

# Municipal Court Recorder

Volume 14

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## LEGISLATIVE UPDATE

### Traffic and the Transportation Code

#### High Priority

##### Subject: Alteration of Speed Limits in an Urban District

HB 87

##### Effective Date: Immediately

Amends Section 545.356, Transportation Code, allowing the governing body of a municipality to lower the speed limit to not less than 25 miles per hour for a highway or part of a highway. The highway must be part of an urban district of the municipality, must not be an officially designated or marked highway or road in the state highway system, and must be 35 feet wide or less in width.

Section 545.356, Transportation Code, previously allowed the governing body of a municipality to lower a speed limit only after performing an engineering and traffic study or where the highway was under construction. This amendment is meant to cut down on costs, time and effort associated with a traffic study. However, the requirements imposed by this section may also prove to be problematic.

##### Subject: Safety Belts and Child Passenger Safety Seat Systems

HB 183

##### Effective Date: 9/1/2005

SECTION 1. Child Passenger Safety Seat Systems

Amends Section 545.412(a), Transportation Code. A person commits an offense if transporting a child under age five and under 36 inches tall without keeping the child in a child passenger safety seat system. Currently, children under age four or less than 36 inches tall are required to be in a child passenger safety seat system.

#### SECTION 2. Exemptions

Amends Section 545.412(e), Transportation Code, to exempt Medicaid transport providers from the child passenger safety seat system requirements.

#### SECTION 3. Possession of a Child Passenger Safety Seat System is a Defense

Adds Section 545.4121, Transportation Code, providing a defense to prosecution for failing to transport a child in a child passenger safety seat system. It is a defense to prosecution if the defendant possesses an appropriate child passenger safety seat system for each child required to be transported in a child passenger safety seat system. This section requires that the court determine if satisfactory evidence has been presented. Further, the defense requires only that the defendant *possess* the appropriate number of child passenger safety seat systems.

#### SECTION 4. Safety Belts

Amends Section 545.413(b), Transportation Code. A person commits an offense if he or she operates a passenger vehicle and allows a child under age 17 who is not required to be in a child passenger safety seat system to ride without a safety belt.

#### SECTION 5. A New Moving Violation

Amends Section 708.052, Transportation Code, making the offense of transporting a child without the appropriate child passenger safety seat system a moving violation.

#### SECTION 6. Changes to Driving Safety Course (DSC)

Amends Article 45.0511, Code of Criminal Procedure. A defendant may take a DSC for a violation of Section

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## Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302  
Austin, Texas 78701  
512/320-8274 or 800/252-3718  
Fax: 512/435-6118  
Website: [www.tmcec.com](http://www.tmcec.com)

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## **AROUND THE STATE**

### **TMCA Fall Annual Meeting**

The Texas Municipal Courts Association (TMCA) has scheduled its Annual Meeting on September 15-17, 2005 in San Antonio. The host hotel will be the St. Anthony at 300 E. Travis (800/996-3426 or 210/227-4392). In addition to the annual business meeting of the Association, a legislative update will be offered on changes from the 79<sup>th</sup> Session, including information on court fines and fees collections. Participants are responsible for making and paying for their own hotel rooms. Additional information about the conference may be obtained by writing or calling:

Hon. Robert Doty (TMCA First Vice-President)  
Municipal Judge  
City of Lubbock  
P.O. Box 2000  
Lubbock, TX 79457  
c: 806/775-2492  
FAX (court): 806/775-2468  
EMAIL: [rdoty@mail.ci.lubbock.tx.us](mailto:rdoty@mail.ci.lubbock.tx.us)

Hon. Robert C. Richter, Jr. (TMCA Treasurer)  
Presiding Judge  
City of Missouri City  
1350 NASA Parkway, Ste. 200  
Houston, TX 77058  
o: 281/333-9229  
FAX: 281/333-1814  
EMAIL: [richter333@juno.com](mailto:richter333@juno.com)

The schedule is tentative, but highlights are shown below:

Thursday, September 15<sup>th</sup> *Collections Workshop* (1:30-4:30 pm)

Friday, September 16<sup>th</sup> *Update on TMCEC* (9:15-10:15 am)

*Legislative Update* (10:30-12 noon)

Lunch on Your Own

*Update on the Canons of Judicial Conduct* (1:30-2:30 pm)

*Legislative Update* (2:45-4:30 pm)

*Question & Answer Session* (4:00-5:00 pm)

Friday, September 16<sup>th</sup> Banquet & Award Presentations (7:00-10:00 pm)

Saturday, September 17<sup>th</sup> Annual Business Meeting (9:00-11:00 am)

A series of exhibits on traffic safety, court software, court security, and collections programs is planned. The program will be submitted for MCLE credit and counts towards clerk certification. It does not qualify for mandatory judicial education credit.

The TMCA block of rooms (ask for this name when reserving) will be held until 12:00 noon on August 25, 2005. Please make your own reservations by August 25, 2005, to insure your space and rate. (800/996/3426)



545.412, Transportation Code, even if he or she has taken DSC in the last 12 months. A defendant may do this only if the judge requires the defendant to take a *specialized* DSC (including four hours of instruction on child passenger safety seat systems) and any course the defendant has taken in the last 12 months did not have such instruction. Only the defendant's driving record and affidavit is required to show that he or she has not taken the specialized DSC in the last 12 months. The Texas Education Agency (TEA) refers to this specialized DSC as "Seat Belt Schools." A list of the available schools is available at [www.tea.state.tx.us/drive/activesb.html](http://www.tea.state.tx.us/drive/activesb.html).

#### SECTION 7. Study to Improve Child Passenger Safety Laws

Department of Public Safety shall conduct a study regarding legislative options to improve child passenger safety law.

### **Subject: Traffic-Control Signal Preemption Devices; Criminal Penalty**

**HB 364**

#### **Effective Date: Immediately**

Amends Chapter 544 of the Transportation Code, creating Section 544.0055, making it a Class C misdemeanor to use, sell, offer to sell, purchase, or possess a traffic-control signal preemption device without authority. It is presumed that an individual who possesses a traffic-control signal preemption device possesses it for the purpose of use or sale.

Traffic-control signal preemption devices allow emergency personnel to manipulate traffic signals. However, these devices can now be purchased on the Internet, and

### **A Note to Our Readers**

- Please note that when the bill summaries refer to the "current law," they are referring to the law as it exists at the time of this publication and not as it will be affected after the Effective Date.
- The bills are categorized in the text by both subject matter and priority. An alternate version of this publication, where the bills are listed numerically, may be found on the TMCEC website ([www.tmcec.com](http://www.tmcec.com)). In terms of prioritization, our categorization is admittedly subjective. Readers are encouraged to read all bill summaries in order to ascertain local applicability.
- Full-text versions of the bills may be found on the TMCEC website or on the Texas Legislature Online website ([www.capitol.state.tx.us](http://www.capitol.state.tx.us)).

unauthorized use can lead to traffic hazards.

### **Subject: Driving Safety Course (DSC) for Military Personnel**

**HB 370**

#### **Effective Date: 9/1/2005**

Amends Article 45.0511, Code of Criminal Procedure, to allow active duty members of the military (who do not have a Texas driver's license) to take a DSC if they have not completed DSC in another state in the last 12 months. A defendant must provide evidence of the defendant's driving record maintained by Department of Public Safety (DPS) only if DPS actually has such a record. Presumably, active duty military personnel with out-of-state driver's licenses will not have a driving record with DPS. As such they would not be able to comply with the current article's requirement to provide a DPS record.

The affidavit provided by the defendant is also altered for active duty military personnel. Such defendants must provide an affidavit stating that they have not taken DSC or MOC (Motorcycle Operators Course) in another state in the 12 months preceding the offense.

### **Subject: Towing and Storage of Certain Vehicles**

**HB 480**

#### **Effective Date: 9/1/2005**

##### SECTION 1. Towing for Evidentiary Purposes

Adds Article 18.23, Code of Criminal Procedure, to provide that the law enforcement agency that directs the towing and storage of a vehicle for evidentiary purposes must pay the cost of towing and storage.

##### SECTION 2. Vehicle Storage Fee

Amends Section 2303.155, Occupations Code, raising the daily storage fee in a storage facility from \$15 to \$20 for vehicles not longer than 25 feet and from \$30 to \$35 for vehicles greater than 25 feet.

##### SECTION 3. Access to Glove Compartment

Adds Section 2303.158, Occupations Code, requiring operators of storage facilities to allow people access to the interior storage compartments of the car to obtain information necessary to prove ownership.

##### SECTION 4. Forms of Payment

Adds Section 2303.159, Occupations Code, requiring vehicle storage facilities to accept debit cards, credit cards and electronic checks.

##### SECTION 5. Location

Amends Section 643.206, Transportation Code, to allow towing companies to agree to take a vehicle to a location designated by the vehicle's owner.

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SECTION 6. Peace Officer Approval

Amends Section 684.012, Transportation Code, requiring peace officer approval to tow vehicles if the vehicle is obstructing the entrance or exit of the parking facility.

SECTION 7. Parking Facility Towing

Amends Section 684.014, Transportation Code, allowing a towing company to remove a vehicle from a parking facility only if the parking facility owner makes a request of the towing company and has an agreement with the towing company to enforce parking restrictions in the facility.

SECTION 8. Increase Punishment Range for Violation of Chapter 684

Amends Section 684.085, Transportation Code, increasing the fine for the offense of illegal towing to not less than \$500 or more than \$1500.

**Subject: Driving Safety Course (DSC); Fee for Obtaining Driving Record**

*HB 703*

**Effective Date: 9/1/2005**

Amends Article 45.0511, Code of Criminal Procedure, to grant a judge the discretion to require a defendant to pay a \$10 fee for obtaining a copy of the defendant's driving record from the DPS. The city shall keep a record of the fees collected and send all of the fees collected to the Comptroller, who then credits the fees to DPS.

**Subject: Transportation of Loose Material**

*HB 754*

**Effective Date: 9/1/2005**

SECTION 1. Offense and Punishment Range

Amends Section 725.003, Transportation Code, requiring drivers to cover loads containing aggregates or refuse. Currently, the punishment range is \$25-200 for a first conviction and \$200-500 for a second or subsequent conviction. The amendment provides for a punishment range of \$25-500 on all convictions.

SECTION 2. Commercial Motor Vehicles

Amends Section 725.021, Transportation Code, to require commercial motor vehicles transporting aggregates or refuse to completely cover or enclose their load.

**Subject: Disobeying Barricades**

*HB 1481*

**Effective Date: 9/1/2005**

SECTION 1. Heading Changed

Amends the heading to Section 472.022, Transportation Code, to conform to changes in that section.

SECTION 2. Class B Misdemeanor for Disobeying Low

Water Barrier

Amends Section 472.022, Transportation Code, providing that a person commits an offense if driving around a barricade. Currently, the law provides that a person commits an offense if he or she disobeys instructions, warnings, signs, or signals. If a warning sign or barricade was placed because of water on the roadway and the person disobeys or drives around a barricade, the offense is a Class B misdemeanor. Definitions are amended to conform to substantive changes.

This amendment aims to deter commission of the offense and prevent flood-related deaths that occur when drivers disobey barriers. Because the offense is heard in county court, the judge may order restitution sufficient to cover the cost of summoning rescue personnel to the scene.

**Subject: Duties following a Vehicle Accident**

*HB 1484*

**Effective Date: 9/1/2005**

Amends Section 550.022, Transportation Code, making the failure to move a vehicle that can be normally and safely driven after an auto accident a Class C misdemeanor. Currently, such an offense is a Class C misdemeanor if the damage to the vehicles is less than \$200 and a Class B misdemeanor if the damage to all vehicles is \$200 or more. HB 1484 makes this offense a Class C misdemeanor regardless of the amount of damage to the vehicles.

Most accidents result in damage greater than \$200, requiring the defendant to be charged with a Class B misdemeanor; as such the offense was inadequately enforced.

**Subject: Neighborhood Electric Vehicles and Motor-Assisted Scooters**

*HB 1596*

**Effective Date: Immediately**

The following sections relate to the location and definition of terms:

SECTION 1. Heading Changed

Amends the heading to Subchapter D, Chapter 551, Transportation Code, to read "NEIGHBORHOOD ELECTRIC VEHICLES," omitting "MOTOR-ASSISTED SCOOTERS" from the heading to conform with substantive changes in the chapter.

SECTION 2. Neighborhood Electric Vehicles

Amends Section 551.301, Transportation Code, deleting Subsection (2), defining motor-assisted scooters. The definition of "neighborhood electric vehicle" remains the same.

SECTION 3. Motor-Assisted Scooters

Adds Subchapter E, to Chapter 551, Transportation Code, providing a definition of “motor-assisted scooter.” The definition of “motor-assisted scooter” remains the same, but has been moved into its own subchapter.

Adds Section 551.352, Transportation Code, providing that a motor-assisted scooter may only be operated on a street or highway with a posted speed limit of 35 miles per hour or less. This section also allows a county or municipality to prohibit the operation of a motor-assisted scooter on a street, highway or sidewalk in the interest of safety. DPS may also prohibit the operation of a motor-assisted scooter on a highway in the interest of safety. A motor-assisted scooter may be operated on a bike path or sidewalk. Provisions of Title 7, Transportation Code, that apply to bicycles also apply to motor-assisted scooters. Provisions of Title 7, Transportation Code, relating to motor vehicles *do not* apply to motor-assisted scooters.

#### SECTION 4. Repeals Redundant Section

Repeals Section 551.302, Transportation Code, regarding operation of neighborhood electric vehicles. This section was enacted twice by the 2003 Legislature.

#### **Subject: Obsolete Documents Issued in Connection with Driver’s Licenses**

**HB 1789**

#### **Effective Date: 9/1/2005**

Repeals Sections 521.054(d), Transportation Code, that currently allows individuals who change addresses to request a sticker to put on their license instead of requesting a duplicate license. Repeals Section 521.054(e), Transportation Code, providing for a \$10 fee to be collected by DPS for issuing such a sticker. Repeals Section 521.054(f), Transportation Code, requiring DPS to make the request for the sticker available in public places.

Repeals Section 521.102, Transportation Code, which allows DPS to issue a disability or health condition certificate. Repeals Section 521.423, Transportation Code, regarding a \$5 fee for issuing a disability or health condition certificate. Amends Section 521.424, Transportation Code,

repealing the \$5 fee for issuing a *duplicate* disability or health condition certificate.

#### **Subject: Removal or Covering of Signs in Construction or Maintenance Work Zone**

**HB 1925**

#### **Effective Date: Immediately**

Adds Section 201.907, Transportation Code, providing that the Texas Department of Transportation (TxDOT) remove, cover or require the removal or covering of signs that restrict speed limits in construction or maintenance work zones when no hazard exists.

Restricted speed limit signs in construction and maintenance work zones regulate traffic and caution drivers regarding hazards to the safety of both drivers and workers. The placement of signs in areas where no hazard exists impedes traffic flow. This practice also encourages drivers to disregard such signs in areas where hazards do exist.

#### **Subject: Rural Highway Speed Limits**

**HB 2257**

#### **Effective Date: Immediately**

Amends Section 545.353, Transportation Code, allowing the Texas Transportation Commission to establish daytime speed limits up to 80 miles per hour along Interstate Highway 20 and Interstate Highway 10 through Crockett, Culberson, Hudspeth, Jeff Davis, Kerr, Kimble, Pecos, Reeves, Sutton, or Ward County.

Amends Section 545.353, Transportation Code, to allow the Texas Transportation Commission to establish daytime speed limits up to 75 miles per hour in counties with a population density of less than 15 persons per square mile. Previously, this section allowed the Commission to establish such speed limits in counties with a population density of less than 10 persons per square mile.

#### **Subject: Jurisdiction to Enforce Dealer and Manufacturer License Plate Laws**

**HB 2509**

#### **Effective Date: Immediately**

“Curbstoning” is the practice of selling cars on the street or in parking lots, usually by unlicensed dealers. People engaged in the practice of curbstoning violate requirements of Chapter 503 of the Transportation Code, pertaining to dealer’s and vehicle license plates. Previously such violations had to be filed in either county or justice court, but may now be filed in municipal court.

The penalty for a violation of Chapter 503 is not less than \$50 or more than \$5000. The fine may be tripled on a finding of a willful violation or conscious indifference to law. A defendant may also be subject to civil penalties from \$50 to \$1000.

### **Acronyms used in this Newsletter**

|       |   |
|-------|---|
| CDL   | Commercial Driver’s License             |
| DPS   | Department of Public Safety             |
| OCA   | Office of Court Administration          |
| TEA   | Texas Education Agency                  |
| TxDOT | Texas Department of Transportation      |
| TMCA  | Texas Municipal Courts Association      |
| TMCEC | Texas Municipal Courts Education Center |

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**Subject: Procedures regarding Removal and Storage of Vehicles and Associated Fee**

**HB 2630**

**Effective Date: 9/1/2005**

Amends Chapter 683, Transportation Code, to provide rules for law enforcement agencies that take into custody an abandoned vehicle left in a storage facility and rules for garagekeepers of storage facilities. Amended are Sections 683.011 and 683.031(c).

Amends Chapter 685, Transportation Code, regarding the rights of owners and operators of stored vehicles. Section 685.003 provides for the right of an owner or operator to have a hearing. Section 685.004 is amended to give jurisdiction of the hearing to the justice of the peace court. Current law provides that a justice of the peace or a magistrate in the jurisdiction where the vehicle was removed or a judge in the City of Houston has jurisdiction over this hearing.

Section 685.006, Transportation Code, is amended changing the content of the law enforcement's notice to the owner of the stored vehicle.

Section 685.008, Transportation Code, is amended by increasing the court's filing fee from \$10 to \$20 for a hearing under Chapter 685.

Section 685.009, Transportation Code, is amended by adding Subsection (b)(1) to provide at the hearing under Section 685.009 that the burden of proof is on the person who requested the hearing and that hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

Section 685.010, Transportation Code, is amended to provide that an appeal from a hearing under Chapter 685 is governed by the rules of procedure applicable to civil cases in justice court, except that the court cannot require an appeal bond.

Amends Section 2303.154, to add Subsection (a)(1) to provide that if a vehicle is not claimed before the 10<sup>th</sup> day after the date notice is mailed or published, the operator of the vehicle storage facility shall consider the vehicle abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code. Section 2303.155(e), Occupations Code, is amended to provide that the operator of a storage facility may charge a daily storage fee for a certain time and under certain conditions. Chapter 2303, Occupations Code, is amended by adding Section 2303.158, requiring storage facilities to accept payment of a storage charge by electronic check, debit card or credit card for any charge associated with delivery or storage of a vehicle.

Amends Section 101.141(a), Government Code, to make a conforming change to the fee for a hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court from \$10 to \$20.

Amends Section 101.161, Government Code, to make a conforming change to the fee for hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court from \$10 to \$20. Note: Municipal court judges acting as magistrates will not have jurisdiction to conduct this hearing when this bill goes into effect on 9/1/2005.

Amends Section 101.181, Government Code, to repeal the \$10 fee provided for in Section 685, Transportation Code, for municipal courts of record.

**Subject: Transportation "Omnibus" Bill**

**HB 2702**

**Effective Date: Immediately**

SECTION 2.76. Failure to Pay a Fare

Adds Section 370.355, Transportation Code, providing that a person commits a Class C misdemeanor if failing to pay or failing to provide evidence of payment of a fare required for use of a transit system. Such an offense is not a crime of moral turpitude. Notably, the same action may be prosecuted as Theft of Service under Section 31.04, Penal Code.

SECTION 2.86. Pocket Bikes and Minimotorbikes

Amends Section 551.301, Transportation Code, to say that a "motor-assisted scooter" does not include a pocket bike or minimotorbike. The act also provides a definition of "pocket bike or minimotorbike." "Pocket bike or minimotorbike" means a vehicle that: (1) is self-propelled; (2) has an engine piston displacement of 50cc or less; (3) has no more than two wheels; (4) has a seat or saddle; (5) is not designed for use on highway; and (6) is ineligible for certificate of title. The term does not include a moped, motorcycle, electric bicycle, motor-driven cycle, motorized mobility device, electric personal assistive mobility device, or neighborhood electric vehicle.

SECTION 2.87. Use of Pocket Bikes and Minimotorbikes

Adds Section 551.304, Transportation Code. This new section provides that Subchapter D of Chapter 551, entitled "Neighborhood Electric Vehicles," does not authorize the operation of pocket bikes or minimotorbikes on a highway, road, street, bike path, or sidewalk.

It appears the Legislature has attempted to resolve some of the issues surrounding the newest transportation gadget—the pocket bike. There is now a definition for the pocket bike, whereas, previously the pocket bike did not fit into any

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of the Transportation Code vehicle definitions. It also appears that the Legislature attempted to criminalize the use of pocket bikes. They do not, however, create a penalty or an offense for using a pocket bike or minimotorbike on a highway, road, street, bike path, or sidewalk. This bill should be read in conjunction with HB 1596, which also amends Chapter 551 of the Transportation Code. It is far from clear how these changes will be interpreted and put into effect.

#### SECTION 3.01. Deferred Disposition

Amends Article 45.051, Code of Criminal Procedure, to provide that a commercial driver is not eligible for deferred disposition if committing a violation of state law or ordinance relating to motor vehicle control. Previously, commercial drivers could not get deferred disposition if they committed a traffic offense. The term “motor vehicle control” is not defined in the Transportation Code and, thus, is subject to interpretation by the judge.

