Consult the Code Construction Act, Chapter 311 of the Government Code, to make sense of these two amendments. Pay special attention to the effective date of this bill.

Subject: Judge's Right to Appeal Censure by State Commission on Judicial Conduct (SCJC)

S.B. 1436

Effective Date: Immediately

S.B. 1436 entitles a judge who has been sanctioned or who receives censure under Section 1-a(8) (relating to a private or public admonition, warning, reprimand, or requirement of additional training or education, or formal hearing), Article V (Judicial Department), Texas Constitution, by State Commission on Judicial Conduct (SCJC) to a review of the SCJC's decision.

TMCEC Commentary: This bill amends Section 33.034 of the Government Code regarding the appeal of SCJC decisions by a special court of review. Now, a judge may appeal a censure in addition to a sanction. It applies to censures issued after September 1, 2009. Another bill, S.B. 2325, relating to the confidentiality of certain information, including the identity of complainants to the SCJC, was vetoed.

Subject: Civil Remedies for Tenants of Substandard Residential and Commercial Properties

S.B. 1448

Effective Date: January 1, 2010

Poor maintenance practices at residential and commercial lease properties in the state occasionally result in death or injury to occupants even after municipal citations have been served. Under current law, a leaseholder must endure a lengthy and expensive process to correct violations of municipal health and safety codes.

S.B. 1448 amends Section 92.0563 of the Property Code, to allow actions in a justice court regarding the repair of residential rental property and to provide an affordable and timely recourse to occupants who wish to take direct corrective action to protect their families and possessions.

TMCEC Commentary: While intensive code enforcement by municipalities is key to deterring substandard buildings, this bill acknowledges that a civil remedy must also be available to tenants. While the venue for seeking such reparations is justice court, city attorneys who deal with complaints by tenants will want to be advised of this change in law.

Subject: Utilizing Non-Profit Housing Organizations as Receivers in Civil Nuisance Abatement

S.B. 1449

Effective Date: September 1, 2009

During the interim of the 80th Legislature, the Senate Committee on Intergovernmental Relations was charged with examining the incidence of health and safety violations among multifamily and single-family rental properties and the adequacy of the existing authority conferred by the state upon local governments to address violations of habitability standards. Tragic accidents that occurred at the time the committee was studying the issue magnified the need for additional options for municipalities.

Most municipalities do not have adequate resources or the expertise needed to devote to rehabilitating dilapidated multifamily and single-family properties.

S.B. 1449 authorizes a home-rule municipality, or an eligible nonprofit housing organization, to bring an action in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding the prevention of substantial risk of injury to any person or property or the prevention of an adverse health impact to any person.

TMCEC Commentary: While municipal courts of record may not have the authority to order receivership, some municipal courts of record do have civil jurisdiction to enforce ordinances enacted under Chapter 214 of the Local Government Code (See, Section 30.00005(d)(1), Government Code). Such courts will benefit to know of this change in the law.

Subject: Concurrent Jurisdiction in Municipal Courts Contiguous to Houston

S.B. 1504

Effective Date: September 1, 2009

S.B. 1504 authorizes a municipality with a population of 1.9 million or more and a contiguous municipality to enter into agreements for concurrent municipal court jurisdiction. This act applies only to offenses punishable by a fine and committed on the boundary of those municipalities or within 200 yards of that boundary, thus eliminating the uncertainty in determining appropriate jurisdiction.

Subject: Costs of Conditions of Bond

S.B. 1506

Effective Date: September 1, 2009

S.B. 1506 amends Article 17.44, Code of Criminal Procedure, regarding payment for costs relating to pretrial conditions of bond. Particularly, this bill addresses electronic monitoring and testing for controlled substances. Both of these elements have costs associated with them, in terms of equipment and analysis. The bill includes payment of these costs as conditions of bond or as assessed court fees. In this manner, these costs can be properly recuperated. Currently, state and local authorities incur these costs because there is no authority to place sanctions on a defendant who fails to pay such costs. This bill grants a magistrate the authority to consider the failure to comply with conditions in determining the revocation of bond.

This bill seeks to secure payment for costs associated with electronic monitoring and controlled substances testing where they are directly associated with conditions of bond. Because of the lack of authority on these costs, state and local authorities are left with costs that go unpaid and burden the system's efficiency. This bill seeks to remedy these issues.