#### **Subject: Affirmative Defense for Misuse of Exhibition Vehicle Offenses**

*HB 3425*

**Effective Date: 9/1/2005**

Amends Section 504.502 of the Transportation Code by creating Subsection (j), providing an affirmative defense to prosecution for inappropriate use of an exhibition vehicle if the vehicle is traveling to or from routine maintenance at the time of the offense.

Antique license plates were created during the 78th Legislative Session to allow certain antique vehicles a reduced registration fee. Because registration is reduced, vehicle use is restricted to exhibitions, parades and other similar public functions. A person who violates these restrictions (*e.g.*, driving a Model T to work every day) commits a misdemeanor punishable by a fine of not less than \$5 or more than \$200. HB 3425 provides a defense to prosecution for this offense.

#### **Subject: Paying of Proper Tolls**

*SB 129*

**Effective Date: 9/1/2005**

Amends Section 361.252, Transportation Code, to allow TxDOT to waive or reduce payment of a toll for any vehicle or class of vehicles. Amends Section 370.177, Transportation Code, to allow the board of directors of a regional mobility authority to waive or reduce payment of a toll for any vehicle or class of vehicles.

These sections previously excepted only authorized emergency vehicles from the requirement to pay a toll. The new enactments now permit TxDOT and the regional mobility authority to create such an exception for any vehicle or class of vehicles. This legislation aims at

excepting public school buses and public transit vehicles from paying tolls.

#### **Subject: Alcohol and Drug Testing for Holders of Commercial Driver’s Licenses**

*SB 217*

**Effective Date: 9/1/2005**

Adds Subchapter F to Chapter 644, Transportation Code, providing a definition of “employee” and “valid positive result.” Section 644.252, Transportation Code, requires an employer to report a valid positive result, refusal to take a drug test, or an adulterated specimen to TxDOT. TxDOT must maintain the information and it may only be released in limited circumstances.

Repeals Section 643.064, Transportation Code. Subchapter F replaces this section, and provides more specific definitions and reporting requirements.

Amends Section 521.053, Transportation Code, to coincide with the addition of Subchapter F, Chapter 644 and the repeal of Section 643.064.

#### **Subject: Jurisdiction of Offenses Involving Operating or Loading Overweight Vehicles**

*SB 737*

**Effective Date: Immediately**

Amends Section 621.506(f), Transportation Code, to remove the restriction on municipal court jurisdiction over offenses involving operating or loading overweight vehicles of only offenses with a maximum fine of \$500. Municipal courts now have jurisdiction over all fine-only offenses involving the operation and loading of overweight vehicles. Municipal court jurisdiction includes Subsections 621.506(b)(1)-(4).

#### **Subject: Deferred Disposition for Defendants under 25**

*SB 1005*

**Effective Date: 9/1/2005**

*Refer to Procedural Law section on page 30 in this newsletter.*

#### **Subject: Commercial Drivers**

*SB 1257*

**Effective Date: 9/1/2005**

#### SECTION 1. Changes to Suspensions

Amends Section 521.292, Transportation Code, deleting the subsection that allows DPS to suspend a person’s license for violating a restriction or endorsement on the license.

#### SECTION 2. Military Commercial Driver’s License

Amends Section 522.004, Transportation Code, to add the U.S. Coast Guard to the list of active duty military personnel who are not subject to commercial driver’s

license (CDL) requirements when driving a military vehicle.

### SECTION 3. Disqualification of Commercial Drivers

Amends Section 522.081, Transportation Code, adding Subsection (g), which disqualifies a commercial driver from operating a commercial motor vehicle when driving constitutes an imminent hazard. The driver's driving record must reflect this disqualification.

### SECTION 4. Wireless Communication Devices and Young Drivers

Amends Section 545.424, Transportation Code, to prohibit persons under age 18 from operating a motor vehicle while using a wireless communication device during the first six months after their license is issued. This act also prohibits persons under 17 from operating a motorcycle or moped while using a wireless communication device during the first six months after the license is issued.

### SECTION 5. Wireless Communication Devices and Bus Drivers

Amends Section 545.425, Transportation Code, to prohibit a driver from using a wireless communication device while operating a passenger bus carrying a minor, except in limited circumstances.

### SECTION 6. CDL and Deferred Disposition

Amends Article 45.051, Code of Criminal Procedure, to prohibit a person who held a CDL at the time of the offense from getting deferred disposition.

### SECTION 7. CDL and Driving Safety Course (DSC)

Amends Article 45.0511, Code of Criminal Procedure, to prohibit a person who held a CDL at the time of the offense from getting DSC .

SECTIONS 6 and 7 close the loophole in the deferred disposition and DSC statutes that allow a commercial driver to surrender a CDL before requesting deferred or DSC and thus be eligible at the time of the request.

## Medium Priority

### **Subject: New Billboard Restriction on Select Highways**

*HB 34, HB 1248, HB 1851, SB 1206, SB 1579*

**Effective Date (all bills): 9/1/2005**

All five bills amend Subsection 391.252(a) of the Transportation Code, prohibiting the erection of billboards (off-premises signs) adjacent to and visible from particular roads. Numerous Texas cities restrict or prohibit the construction of billboards in their city limits, but municipal ordinances do not apply to unincorporated or rural areas. However, under state law, billboards may be banned on

certain sections of highway. These bills amend the already lengthy list of locations where the billboards may not be placed by adding:

- U.S. Highway 281 between State Highway 186 and Interstate Highway 37, between the southern boundary line of Comal County and State Highway 306 (HB 1248), and exclusive of the segment of U.S. Highway 281 located in the city limits of Three Rivers (SB 1579);
- Farm-to-Market (FM) Road 2978 between FM 1488 and the boundaries between Harris and Montgomery Counties (HB 34);
- State Highway 90 between the western city limits of the City of San Antonio and the eastern city limits of Hondo (HB 1851); and
- Highways in Bandera County that are part of the state highway systems (SB 1206).

### **Subject: Use of Electronically Readable Information in Voting**

*HB 178*

**Effective Date: 9/1/2005**

Amends Sections 521.126(d), Transportation Code, adding a person establishing the identity of a voter to the list of who may access, use, compile, or maintain a database of electronically readable information from a driver's license. Conforming changes are also made to Section 63.0102, Election Code.

The 78<sup>th</sup> Legislature adopted SB 1445, specifying who is allowed to access electronically readable information from driver's licenses. At that time, election officials were left off the list of officials who may "swipe" a driver's license to verify the identity of a voter. HB 178 rectifies this omission.

### **Subject: Standardized Penalty for Use of Another's Driver's License**

*HB 699*

**Effective Date: 9/1/2005**

Amends Section 521.451 of the Transportation Code, pertaining to false/incorrect driver's license by changing an offense under the section from a Class B misdemeanor to a Class A misdemeanor. If any conduct under the section can also be prosecuted under Section 106.07 of the Alcoholic Beverage Code (Misrepresentation of Age by a Minor), the offense is punishable only under the Alcoholic Beverage Code as a Class C misdemeanor.

Currently, a person can be charged for use of another person's driver's license as a Class B misdemeanor under the Transportation Code, or as a Class A misdemeanor under the Section 37.10 of the Penal Code (Tampering with a

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Governmental Record). This prevented uniformity of prosecution, so HB 699 establishes the offense as a Class A misdemeanor in both codes.

**Subject: Classic Travel Trailer Specialty License Plates**

*HB 1244*

**Effective Date: 9/1/2005**

Amends Chapter 504 of the Transportation Code by creating Section 504.5011, providing for the issuance of specialty license plates (bearing the words "Classic Travel Trailer") for travel trailers that are at least 25 years old. A person eligible for the specialty plates may also use license plates that were issued the model year of the travel trailer. The fee for issuance or approval of these specialty plates is \$15.

Prior to this amendment, Texas allowed for the issuance of specialty plates for classic cars, motorcycles and trucks, but not classic travel trailers. HB 1244 creates another class of motor vehicles that can be issued specialty plates, and trailers bearing the plates should not be penalized for having incorrect plates.

**Subject: Landlord Towing Policy and Tenant Notice**

*HB 1399*

**Effective Date: 1/1/2006**

Amends Chapter 92 of the Property Code by creating Section 92.0131, requiring a landlord of a multiunit housing complex to provide a tenant with a copy of any towing rules or policies that the landlord adopts and requiring the landlord to obtain the tenant's signature on the rules or policies. HB 1399 also requires the landlord to give the tenant prior written notice if the landlord changes the vehicle towing or parking rules or policies and that the notice be delivered in certain methods, such as by certified mail.

A landlord who violates these provisions is liable for a civil penalty of \$100 plus towing and storage costs that the tenant incurs as a result of the towing of the tenant's vehicle. A landlord is also liable for any damage to the tenant's vehicle resulting from the vehicle being towed if the towing company does not have insurance that covers the damage.

Currently, a vehicle can be towed from a premise without the owner's knowledge or permission, and at the discretion of the towing company. Often the towing rules and policies are in a lease agreement but are not conspicuous.

**Subject: Payment Methods at Vehicle Storage Facilities**

*HB 1584*

**Effective Date: 9/1/2005**

Amends Chapter 2303 of the Occupations Code by adding Section 2303.158, requiring the operator of a vehicle storage facility to accept payment by electronic check, debit card or credit card for any payment associated with the delivery or storage of a vehicle. Governmental vehicle storage facilities (defined in Section 2303.155) must also comply with this provision.

Currently, a vehicle storage facility has the ability to set the payment options it would accept for payment of storage fees. Often this meant a cash-only payment. Payment by electronic check, debit card or credit card provides more flexibility for people making payments. Municipal courts should be aware of this amendment because it provides more payment options to defendants involved in offenses where the defendant's vehicle has been towed.

**Subject: All-Terrain Vehicle (ATV) Definition Amended**

*HB 1646*

**Effective Date: 9/1/2005**

Amends Section 502.001(1) of the Transportation Code, altering the definition of "all-terrain vehicle" (ATV) to reflect changes in the design of newer ATV models. The amendment specifies that an ATV is a motor vehicle that is not a golf cart, has a saddle or bench, has three or more wheels, is designed for off-highway operation, and is not designed primarily for farming or lawn care. Section 501.002(14), which defines "motor vehicle," is also amended to reflect the altered definition of ATV.

An expanded definition of ATV increases the number of vehicles that can be titled but are not required to be registered and are therefore not subject to penalty under Section 502.402 (Operation of an Unregistered Motor Vehicle).

**Low Priority**

**Subject: Overweight Vehicle Permits in Chambers County**

*HB 1044*

**Effective Date: Immediately**

Amends Chapter 623 of the Transportation Code by creating Subchapter M, allowing the Texas Transportation Commission to authorize Chambers County to issue permits to oversized or overweight vehicles (up to 100,000 pounds) carrying cargo on FM 1405 and the frontage road to State Highway 99 located in the Cedar Crossing Business Park. The permit fees may not exceed \$80 per trip and

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should be deposited in the state highway fund. The movement authorized by an issued permit may not exceed the posted speed limit or 55 miles per hour, whichever is less. A violation of this provision is a moving violation.

Cedar Crossing Business Park in Chambers County is located only a short distance from the Port of Houston's Barbour's Cut Terminal. Cedar Crossing's job growth and investment potential is somewhat impeded by the TxDOT's weight restrictions placed upon trucks with containers moving from or destined for overseas shipment. Because of shipping costs, overseas customers demand that their containers be filled to maximum capacity. HB 1044 designates two roads in Cedar Crossing Business Park as "heavy haul roads" and raises the gross weight limit to 100,000 pounds. However, overweight vehicles are still restricted in how fast they can travel as a matter of public safety.

**Subject: Driver's License Reciprocity with Foreign Countries**

*HB 1137*

**Effective Date: Immediately**

Amends Chapter 521 of the Transportation Code by creating Section 521.0305, allowing DPS to enter into an agreement with a foreign country whereby citizens of both Texas and the foreign country who are 18 and older and holders of Class C licenses (or the foreign country's equivalent) may receive a Class C license (or equivalent) from the other party to the agreement in priority matters.

DPS may only enter into such an agreement with a foreign country if both Texas and the foreign country are partners in a reciprocity agreement in driver's licensing matters and if DPS determines that the foreign country has vehicle laws, ordinances and administrative rules and regulations similar to those of Texas.

Prior to HB 1137, Texans working for multi-national companies and stationed overseas for long periods of time found it difficult to secure a foreign license. Conversely, this makes it easier for certain foreign citizens who are employed in Texas to receive Class C licenses.

**Subject: Traffic Officer Limit Removed for Counties of over Two Million**

*HB 1165*

**Effective Date: Immediately**

Amends 701.001, Transportation Code, removing limitations on county traffic officers for counties with populations of two million or more (Dallas and Harris Counties, according to the 2000 Census). Previously, the commissioners court in every county was limited to employing five regular county traffic officers and two

additional officers in special emergencies. Now counties with two million residents or more are not subject to these restrictions.

This amendment is particularly relevant to municipalities since county officers work with municipal police officers to enforce state traffic laws within individual municipalities. County traffic officers may also patrol a highway that runs through a municipality, as the officers are required to patrol highways almost exclusively.

**Subject: "Police Escort" Definition Expanded  
SB 866**

**Effective Date: Immediately**

Amends Section 546.002 of the Transportation Code, adding university, school district and transit authority police officers to the list of officers who may operate their sirens and flashing lights when escorting a procession or directing traffic. Prior to this amendment, only those officers defined in Article 2.12 (1)-(4) of the Code of Criminal Procedure (sheriffs, constables, marshals, rangers, *etc.*) could legally operate their sirens and lights when escorting a procession, directing traffic or performing some other non-emergency but public-safety-related activity.

**Please check the TMCEC website for new laws from Legislative Special Sessions and for any corrections to this newsletter.**

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# Ordinances and Related Municipal Law

## High Priority

### **Subject: Collection of Hotel Occupancy Tax**

*HB 352*

#### **Effective Date: 9/1/2005**

Amends Section 351.004, Tax Code, to authorize a city to hold a hotel operator who has failed to pay taxes liable for the cost of an audit. Municipalities are also authorized to use previous year's tax filings to determine the amount due and to consider previous year's filings as *prima facie* evidence of the amount due.

Cities are authorized to assess and impose a hotel occupancy tax. The revenues derived from this tax are used to finance many important tourism development projects within a municipality. Hotel owners are to collect the occupancy tax, file a quarterly report with the city, and submit their payment to the city.

While Section 351.004 authorizes tax collection by civil means, it also authorizes cities by ordinance to authorize misdemeanor punishment for violation of Chapter 351. Yes, in such instances, municipal courts can have jurisdiction in tax collection cases.

### **Subject: Proof of a Culpable Mental State Mandatory in Certain Ordinance Violations**

*HB 970*

#### **Effective Date: 9/1/2005**

Amends Section 6.02, Penal Code, adding Subsection (f) prohibiting an offense defined by municipal ordinance or by order of a county commissioners court from dispensing with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23 (\$500).

A criminal statute can be enacted without requiring criminal intent, such as intentional, knowing or reckless culpability (*i.e.*, "strict liability" crimes). Some public policy groups assert that strict liability crimes are supposed to be limited to minor, fine-only offenses. Accordingly, a crime that imposes a "large penalty" (a term subject to debate) requires culpability on the part of the offender. Some cities by ordinance have enacted strict liability crimes and have attached fines exceeding the maximum allowed by Section 12.23, even though the offense dispenses with the requirement of culpability by the actor.

HB 970 limits the punishments on criminal offenses enacted by local governments to the maximum fine allowed by Section 12.23, Penal Code, if the proposed criminal offense does not require a culpable mental state. Local governments

would remain free to impose higher fines than those allowed by Section 12.23, but could not do so if they opted to enact a strict liability crime requiring no proof that the actor acted with intent, knowledge or recklessness in committing the offense.

### **Subject: Noxious/Invasive Plant Ordinances**

*HB 2313*

#### **Effective Date: 9/1/2005**

Creates Section 71.153 of the Agriculture Code, prohibiting a political subdivision from adopting an ordinance that restricts the planting, sale or distribution of noxious or invasive plant species. The offense of selling, distributing or importing noxious plants remains a Class C misdemeanor. Additionally, it is a Class C misdemeanor to sell, distribute or import invasive plants.

### **Subject: On-Site Sewage Disposal Systems and Municipalities**

*HB 2510*

#### **Effective Date: 9/1/2005**

Amends Chapter 7, Water Code, prohibiting a person from knowingly violating an order or resolution adopted by an authorized agent under Section 366.0515 of the Health and Safety Code. Section 366.0515 allows an authorized agent of the Texas Natural Resource Conservation Commission to adopt an order, resolution or rule pertaining to the on-site sewage disposal systems that are maintained directly by the owner of the system. The penalty for committing this offense is a Class C misdemeanor.

Under Section 366.002, "authorized agent" means a local governmental entity authorized by the Commission to implement and enforce rules under Chapter 366; the definition of "local governmental entity," also defined under Section 366.002, can include a municipality. Section 366.031 states that the Commission will designate a governmental entity if the entity notifies the Commission that it wants to regulate the use of on-site sewage disposal systems in its jurisdiction, hold public hearings and adopt an order or resolution that complies with Section 366.032. The designation as authorized agent only takes effect when the order or resolution is approved.

Although the construction of Chapter 366 may be confusing, with references to both "orders or resolutions" and "municipalities" (when municipalities may only issue ordinances and regulations), municipalities may regulate on-site sewage disposal systems under Chapter 366, according to Texas AG Opinion DM-343 (1995). Indeed, the AG Opinion concludes that Chapter 366 impliedly repeals any other authority municipalities have to regulate on-site

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sewage systems within municipal limits pursuant to Section 342.002, Health and Safety Code, and Sections 51.012, 214.012(a)(2), 214.014, and 217.002, Local Government Code.

**Subject: Charitable Solicitation by a Pedestrian  
SB 245**

**Effective Date: 9/1/2005**

Adds Section 552.0071, Transportation Code, requiring local governments to create by ordinance or regulation a process by which certain authorized persons may stand in a roadway and solicit charitable contributions. Section 552.007 prohibits solicitations by a person standing in a roadway, but provides that a person may solicit charitable contributions if the person is granted authorization by a local authority having jurisdiction over the roadway. The new law ensures that authorization shall be granted subject to certain conditions.

Under the new law, a solicitor must file a written application for authorization not later than the 11th day before the day the solicitation is to begin. Applications must include the day or dates, the times and place or places where the solicitation will occur, and the number of solicitors to be involved. The applicant must also provide proof of insurance in the amount of at least \$1 million to cover damages that may arise from the solicitation.

Municipalities are not prohibited from requiring a permit or the payment of a fee to provide for solicitation within its jurisdiction and does not waive or limit any immunity from liability applicable under law to the local authority. Existing rights of individuals or organizations under Section 552.007, Transportation Code, are not impaired by any provision of subsections created in this bill.

**Subject: Limiting Criminal Liability of Property  
Management  
SB 399**

**Effective Date: Immediately**

This amendment to the Property Code and Government Code adds provisions stating that an employee, in certain instances, cannot be held personally liable for code violations (made by citation) if the employee provides code enforcement officials with the name and address of the owner.

While most code enforcement officials cite property owners for code violations, some personally cite employees of the property owners or management companies rather than the owner. In certain instances, this has ultimately resulted in the arrest of employees.

Employees of property owners and management companies claim that they do not have control over funds

needed to bring property into code compliance; that they need the permission of the owner. Proponents of this bill claim it is wrong to hold an on-site employee personally responsible.

SECTION 1. Amends Subchapter A, Chapter 92, Property Code, adding Section 92.016, which prohibits landlords from passing the costs of criminal fines on to tenants (unless the tenants created the condition resulting in the imposition of a fine).

SECTION 2. Amends Chapter 250, Local Government Code, adding Sections 250.003, 250.004 and 250.005, which: (1) limits the personal criminal liability of a non-owner issued citation as long as the non-owner provides the property owner's name, street address and telephone number; (2) limits application to properties that possess a certificate of occupancy or a certificate of completion with respect to the construction of improvements on the property; (3) provides that the employee or owner to whom a citation described by Section 250.003 is issued is considered the owner's agent for accepting service of the citation for the violation if the property owner's street address is not in this state; (4) provides that service of the citation on the agent has the same legal effect as service on the owner for the purpose of fines against the owner or the property, including a warrant or *capias*; and (5) provides that Sections 250.003 and 250.004 do not limit the availability of remedies against a real property owner or real property otherwise provided by law, including fines, closure, injunction, and *mandamus*.

**Subject: Public Nuisance; Improper Maintenance  
of a Drainage Easement  
SB 1238**

**Effective Date: 9/1/2005**

Amends Section 343.011(c) of the Health and Safety Code, stating that it is a public nuisance to fill, block or maintain a drainage easement in a manner that allows the easement to be clogged. It is also a public nuisance to violate an agreement with the county to improve or maintain the drainage easement.

Prior to this amendment, the law did not recognize a blocked, non-maintained or unimproved drainage easement as a public nuisance; a county did not have authority to access, maintain or improve drainage easements without landowner approval. SB 1238 allows counties to have access to maintain and improve drainage easements that have not been maintained by the owner, making it easier for counties to reduce and prevent flooding due to blocked or non-functioning drainage ways.

Section 343.012 states that if a public nuisance is not abated 30 days after the owner of the property receives notice of

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the nuisance, it is a misdemeanor and the owner may be fined \$50-200. If the owner has been previously convicted of having a nuisance, the owner may be fined \$200-1000, be confined in jail for no more than six months or both.

## **Medium Priority**

### **Subject: Civil Nuisance Abatement against Criminal Street Gangs**

*HB 68*

**Effective Date: 9/1/2005**

Amends Section 125.061(2), Civil Practice and Remedies Code, to redefine "continuously or regularly" and makes prospective to the effective date of this amendment or in the six-month period immediately preceding the effective date of the amendment.

In an effort to curtail gang activity in neighborhoods, civil law may be used to prohibit people who create a public nuisance from repeatedly gathering in the same location. Such causes of action can be pursued in county or district court by citizens or by attorneys representing the State (including city attorneys). Although the law was successful and many neighborhoods are safer, modification was necessary to make the statute more effective. When the law originally passed, a person who participated in gang activity and/or a person who owned or was responsible for a location where gang activity occurred five times in a period of six months could be subject to reasonable requirements to prevent future gang activity. The problem was that the six-month time period was too short. This amendment solves the problem by increasing the time period for the five occurrences of gang activity from six months to 12 months.

### **Subject: Processing of a City Building Permit**

*HB 265*

**Effective Date: 9/1/2005**

Amends Subchapter Z, Chapter 214, Local Government Code, adding Section 214.904 requiring municipalities to review a building permit application within six weeks of its filing, and grant or deny the application within 45 days of its filing. If the permit is not approved, the municipality is required to meet with the applicant or send a letter to the applicant that outlines the problems with the application. If the applicant resubmits the application with necessary corrections, the municipality has one month to approve or reject the application or all permit fees are waived.

Prior to the amendment, there were no time limits placed on municipalities regarding the processing of building permits.

### **Subject: Civil Abatement of a Common Nuisance**

*HB 1690*

**Effective Date: 9/1/2005**

Amends Section 125.001(3), Civil Practice and Remedies Code, altering the definition of multiunit residential property in the properties that may be considered as a "common nuisance." The bill also amends the Civil Practices and Remedies Code so that evidence must show the defendant knowingly "tolerated" rather than "permitted" the nuisance to occur on the property.

Under current statute, it is unclear who is responsible for maintaining nuisance problems in the common areas of a condominium complex. If a condominium complex is experiencing a nuisance problem in the areas jointly owned and shared by all residents, law enforcement officials are required to address the entire complex population. Law enforcement officers need clarification as to who is responsible for the maintenance of recurring illegal activity in common areas of a condominium complex.

### **Subject: Local Regulation of Mobile Food Units/Roadside Vendors in the City of Houston and Harris County**

*HB 2507*

**Effective Date: 9/1/2005**

Amends Chapter 121 of the Health and Safety Code by creating Section 121.0035, which states a municipality with a population of 1.5 million or more (Houston) and a county with a population of 3.4 million or more (Harris County) must enforce state law concerning mobile food units and roadside vendors just as the municipality or county enforces other health and safety regulations relating to food services.

Some mobile food vendors in the City of Houston and Harris County have ceased to operate as mobile establishments and remain at fixed locations. These locations lack proper sanitary facilities (*e.g.*, bathrooms and running water) and pose a risk to the public health. The legal departments of the local governments have questioned the authority of their local health departments to regulate mobile food operations and, therefore, were not effective at enforcing the law. This amendment clarifies that the City of Houston and Harris County have the authority to enforce state law and rules concerning mobile food units and roadside food vendors within their jurisdictions.

### **Subject: Political Subdivisions and Local Permit Regulation**

*SB 574*

**Effective Date: 9/1/2005**

Amends Sections 245.004-245.006, Local Government Code, clarifying that municipal zoning regulations affecting landscaping, tree preservation, open space, or park

dedications are not exempt from Chapter 245 (Issuance of a Local Permit). SB 574 also allows a local regulatory agency to enact an ordinance that places an expiration date on dormant projects. The expiration date will be no less than two years for projects involving individual permits or no less than five years on projects involving multiple permits. It should also be recalled that many municipalities have enacted ordinances requiring a permit before beginning a project, and failure to obtain a permit may have criminal penalties.

**Subject: International Building Code (IBC)  
Adopted as Municipal Building Code  
SB 1458**

**Effective Date: The provision requiring municipalities establish rules to implement the IBC is effective 9/1/2005; the remainder of SB 1458 is effective 1/1/2006**

Amends Chapter 214 of the Local Government Code by creating Section 214.216, adopting the IBC as the municipal building code of the state. The IBC is to be adopted as it existed on May 1, 2003 and will apply to all commercial buildings constructed, altered, remodeled, or repaired after January 1, 2006. Municipalities must establish rules adopting and implementing the IBC before January 1, 2006. If a municipality has a building code more stringent than those of the IBC, it is not required to repeal the code.

The IBC is the standard in the United States for the building industry. Although the code is in effect in much of Texas, it is adopted in different forms. This amendment provides consistency across municipalities. Adoption of the IBC will streamline commercial building leasing, construction and renovation; it will also protect public health, safety and welfare.

**Low Priority**

**Subject: Regulation of Election-related Signage by a Property Owners' Association**

*HB 873*

**Effective Date: Immediately**

Amends Chapter 202 of the Property Code by creating Section 202.009, which states a property owners' association may not adopt or enforce a restrictive covenant that prohibits a property owner from displaying a sign advertising a political candidate or ballot item on or after the 90<sup>th</sup> day before the election day or before the 10<sup>th</sup> day after the election. However, property owners' associations may adopt restrictive covenants that limit the quantity, size, nature, and location of the election-related signs on the property.

The U.S. Supreme Court has strongly affirmed the importance of signs on and around the home as a means of free expression and has ruled a property owners' association may not infringe a homeowner's freedom of speech by prohibiting the placement of signs on the owner's lawn or window.

**Subject: Municipal Regulation of the Discharge of Firearms and Other Weapons**

*SB 734*

**Effective Date: Immediately**

Amends the Agriculture Code and Local Government Code to prevent municipalities from restricting the discharge of firearms on recently annexed tracts of land (annexed after September 1, 1981) under certain conditions that protect public safety.

Under former law, if a municipality annexes property, the regulations of the municipality will apply. In some parts of the state, large tracts of land that have traditionally been used for hunting leases have been annexed. Despite the fact that many owners of these large tracts depend on the revenue generated from their hunting leases, upon the annexation, a municipality can inform the owners of these large tracts that they can no longer discharge firearms on the property, thereby ending their right to lease their property for hunting.



**A special word of thanks to Elisabeth Gazda**

Elisabeth, TMCEC Legislative Legal Intern, is a third-year student at Texas Wesleyan University School of Law. On behalf of TMCEC and the courts, we appreciate your contribution!

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# Juvenile Justice

## High Priority

### **Subject: Driver's License Suspensions for Alcoholic Beverage Code Violations** *HB 1357*

**Effective Date: 9/1/2005**

Amends Section 106.115 (d), Alcoholic Beverage Code (Attendance at Alcohol Awareness Course; License Suspension), requiring courts to order DPS to suspend a minor's driver's license.

As amended, a court shall suspend the license or permit of a minor who has previously been convicted of an alcohol-related crime (described below) for a period not to exceed one year for failure to complete an alcohol awareness program. If the minor does not possess a license or permit, the minor shall be denied issuance of a license or permit for the specified period.

The increased suspension applies to the following offenses: public intoxication (Section 49.02, Penal Code); purchase of alcohol by a minor (Section 106.02, Alcoholic Beverage Code); attempt to purchase alcohol by a minor (Section 106.025); consumption of alcohol by a minor (Section 106.04); driving under the influence of alcohol by minor (Section 106.041); possession of alcohol by a minor (Section 106.05); and misrepresentation of age by minor (Section 106.07).

Minors are no longer the only ones who face driver's license suspensions as a consequence of conviction under Chapter 106 of the Alcoholic Beverage Code. HB 1357 creates Section 521.351 of the Transportation Code, stating that defendants convicted of purchasing or furnishing alcohol to a minor (Section 106.06, a Class A misdemeanor) shall receive a suspension for 180 days. If the defendant does not possess a driver's license at the time of conviction, the suspension does not begin until application is made for a driver's license. Repeat offenders face mandatory suspensions/denials for one year.

### **Subject: "Juvenile Omnibus Bill"** *HB 1575*

**Effective Date: 9/1/2005 (except where noted)**

This 56-page bill, like its five predecessors, relates to "juvenile delinquency" and impacts nearly every facet of the Texas juvenile justice system. It is the final legislative work product of the late University of Texas Law Professor Robert O. Dawson, who passed away in February 2005. Like past juvenile omnibus bills, Professor Dawson organized a group of juvenile justice practitioners who in

turn drafted the legislation's various components.

What follows is a section-by-section overview of the provisions of interest to municipal, justice and other courts that by statute are governed by Chapter 45 of the Code of Criminal Procedure:

#### SECTION 1. Not All "Traffic Offenses" Involving Juveniles Belong in Municipal or Justice Court

Amends Section 51.02(16), Family Code, to redefine "traffic offense" in the Juvenile Justice Code by excluding from its definition any offense that is punishable by incarceration.

While most "traffic offenses" are fine-only offenses, some are punishable by incarceration. Yet, "traffic offenses" (with a few statutory exceptions) have historically been excluded from the jurisdiction of juvenile courts. This resulted in problematic situations where no court would have apparent jurisdiction of certain "jailable" traffic offense involving juveniles. This was recently illustrated in Texas AG Opinion GA-0157 (2004) where, through debatable construction, it was opined that municipal and justice courts had jurisdiction of street racing offenses involving juveniles even though they were not fine-only offenses. In an effort to appease critics of GA-0157, and to prevent similar jurisdictional problems in the future, this amendment makes it clear that juvenile courts have jurisdiction of all traffic offenses that are not fine-only offenses.

#### SECTION 2. Affirmative Defenses in Civil Truancy and Criminal Failure to Attend School Cases are Curtailed

Amends Section 51.03(d), Family Code, to clarify that the affirmative defense of excused absences or involuntary absences in a civil truancy proceeding in a juvenile court is effective only when there are insufficient unexcused or voluntary absences remaining to constitute a violation of law.

Similarly, SECTION 37 of the bill amends Section 25.094(f), Education Code, to conform to the change in

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Municipal Juvenile/Minor Chart  
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SECTION 2 to clarify that in criminal failure to attend school charges (filed in municipal, justice or other designated courts in which proceedings are governed by Chapter 45 of the Code of Criminal Procedure) the affirmative defense of excused absences or involuntary absences applies to defeat the charges only when there are insufficient unexcused and voluntary absences remaining to constitute a violation of law.

Remember: truancy is not a crime and municipal courts do not have jurisdiction to hear civil truancy cases (only criminal failure to attend school cases).

#### SECTION 5. Closing the Electronic Recording “Loophole” in the Juvenile Confession Statute

Amends Section 51.095, Family Code, adding (f) to authorize a magistrate who is giving juvenile warnings for a videotaped interrogation to require the officer to return the child and videotape to the magistrate for a determination of voluntariness. If a magistrate uses this procedure, a child’s statement is not admissible unless the magistrate determines that the statement was given voluntarily.

Under the current law, children whose confessions are recorded by mechanical means were not provided the benefit of a magistrate’s determination of voluntariness. Such determinations are made when a juvenile’s confession is made in writing. Subsection (f) permits, but does not require, a magistrate who is giving juvenile warnings for a videotaped interrogation to require the officer to return the child and videotape to the magistrate for a determination of voluntariness. It is anticipated that magistrates will use this authority sparingly and only in cases where there may be reason for concern about the child’s capacity for making a voluntary statement.

#### SECTION 29. The Days of Unlimited Deferred Adjudications for DUI in County Court are Over

Amends Section 106.041(f), Alcoholic Beverage Code, to not allow a minor who is at least 17 years of age to receive deferred adjudication for driving under the influence of alcohol by a minor if the minor has been previously convicted of the same offense twice before.

This amendment is a non-substantive clarification intended to alleviate confusion relating to how prior adjudications in juvenile court and deferred dispositions in municipal and justice court relate to the length of driver’s license suspensions incurred as a result of a subsequent conviction in DUI cases. It also makes the Texas DUI statute uniform with other Alcoholic Beverage Code offenses involving minors (*i.e.*, purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor) by denying defendants

with two DUI convictions from being eligible for either deferred disposition or deferred adjudication.

#### SECTION 30. Driver’s Licenses under Chapter 106 of the Alcoholic Beverage Code: The Rule Restated

Amends Section 106.071(f) and (i), Alcoholic Beverage Code, but does not change the law. Rather, it attempts to restate the law so that fewer people will misconstrue it. This amendment is a non-substantive clarification intended to alleviate confusion relating to how prior adjudications in juvenile court and deferred dispositions in municipal and justice courts relate to the length of driver’s license suspensions incurred as a result of a subsequent conviction.

The rule is as follows: In municipal and justice court, deferred dispositions for the status offenses contained in Chapter 106 of the Alcoholic Beverage Code never result in the suspension of the defendant’s driver’s license. Deferred disposition only becomes pertinent administratively once a defendant is subsequently convicted (*i.e.*, there must be a final judgment of guilty entered against the defendant). In such instances, DPS will then, and only then, treat any prior deferred disposition as a conviction for the purpose determining the duration of the driver’s license suspension.

#### SECTION 31. Notification to Schools Required

Amends Article 15.27, Code of Criminal Procedure, adding Subsection (i) to authorize electronic notification to schools of offenses alleged to have been committed by students, instead of oral notice followed by written notice.

Prosecutors in municipal and justice courts should note that Article 15.27 relates to the adjudication of two Class C misdemeanors (assault and drug paraphernalia) and requires prosecutors to report to schools in such instances. Disclosure of such information by school officials is itself a Class C misdemeanor.

#### SECTION 33. Harmonizing Parental Appearances in Chapter 45

Amends Article 45.0215, Code of Criminal Procedure, adding Subsection (d) to require a parental summons to include a warning that failure of the parents to appear with their child may result in arrest and is a Class C misdemeanor..

This amendment is non-substantive and merely mirrors a similar and related law contained in Article 45.057(e). Chapter 45 is clarified by having similar language in both articles.

#### SECTION 34. Juvenile Case Managers

Amends Article 45.056(a) and adds Subsections (c)-(e) to the Code of Criminal Procedure, to authorize a justice or county court, on approval of the commissioners court, or a municipal court, on approval of the city council, to employ

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juvenile case managers to assist the court in monitoring its orders. Authorizes the salaries to be paid from the juvenile case manager fund authorized in SECTION 35 of the bill. Provides that juvenile case managers work primarily on criminal cases alleging failure to attend school (Section 25.094, Education Code) or parent contributing to nonattendance (Section 25.093, Education Code).

#### SECTION 35. Funding Juvenile Case Managers

Amends Subchapter A, Chapter 102, Code of Criminal Procedure, adding Article 102.0174 to authorize a city council or commissioners court to create a juvenile case manager fund for the salaries and benefits of juvenile case managers employed by the local governmental entity under Article 45.056, Code of Criminal Procedure. Authorizes a local governmental entity to require a person convicted of a fine-only misdemeanor offense in a municipal, county or justice court to pay a juvenile case manager fee of up to \$5 as a cost of court, which the judge may waive in the case of financial hardship. Requires the respective court clerks to collect the fees and pay them to the appropriate treasurer.

While juvenile case managers have “been on the books” for four years, funding for such positions has been difficult to procure. In an age where municipal and justice courts have become viewed as the court cost “cash cow,” this court cost may be one of the few welcomed by local government. Why? First, it is optional. Second, the amount to be collected is determined locally and can be up to \$5. Third, the money is kept entirely by the local government.

This legislation reflects an often-ignored reality in the juvenile justice system: most juveniles accused of wrongdoing do not go to juvenile court. The vast majority of children accused of violating the law are adjudicated in either a municipal or justice court.

Local governments should be advised that this court cost, if adopted, is designated for specific-use only. While juvenile case managers may perform other services for the court, the primary duty of a juvenile case manager is to assist the court in administering its juvenile docket and to monitor the behavior of children and their compliance with court orders. Furthermore, their work must primarily relate to school attendance cases involving either children or parents.

Note: While this bill goes into effect 9/1/2005, a Constitutional amendment passed after the last session provides that, unless excepted, court costs go into effect January 1 of the year following session. Accordingly, local governments should not begin collecting the juvenile case manager fee until January 1, 2006.

#### SECTION 37. Statute of Limitations in Criminal School Attendance Cases

Amends Section 25.0951(a) and adds Subsection (d), Education Code, to require that a court dismiss a complaint or referral regarding a student’s failure to attend school or a parent’s contributing to the child’s nonattendance when a school district fails to file the complaint or referral within seven school days of the student’s last absence.

This amendment came about as a result of the failure of some school districts to file school attendance within the time guidelines mandated by the Legislature in 2001. Judges and parents have reported instances where school districts waited as long as an entire semester before filing a single complaint alleging nonattendance. By this time, the school year is practically a loss for the student (credit cannot be earned, courts are left with voluminous complaints and defendants are potentially left facing expensive fines and courts costs).

While the initial draft of this amendment would have prescribed criminal penalties for school officials who fail to comply with the mandatory filing laws, school districts opposed such penalties. Furthermore, questions were raised to as whether prosecutors would pursue such prosecutions.

As amended, the law mandates judges to dismiss any complaint that is not filed within the time guidelines. While this is likely to be a welcomed change for defendants, it may pose somewhat of a unique challenge to math-phobic judges and clerks who will have to determine (1) whether the student failed to attend school without excuse on 10 or more days or part of days within a six-month period in the same school year, and (2) whether the school district filed a complaint within seven days of the student’s last absence.

#### SECTION 38. Authorization for Clerks to Collect Applicable Court Costs

Amends Sections 102.061, 102.081, 102.101, and 102.121, Government Code, to require the clerks of a statutory county court, county court, justice court, and municipal court to collect as court costs any juvenile case manager fees created by units of local government under SECTION 35.

These amendments to Chapter 102 of the Government Code were misconstrued by at least one statewide organization in a widely circulated publication. All readers should be mindful that the dollar amount to be collected for the juvenile case manager fund is determined by the local government and is only effective after the passage of an appropriate ordinance or regulation. Some city and counties will certainly opt not to create a juvenile case manager fund. In no instance can the amount exceed \$5.

Reminder: As stated in the commentary to SECTION 35, local government may not begin collecting court costs for the juvenile case manager fund until January 1, 2006.

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**SECTION 45. Traffic Crimes Committed by Juveniles that Are Not Fine-Only Are Excepted from Criminal Prosecution**

Amends Section 8.07(a), Penal Code, to except traffic violations for which the person convicted may be sentenced to imprisonment or confinement in jail from the list of traffic offense violations (Chapter 729, Transportation Code) for which a person may be prosecuted or convicted when the violations are committed when the person is younger than 15 years of age.

While HB 1575 gives juvenile courts jurisdiction over all traffic offense that are not fine-only offenses (see SECTION 1), this amendment ensures that such offenses are not filed in criminal courts that ordinarily hear “jailable” traffic offenses (*i.e.*, county and district courts).

**SECTION 49. Denying Driver’s License Renewal to Juveniles who Fail to Appear in Court: Relocated not Repealed**

Amends Subchapter O, Chapter 521, Transportation Code, adding Section 521.3452 to move the requirements of Section 729.003, Transportation Code, to a more suitable location in the Transportation Code.

The 78th Legislature repealed nearly all of Chapter 729. This was in part due to the beliefs of a growing number of judges, peace officers and criminal law practitioners that the purpose of Chapter 729 had for the most part been incorporated into other parts of Texas law. This amendment continues the “thinning out” of Chapter 729 by moving Section 729.003 into the portion of the Transportation Code pertaining to driver’s licenses.

**SECTION 50.** Amends Section 521.201, Transportation Code, to Make a Conforming Amendment to Substitute Section 521.3452 for Section 729.003, Transportation Code.

See commentary to SECTION 49.

**SECTION 51.** Amends Section 521.294, Transportation Code, to Make a Conforming Amendment to Substitute Section 521.3452 for Section. 729.003, Transportation Code.

See commentary to SECTION 49.

**SECTION 52. Parental Presence in Status Offense Alcohol Crimes**

Repeals Section 106.11, Alcoholic Beverage Code, relating to the requirement that parents or legal guardians be present when a person under age 18 is convicted of an offense under the chapter, and repeals Section 729.003, Transportation Code, relating to the requirement in cases involving traffic offenses by minors that the court report to DPS when the person does not appear in court and when there is final disposition of those cases.

Section 106.11 of the Alcoholic Beverage Code conflicted with the provisions relating to the appearance of parents contained in Article 45.0215 of the Code of Criminal Procedure that states that upon reaching age 17, parents are not required to attend court with their child. This amendment conforms the Alcoholic Beverage Code with the general rule in Chapter 45.

**Subject: Transfer of Failure to Attend School Cases to Juvenile Court**

**HB 3010**

**Effective Date: 9/1/2005**

Amends Section 51.08 of the Family Code (Transfer from Criminal Court) by adding Subsection (e), prohibiting a juvenile court from refusing to accept the transfer of a case brought under Section 25.094 (Failure to Attend School) of the Education Code. This prohibition is subject to the juvenile court prosecutor determining under Section 53.012, Family Code (Review by Prosecutor), that the case is legally sufficient under Section 53.01, Family Code (Preliminary Investigation and Determinations; Notice to Parents), for adjudication.

While the number of juvenile cases adjudicated by municipal and justice courts has increased in the last decade, many municipal and justice courts complain that some juvenile courts are unresponsive in instances where the law either requires or authorizes a child’s case to be transferred to juvenile court. The intent of this law is to ensure that juvenile courts do not ignore school attendance cases transferred from criminal to juvenile court.

**Subject: Fees for Applying for Expunction of Certain Offenses Committed by Minors**

**SB 1426**

**Effective Date: 9/1/2005**

Adds Subsection (d) to Section 106.12, Alcoholic Beverage Code, to require courts to assess a \$30 fee for an application for expunction of a conviction of an offense involving a minor.