TMCEC Commentary: This bill is notably broader in scope than H.B. 1506 which is similar in nature, though limited to use of global positioning technology. This bill would allow the use of secure continuous remote alcohol monitoring (SCRAM) and similar technology.

Subject: Corroboration of Testimony to Support a Criminal Conviction

S.B. 1681

Effective Date: September 1, 2009

The veracity of an in-custody informant's statement can be highly suspect. The person may have been offered a reduction in their own sentence, a plea deal in return for their testimony, or an improvement in their conditions of confinement as a reward for testifying. If an in-custody informant provides information related to a crime that only declares the crime was committed, and there is no additional evidence to substantiate the informant's claim, it is imprudent to convict a person based on the informant's statement alone.

Current law already requires that a conviction under the Texas Controlled Substances Act be supported by corroborating evidence that validates the testimony of a person who is not a peace officer or who is an undercover peace officer. This means that even the testimony of an undercover peace officer is required to be corroborated by evidence in seeking a conviction under the Texas Controlled Substances Act. The testimony of an in-custody informant should be held to the same standard.

S.B. 1681 adds Article 38.075 to the Code of Criminal Procedure and prohibits the conviction of a defendant based solely on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when the person was imprisoned or confined in the same correctional facility as the defendant. S.B. 1681 defines "correctional facility" and provides that corroboration is not sufficient if it only shows that the offense in question was committed.

Subject: Notice of Citation to Owner of Real Property

S.B. 1945

Effective Date: January 1, 2010

H.B. 1945 amends Section 250.003 and 250.004 of the Local Government Code provision establishing that an employee of the owner of real property for which a citation for a violation of a county or municipal rule or ordinance is issued, or of a company managing property on behalf of the owner, is not personally liable for criminal or civil penalties resulting from the violation if the owner's contact information is provided to the enforcement official who issues the citation or the official's superior to specify that such information must be provided not later than the fifth business day after the date the citation is issued, and specifying that the owner's street address which is included in the contact information, is the current address.

The bill removes language specifying that the employee to whom such a citation is issued is considered the property owner's agent for accepting service of the citation only if the owner's street address is not in Texas. The bill requires the county or municipality issuing the citation to

mail notice of the citation to the property owner at the address most recently provided to the county or municipality by the property owner or by the employee of the owner or management company and specifies that this provision does not require the county or municipality to mail notice using a service that provides delivery confirmation.

TMCEC Commentary: The fact that this bill requires that notice of the citation be mailed is an implicit reminder to all local governments that citations should not be mailed. Summonses are mailed. Citations are issued to people. This specific legislation is intended to close a loophole whereby municipal authorities are unable to serve legal notice of code violations at certain apartment developments.

Subject: Motorcycle Awareness and Safety (“Share the Road Campaign”)

S.B. 1967

Effective Date: September 1, 2009

Motorcycle safety is an important issue in Texas. Currently, it is an offense under Section 661.003, Transportation Code, to drive or ride on a motorcycle without a helmet unless the person is 21 years of age and has completed a motorcycle safety course or has health insurance. However, Texas statute does not require all motorcyclists or the public to complete any motorcycle safety training.

S.B. 1967 requires an applicant for a certain license or permit that includes an authorization to operate a motorcycle to furnish satisfactory evidence that the applicant has successfully completed an approved basic motorcycle operator training course. The bill amends provisions relating to the minimum required amount of insurance coverage for motorcyclists. The bill provides penalties for an accident that results from failure of a vehicle to yield the right-of-way to another vehicle and bodily injury or serious bodily injury occurs.

S.B. 1967 requires TxDOT to conduct a continuing public awareness campaign to promote motorcyclist safety and the concept of sharing the road with motorcyclists. The bill also requires the Texas Education Agency by rule to require that certain information relating to motorcycles be included in the curriculum of any driver education course or driving safety course.

TMCEC Commentary: Sections 521.148 and 522.034 of the Transportation Code are amended, requiring applicants for the Class M license or endorsement to complete a basic motorcycle operator training course. The bill removes the \$10,000 minimum requirement for health insurance under the helmet law in Section 661.003, as well as removing all references to the stickers obtained from DPS. Instead, with these amendments, the Texas Department of Insurance will provide standard proof of insurance to persons at least 21 years old who are covered by health insurance. The bill also provides that a peace officer cannot stop or detain a motorcyclist for the sole purpose of determining whether they (1) successfully completed a motorcycle operator training and safety course or (2) have health insurance.