Amends Article 45.0216(i), Code of Criminal Procedure, to require the court to assess a \$30 fee for an application for an expunction of a conviction for a penal offense.

Amends Article 45.055(d), Code of Criminal Procedure, to require the court to assess a \$30 fee for an application for an expunction of a conviction for the offense of failure to attend school.

Amends Section 161.255, Health and Safety Code, adding Subsection (b) to require the court to assess a \$30 fee for an application for an expunction of a conviction of a tobacco offense under Section 161.252.

Amends Article 102.006, Code of Criminal Procedure, to

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make it clear that the \$30 fee for expunction is in addition to the mandatory fees for expunction in Article 102.006.

Adds Subsection 20(a)-(d) to Section 103.021, Government Code, which lists criminal fees. The new fees are the \$30 fees for the above noted expunctions.

## Medium Priority

### Subject: Parents and Corporal Punishment

*HB 383*

**Effective Date: 9/1/2005**

Amends Section 151.001 of the Family Code by adding Subsection (e), stating that a parent, grandparent or guardian may use corporal punishment to reasonably discipline a minor child. Previously, Texas law provided that a parent had the right and duty to care, control, protect, and reasonably discipline a child, but there was confusion over whether criminal charges could arise when a parent used corporal punishment. The amendment clarifies parental ability to use

reasonable corporal punishment without fear of criminal charges.

## Low Priority

### Subject: Parental Notice and Release of Student Directory Information

*SB 256*

**Effective Date: Immediately**

Amends Chapter 26 of the Education Code by creating Section 26.013, requiring a school district to provide information about the student directory to the parent of each district student at the beginning of each school year or upon enrollment of the student after the beginning of a school year. This information should include a written notice of the parent's rights to object to the release of directory information, printed in a bold font that is size 14 or larger. There should also be a form on which parents may consent or object to the release of directory information.

A school district may designate as directory information any or all information defined as directory information by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Section 1232g). Information not designated by a district as directory information may not be disclosed. Courts may look to schools to collect personal information about a student involved in a legal action. Under SB 256, a school would be much more limited in the information it could release and, thus, could create a hindrance for the courts in obtaining student information.

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# Substantive Law

## High Priority

### Subject: Discharging a Firearm across a Property Line; Criminal Penalty

*HB 505*

**Effective Date: 9/1/2005**

Amends Chapter 62 of the Parks and Wildlife Code by creating Section 62.0121, which states it is a Class C Parks and Wildlife Code misdemeanor if a person who is hunting or recreationally shooting knowingly discharges a firearm and the projectile travels across a property line. While this offense appears in the Parks and Wildlife Code, if the conduct also constitutes an offense under the Penal Code, the person may be prosecuted under either or both codes. It is a defense to prosecution that the person owns the property on both sides of each property line crossed by the projectile. It is also a defense that the person obtained written permission from the landowners on either side of the property lines crossed by the projectile allowing the

person to discharge a firearm on, over or across the property or property line.

### Subject: Prohibition against Hunting over Submerged Land

*HB 506*

**Effective Date: 9/1/2005**

Amends Chapter 62 of the Parks and Wildlife Code by creating Section 62.002, which prohibits the hunting of wild animals or birds on or over submerged land. Violation of this provision is a Class C Parks and Wildlife misdemeanor, pursuant to Section 62.013(a). This section applies only to privately-owned land that is submerged by public fresh water resulting from seasonal or occasional rain, submerged land that is clearly marked as private property and submerged land containing public saltwater and located above the mean tide line of the Gulf of Mexico and its bays and estuaries. Prior to this amendment, when private property became flooded, it could then be

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used for hunting. HB 506 permits hunting over submerged private property if a person owns the property or obtains permission from the owner to hunt on the property.

**Subject: Operation of a Sound Amplification Device near a Polling Place**

*HB 535*

**Effective Date: 9/1/2005**

Amends Section 61.004 of the Election Code, criminalizing the operation of a sound amplification device during the voting period and within 1000 feet of a polling place when the device is operated to make political speeches or electioneering for or against a candidate. The offense is a Class C misdemeanor. Previously, Section 61.004 only prohibited the use of a vehicle with a loudspeaker near a polling place.

**Subject: Introducing Prohibited Items and Contraband into Correctional Facilities**

*HB 549*

**Effective Date: Immediately**

Amends Chapter 38 of the Penal Code, adding to Section 38.11(a) and creating Section 38.114; both sections address prohibited items in correctional facilities. Section 38.11(a) prohibits a person from providing a cellular phone or money to a person confined in a local jail regulated by the Commission on Jail Standards. A person is also forbidden from providing cigarettes and tobacco products to a person confined in a local jail when doing so violates jail rules.

Section 38.11(a) previously applied only to a person providing prohibited items to inmates in correctional facilities under contract with the Texas Department of Criminal Justice; the provision did not apply to jails in local jurisdictions. Consequently, local jails experienced problems with cigarettes and tobacco products being brought into jail facilities and used as a form of currency among the inmates.

Section 38.114 defines "contraband" and creates a Class C misdemeanor for a person to provide or otherwise introduce contraband into a correctional facility or possess contraband while confined in a correctional facility. The offense becomes a Class B misdemeanor if committed by an employee or a volunteer of the correctional facility.

**Subject: Interference with Duties of Animal Control Officers**

*HB 825*

**Effective Date: 9/1/2005**

Amends Section 38.15(a) of the Penal Code, making it a Class B misdemeanor to disrupt, with criminal negligence, the public duties of an animal control officer. The officer must be responsible for animal control in the county or

municipality and must be acting under Chapter 821 (Treatment and Disposition of Animals) or 822 (Regulation of Animals) of the Health and Safety Code. Currently, the section applies only to peace officers, emergency medical personnel and firefighters.

This amendment is relevant because of the involvement animal control officers have with municipal courts, particularly in cases involving dangerous dogs.

**Subject: Required Disclosure of Conflicts of Interest**

*HB 914*

**Effective Date: Immediately**

Amends Subtitle C, Title 5 of the Local Government Code by creating Chapter 176, requiring local government officers to complete a conflicts disclosure statement when a vendor has contracted or is considering contracting with a local governmental entity and (a) the officer has received taxable income from a business relationship with the vendor, or (b) the vendor has given the officer \$250 or more in gifts over the 12-month period before the officer became aware of the contract with the governmental entity. The disclosure statement must contain a description of the relationship between the officer and vendor and must acknowledge that the disclosure applies to all members of the officer's family. If an officer knowingly fails to file a disclosure statement within seven business days of becoming aware of the facts that require filing of the statement, it is a Class C misdemeanor. It is a defense to prosecution that the officer filed the required disclosure statement not later than the seventh business day after the date the officer received notice of the violation.

The vendor must also file a conflicts disclosure questionnaire detailing the relationship between the officer and the vendor. The questionnaire must be filed by September 1 of the year of the transaction or the seventh business day after the event that would have made the previously filed questionnaire incorrect. Failure to correctly file a questionnaire is a Class C misdemeanor. Note the violation must not be made knowingly. It is a defense to prosecution that the vendor filed the required disclosure statement not later than the seventh business day after the date the vendor received notice of the violation.

Chapter 176 also requires the records administrator of a local governmental entity to prepare a list of the local government officers and make the list publicly accessible. The chapter also allows for electronic filing of disclosure statements and questionnaires and public access to disclosure statements and questionnaires via county or municipality websites.

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**Subject: Mandatory Signs Warning Restaurant or Bar Employees against Fraudulent Use or Possession of Identifying Information; Criminal Penalty**

**HB 982**

**Effective Date: 9/1/2005**

Amends Chapter 35 of the Business and Commerce Code by creating Section 35.60, requiring restaurants and bars to post signs in “prominent places” that warn employees against fraudulent use or possession of identifying information. It also creates a misdemeanor offense (a fine not to exceed \$25) for the restaurant or bar owner failing to post the required signage.

Under current law, a person commits an offense if the person obtains, possesses, transfers, or uses identifying information of another person without the other person’s consent and with intent to harm or defraud another, as stated in the Penal Code, Section 32.51(b). Patrons of some restaurants and bars have fallen victim to illegal credit card skimming, whereby some restaurant or bar waitstaff swipe patrons’ credit cards into an electronic device and then sell the credit card numbers to individuals who transfer the stolen card information to create counterfeited cards.

Credit card skimming is illegal and carries a penalty of up to two years in jail. However, some criminally-minded waitstaff might not be aware of the penalty. This law aspires to make them better informed.

Notably, this law only applies “to a restaurant or bar that accepts credit or debit cards from customers in the ordinary course of business.” It also requires a restaurant or bar owner to display the sign in English and in another language spoken by a substantial portion of the employees of the restaurant or bar as their familiar language. Last, but not least, it is a defense to prosecution that the person charged produces to the court satisfactory evidence that the person displayed a sign as required by within 48 hours of receiving the citation. In such instances, a court is required to dismiss the charge if the court is satisfied with the evidence produced by the person.

**Subject: Heightened Criminal Penalty for Desecration of a Cemetery**

**HB 1012**

**Effective Date: 6/1/2005**

Repeals Section 711.0311 of the Health and Safety Code, making it a Class C misdemeanor to knowingly deface, vandalize or obliterate a gravestone or other cemetery property without proper legal authority. Under Section 711.031, a person found guilty of committing such an offense is required to pay restitution to the cemetery organization for the amount of damage caused.

The offense of desecration of a cemetery previously appeared in both the Health and Safety Code and the Penal Code. This amendment seeks to eliminate discrepancies and duplications by placing these provisions only in the Penal Code and creating more uniformity in the classification of these crimes. Accordingly, desecration of a cemetery is now criminalized in Sections 28.03(f) and 42.08 of the Penal Code.

Section 28.03(f) makes desecration of a cemetery a state jail felony if the tangible personal property loss or pecuniary loss to real property is less than \$20,000. Section 42.08 has been amended to include grave desecration because the section addressed only abuse of a corpse in the past. Section 42.08(a)(5) makes it a Class A misdemeanor for a person to knowingly vandalize or damage a grave.

**Subject: Creation of an Animal Identification Program; Criminal Penalty**

**HB 1361**

**Effective Date: 9/1/2005**

Amends Section 161.056 of the Agriculture Code, granting the Animal Health Commission authority to create an animal identification program consistent with that of the USDA National Animal Identification System. The Commission may adopt rules necessary to implement such a system. Failure to comply with an order or rule adopted by the Commission as part of the identification program is a Class C misdemeanor. If it is shown at trial that the defendant was previously convicted under Section 161.056, the offense is a Class B misdemeanor.

The number of animal disease outbreaks around the world has greatly intensified the need to develop a national animal identification program to protect animal health and track diseased or potentially diseased animals. However, information collected by the Texas identification program will not be publicly accessible; the information collected will be available to government entities for the promotion of public or animal safety and may be released by the Commission for emergency management purposes.

**Subject: Fine-Only Offense for Idling a Vehicle near a School Zone during School Hours**

**HB 1540**

**Effective Date: 9/1/2005**

Amends Chapter 382, Health and Safety Code, adding Section 382.0191, prohibiting a driver using a truck’s sleeper berth from idling the truck in a school zone or within 1000 feet of a public school during its hours of operation. This offense is punishable with a fine not to exceed \$500. “Idling” is also defined in the section.

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**Subject: Penalties for Consuming, Selling or Serving Alcohol after Hours**

**HB 2451**

**Effective Date: 9/1/2005**

Amends Section 105.06 of the Alcoholic Beverage Code, making it a Class C misdemeanor to consume alcohol or possess alcohol with the intent to consume during prohibited hours. Previously, the punishment for this offense was a fine of not more than \$50. This amendment creates a specific criminal charge for this offense, making criminal prosecution easier and substantially increases the allowable fine for violations.

The amendment also adds to Section 11.61, Alcoholic Beverage Code, allowing an alcohol permit suspension or cancellation if the permittee allowed alcohol to be consumed, sold, served, or delivered at a time when the sale of alcohol was prohibited. The prohibited hours for sale and consumption of alcohol are found in Chapter 105.

**Subject: Insurance Fraud Claims; Notice of Insurance Fraud Adjudication**

**HB 3376**

**Effective Date: 9/1/2005**

Amends Section 35.02 of the Penal Code, to state that a fraudulent insurance claim with a value of less than \$50 is a Class C misdemeanor. Currently, a fraudulent claim of less than \$20 is a Class C misdemeanor. If the actor proves by a preponderance of evidence that a portion of the insurance claim is valid, the value of the claim is the difference between the total value of the claim and the valid portion of the claim. Furthermore, a rebuttable presumption arises that the actor caused the insurance claim to be prepared when it is shown at trial that the actor submitted a claim for payment under an insurance policy to the policy insurer.

The amendment also creates Section 35.025, which states that if the claim value is not readily ascertainable, the value is either the fair market value of the goods and services that are the subject of the claim or the cost of replacing the goods and services within a reasonable time. If the cost of the goods and services cannot be readily estimated, then the value of the goods and services is considered to be more than \$500 but less than \$1500.

Chapter 42 of the Code of Criminal Procedure is amended by creating Article 42.0181, which requires the court clerk to notify the Texas Department of Insurance when one of its agents is convicted of or granted deferred adjudication for a theft, fraud, money laundering, or insurance fraud offense. No similar reference is made to agents who receive deferred disposition in either municipal or justice court.

**Subject: Family and Marriage-related Offenses**  
**SB 6**

**Effective Date: 9/1/2005**

This 118-page bill amends Sections 2.004, 2.005, 2.102, 2.202, 2.403, 261.302, and 261.3032 of the Family Code, creating the following offenses:

- Knowingly providing false information on a marriage application concerning the county of marriage, names of the applicants, the identifying documents, or the marital status of the applicants is a Class C misdemeanor [Section 2.004(c)];
- Knowingly providing false information on a marriage application concerning the marital status of the parties or the familial relationship between the parties is a Class A misdemeanor [Section 2.004(d)];
- Knowingly providing false, fraudulent or otherwise inaccurate information concerning age or identity when applying for a marriage license is a Class A misdemeanor [Section 2.005];
- Knowingly providing parental consent for an underage applicant to marry when the person giving consent is not a parent, guardian or managing conservator of the applicant is a Class A misdemeanor [Section 2.102(g)];
- Knowingly providing parental consent for an applicant to marry when the applicant is under age 16 or already married is a third degree felony [Section 2.102(h)];
- Knowingly conducting a marriage ceremony without authorization is a Class A misdemeanor [Section 2.202(c)];
- Knowingly conducting a marriage ceremony for a minor who is prohibited from marrying by law or who is already married is a third degree felony [Section 2.202(d)];
- Knowingly providing false, fraudulent or otherwise inaccurate information concerning age or identity when declaring an informal marriage is a Class A misdemeanor [Section 2.403];
- Interfering with the transport of a child for a videotaping interview conducted by the Department of Family and Protective Services is a Class B misdemeanor [Section 261.302]; and
- Interfering with the investigation of a report of child abuse or neglect is a Class B misdemeanor [Section 261.3032].

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It is also interesting to note, though it may come as a shock, that Texas has finally made it illegal to marry or have sex or deviant sexual intercourse with a first cousin. Such acts are now a second degree felony. Amends Section 25.01, Penal Code, to increase the punishment for bigamy depending upon the age of the person the actor marries.

**Subject: False Report of Transaction involving Products Used to Manufacture Methamphetamine**  
*SB 66*

**Effective Date: Immediately**

Amends Subtitle B, Title 6 of the Health and Safety Code, creating Chapter 468, which forms the Methamphetamine Watch Program. The program aspires to limit the sale and theft of over-the-counter products containing pseudoephedrine, a drug commonly used in methamphetamine production and found in many over-the-counter cold medications.

Retailers are encouraged to participate in the voluntary program. Retailers participating in the program are expected to make good faith reports of thefts, suspicious purchases and other transactions involving products used in the manufacture of methamphetamine. It is a Class C misdemeanor for a person to knowingly make a false report of such a transaction.

Methamphetamine production and abuse is increasing in Texas. DPS reports that, before the 121st day after the date of notification, the number of methamphetamine labs raided has quadrupled over the last four years. Also, the number of people entering methamphetamine treatment centers per year grew from 1800 in year 2000 to 11,200 in 2004—a six-fold increase. Adding to this problem is the availability of instructions on the Internet detailing how to produce methamphetamine out of common ingredients like pseudoephedrine.

**Subject: Medicaid Fraud Penal Code Offense**  
*SB 563*

**Effective Date: 9/1/2005**

Amends Title 7 of the Penal Code by creating Chapter 35A, penalizing the offense of Medicaid fraud. Penalties for this offense range from a Class C misdemeanor to a first degree felony, depending on the value of any monetary or in-kind benefit provided under the Medicaid program as a result of the offender's fraudulent conduct.

**Subject: Stamps for Hunting Migratory or Upland Birds; Criminal Penalty**

*SB 1192*

**Effective Date: Immediately**

Amends Chapter 43 of the Parks and Wildlife Code by creating Subchapter S, addressing migratory and upland

game bird stamps. Sections 43.652 and 43.653 prohibit a person from hunting a migratory or upland game bird in Texas without an appropriate stamp and hunting license issued by the Parks and Wildlife Department. Section 43.665 creates a Class C Parks and Wildlife misdemeanor for a violation of Section 43.652.

**Subject: Operation of an Off-Highway Vehicle in a State Park or on Public Land; Penalty**

*SB 1311*

**Effective Date: 1/1/2006**

Amends Title 3, Parks and Wildlife Code, adding Chapter 29. Section 29.003 prohibits a person from operating an off-highway vehicle on a trail or in a recreation area maintained by the Department of Parks and Wildlife under this chapter, on other public land or on land purchased or developed under a grant made under Section 29.008 or any other grant program operated or administered by the Department, without having obtained and displayed an off-highway vehicle decal (unless specifically excepted by Chapter 29).

Section 29.009 provides that a person who violates Section 29.003 commits a Class C Parks and Wildlife misdemeanor.

**Subject: Murder of a Judge Made a Capital Offense**

*SB 1791*

**Effective Date: 9/1/2005**

Amends Section 19.03(a) of the Penal Code, making it a capital offense to murder a judge. The punishment for such an offense is either the death penalty or life without parole.

Under current law, a person commits a capital offense if that person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman. The murder of a judge in retaliation for or on account of the service or status as judge is not currently a capital offense, but the amendment seems fitting given the recent acts of violence toward judges.

**Medium Priority**

**Subject: Prohibition against Outdoor Trash Burning near Harris County**

*HB 39*

**Effective Date: 9/1/2005**

Amends Chapter 352 of Local Government Code by creating Section 352.082, which states it is a Class C misdemeanor for a person to intentionally and knowingly burn household refuse outdoors on a lot that is in a neighborhood or that is less than five acres. The burning of household refuse can produce various air contaminants that

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can adversely affect the health of those exposed; there are also safety concerns associated with open fires in proximity to other landowners.

Notably, this law only applies when burning occurs in an unincorporated area that is part of a planned community and adjacent to a county with 3.3 million people or more (Harris County). If convicted of this offense, a defendant is required to perform community service in addition to any fines that may be ordered by the court. Community service, governed by Section 16(e), Article 42.12 of the Code of Criminal Procedure, must be 60 hours in length and must consist of the defendant either picking up litter in the county of residence or working in a recycling facility, if such a facility is available in the defendant's community.

**Subject: Ignition Interlock Device as a Condition of Community Supervision**

*HB 51*

**Effective Date: 9/1/2005**

Amends Section 13(i) of Article 42.12 of the Code of Criminal Procedure, requiring the court to order an ignition interlock device installed in a defendant's vehicle as a condition of community supervision, if it is shown at the trial of a defendant charged with an intoxication offense (found in Sections 49.04-49.08, Penal Code) that the defendant's blood, breath or urine showed an alcohol concentration of 0.15 or higher at the time of the analysis. The ignition interlock device uses a deep-lung breath analysis mechanism that makes it impossible to operate the vehicle if ethyl alcohol is detected in the breath of the operator. Currently, such a device is suggested as a condition of community supervision for a defendant convicted of an intoxicated offense; the device is also mandatory as a condition of community supervision when the defendant is convicted of a second or subsequent intoxicated assault or manslaughter offense or receives an enhanced sentence for an intoxicated offense [Sections 49.09(a)-(b)].

**Subject: Tampering with Governmental Records Establishing Residency for Enrollment in Public School**

*HB 126*

**Effective Date: Immediately**

Amends Section 37.10(c) of the Penal Code by adding 37.10(c)(3), stating it is a Class C misdemeanor to tamper with governmental records required for enrollment of a student in a school district and used to establish the residency of the student. Previously, the penalty for tampering with such governmental records was a Class A misdemeanor.

**Subject: Selling of Alcoholic Beverages at Certain Events**

*HB 168*

**Effective Date: 9/1/2005**

Amends Chapter 105, Alcoholic Beverage Code, adding Section 105.08, which states that, notwithstanding any other provision of the code and in addition to any other period during which the sale and consumption of alcohol is authorized, a licensed or permitted premise located at a festival, fair or concert is authorized to sell alcoholic beverages between 10 a.m. and noon and a person is authorized to consume alcoholic beverages at a festival, fair or concert between 10 a.m. and noon.

State law prohibits the sale of beer and wine prior to noon on Sundays. However, there is an exception that allows for the sale of beer and wine after 10 a.m. at Sunday "sports venues." This exception for sports venues does not include the many fairs, festivals and concerts that take place on Sunday mornings. Due to the current state of the law, vendors at these events are losing two hours' worth of sales opportunities.

This amendment allows certain venues the opportunity to increase sales by allowing vendors associated with fairs, festivals and concert events to sell beer and wine starting at 10 a.m. on Sundays, rather than noon.

**Subject: Unlawful Carrying of a Weapon; Presumption of Fact and Jury Charge**

*HB 823*

**Effective Date: 9/1/2005**

Amends Section 46.15 of the Penal Code, defining the term "traveling." The definition of traveling is important because provisions pertaining to the unlawful carrying of a weapon (Section 46.02, Penal Code) do not apply to someone who is traveling. HB 823 states a person is presumed to be traveling if he or she is in a motor vehicle, not otherwise engaged in criminal activity, not prohibited by law from possessing a firearm, and not a member of a criminal street gang. "Traveling" has been subject to various appellate court interpretations but has never previously been defined in a statute.

HB 823 also amends Section 2.05 of the Penal Code by creating Subsection (b), requiring that when facts give rise to a presumption of fact in favor of the defendant, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole precludes a finding beyond a reasonable doubt of the presumed fact. If the existence of the presumed fact goes before the jury, the jury must be instructed that the presumption applies unless the State proves beyond a reasonable doubt that the facts giving rise

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to the presumption do not exist; if the State's burden of proof is not fulfilled, the jury must find that the presumed fact exists. Regardless of how the jury finds on the issue of a presumption, the State must still prove each element of an offense beyond a reasonable doubt.

**Subject: Communication Facility Structures in Counties of 1.4 Million or More; Criminal Penalty**

**HB 843**

**Effective Date: Immediately**

Amends Chapter 240 of the Local Government Code by creating Subchapter E, addressing the construction of communication facility structures (*i.e.*, cellular telephone towers) on real property in unincorporated areas in counties of 1.4 million or more (Tarrant, Dallas and Harris Counties). The commissioners courts in the affected counties may regulate the location of communication facility structures and may impose restrictions on people seeking to build such a structure.

Under Section 240.087, a person commits an offense by violating an order adopted under the subchapter, when the order defines the violation as an offense. Such an offense is a Class C misdemeanor (Section 240.087).

**Subject: "Chunking" Directed at Public Servants**

**HB 1095**

**Effective Date: 9/1/2005**

Amends Section 22.11 of the Penal Code, criminalizing the act of an inmate causing a person the inmate knows is a public servant to come into contact with bodily fluid or excrement while the public servant is lawfully discharging an official duty or in retaliation of an official duty or exercise of duty. There is a presumption that the inmate knows the person is a public servant if the person is wearing a distinctive uniform or badge indicating the person's employment as a public servant. Additionally, the inmate must act with the intent to assault, harass or alarm. This section currently criminalizes the act of "chunking" bodily fluid or excrement at "another person." HB 1095 adds the offense of "chunking" at a public servant. An offense under this section is a third degree felony.

**Subject: Online Solicitation of a Minor; Criminal Penalty**

**HB 2228**

**Effective Date: Immediately**

Amends Chapter 33 of the Penal Code by creating Section 33.021, criminalizing the act of soliciting a minor with the intent that the minor will engage in sexual contact with the solicitor or another person. This offense is a third degree felony unless the minor was under 14 years old, or someone the defendant believed to be under 14 years old. Then the offense is a second degree felony. It is not a defense to

prosecution that the meeting did not occur, that the defendant did not intend the meeting to occur, or that the defendant was engaged in a fantasy at the time of the offense. It is a defense, however, that the defendant was married to the minor or that the defendant was not more than three years older than the minor and the minor consented to the conduct.

HB 2228 also criminalizes the act of communicating in a sexually explicit manner or delivering sexually explicit material to a minor over the Internet for the purpose of sexual gratification. This offense is a state jail felony unless the minor was under 14 years old, or someone the defendant believed to be less than 14 years old. Then the offense is a second degree felony. It is a defense to prosecution that the defendant was married to the minor or that the defendant was not more than three years older than the minor and the minor consented to the conduct.

Increased accessibility of the Internet combined with the popularity of Internet messaging (*i.e.*, Instant Messenger) has created more opportunities for minors to engage in conversations with possible sex-offenders. Previously, an individual who arranged a meeting with a minor for the purpose of sexual activity had to appear at the meeting place in order to be charged with a crime. An individual who engaged in an explicit conversation with a minor online could not be charged at all. This amendment allows law enforcement agents to charge individuals that solicit minors or engage minors in explicit conversations on the Internet.

**Subject: "Chop Shop" Inspection; Criminal Penalty**

**HB 3221**

**Effective Date: 9/1/2005**

Amends Section 2305.101, Occupations Code, making it a Class A misdemeanor to violate Section 2305.007 of the code. Section 2305.007, a newly added section, allows members of various transportation agencies and peace officers to enter into "chop shops" (where vehicles are repaired for resale) to inspect the shop's documents and the shop itself in the interest of tracing or locating a stolen motor vehicle.

Prior to HB 3221, all violations of Chapter 2305 (Records of Certain Vehicle Repairs, Sales and Purchases) were Class C misdemeanors. However, "chop shops," unlike automobile dealerships, are not subject to any formal regulatory oversight and often process stolen cars. This amendment delineates the procedure for entry and inspection of "chop shops" and also provides a higher penalty for persons who do not consent to inspection.

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**Subject: Sentence Enhancement for Family Violence Offenses; Family Violence Arrests**  
**SB 91**

**Effective Date: 9/1/2005**

Amends Section 22.01(b) of the Penal Code, elevating assault from a Class A misdemeanor to a third degree felony when the offense is committed against a family member, dating partner or member of the defendant's household and it is shown at trial that the defendant was previously convicted of assault (Chapter 22, Penal Code), criminal homicide, kidnapping or aggravated kidnapping against a family member, dating partner or member of the defendant's household.

Currently, a defendant can receive a sentence enhancement for an assault offense when it was shown at trial that the defendant was previously convicted of an assault offense only against a member of the defendant's family or household. This act expands the list of people constituting "family" for the purposes of establishing a family violence assault. However, courts cannot enhance the defendant's sentence when the defendant was previously convicted of a more severe assault offense (governed by Chapter 22, Penal Code), criminal homicide, kidnapping, or aggravated kidnapping. This amendment expands the number of crimes that may be used for the purposes of enhancing a family violence assault.

SB 91 is particularly relevant when a magistrate must set bail for a defendant, because a prior conviction for an offense against a family member will enhance the defendant's charges and, thus, require a higher bond.

Article 14.03(a)(4) of the Code of Criminal Procedure is also amended, allowing peace officers to make warrantless arrests if they have probable cause to believe a person committed an offense involving family violence. Currently, this article allows officers to make a warrantless arrest only if they have probable cause to believe a person committed "an assault resulting in bodily injury to a member of the person's family or household." The amendment allows officers to consider more factors when making the decision whether or not to arrest, because family violence, as defined by Section 71.004 of the Family Code, includes threats of harm, dating violence, sexual abuse, assault, and acts intended to cause bodily harm to a family member or member of a household.

**Subject: Offense for the Unauthorized Operation of a Recording Device in a Motion Picture Theater**

**SB 481**

**Effective Date: 9/1/2005**

Amends Chapter 35 of the Business and Commerce Code

by adding Section 35.935, criminalizing the making of an audiovisual recording in a movie theater. The offense is a Class A misdemeanor offense, except that it is a state jail felony if the person has been previously convicted of the offense one time, or a third degree felony if the person has been convicted two or more times. A person who reasonably believes that another has knowingly operated a recording device in a movie theater is privileged to detain that person in a reasonable manner and for a reasonable time to allow for the arrival of law enforcement. It is a defense to prosecution for this offense that the audiovisual recording device was operated solely for official law enforcement purposes.

It is a trend among sophisticated thieves to use video recording devices to illicitly steal a movie from a movie theater, usually very early in its theatrical release or even prior to the film's U.S. release (such as during a promotional screening). Recordings are then illegally duplicated, packaged and sold on the black market. As a result, many motion pictures become available over the Internet, on street corners and in flea markets around the world. This is a major threat to U.S. film distributors both at home and abroad.

This law puts Texas on the list with 18 other states and the District of Columbia that have laws enabling state and local authorities to arrest and prosecute individuals who criminally operate a camcorder in a movie theater. In states where such statutes do not exist, the police cannot detain the operator, as it is not a crime.

**Low Priority**

**Subject: Tampering with Electronic Voting Machines**

**HB 56**

**Effective Date: 9/1/2005**

Creates Section 33.05 of the Penal Code, making it a first degree felony for a person to tamper with an electronic voting machine. If the person only attempted to commit the crime, it is a third degree felony.

**Subject: Possession or Transport of Anhydrous Ammonia; Criminal Penalty**

**HB 164**

**Effective Date: 8/1/2005**

Amends Chapter 481 of the Health and Safety Code by creating Section 481.1245, making it a third degree felony for a person to: (1) possess or transport anhydrous ammonia in a container not designed to carry anhydrous ammonia; or (2) use, transfer, sell, or tamper with a container designed to contain anhydrous ammonia without express consent of the owner of the container.

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Anhydrous ammonia is a highly toxic chemical used as a nitrogen fertilizer. It will quickly bind with any type of moisture, leading to rapid dehydration that can cause severe chemical burns, blindness or even death. Anhydrous ammonia is also used to manufacture methamphetamine and is often stolen from storage tanks on farms.

HB 164 is one of several bills proposed by the 79<sup>th</sup> Legislature to combat the manufacture of methamphetamine. See SB 66, creating the Methamphetamine Watch Program.

**Subject: Taking an Officer's Stun Gun; Criminal Penalty**

**HB 582**

**Effective Date: 9/1/2005**

Amends Section 38.14 of the Penal Code, first defining "stun gun," and then making it a third degree felony to intentionally or knowingly take a stun gun with force from a peace officer with the intent to harm the officer or a third person. This offense is a state jail felony if only attempted. It is currently an offense under this section to take the firearm, nightstick or personal protection chemical dispensing device of a peace officer.

**Subject: False Complaint against a Child-Care Facility or Family Home**

**HB 877**

**Effective Date: 9/1/2005**

Amends Chapter 42 of the Human Resources Code by creating Section 42.0447, making it a Class A misdemeanor for a person to knowingly or intentionally file a complaint alleging that a child-care facility or registered family home failed to meet minimum standards, and the person knows the allegation is false. If the offender has been previously convicted of this offense, the subsequent offense is a state jail felony.

**Subject: Practicing Chiropractics while Intoxicated; Criminal Penalty**

**HB 972**

**Effective Date: 9/1/2005**

Creates Section 201.606 of the Occupations Code, making it a state jail felony to practice chiropractics while intoxicated and, by reason of that intoxication, place the patient in substantial and unjustifiable risk of harm.

**Subject: Penalties for Fraudulent Academic Credentials**

**HB 1173**

**Effective Date: 9/1/2005**

Amends Sections 61.304, 61.312 and 61.313 of the Education Code, creating three new Class A misdemeanors:

- Unauthorized granting, offering or awarding of a degree or class credit or soliciting another person to seek an unauthorized grant or award [Section 61.304];
- Offering or granting an honorary degree or soliciting another person to seek an honorary degree without institutional authority [Section 61.312]; and
- Using a protected term (*i.e.*, law school) in the name of an institution or soliciting a person to seek a degree or earn a credit from an institution violating the protected name provision [Section 61.313].

HB 1173 also creates Section 32.52 of the Penal Code, making it a Class B misdemeanor to use or claim to hold a fraudulent, substandard or fictitious degree. These changes in law are in response to the abundance of bogus "diploma mills" on the Internet where degrees are purchased.

**Subject: New Arson-related Offenses**

**HB 1634**

**Effective Date: 9/1/2005**

Amends Section 28.02 of the Penal Code (Arson), making it a state jail felony for a person to recklessly start a fire or cause an explosion while manufacturing or attempting to manufacture a controlled substance if the fire or explosion damages any building, habitation or vehicle. This offense is a third degree felony if the fire or explosion causes the bodily harm or death of another person.

HB 1634 makes it a third degree felony for a person to commit arson when the person intentionally starts a fire in a building, habitation or vehicle with the intent to destroy the property of another or injure any person and, in doing so, recklessly causes damage to the building, habitation or vehicle.

Amends Section 352.021, Local Government Code, creating Subsection (a-1). This new subsection makes it a misdemeanor, punishable by a fine up to \$2000, for a property owner to not cooperate with the fire investigation when the owner's property is being investigated.

**Subject: Penalties related to Local Option Elections**

**HB 1799**

**Effective Date: 9/1/2005**

Creates Chapter 501 of the Election Code, which addresses local option elections on the sale of alcoholic beverages. Section 501.029 of this chapter makes it a Class B misdemeanor to misrepresent the purpose or intent of a petition for a local option election. Section 501.108 makes it an offense punishable by a fine of \$200-500 and/or up to

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30 days in a county jail for a county clerk to issue a petition for a local option election to an applicant who has not made the requisite deposit.

**Subject: Hunting Deer with Dogs**

**HB 1959**

**Effective Date: 9/1/2005**

Amends Chapter 62 of the Parks and Wildlife Code by adding Section 62.0065, making it a Class A Parks and Wildlife misdemeanor for a person to recklessly use dogs to hunt or pursue deer. It is not a defense to prosecution that the offender was not the owner of the dog or in immediate possession of the dog at the time of the offense, or that the offense was committed without the effective consent of the dog's owner.

**Subject: No More Point-and-Click Hunting**

**HB 2026**

**Effective Date: Immediately**

Amends Chapter 62 of the Parks and Wildlife Code by adding Section 62.002, making it a Class B Parks and Wildlife misdemeanor to hunt animals using computer-assisted remote hunting. A subsequent offense is a Class A Parks and Wildlife misdemeanor.

**Subject: Fraudulent/Unlicensed Currency**

**Exchange Services; Criminal Penalty**

**HB 2218**

**Effective Date: 9/1/2005**

Creates Chapter 151 of the Finance Code, addressing the regulation of money services businesses. Section 151.708 of the chapter makes it a third degree felony to conduct fraudulent or unlicensed currency exchange services. In an increasingly global society, a fraudulent or unlicensed currency exchange service could cause serious financial problems.

**Subject: Massaging without a License**

**HB 2696**

**Effective Date: 9/1/2005**

Amends Section 455.352 of the Occupations Code, making it Class B misdemeanor to knowingly practice massage therapy without a license. A second and third offense under this section is a Class A misdemeanor; a fourth or subsequent offense is a state jail felony.

**Subject: Heightened Penalty for Trespass in a Critical Infrastructure Facility**

**SB 9**

**Effective Date: Immediately**

Amends Section 30.05 of the Penal Code, making it a Class A misdemeanor when a person trespasses on or in a critical infrastructure facility (*i.e.*, a chemical manufacturing facility, refinery or gas processing plant). This amendment is likely

in response to the fear of terrorist activity around these locations.

**Subject: Improperly Obtaining Aircrafts Subject to Liens**

**SB 149**

**Effective Date: Immediately**

Amends Chapter 70 of the Property Code by creating Section 70.307, making it a Class B misdemeanor for a person to improperly obtain possession of an aircraft that is subject to a lien.

**Subject: Penalties related to Personal Emergency Response Systems**

**SB 568**

**Effective Date: 9/1/2005**

Creates Chapter 781 of the Health and Safety Code, addressing personal emergency response systems. Section 781.403 creates the following new offenses:

- Knowingly falsifying fingerprints or documents submitted to the Department of State Health Services is a third degree felony [Section 781.403(a)(2)];
- Knowingly contracting for or employing an unlicensed person for a job where the person must be licensed is a Class A misdemeanor [Section 781.403(a)(2)]; and
- Violating any provision of Chapter 781 is a Class A misdemeanor [Section 781.403(a)(3)].

**Subject: Out-of-State Wine Shipment to Texas Consumers; Permit; Criminal Penalty**

**SB 877**

**Effective Date: Chapter 54 was effective 4/27/2005.**

**The requirement for a permit and penalty for shipment without a permit takes effect 90 days after the effective date (approximately 7/27/2005).**

Creates Chapter 54 of the Alcoholic Beverage Code, requiring out-of-state wineries to obtain a permit before shipping wine directly to Texas consumers. The penalty for shipping wine directly without a permit is a Class B misdemeanor for the first offense, a Class A misdemeanor for the second offense, and a state jail felony for a third or subsequent offense.

**Subject: Alcohol/Tobacco Sales; Illegal Access or Use of Electronically-Readable Personal Information on Driver's License**

**SB 1465**

**Effective Date: 9/1/2005**

Creates Section 161.0825 of the Health and Safety Code, making it a Class A misdemeanor for a person to illegally

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access or use electronically-readable personal information contained on a driver's license. It is an affirmative defense to prosecution that the information was accessed in good faith or accessed by a store employee in connection with a sale of alcohol or tobacco products.

The interim study of the Criminal Justice Committee found that an issue in need of attention is the use of false identification by minors seeking to purchase tobacco and/or alcohol. This bill is designed to deter vendors of alcohol or tobacco from improperly using personal information contained on a driver's license.

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## Procedural Law

### High Priority

#### **Subject: Authority of Municipal Police Officers Expanded in Certain Instances**

*HB 915/SB 907*

**Effective Date: 9/1/2005**

Amends Article 14.03(g), Code of Criminal Procedure, to clarify that a municipal police officer's jurisdiction is countywide in Subtitle C, "Rules of the Road," Transportation Code offenses.

State intermediate appellate courts have disagreed as to whether a municipal police officer has countywide jurisdiction of common traffic violations. This bill purports to conform the law to legislative history and former statutory provisions that support a finding that a municipal officer's jurisdiction is countywide.

#### **Subject: Required Information in Judgment**

*HB 967*

**Effective Date: 9/1/2005**

Amends Article 42.01 of the Code of Criminal Procedure, to require certain information (title and number of the case, parties in the case, *etc.*) to be included in the judgment. Currently, the article states that certain information *should* appear in the judgment but is not necessarily required. Why? Because not all of the issues contained in the article's long laundry list are applicable to all trial courts (*e.g.*, only district courts need to be concerned with the death sentences).

Nevertheless, as amended, HB 967 replaces "should" with "shall." This could be confusing for municipal and justice courts that will see that many of the items contained in Article 42.01 are inapplicable to their jurisdiction. While Chapter 45 of the Code of Criminal Procedure provides such courts with a specific rule regarding judgments (*i.e.*, Article 45.041), readers will note that it does not contain most of the basic elements one would expect to see in a judgment (*i.e.*, the title and number of the case, the defendant's name, the verdict of the court, the county and court where the case was tried, *etc.*). Such fundamental elements are contained only in Article 42.01. Accordingly,

municipal courts should make every effort to comply with the requirements of both Article 45.041 and Article 42.01 where applicable.

#### **Subject: Use of "Qualified Telephone Language Services" in Class C Misdemeanors and Magistrate Functions**

*HB 1601*

**Effective Date: 9/1/2005**

Amends Article 38.30 of the Code of Criminal Procedure (Interpreters) by adding (a-1), stating that a qualified telephone interpreter may be sworn to interpret for the person in the trial of a Class C misdemeanor or a proceeding before a magistrate if an interpreter is not available in person before the court or if the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

A "qualified telephone interpreter" is defined to mean a telephone service that employs either: (1) licensed court interpreters as defined by Section 57.001, Government Code; or (2) federally certified court interpreters.

Also amends Section 11(a), Article 42.12, Code of Criminal Procedure, to authorize community supervision to include, but not be limited to, the condition that the defendant is required to reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case. Note: This reimbursement provision has no implication on municipal or justice courts, as municipal and justice courts are not authorized to use Article 42.12.

This bill acknowledges the reality that the existing interpreter law did not adequately accommodate the needs of most municipal and justice courts, let alone those in need of a language interpreter in most rural parts of the state. This bill along with HB 1642 should go a long way in helping local trial courts deal with the systemic problems and inherent barriers that are part of the current laws pertaining to language interpreters.

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**Subject: Language Interpreters in Counties with Populations over 50,000**

**HB 1642**

**Effective Date: 9/1/2005**

Amends Chapter 57, Government Code (Court Interpreters), to allow all trial judges in counties with a population of more than 50,000 to appoint a spoken language interpreter who is not a certified or licensed court interpreter if: (1) the language necessary in the proceeding is a language other than Spanish; and (2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

This bill along with HB 1601 should go a long way in helping local trial courts deal with the systemic problems and inherent barriers that are part of the current laws pertaining to language interpreters.

**Subject: Expunction Requests by DPS and Procedures relating to the Formation of a Jury**

**HB 3093**

**Effective Date: 9/1/2005**

SECTIONS 1-2: Expunctions Requested by DPS

Occasionally, through human error, incorrect information is entered on a driver record resulting in suspension action against an individual. DPS identifies most of these errors through standard exception processing procedures. However, in limited circumstances, the error is not identified or corrected in a timely manner and the driver is subsequently arrested for the offense of driving while a license is invalid.

When the driver notifies DPS that such an event has occurred, the individual's driving record is immediately corrected and the local prosecutor is notified of the error. Although the criminal charges are dismissed, the driver still has an arrest record related to the incident. Chapter 55 (Expunction of Criminal Records) of the Code of Criminal Procedure allows a person placed under a custodial or non-custodial arrest to file an *ex parte* petition for expunction, which usually requires the driver to hire an attorney to petition the court for expunction of the records and then seek reimbursement from DPS to cover the expenses.

In an effort to alleviate the burden on the driver and to limit monetary claims against the agency, this bill amends the Code of Criminal Procedure to permit the director of DPS, or the authorized representative of the director, to file an *ex parte* petition for expunction of criminal records in these cases.