S.B. 1967 adds Section 542.4045, providing the penalties for a failure to yield the right of way offense: a fine of not less than \$500 or more than \$2,000 if a person other than the operator who failed to yield suffers bodily injury and a fine of not less than \$1,000 or more than \$4,000 if another person suffers serious bodily injury.

S.B. 1967 also contains the same provisions pertaining to the three-wheeled “motorcycle” as H.B. 3599 and S.B. 129.

Subject: Election Practices and Procedures

S.B. 1970

Effective Date: September 1, 2009

Every election cycle presents new situations that often result in the need to clarify or adjust state election laws to allow local jurisdictions more flexibility and direction in the election process. Additionally, the implementation of the federal Help America Vote Act has made elections increasingly complex, both for those who administer them and for voters. This bill addresses questions frequently asked of and by election officials and will result in more efficient elections.

TMCEC Commentary: S.B. 1970 amends Section 2.054 of the Election Code dealing with coercion in the election of an unopposed candidate. It is a Class A misdemeanor to influence or attempt to influence through intimidation or coercion a person to not file an application for a place on the ballot or to withdraw as a candidate.

Subject: Physician Assistants Issuing Disabled Parking Placards in Certain Counties

S.B. 1984

Effective Date: Immediately

Physicians often practice in a team model, wherein a physician supervises and delegates to physician assistants (PAs). In many physician practices the patient may only see their PA, especially in rural and medically underserved areas. Like a prescription for medication, a prescription for a handicap parking placard is, for some patients, a medical necessity.

Section 681.003, Transportation Code, provides for a written prescription by a licensed physician for a handicap parking placard. The language is restrictive to a licensed physician, such that only a physician is authorized to prescribe a handicap placard. By extending the authority to prescribe handicap parking placards, the Transportation Code is simply being updated to conform to the Physician-PA practice laws of our state. This will ensure that patients of PAs in a Physician-PA practice model will not be delayed in receiving their medically necessary disabled parking privileges.

TMCEC Commentary: A PA's authority to issue the placard only applies to a person's first application for the placard and only applies in a county with a population of 125,000 or less. If you live in a larger county, you still have to see your licensed physician.

Subject: Statewide Regulation of Booting Practices

S.B. 2153

Effective Date: September 1, 2009

Vehicle immobilization by privately owned booting companies in parking facilities is unregulated by state law in Texas, resulting in unreasonable, inconsistent, fraudulent, and coercive business practices by booting companies acting on behalf of and in collusion with parking facilities.

S.B. 2153 amends Chapter 2308, Occupations Code, and requires the Texas Commission on Licensing and Regulation to adopt rules for permitting booting companies and boot operators and makes a violation of a commission rule applicable to a booting company an offense under the Texas Towing Act, which is renamed the Texas Towing and Booting Act. The bill authorizes a municipality to adopt an ordinance that is identical to the booting provisions in the act or that imposes additional requirements that exceed the minimum standards of the booting provisions of

the act and prohibits a municipality from adopting an ordinance that conflicts with those provisions. The bill establishes that a person commits an offense under the act if the person violates an ordinance or regulation.

TMCEC Commentary: A violation of towing or booting ordinances or regulations is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000.

Subject: Oyster Boat Crew Penalties

S.B. 2379

Effective Date: September 1, 2009

When illnesses associated with oyster consumption occur, the National Shellfish Sanitation Program requires states to take immediate action to stop the outbreak. If two or more individuals become ill from oyster consumption, the national program requires states to immediately close the growing area and recall all of the product produced from that area during the time period in question.

S.B. 2379 provides definitions, in Section 76.001, Parks and Wildlife Code, relating to the harvesting of oysters, increases the penalties in Section 76.118 for taking oysters from restricted areas, and provides that, under Section 76.119, each person on a commercial oyster boat, rather than just the captain, is responsible for a violation regarding the taking of oysters from restricted areas.

TMCEC Commentary: These offenses are Class A Parks and Wildlife Code misdemeanors. If a person has been convicted of the offense in the last five years, a subsequent offense is a Parks and Wildlife Code state jail felony.

House Resolutions

Subject: Municipal Courts Week

H.R. 257

Effective Date: Immediately

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 critical 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 2-6, 2009 will be recognized as Municipal Courts Week.