HB 3093 allows DPS to properly remove all records and files relating to the arrest from the computerized criminal history database maintained by DPS and from any law enforcement

agencies, jails, magistrates, courts, and other entities authorized under Chapter 55.

SECTION 4. Mode of Testing Jurors

This poorly drafted section of HB 3093 was added, presumably, as a last minute amendment. It relates to testing the qualification of jurors in criminal cases and will likely be problematic for judges to apply (and confusing for many jurors to comprehend). It provides that in addition to the questions a judge is required to ask prospective jurors, contained in Article 35.12 of the Code of Criminal Procedure, the court shall ask whether the juror has been the subject of an order of nondisclosure or has a criminal history subject to such an order. If such is the case, "the juror may state only that the matter in question has been sealed." (Confusing? We agree.)

**Subject: Deferred Disposition for Defendants under Age 25**

**SB 1005**

**Effective Date: 9/1/2005**

SECTION 1. Deferred Disposition

Amends Article 45.051, Code of Criminal Procedure. For defendants under age 25 who commit a "moving violation," the judge must require the defendant to take a DSC. If the defendant holds a provisional license, the judge must require the defendant to take an examination. The defendant must pay a \$10 examination fee, which is deposited in the general revenue fund of DPS. This fee is presumably to be collected by DPS, not the court.

Also requires the judge to impose the fine assessed if a defendant, ordered to complete a DSC or a test under (b-1), does not provide evidence of completion by the end of the deferral period. Notably, however, the defendant is not required to pass the test (only be "examined").

Judges should read this bill carefully and come to their own conclusions. While the bill may be construed to limit judicial discretion, structural and drafting deficiencies in Subsection (b-1) lend themselves to varying interpretations.

SECTION 2. DSC

Amends Article 45.0511, Code of Criminal Procedure, to apply to defendants under age 25 who commit a moving violation that is within the jurisdiction of the justice or municipal court. Article 45.0511 currently applies to this particular group of people; as such this amendment makes no real change.

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**Subject: Appeals from Municipal Courts of Record**

**SB 1014**

**Effective Date: Immediately**

Amends Chapter 30 of the Government Code (the Uniform Municipal Courts of Record Act) by conforming to the language currently contained in the Rules of Appellate Procedure and the Code of Criminal Procedure.

When the Uniform Municipal Courts of Record Act was passed in 1987, the language contained in the Act regarding appeal procedures mirrored that of the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. However, when the Rules of Appellate Procedure and the Code of Criminal Procedure were re-codified in 1997, new language for an appellate record was established, replacing “transcript” with “clerk’s record” and “statement of facts” with “reporter’s record.” A corresponding change, however, was not made to the Uniform Municipal Courts of Record Act. This conflict in terminology led to confusion and two recent appellate decisions. This change in law resolves the incongruent terminology.

**Medium Priority**

**Subject: Community Service Pitfall**

**HB 129**

**Effective Date: 9/1/2005**

Amends Article 43.10 of the Code of Criminal Procedure, allowing persons convicted of certain misdemeanors or felonies to perform manual labor in the maintenance and service of non-profit organizations or county-funded cemeteries. But be warned! Although HB 129 addresses community service for persons convicted of misdemeanors, it is inapplicable to municipal courts. Chapter 45 of the Code of Criminal Procedure governs municipal courts. According to Article 45.002, Code of Criminal Procedure, criminal proceedings in municipal courts must be conducted in accordance with Chapter 45 unless there is no rule of procedure in the chapter. Only then should the judge look outside the chapter for rules of procedure. Since rules regarding community service are found in Article 45.049, the provisions found in Article 43.10 do not apply.

**Subject: Mandatory Discovery Provision**

**HB 969**

**Effective Date: 9/1/2005**

Amends Article 39.14(a) of the Code of Criminal Procedure, providing that, upon motion of a defendant, the court shall order the prosecutor to produce most evidence materially related to any matter involved in the action. Currently, the court is authorized but not required to order the prosecutor to produce such evidence upon a motion by the defendant. The granting of a motion for discovery is

still predicated on a showing of good cause, proper notice and the State’s control of the evidence itself.

**Subject: Nurse Licensing and Deferred Disposition**

**HB 1366**

**Effective Date: 9/1/2005**

Amends Section 301.452(b) of the Occupations Code, stating a person is subject to denial of a nursing license or to disciplinary action for a placement on deferred adjudication, community supervision or deferred disposition for a felony or misdemeanor involving moral turpitude. Currently, action can only be taken when a person was *convicted* of a felony or misdemeanor involving moral turpitude. HB 1366 clearly emphasizes that deferred adjudication, community service and deferred disposition for crimes of moral turpitude are not a means of avoiding repercussions concerning one’s nursing license. The amendment updates the Nursing Practice Act, making it more consistent with other professional practice acts in Texas.

**Subject: District Attorney Approval of Bad Check Warrants in Counties with Populations in Excess of Two Million**

**HB 2885**

**Effective Date: 9/1/2005**

Amends Article 45.014(d), Code of Criminal Procedure, to require a justice or judge to get the approval of the district attorney before issuing a warrant for the issuance of a bad check in a county with a population of more than two million that does not have a county attorney. Amends Article 45.019, Code of Criminal Procedure, to require complaints to be approved by the district attorney in a county with a population of two million or more that does not have a county attorney, regardless of whether a collection proceeding was initiated by the district attorney.

Article 45, Code of Criminal Procedure, authorizes a justice of the peace or municipal judge to issue a warrant for an arrest upon the filing of a sworn complaint or an affidavit showing probable cause. An arrest warrant or complaint for the passing of a bad check can currently be issued without approval of the county attorney or district attorney.

This bill erodes the authority of justices of the peace and municipal judges in Dallas County. It restricts their ability to issue warrants on bad checks, subject to the approval of the Dallas County district attorney. While Harris County has a population of more than two million, it has a county attorney and is, thus, exempt from this statute. Thankfully, so are all other counties in Texas.

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## Low Priority

### **Subject: Juror Excuses**

*HB 75*

#### **Effective Date: 9/1/2005**

HB 75 gives a court's designee the ability to both hear and discharge a prospective juror in a civil and criminal case. The bill, which is permissive, will only occur if a county commissioners court first approves the measure. Under Chapter 62 of the Government Code, a court's designee may hear and determine an excuse offered for not serving as a juror, but the designee does not have the ability to discharge the juror or postpone the prospective juror's service. The actual discharge has to be done by a judge.

### **Subject: Effect of Expunction**

*HB 269/SB 166*

#### **Effective Date: Immediately**

Amends the Code of Criminal Procedure to clarify that expunged records may not be maintained by DPS and disseminated to criminal justice agencies or to non-criminal justice agencies authorized by state or federal law to receive criminal history record information.

Persons who have been acquitted at trial, pardoned or for whom no case was presented for trial, with exceptions, are entitled to have their records expunged. This differs from persons who may apply for an order of non-disclosure, which in effect "seals" the record of a person who has been placed on deferred adjudication (not to be read "deferred disposition"), has successfully completed a period of community supervision and has had the charge dismissed.

During the 78th Legislative Session, SB 1477 was passed, which made orders of non-disclosure possible, but which also made minor changes to the expunction statutes. One of the changes has had the unintended consequence of allowing the DPS to maintain records that have been ordered by a court to be expunged and to make the records public to criminal justice and certain non-criminal justice agencies. The intended consequence of this amendment is to require DPS to destroy records that were not expunged.

### **Subject: Appointment and Jurisdiction of Cattle Rangers**

*HB 1695*

#### **Effective Date: 9/1/2005**

Creates Article 2.125 of the Code of Criminal Procedure, authorizing the director of DPS to appoint a maximum of 50 special rangers employed by the Texas and Southwestern Cattle Raisers Association (TSCRA) to aid law enforcement agencies in the investigation of the theft of livestock or related property.

The TSCRA was founded in 1877 to combat the rise of

cattle theft. Since that time, TSCRA has employed field inspectors whose primary responsibility is to investigate livestock theft and other ranch-related property losses. In 1893, the field inspectors became special rangers: commissioned peace officers licensed by the DPS. Section 411.023 of the Government Code, which states that they "may not enforce a law except one designed to protect life and property," governs special rangers. This statute was interpreted by DPS rule to prohibit special rangers from enforcing any law except when necessary to protect the personal property of a special ranger.

While Article 2.125 reinstates the authority exercised by the TSCRA field inspectors since 1893 to conduct investigations into the theft of cattle and other ranch-related property or livestock, it notably prohibits a special ranger from issuing a traffic citation for a violation of Chapter 521 (Driver's Licenses and Certificates), Transportation Code, or Subtitle C (Rules of the Road), Title 7, Transportation Code.

### **Subject: Eligibility and Citation of Bail Bond Sureties**

*HB 2767*

#### **Effective Date: 9/1/2005**

Amends Article 17.10 of the Code of Criminal Procedure, adding to the list of disqualified bail bond sureties. Currently, only a minor cannot be a surety: This amendment prohibits a person from being a surety on a bail bond written in a county in which a county bail bond board (regulated by Chapter 1704 of the Occupations Code) does not exist unless the person, within two years before the bail bond is given, completed in person at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are approved by the State Bar of Texas and offered by an accredited institution of higher education in this state. This amendment requires bail bond agents who work in non-bail bond board counties to complete the same continuing education requirements as sureties in bail bond counties, because sureties in bail bond board counties are already required to fulfill a continuing education requirement.

Amends Article 17.141 of the Code of Criminal Procedure, authorizing the sheriff in a county in which a county bail bond board does not exist to post a list of eligible bail bond sureties whose security has been determined to be sufficient. Each surety must annually file a sworn financial statement with the sheriff. This provides oversight of bail bond sureties in non-bail bond board counties.

Amends Articles 22.03-22.05 of the Code of Criminal Procedure, designating where a surety will be served a citation upon bail bond forfeiture. Sureties may now waive

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their rights to service of citation by filing a written waiver with the clerk of the court. This waiver is effective until a written revocation is filed. Furthermore, a citation of forfeiture must contain a copy of the judgment of forfeiture entered by the court, a copy of the forfeited bond and a copy of any power of attorney attached to the forfeited bond. Currently, only a copy of the judgment of forfeiture is required as part of the citation.

Amends Article 32.01 of the Code of Criminal Procedure, stating that when a defendant is detained in custody or held on bail and no indictment or information is presented against the defendant within a certain amount of time, the case must be dismissed and bail discharged. This provision is currently applicable only to district courts, but now will apply to all courts of proper jurisdiction.

**Subject: Insanity Defense Revision**  
**SB 837**

**Effective Date: 9/1/2005**

Creates Article 46C of the Code of Criminal Procedure, delineating the procedures for the examination, trial and disposition of individuals who offer the defense of not guilty by reason of insanity. The Senate Jurisprudence Committee recommended that the current language addressing the insanity defense (Article 46.03) be rewritten to make it more concise and easier for lawyers, judges and mental health professionals to understand. The Committee's recommendations included making the provisions concerning release standards and post-release monitoring more explicit as well as conforming the standards for experts used in an insanity case to those standards used by experts to determine the competency of a defendant to stand trial.

The amendment completely rewrites the insanity defense statute to streamline the process and improve the post-acquittal procedures for persons found not guilty by reason of insanity. The amendment includes specific release standards and provisions regarding post-release monitoring. The former insanity defense provision, Article 46.03, is accordingly repealed.

**Subject: Constitutional Amendment; Denial of Bail Pending Trial**

**SJR 17**

**Effective Date: This proposed constitutional amendment will be submitted to voters at an election held on 11/8/2005**

Proposed amendment to Article 1, Section 11 of the Texas Constitution, creating Section 11b, which would permit a district judge to deny bail pending trial to a person accused of a felony if the judge determines the person violated a condition of release related to the safety of a victim or of the community. This applies only to people previously released on bail pending trial and who have had bail revoked or forfeited for a violation of a condition of release.

Current law requires a defendant to be released on a reduced bond or a personal bond if the State is not ready for trial within 90 days of an arrest in a felony case. Defendants who violate parole by committing additional offenses are guaranteed to be offered bond and the State does not have the ability to hold the defendant without bond until the time of the trial. SJR 17 proposes an amendment that would authorize denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial.

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## Magistrate Duties

### High Priority

**Subject: Motor Vehicles Equipped with Recording Devices**

**HB 160**

**Effective Date: 9/1/2006**

Adds Section 547.615, Transportation Code, requiring the manufacturer of a vehicle to disclose that the vehicle is equipped with a recording device. This section prohibits anyone, other than the owner, from retrieving information recorded or transmitted by the device unless: (1) there is a court order (*e.g.*, a search warrant); (2) the owner consents; (3) information is to be used for motor vehicle safety

improvement and the owner's identity is not revealed; or (4) the information is used to facilitate emergency medical response to an accident.

To obtain a court order for information regarding the location of a vehicle, there must be a showing that the information is necessary to protect the public safety, is evidence of an offense, or is evidence that a particular person committed an offense.

If a recording device is used as part of a subscription service, the service must disclose that the device may record or transmit information. The restrictions on obtaining information recorded or transmitted by a

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recording device do not apply to obtaining information from a subscription service.

These recording devices are commonly referred to as event data recorders (EDRs) or “black boxes.” They function like black boxes used on airplanes. EDRs can record speed, direction, location, steering performance, brake performance, safety belt use, *etc.* Information retrieved from these devices is now being used to prosecute drivers in both criminal and civil cases. This act intends to make consumers aware of EDRs and regulate how information can be obtained for use in criminal and civil cases.

Note: The effective date of this bill is September 1, 2006, not September 1, 2005.

**Subject: Disposition of Seized Weapons and Access by County Forensic Crime Laboratories**  
**HB 705**

**Effective Date: 9/1/2005**

Amends Article 18.19(c)-(e) of the Code of Criminal Procedure by requiring: (1) the magistrate to whom a weapon seizure was reported, if the weapon is not requested before the 61st day after the date of notification and before the 121st day after the date of notification, to order the weapon destroyed or forfeited to the State for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the magistrate; or (2) the court entering the judgment in which a person was convicted or placed on deferred adjudication under Chapter 46, Penal Code (which is not deferred disposition under Chapter 45 of the Code of Criminal Procedure) to order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court in certain circumstances.

Currently, when a weapon is seized in connection with an offense, the weapon is turned over to either a magistrate or court having jurisdiction. If there is no prosecution or conviction for an offense involving the weapon seized and the person found in possession of the weapon does not request the return of the weapon within a period prescribed by law, the magistrate or court may order it destroyed or forfeited for use by the law enforcement agency holding the weapon. The current law does not allow county forensic laboratories access to these weapons. County lab examiners often disassemble and study firearms before testifying about a specific firearm, use essential parts from firearms to test-fire other weapons and gather information on specific characteristics of firearms. Many firearms that county labs could use for research are not available to them under current law, resulting in lost data and depriving these labs of weapons that could result in research that is more

accurate. In particular situations, this amendment allows county forensic labs access to seized weapons.

**Subject: Magistrates and DNA Specimens**  
**HB 1068**

**Effective Date: 9/1/2005**

SECTION 11. Magistrate Authority to Order a DNA Specimen

In 2001, the 77<sup>th</sup> Legislature added Section 411.148 of the Government Code, which addressed DNA records of certain felon inmates.

As amended, a magistrate or court may also order a DNA specimen in instances relating to juveniles described in Section 411.150, in other circumstances described in Section 411.154, and pursuant to other laws (presumably mere evidence blood warrants).

SECTION 17. Magistrate’s Discretionary Authority to Order a DNA Specimen as a Condition of Bail

In 2001, the 77<sup>th</sup> Legislature added Article 17.47 of the Code of Criminal Procedure requiring that in certain enumerated felonies (listed in Section 411.1471 of the Government Code) a magistrate is required as a condition of release to order that defendants provide a law enforcement agency with specimens for the purpose of creating a DNA record.

As amended, a magistrate will have the authority to order a specimen be provided to local law enforcement under Chapter 411, even in instances where the offense is not an enumerated felony listed in Section 411.1471.

**Subject: Presentation before Magistrate after Arrest**

**HB 2120**

**Effective Date: 9/1/2005**

While the caption reads “relating to the administration of county government and the exercise of powers at the county level,” Sections 1 through 6 of this bill have major implications on procedures following arrest and the use of teleconferencing/electronic broadcasting in criminal cases.

SECTION 1. Amends Article 14.06(a), Code of Criminal Procedure, to allow an arresting officer, in the interests of expediency, to take a person in custody to any magistrate in this state, rather than a magistrate in the jurisdiction where the arrest was made. Notably, the former language, authorizing the person in custody being brought before a magistrate in a bordering county, is repealed.

SECTION 2. Amends Article 15.16, Code of Criminal Procedure (How Warrant is Executed), to authorize the officer or person executing the arrest warrant as permitted by Article 15.17, notwithstanding Subsection (a), to provide

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more expeditiously to the person arrested the warnings described by Article 15.17, to take the person arrested before a magistrate in a county other than the county of arrest. The implications of Subsection (b) will likely be minimal except in the most rural of counties.

SECTION 3. Amends Article 15.17(a), Code of Criminal Procedure, to authorize the image of the arrested person to be presented by means of an electronic broadcasting system and repeals all references to close circuit television. "Electronic broadcast system" is defined as "a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing."

SECTION 4. Amends Article 15.18, Code of Criminal Procedure (Arrest for Out-of-County Offenses), to make conforming changes.

SECTION 5. Amends Article 15.19(b), Code of Criminal Procedure, to delete existing text regarding an arrest made under the provisions of Article 15.17(a) of this code and to make conforming changes.

SECTION 6. Amends Article 27.18, Code of Criminal Procedure, to authorize the teleconferencing/electronic broadcasting, authorized in Article 15.17, of a defendant's plea or waiver when the defendant is confined in a county other than the county in which the criminal charges are pending.

**Subject: Notice of Certain Bail Reductions Required**

**SB 56**

**Effective Date: 9/1/2005**

Amends Chapter 17 of the Code of Criminal Procedure by adding Article 17.091, requiring a judge or magistrate to provide reasonable notice of a proposed bail reduction and an opportunity for a hearing to the attorney representing the State or the defendant's counsel. This requirement only applies to offenses listed in Section 3g, Article 42.12 or an offense described by Article 62.01(5) (defining "reportable conviction or adjudication"). Offenses include murder, capital murder, aggravated sexual assault, and aggravated robbery.

**Subject: Availability of Judges and Magistrates in Proceedings relating to Chemically Dependent Persons**

**SB 348**

**Effective Date: Immediately**

Amends Section 462.0025 of the Health and Safety Code to require the courts to be open only during normal business hours. Subsection (b), however, requires a probate judge or magistrate to be available at all times at the request of a

person taken into custody, detained or proposed to be made a patient under court-ordered treatment.

**Subject: Restricting Eligibility for Release on Personal Bond for Certain Criminal Defendants after a Delay in Prosecution**

**SB 599**

**Effective Date: 9/1/2005**

Amends Section 2, Article 17.151, of the Code of Criminal Procedure, to specify that the provisions of this article do not apply to a defendant who is being detained for a violation of the conditions of a previous release under this article. Makes other non-substantive changes.

Current law requires a defendant to be released on a reduced bond or a personal bond if the State is not ready for trial within 90 days of arrest in a felony case. Similarly, defendants who violate parole by committing additional offenses are guaranteed bond and the State does not have the ability to hold the defendant without bond until the time of the trial. SB 599 allows for an exemption to the mandatory release of a defendant who is pending trial for violating a condition of the defendant's bond.

**Subject: Duration of a Magistrate's Order of Emergency Protection**

**SB 1275**

**Effective Date: Immediately**

Amends Article 17.292(j), Code of Criminal Procedure, extending a magistrate's order of emergency protection (MOEP) to 91 days if the assault involves use or exhibition of a deadly weapon. A MOEP for an assault without a deadly weapon would remain in effect for up to the 61<sup>st</sup> day but not less than 31 days after the date of issuance. After notice to each affected party and a hearing, the issuing court may modify all parts of an order issued under this article if the court finds that: (1) the order as originally issued is unworkable; (2) the modification will not place the victim of the offense at greater risk than did the original order; and (3) the modification will not in any way endanger a person protected under the order.

Notably, this bill also requires county and district courts to inform the parties involved in divorce and in instances where domestic violence is suspected of their right to apply for a protective order under Title 4 of the Family Code.

Applies only to an order for emergency protection rendered on or after the effective date of this act. An order rendered before the effective date is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

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## Medium Priority

### **Subject: Disposition of Certain Obscene Material and Child Pornography**

*HB 839*

**Effective Date: 9/1/2005**

Amends Article 18.18 of the Code of Criminal Procedure to require electronic materials and computers used to possess or promote child pornography be forfeited to the state or destroyed upon final conviction.

Under current law, upon final conviction for an offense involving obscene material or devices, the court is required to order the obscene material to be destroyed or forfeited to the State. The State routinely obtains felony convictions of individuals who possess child pornography that meets the definition of obscene material. However, it is not printed material, but electronic computer images contained on the hard drive of the suspect's computer.

The primary focus of this bill is to allow district courts to dispose of evidence related to child pornography after trial. Nevertheless, because it expands the scope of Article 18.18, magistrates need to be aware that they may be called upon to conduct property hearings in the event there is no prosecution (*e.g.*, cases where images on a hard drive are deemed by the district attorney to not be child pornography or where the defendant is acquitted). To reiterate, the property subject to the hearing would be computers, components, accessories, *etc.*, not child pornography.

### **Subject: State Opportunity to Depose a Witness in an Examining Trial**

*HB 975*

**Effective Date: 9/1/2005**

#### SECTION 1. Examining Trials

Amends Articles 39.01 of the Code of Criminal Procedure, allowing the State to depose a witness. Currently, prosecutors cannot preserve testimony by taking a deposition before an examining trial.

#### SECTION 2. Witness Depositions

Amends Article 39.02, Code of Criminal Procedure, affording the State the same rights as the defendant to take the deposition of a witness for limited purposes. Neither the State nor the defendant can use the deposition testimony for any purpose unless that party acknowledges that the entire statement may be used for or against the defendant. When a party desires to take a deposition, they must first file an affidavit with the court clerk in whose court the case is pending and give adequate reasons for wanting a deposition in addition to the application to take a deposition. Once the affidavit and the application have been filed and the opposing party is notified, the court is

required to hear the application and decide whether there is good reason to conduct the deposition. The court is required to make its determination and grant or deny the application based on the facts made known at the hearing.

## Low Priority

### **Subject: Expanded Duties and Powers of Magistrates in Brazos County**

*HB 3541*

**Effective Date: 9/1/2005**

Amends Article 2.09 of the Code of Criminal Procedure, expanding the list of magistrates to include magistrates appointed by judges of the district courts and statutory county courts of Brazos County. Section 54.1106 of the Government Code is also amended to expand the list of cases that may be referred to a magistrate in Brazos County. Additional proceedings that may be referred to a magistrate in Brazos County are:

- Negotiated pleas of no contest and sentencing;
- A pretrial motion;
- An examining trial;
- An application for a writ of *habeas corpus*;
- An issuance of an arrest warrant or search warrant;
- Setting of bond;
- A motion to increase or decrease a bond;
- A motion to proceed with adjudication;
- A motion to modify or revoke community supervision;
- A drug court proceeding;
- An occupational driver's license; and
- Any matter the judge considers necessary and proper.

The amendment also allows certain types of family law and tax suits to be referred to these magistrates in Brazos County. It also allows a magistrate to preside over bench trials on the merits with written consent by the parties and approval by the referring judge.

Courts in Brazos County have become increasingly backlogged. This amendment is intended to help alleviate the caseload on Brazos county courts by delegating more of the docket to magistrates.

### **Subject: Magistrates in Nolan County**

*SB 552*

**Effective Date: Immediately**

Amends Chapter 54 of the Government Code by adding

Subchapter BB, allowing the Commissioners Court in Nolan County to authorize the judge of the district court to appoint one or more magistrates to serve at the will of the judge. The subchapter lays out the qualifications, compensation, jurisdiction, and responsibilities of the magistrate in Nolan County.

**Special appreciation is expressed to Representative Burt R. Solomon for sponsoring HR 1397 (*summarized on page 38*).**

## Court Costs and Administrative

### High Priority

#### **Subject: Driving Safety Course (DSC) Certificate of Completion Numbers**

*HB 468*

**Effective Date: 9/1/2005**

Amends Section 1001.056 of the Education Code, requiring that TEA provide each licensed driving safety course provider with a course completion certificate number to enable the provider to print and issue agency-approved certificates of completion. With the substitution of course completion certificate numbers in the place of course completion certificates, control over the issuance of these certificates now lies with the driving safety course providers. Prior to this amendment, the TEA printed and issued course completion certificates upon completion of a driving safety course. This was logistically inefficient for both the TEA and the driving safety course providers. This change is meant to allow courts and individuals to receive course completion certificates more quickly, which in turn will create less of a backlog of traffic cases in the courts.

#### **Subject: Sunset Commission Study of Court Costs and Fees**

*HB 1116*

**Effective Date: 9/1/2005**

HB 1116 mandates that the Sunset Commission must study the purpose, collection and use of certain criminal court costs and fees as part of its review of criminal justice agencies for the 80th Legislature in 2007.

The Sunset Commission provides regular assessment of the continuing need for a state agency to exist and provides the opportunity for the Legislature to look closely at each agency and make fundamental changes to the agency's operations if needed. The Commission is composed of 12 members of the Legislature and public members appointed by the Lieutenant Governor and Speaker of the House of Representatives.

In light of the state's growing dependence on revenues generated by court costs at the local trial court level, this study will be of particular interest to local government. It will be an important opportunity for cities and counties to make their concerns and perspectives known to state government.

#### **Subject: Procedures for Payment of Restitution**

*HB 1751*

**Effective Date: 9/1/2005**

Amends Article 42.037(g)(1), Code of Criminal Procedure, giving the court authority to require a defendant who is ordered to make restitution in specified installments to pay a one-time restitution fee of \$12. If the court orders the restitution fee, the court retains \$6 of the fee and pays \$6 to the compensation to victims of crime fund. Note: Article 45.041, Code of Criminal Procedure, provides municipal courts authority to collect restitution up to \$500.

Also amends Sections (a)-(c), (e)-(f), and (i) of Article 41.037 to provide authority for the court to order a defendant convicted of an offense to make restitution to the Crime Victims' Compensation Fund instead of making restitution to the victim. The court may order the defendant to make restitution for any expenses incurred by the victim or to make restitution to the Crime Victims' Compensation Fund to the extent that the fund has paid compensation to or on behalf of the victim.

Also provides rules for restitution when a defendant is placed on community supervision. Note: Municipal courts do not have the authority to grant community supervision.

#### **Subject: Sunset Provision to State Traffic Fine Repealed; Requires Certain Language about Surcharges to be on Citations**

*HB 2470*

**Effective Date: 9/1/2005**

Repeals Section 542.4031(k) of the Transportation Code, which provided an expiration date of September 1, 2007 for the \$30 State Traffic Fine. Section 780.007 of the Health and Safety Code is also repealed; that section provided a September 1, 2007 expiration date for funding of trauma care and the state's general revenue fund through the \$30 Traffic Fine and the Texas Driver Responsibility Program.

Chapter 708 of the Transportation Code is amended by creating Section 708.105 to require a citation issued for a traffic offense to include the following statement: "A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment

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on your driver's license of a surcharge under the Driver Responsibility Program." Note: Section 601.233(a), Transportation Code, is amended to provide that language required by that section is printed in smaller type than the language required by Section 708.105, Transportation Code, but larger type than any other type on the citation.

The 78<sup>th</sup> Legislature created the Driver Responsibility Program that placed surcharges on licenses of persons who committed certain violations of the law involving the safe operation of motor vehicles. The funds collected by the program are used for both transportation projects and to fund the state's trauma care program. HB 2470 updates the Driver Responsibility Program and makes changes that have been suggested during the interim.

**Subject: Municipal Courts Week**

*HR 1397*

**Effective Date: Immediately**

This House Resolution recognizes October 31-November 4, 2005, and November 6-10, 2006 as Municipal Courts Week. The purpose of Municipal Courts Week is to honor the numerous accomplishments of municipal court judges, clerks, bailiffs, court administrators, and warrant officers, and also to provide the public with information on municipal courts. Municipal courts and the governing bodies of municipalities are encouraged to organize activities and events in celebration of Municipal Courts Week.

**Subject: "Juvenile Omnibus Bill"**

*HB 1575*

**Effective Date: 9/1/2005 and 1/1/2006**

*See SECTIONS 35 and 38 of the "Juvenile Omnibus Bill" summarized on page 17 in this newsletter.*

**Subject: Index to Court Fees and Costs**

*SB 291*

**Effective Date: 9/1/2005**

Amends Chapter 101 of the Government Code to add the new fees adopted by the 79<sup>th</sup> Legislature to the list of fees required to be collected by all municipal courts.

If the court orders a juvenile defendant to participate in a special program under Article 45.057, Code of Criminal Procedure, the clerk of the municipal court must collect costs not to exceed \$100 for the special program. (Sections 101.161(2) and 101.181(4), Government Code.)

Amends Section 102.021, Government Code, to add Subsection (22) to provide that a person convicted of an offense shall pay, in addition to all other costs if directed by the judge hearing the case, court costs on conviction in a criminal action (Article 45.041, Code of Criminal Procedure) and part or all of the costs as directed by the judge. Note: This is not a substantive change in law but rather a conforming change with the provision applicable to final

judgments in municipal and justice courts.

Section 103.021, Government Code, is amended to add a 30 percent collection fee authorized by Article 103.0031, Code of Criminal Procedure.

Also amends costs and fees statutes pertaining to other courts. Those statutes are all contained in the Government Code and are as follows: Sections 101.061(22)(a)-(c) and (36)-(43); Sections 101.081(23)-(39); Sections 101.101(14)-(24); Sections 101.121(22)-(33); Sections 101.141(a)(5)-(8) and (b); Section 103.021(39) and (40); and Sections 103.022(16) and (19)(a)-(b), and (21)-(32). Chapter 104 is repealed.

**Subject: Confidentiality of Certain Personal Information of Select City Attorneys**

*SB 450*

**Effective Date: Immediately**

Amends Section 552.1175, Government Code, which is the Public Information Act. The amendment adds "employees of a district attorney, criminal district attorney or county or municipal attorney whose jurisdiction includes any criminal law or child protective service matters" to the list of persons whose personal family information, social security number, telephone number, and address is confidential.

**Subject: Building Security Fund**

*SB 550*

**Effective Date: 9/1/2005**

Amends Article 102.017, Code of Criminal Procedure, which provides for the municipal court building security fee. The amendment provides authority for the building security fund to be used to finance security personnel for buildings housing municipal courts. Security personnel are listed in addition to the security items currently listed in the statute. Since the act does not define security personnel, it could include peace officers, bailiffs and security personnel contracted with the city by a security company.

Also amends Section 53.009, Government Code, to provide funding for salaries for bailiffs of the 106<sup>th</sup> District Court.

**Subject: Electronic Creation, Transmission and Use of Certain Documents related to Prosecution of a Criminal Offense**

*SB 611*

**Effective Date: Immediately**

Amends Article 2.26(b), Code of Criminal Procedure, to provide that electronically transmitted documents issued or received in a criminal matter by the clerk of the court are considered signed if a digital signature is transmitted with the document. Prior law just provided for the court (judge) to issue or receive electronically transmitted documents.

Also adds Subsection (b-1) to Article 2.26 to provide that an electronically transmitted document is a written document for all purposes and exempt from any additional writing

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requirement under any law. Article 2.26 is a general statute. Municipal courts should also refer to Article 45.012, Code of Criminal Procedure, for more information on electronically created records.

Adds Article 21.011 to Chapter 21, Code of Criminal Procedure, to provide authority for electronically filing an indictment, information, complaint, or other charging instrument, or a related document in a criminal case. The electronic form of the document must be in accordance with Subchapter I, Chapter 51, Government Code, which contains the rules for filing documents in district or county courts, courts of appeals and the Texas Supreme Court. Municipal courts that are paperless may want to review this legislation to see if appeals can be filed electronically.

Article 23.031 is added to Chapter 23, Code of Criminal Procedure, and provides authority for a district clerk, county clerk or court (judge) to issue in electronic form a *capias* for a person who fails to appear, fails to pay a fine or fails to comply with a court order.

Article 38.44 is added to Chapter 38 of the Code of Criminal Procedure to provide that an electronically preserved document has the same legal significance and admissibility as a document maintained in hard-copy.

### **Subject: Attorneys Acting as Bondsmen**

#### **SB 624**

#### **Effective Date: 9/1/2005**

Amends Sections 1704.152 and 1704.163 of the Occupations Code, which address the qualifications of a bond surety. Section 1704.152 now requires that to be eligible for a bonding business license, the applicant must submit documentary evidence that the individual has been continuously employed by a person licensed as a bond surety for one year, during which time the person has worked at least 30 hours per week and has performed duties that encompass all phases of the bonding business. This new requirement is in addition to the existing requirements for a bonding business license, which include being a U.S. citizen and having completed the necessary legal education courses.

Section 1704.163 is amended to allow an attorney (though unlicensed as a bondsman) to execute a bond or provide a surety if the attorney files a notice of appearance as counsel of record in the criminal case for which the bond was executed or the surety provided. Prior to this amendment, the attorney could act as a bondsman if the attorney represented a person in the criminal case for which the bond was given—there was no filing requirement. The bail board may suspend or revoke an attorney's authorization to post a bond if the attorney acts in a manner that would lead to the suspension or revocation of a bondsman's license.

For years, courts have heard of "attorney bonds." Yet, the scope of attorneys acting in such capacity has been called

into question and is the subject of a recent Texas Attorney General Opinion GA-0197 (2003). Municipal courts are urged to take note of this change in law and to contemplate how it could impact court administration.

### **Subject: Court Costs to Reimburse Counties for Cost of Juror Services**

#### **SB 1704**

#### **Effective Date: 9/1/2005, except where noted**

Adds Article 102.0045, Code of Criminal Procedure, to require defendants convicted of any offense except pedestrian or parking offenses to pay a \$4 fee to be used to reimburse counties for the costs of juror services. The fee will be collected like other costs and remitted quarterly to the State Comptroller, who shall deposit the money into the jury service fund. Counties, not cities, can seek reimbursement for juror payments. If at any time the fund's unexpended balance exceeds \$10 million, the Comptroller must transfer the amount in excess of \$10 million to the fair defense account.

Sections 102.021 and 133.003, Government Code, are amended to add the \$4 jury reimbursement fee to the list of required fees collected by courts.

Amends Section 61.001(a), Government Code, to require grand jurors and petit jurors to be paid not less than \$6 for the first day or fraction of the first day for jury service and not less than \$40 for each day or fraction of each day served as a juror after the first day. This provision goes into effect January 1, 2006.

Section 61.0015, Government Code, is amended to provide that the state shall reimburse a county \$34 a day for the reimbursement paid to a grand juror or *petit* juror for each day or fraction of each day served as a juror after the first day. Subsections (b)-(e) of Section 61.0015 create rules for reimbursement of counties' juror pay. This provision goes into effect January 1, 2006.

Amends Section 62.0141, Government Code, which is the general statute regarding failure to answer a jury summons, to add that a person who knowingly provides false information in a request for an exemption or excuse from jury service is subject to a contempt action punishable by a fine of not less than \$100, nor more than \$1000.

Adds Section 62.0142, Government Code, to provide that a prospective juror may request a postponement of initial appearance for jury service by contacting the clerk before the date on which the person is summoned to appear. The request for postponement can be in person, in writing or by telephone. The clerk must grant the request for postponement if the person has not been granted a postponement in the county during the one-year period preceding the date on which the person is summoned to appear. A substitute date on which the person will appear for jury service may not be later than six months after the person was originally to appear for jury duty.

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The clerk of the court may approve a subsequent request for postponement only because of an extreme emergency that could not have been anticipated.

**Subject: Collection Improvement Program**  
**SB 1863**

**Effective Date: Immediately**

Adds Article 103.0033 to Chapter 103 of the Code of Criminal Procedure to require cities with a population of 100,000 or greater to develop and implement a collection improvement program. The program is to improve collection of court costs, fees and fines. The municipality may apply for a waiver from developing a program, but a waiver may only be granted if the Office of Court Administration (OCA) in conjunction with the State Comptroller determines that it is not cost-effective to implement such a program in the city.

The program must have a component that conforms with a model developed by OCA, designed to improve in-house collections through application of best practices, and designed to improve the collection of the balances of fines, fees and costs. The program must have a second component to improve collections of balances that are more than 60 days past due. This component may be implemented by entering into a contract with a public or private vendor or an attorney.

OCA must annually identify the cities that have not implemented a program and are able to implement a program before April 1<sup>st</sup> of the following year.

The Comptroller, in cooperation with OCA, must develop a methodology for determining the collection rate of municipalities before the implementation of the program. The Comptroller shall determine the rate not later than the first anniversary of the adoption of a program by a municipality.

OCA must make available a website with the requirements of the program and assist cities in implementing a program by providing training and consultation. However, OCA may not provide employees for implementation of a program.

OCA, in consultation with the Comptroller, may use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs. Each city shall at least annually submit to OCA and the Comptroller a written report that includes updated information regarding the program. The report must be in a form approved by OCA in cooperation with the Comptroller. The Comptroller is required to periodically audit cities to verify the information reported and confirm that the city is conforming with the requirements relating to the program.

Amends Section 133.058, Local Government Code, adding Subsection (e) to provide that a city may not retain 50 percent of the time payment fee if the city is not conforming with its collection improvement program.

Amends Section 133.103, Local Government Code, to require

the city treasurer to send in 100 percent of the time payment fees collected under Section 133.103 if an audit determines that the city has not conformed to its collection improvement plan under Article 103.0033, Code of Criminal Procedure.

**Medium Priority**

**Subject: Issuance and Expiration of Licenses to Carry a Concealed Handgun**

**HB 225**

**Effective Date: 9/1/2005**

Amends Section 411.173(a), Government Code, which allows nonresidents to obtain a license to carry a concealed handgun. The act provides that if a person is a legal resident of another state, the person may obtain a license in accordance with the procedure established by Section 411.173(a).

Amends Section 411.173(b), Government Code, to define "background check" to mean a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation.

Amends Section 411.183(b), Government Code, to change the date of a renewed license from the expiration of the fourth birth date after the date of the expiration of the previous license to the fifth birth date.

Repeals Section 411.173(a-1), Government Code.

**Subject: Disqualification from Jury Service and Voter Registration**

**HB 1271**

**Effective Date: 9/1/2005**

Adds Section 62.0142 of the Government Code, requiring a written jury summons include a notice that a person claiming a disqualification or exemption based on a lack of citizenship or residence in the county might be ineligible to vote in the county.

Section 62.114 is added to Chapter 62, Government Code, requiring the clerk of the court to maintain a list of names and addresses of person who are excused or disqualified from jury service because of non-residence in the county.

Amends Section 15.081(a), Election Code, to add persons on the excused or disqualified jury service list for non-residence in the county to the suspended voter list.

**Subject: Court Interpreters**

**HB 2200**

**Effective Date: 9/1/2005**

Amends Chapter 57, Government Code, relating to certified court interpreters. Section 57.002(c) was amended to make it clear that a certified court interpreter for deaf or hearing-impaired individuals must be appointed regardless of the size of the county.

Amends Section 57.001 to change Texas Commission for the Deaf and Hard of Hearing to the Department of Assistive

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and Rehabilitative Services. It also adds Subsection (7) to Section 57.001, defining "court proceeding" to include an arraignment, deposition, mediation, court-ordered arbitration, or other form of court-ordered alternative dispute resolution.

Section 57.026 is amended to provide that a person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate under Chapter 57 of the Government Code.

**Subject: State Commission on Judicial Conduct Membership**

*HJR 87*

**Effective Date: This proposed constitutional amendment will be submitted to voters at an election held on 11/8/2005.**

Proposed amendment to Article V, Section 1-a(2) of the Texas Constitution, increasing the number of members of the State Commission on Judicial Conduct from 11 to 13: one additional citizen member and a judge of a constitutional county court will be added. Furthermore, members of the Commission are now forbidden from holding a judgeship or residing in the same court of appeals district as one another, whereas some members were formerly prohibited from residing or holding a judgeship in the same supreme judicial district as one another.

The State Commission on Judicial Conduct is an independent state agency that is responsible for investigating judicial misconduct and disability and for disciplining judges. The Commission has jurisdiction over many types of judges in the state, including municipal judges.

**Subject: Qualifications for Service as a Juror and Challenges for Cause**

*SB 451*

**Effective Date: 9/1/2005**

Amends Article 35.16(a), Code of Criminal Procedure, to add that a challenge for cause may be made of a juror because the juror has been convicted of or is accused of misdemeanor theft. Since the statute does not define misdemeanor, this will include Class C thefts.

Section 62.102, Government Code, which lists general qualifications for jury service, is amended to provide that a prospective juror is disqualified if he or she has been convicted of misdemeanor theft.

Amends Article 19.06, Code of Criminal Procedure, to provide that a county commissioner is not qualified to serve as a grand juror during the term of court that the commissioner is serving as a commissioner. Article 19.08, Code of Criminal Procedure, is amended to provide that a person accused of misdemeanor theft is not qualified to serve as a grand juror.

**Low Priority**

**Subject: Appointment of Amarillo Municipal Judges**

*HB 596*

**Effective Date: Immediately**

Amends Section 30.00934(a), Government Code, to remove residency and private practice restrictions on Amarillo municipal judges working less than 40 hours a week. Part-time Amarillo municipal judges no longer have to live in the City of Amarillo and are allowed to maintain a private law practice.

**Subject: Appointment of Magistrates to Serve the Municipal Court of Record in Kennedale**

*HB 1394*

**Effective Date: Immediately**

Adds Section 30.001845 to Chapter 30 of the Government Code to provide authority for the governing body of the City of Kennedale to appoint one or more magistrates in addition to those magistrates appointed under Article 2.09, Code of Criminal Procedure. HB 1394 provides for certain duties of the magistrates.

**Subject: Justice Court Technology Fund**

*HB 1418*

**Effective Date: 9/1/2005**

Amends Article 102.0173, Code of Criminal Procedure, which provides for the justice court technology fee. The amendment requires commissioners courts to create a justice court technology fund. Justice courts will be required to collect \$4 upon all misdemeanor convictions. Added to the list of uses for the fund is paying the cost for continuing education and training for justice court judges and clerks regarding technological enhancements.

Amends Section 102.101, Government Code, to conform with Article 102.0173, Code of Criminal Procedure. Note: This amendment has no implications on the municipal court technology fund, which is governed by Article 102.0172, Code of Criminal Procedure.

**Subject: Required Training for Members of the Governmental Bodies**

*SB 286*

**Effective Date: 1/1/2006**

Amends Chapters 551 and 552 of the Government Code, requiring elected or appointed public officials to complete training on open meetings and handling public information under the Public Information Act.

Because the judiciary is an exception to the rules under the Public Information Act, municipal judges do not come under these training requirements. Municipal courts should remember, however, that all municipal court proceedings are open to the public and that the public has a "common law right" of inspection of court records.

# MUNICIPAL COURT JURISDICTION

Effective 9-1-05

|   | Non-Record Courts   | Cite                                | Record Courts   | Cite                                |
|---|---|-------------------------------------|---|-------------------------------------|
| <b>City Ordinance</b>                   | Territorial limits (exclusive jurisdiction)   | Art. 4.14, C.C.P. Sec. 29.003, G.C. | Territorial limits (exclusive jurisdiction)   | Art. 4.14, C.C.P. Sec. 29.003, G.C. |
|   | Property owned by city in extraterritorial limits (exclusive jurisdiction)  | Sec. 29.003, G.C.                   | Property owned in extraterritorial limits (exclusive jurisdiction)  | Sec. 29.003, G.C.                   |
|   | Extraterritorial limits nuisance ordinances adopted under Sec. 217.042, L.G.C. (exclusive jurisdiction)   | A.G. Op. No. JC-0025                | Extraterritorial limits nuisance ordinances adopted under Sec. 217.042, L.G.C. (exclusive jurisdiction)   | A.G. Op. No. JC-0025                |
|   |   |                                     | Extraterritorial limits criminal cases arising under ordinances authorized by Secs. 215.072, 217.042, 341.903, 401.002, L.G.C.* (exclusive jurisdiction)  | Sec. 30.00005, G.C.                 |
|   |   |                                     | Concurrent civil jurisdiction with county courts to enforce nuisance abatement and junk vehicle provisions of Chapters 54 and 214, Local Government Code, and Chapter 683, Transportation Code.           | Sec. 30.00005(d), G.C.              |
| <b>Joint Board Operating an Airport</b> | Territorial limits: resolution, rule or order (exclusive jurisdiction)  | Sec. 29.003, G.C.                   | Territorial limits: resolution, rule or order (exclusive jurisdiction)  | Sec. 29.003, G.C.                   |
|   | Property owned by city in extraterritorial limits (exclusive jurisdiction)  | Sec. 29.003, G.C.                   | Property owned by city in extraterritorial limits (exclusive jurisdiction)  | Sec. 29.003, G.C.                   |
| <b>State Law</b>                        | Territorial limits<br>Fine-only offenses (concurrent jurisdiction with justice court)   | Art. 4.14, C.C.P. Sec. 29.003, G.C. | Territorial limits<br>Fine-only offenses (concurrent jurisdiction with justice court)   | Art. 4.14, C.C.P. Sec. 29.003, G.C. |
|   | Property owned by city in extraterritorial limits (concurrent jurisdiction with justice court)  | Sec. 29.003, G.C.                   | Property owned by city in extraterritorial limits (concurrent jurisdiction with justice court)  | Sec. 29.003, G.C.                   |
|   | Territorial limits and property owned by the city in extraterritorial limits (concurrent jurisdiction with the justice court, county court, and county court at law for enforcement of Chapter 503, T.C.) | Sec. 503.092(b), T.C.               | Territorial limits and property owned by the city in extraterritorial limits (concurrent jurisdiction with the justice court, county court, and county court at law for enforcement of Chapter 503, T.C.) | Sec. 503.092(b), T.C.               |

\*Sections 341.903 and 401.002, L.G.C., only provide authority to a home-rule municipality

**Abbreviations:**

C.C.P. = Code of Criminal Procedure  
 G.C. = Government Code  
 L.G.C. = Local Government Code

A.G. Op. No. = Attorney General Opinion  
 T.C. = Transportation Code

## MUNICIPAL COURT THEFT and RELATED OFFENSES JURISDICTION

| Offense  | Legal Cite       | Pecuniary Loss for Class C Misdemeanor Jurisdiction | Penalty (Class C misdemeanor – Sec. 12.23, P.C. Max fine: \$500)  |
|--|------------------|---|---|
| <b>Theft of Property</b>   | Sec. 31.03, P.C. | Less than \$50                                      | Sec. 31.03(e)(1)(A), P.C.<br>Class C misdemeanor  |
| <b>Theft by Check</b>  | Sec. 31.06, P.C. | Less than \$20                                      | 31.03(e)(1)(B), P.C.<br>Class C misdemeanor   |
| <b>Theft of Service</b>  | Sec. 31.04, P.C. | Less than \$20                                      | Sec. 31.04(e)(1), P.C.<br>Class C misdemeanor   |
| <b>Theft of Service or Credit*</b>   | Sec. 32.32, P.C. | Less than \$50                                      | Sec. 32.32(c)(1), P.C.<br>Class C misdemeanor*  |
| <b>Theft of Gasoline*</b>  | Sec. 31.03, P.C. | Less than \$50                                      | Sec. 31.03(e)(1), P.C.<br>Class C misdemeanor;<br>Art. 42.019, C.C.P.<br>affirmative findings in judgment; and Sec. 521.349, T.C.: 2 <sup>nd</sup> or subsequent offenses: automatic DL suspension or denial* |
| <b>Hindering Secured Creditors</b>   | Sec. 32.33, P.C. | Less than \$20                                      | Sec. 32.33(d)(1), P.C.<br>Class C misdemeanor   |
| <b>Credit Card Transaction Record Laundering</b>                                 | Sec. 32.35, P.C. | Less than \$20                                      | Sec. 32.35(e)(1), P.C.<br>Class C misdemeanor   |
| <b>Issuance of Bad Check</b>   | Sec. 32.41, P.C. | No value amount limitation                          | Sec. 32.41(f), P.C.<br>Class C misdemeanor unless check issued or passed was for child support obligation then it is a Class B misdemeanor  |
| <b>Misapplication of Fiduciary Property or Property of Financial Institution</b> | Sec. 32.45, P.C. | Less than \$20                                      | Sec. 32.45(c)(1), P.C.<br>Class C misdemeanor   |
| <b>Securing Execution of Document by Deception</b>                               | Sec. 32.46, P.C. | Less than \$20                                      | Sec. 32.46(b)(1), P.C.<br>Class C misdemeanor   |
| <b>Insurance Fraud</b>   | Sec. 35.02, P.C. | <u>Less than \$50</u>                               | Sec. 35.02(d)(1), P.C.<br>Class C misdemeanor   |
| <b>Criminal Mischief</b>   | Sec. 28.03, P.C. | Less than \$50                                      | Sec. 28.03(b)(1), P.C.<br>Class C misdemeanor   |
| <b>Reckless Damage or Destruction</b>  | Sec. 28.04, P.C. | No value amount limitation                          | Sec. 28.04(b), P.C.<br>Class C misdemeanor  |

\*For offenses committed on or after September 1, 2005

## COMPARISONS OF DEFERRED OPTIONS (draft)

(Effective September 2005)

|   | <b>Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.</b>  | <b>Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.</b>  |
|---|--|---|
| <b>Application/Use</b>                                | <p>Applies to the following traffic offenses:</p> <ul style="list-style-type: none"> <li>• Section 472.022, T.C.; (Obeying Warning Signs)</li> <li>• Subtitle C, Title 7, T.C.; (Rules of the Road)</li> <li>• Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minors)</li> </ul> <p>Exceptions:</p> <ul style="list-style-type: none"> <li>• Offenses committed in a construction work maintenance zone when workers are present Sec. 472.022, T.C.; Art. 45.0511(p)(3), C.C.P.</li> <li>• Traffic offenses committed by a person with a commercial driver's license Art. 45.0511(s), C.C.P. * (Court is prohibited from granting DSC to a person who held a CDL at the time of the offense.);</li> <li>• passing a school bus loading and unloading children Sec. 545.066, T.C.;</li> <li>• leaving the scene of an accident Secs. 550.022 or 550.023, T.C.; or</li> <li>• speeding 25 mph or more over the limit Art. 45.0511(b)(5), C.C.P.</li> </ul> <p>Court must advise person charged with offenses under Subtitle C, Rules of the Road, T.C., of right to take course.</p> | <p>Applies to fine-only offenses except:</p> <ul style="list-style-type: none"> <li>• Traffic offenses committed in a construction work maintenance zone when workers present Sec. 472.022, T.C.; Art. 45.051(f)(1), C.C.P. or</li> <li>• A violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation committed by a person with a commercial driver's license Art. 45.051(f)(2), C.C.P. (Court is prohibited from granting deferred to a person who held a CDL at the time of the offense.)</li> </ul> |
| <b>How Often</b>                                      | <p>Defendant may request if the defendant has not had a driving safety course within the 12 months preceding the date of the current offense.</p> <p>Under Subsection (u), A defendant may take DSC for a violation of T.C. 545.412, even if they have taken DSC in the last 12 months. A defendant may do this only if the judge requires the defendant to take a <i>specialized</i> DSC (including 4 hours of instruction on child passenger safety seat systems) and any course the defendant has taken in the last 12 months did not have such instruction.</p> <p>If the defendant is on active military duty, the defendant cannot have taken a driving safety course/motorcycle operator course in another state within the 12 preceding the date of the current offense.</p> <p>Under Subsection (d), the court may grant at any time at court's discretion before final disposition of the case.</p>  | <p>Deferred may be granted any time at the judge's discretion.</p>  |
| <b>Plea Required</b>                                  | <p>A plea of guilty or no contest is required when the request is made. Request must be made on or before answer date on citation.</p> <p>Judge has discretion to grant course before final disposition of the case under Subsection (d).</p>  | <p>A plea of guilty of <i>nolo contendere</i> or a finding of guilt required.</p>   |
| <b>Proof of TX DL or on Active Military Duty</b>      | <p>Defendant must have a Texas driver's license or permit. If the defendant is on active military duty, the defendant does not have to have a Texas driver's license or permit.</p>  | NO  |
| <b>Proof of Financial Responsibility</b>              | <p>Defendants are required to present proof of financial responsibility on themselves (not the vehicle).</p>   | NO  |
| <b>State Court Cost Collected</b>                     | <p>YES<br/>Due when request made.</p>  | <p>YES<br/>Due before deferred disposition granted.</p>   |
| <b>Time Limit</b>                                     | <p>Court defers imposition of the judgment for 90 days. The defendant must take the course and present evidence of completion by the 90<sup>th</sup> day. Defendant also required to present to the court a copy of his or her driver's license record as maintained by DPS and an affidavit stating that he or she was not taking DSC or MOC at the time of the request nor has he or she taken a course that is not on his or her driver's license record.</p>   | <p>Not to exceed 180 days.<br/>(1 to 180 days)</p>  |
| <b>Optional Administrative or Special Expense Fee</b> | <p>If defendant makes request on or before answer date, the court may only assess an administrative \$10 non-refundable fee.</p> <p>If the judge grants a course before the final disposition of the case under Subsection (d), the court may assess a fee not to exceed the maximum possible penalty for the offense.</p>   | <p>OPTIONAL SPECIAL EXPENSE FEE not to exceed the amount of fine assessed at the time the court grants the deferral. Fee collected at the end of the deferral period after the court dismisses the case.</p>  |
| <b>Ten Dollar Fee for Driving Record</b>              | <p>Court may at time defendant request DSC/MOC require defendant to pay a \$10 fee for copy of defendant's driving record and judge may obtain a copy of driving record. Ten dollar fee must be remitted to State Comptroller like other court costs.</p>  | <p>Court not required to obtain driving record and there is no authorization for judge to collect a fee for a driving record.</p>   |

\*The only statute that defines traffic offenses is Section. 720.001(f)(2), T.C. "Traffic offense" means an offense under Chapter 521 (driver's license offenses) or Subtitle C, Rules of the Road Offenses.

## COMPARISONS OF DEFERRED OPTIONS

(Effective September 2005)

|                                | <b>Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.</b>  | <b>Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.</b>  |
|--------------------------------|--|---|
| <b>Other Requirements</b>      | <p>Request may be oral or in writing. If mailed, request must be sent certified mail. (Article 45.0511(b)(3), C.C.P.)</p> <p>When a defendant requests a course on or before the answer date on the citation, the defendant must present evidence of a valid Texas driver's license or permit.</p> <p>On or before the 90<sup>th</sup> day after the request the defendant must present:</p> <ol style="list-style-type: none"> <li>1. Evidence of course completion;</li> <li>2. A copy of his or her driving record, if any, as maintained by DPS; and</li> <li>3. An affidavit stating that he or she was not taking a course at the time of request for the current offense nor had he or she taken a course that was not yet on his or her driving record within the 12 months preceding the current offense.</li> <li>4. If the offense is charged under Sec. 545.412, T.C. (Child Passenger Safety Seat Systems), the defendant's driving record and affidavit are only required to show that they have not taken the specialized DSC in the last 12 months.</li> <li>5. If the defendant is on active duty and does not have a Texas driver's license, the affidavit must state that the defendant was not taking a driving safety course or motorcycle operator course, as appropriate, in another state on the date of the request to take the course was made and had not completed such a course within the 12 months preceding the date of the offense</li> </ol> | <p>Requirements under Subsection (b): Judge <u>may</u> require the following:</p> <ol style="list-style-type: none"> <li>1. Post bond in the amount of the fine assessed to secure payment of the fine;</li> <li>2. Pay restitution to the victim of the offense in an amount not to exceed the fine assessed;</li> <li>3. Submit to professional counseling;</li> <li>4. Submit to diagnostic testing for alcohol or controlled substance or drug;</li> <li>5. Submit to psychosocial assessment;</li> <li>6. Participate in an alcohol or drug abuse treatment or education program;</li> <li>7. Pay the costs of any diagnostic testing, psychosocial assessment or participation in a treatment or education program either directly or through the court as court costs;</li> <li>8. Complete DSC or other course as directed by the judge;</li> <li>9. Present to the court satisfactory evidence of compliance with the terms imposed by the judge; and</li> <li>10. Comply with any other reasonable condition.</li> </ol> <p>If defendant under age 25 is charged with a moving traffic offense Subsection (b)(8) does not apply. The judge shall require DSC under Chapter 1001 E.C. If the defendant holds a provisional license, the judge shall require the defendant to be examined by DPS under Sec. 521.161(b)(2), T.C. and pay DPS a \$10 fee. If defendant fails to complete DSC or to be examined by DPS, the court shall impose the fine. The fine constitutes a final conviction.</p> <p>Alcohol Beverage Code - judge <u>must</u>:<br/>For all Alcoholic Beverage Code Offenses and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require an alcohol awareness course. Sec. 106.115(a), A.B.C.</p> <p>For Alcoholic Beverage Code offenses, except DUI, and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require community service. Sec. 106.071(d), A.B.C.</p> <p><b>1st offense:</b> eight to 12 hours<br/><b>2nd offense:</b> 20 to 40 hours.</p> <p>Judge <u>may not</u> suspend or deny issuance of DL.</p> |
| <b>Satisfactory Completion</b> | <p>Judge shall remove the judgment and dismiss the case; the dismissal must be noted in the docket. Court reports completion date of course to DPS.</p>  | <p>Judge shall dismiss and note in docket that complaint is dismissed. Do not report to DPS.</p>  |
| <b>Failure to Complete</b>     | <p>If defendant fails to furnish the evidence of course completion, a copy of his or her driving record as maintained by DPS that shows that he or she had not taken DSC or MOC within the 12 months preceding the date of offense, and the affidavit, the court shall set a show cause hearing and notify the person by mail. At the hearing the judge may, on a showing of good cause, allow the defendant time to present the uniform certificate of course completion. If the court does not grant more time, the defendant may pay the fine or appeal the case.</p> <p>If a defendant fails to appear at the show cause hearing, the court may issue a <i>capias pro fine</i>.</p>  | <p>If defendant fails to comply with terms of the deferral, the judge enters judgment and imposes the fine. The judge may reduce fine previously assessed.</p> <p>The court must report traffic convictions to DPS.</p> <p>If the defendant does not complete the alcohol awareness program, the court must order DPS to suspend or deny issuance of the DL. If the conviction is a for a first time offense, the suspension cannot exceed 30 days. If the conviction is for a second or subsequent offense, the suspension may not exceed one year.</p>  |
| <b>Appeal</b>                  | <p>The defendant may appeal after judge imposes the judgment.</p>  | <p>If defendant fails to complete the terms and after the judge enters the judgment and imposes the fine, the defendant may appeal.</p>   |

**MUNICIPAL JUVENILE/MINOR CHART**

|   | Alcoholic Beverage Code   | Alcoholic Beverage Code/DUI   | Education Code  | Health and Safety Code  | Penal Code   | Transportation Code Chapter 729  |
|---|---|---|---|---|--|--|
| <b>Jurisdiction</b>   | Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03, F.C.)  | Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 8.07, P.C., and Sec. 51.03, F.C.)  | Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03, F.C.)<br>Court required to dismiss complaint for failure to attend school if not filed by 7 <sup>th</sup> day after student's last absence.  | Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 161.256, H.S.C.)  | Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03(f), F.C.)<br>All fine-only offenses, except the offense of public intoxication.  | Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 51.03, F.C., and Sec. 729.001(a), T.C.)<br>For exceptions, see section on offenses.   |
| <b>Waiver of Jurisdiction - Transfer to Juvenile Court<sup>1</sup></b><br><b>Sec. 51.08, F.C.</b> | <b>Sec. 51.08, F.C.</b><br>Under age 17:<br>• <b>May waive</b> jurisdiction over first and second violations;<br>• <b>Shall waive</b> jurisdiction after two previous convictions of any non-traffic fine-only offenses. At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court. | <b>Sec. 51.08, F.C.</b><br>Under age 17:<br>• <b>May waive</b> jurisdiction over first and second violations;<br>• <b>Shall waive</b> jurisdiction after two previous convictions of any non-traffic fine-only offenses. At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court.                   | <b>Sec. 51.08, F.C.</b><br>Under age 17:<br>• <b>May waive</b> jurisdiction over first and second violations;<br>• <b>Shall waive</b> jurisdiction after two previous convictions of any non-traffic fine-only offenses.<br>Age 17 – court retains jurisdiction.                                  | <b>Sec. 161.257, H.S.C</b><br>May not waive jurisdiction. Title 3, Family Code (including transfer to juvenile court) does not apply to Subchapter N, H.S.C.  | <b>Sec. 51.08, F.C.</b><br>Under age 17:<br>• <b>May waive</b> jurisdiction over first and second violations;<br>• <b>Shall waive</b> jurisdiction after two previous convictions of any non-traffic fine-only offenses. | <b>Sec. 51.08, F.C.</b><br>Municipal court may not waive its jurisdiction over traffic violations.   |
| <b>Age Art. 45.058(h), C.C.P.; Sec. 51.02, F.C. Sec. 8.07, P.C.</b>                               | <b>Sec. 106.01.</b><br>Definition of a minor - Under age 21.<br><b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b><br>Child defined as at least age 10 & younger than age 17.   | <b>Sec. 106.01.</b><br>Definition of a minor - Under age 21.<br><b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b><br>Child defined as at least age 10 & younger than age 17.   | <b>Sec. 25.085, Compulsory School Attendance</b><br>• Child under age 6, if previously enrolled in 1st grade, or<br>• At least age 6 and who has not reached his or her 18th birthday. (See Sec. 25.086 for Exemptions.)  | <b>Sec. 161.252, H.S.C.</b><br>Definition of a minor - Under age 18.<br><b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b><br>Child defined as at least age 10 & younger than age 17.                                     | <b>Sec. 8.07, Age Affecting Criminal Responsibility under age 17.</b><br><b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b><br>Child defined as at least age 10 & younger than age 17.                                 | <b>Sec. 729.001, Operation of Motor Vehicle by Minor- Under age 17.</b><br><b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b><br>Child defined as at least age 10 & younger than age 17.   |
| <b>Common Offenses</b>  | • Sec. 106.02. Purchase of Alcohol by Minor;<br>• Sec. 106.025. Attempt to Purchase Alcohol by a Minor;<br>• Sec. 106.04. Consumption of Alcohol by a Minor;<br>• Sec. 106.05. Possession of Alcohol by a Minor;<br>• Sec. 106.07. Misrepresentation of Age by a Minor.   | • Sec. 106.041. Driving Under the Influence of Alcohol by a Minor.<br>• Sec. 106.02. Purchase of Alcohol by a Minor;<br>• Sec. 106.025. Attempt to Purchase Alcohol by a Minor;<br>• Sec. 106.04. Consumption of Alcohol by a Minor;<br>• Sec. 106.05. Possession of Alcohol by a Minor;<br>• Sec. 106.07. Misrepresentation of Age by a Minor. | • Sec. 25.094. Failure to Attend School;<br>• Sec. 37.102. Rules (Enacted by School Board);<br>• Sec. 37.107. Trespass on School Grounds;<br>• Sec. 37.122. Possession of Intoxicants on School Grounds;<br>• Sec. 37.124. Disruption of Classes;<br>• Sec. 37.126. Disruption of Transportation. | <b>Sec. 161.252</b><br>• Possession of cigarettes or tobacco;<br>• Purchase of cigarettes or tobacco;<br>• Consumption of cigarettes or tobacco;<br>• Acceptance of cigarettes or tobacco;<br>• Display false proof of age. | All fine-only offenses, except a person under age 17 may not be charged in municipal court for the offense of public intoxication (See Sec. 51.03(f), F.C.).   | <b>Sec. 729.001(a), T.C.; Sec. 8.07(a)(2), P.C.; Sec. 51.02(16), F.C.</b><br>• Chpt. 502. Registration of Vehicles, except Secs. 502.282 or 502.412;<br>• Chpt. 521. Driver's Licenses, except Sec. 521.457;<br>• Subtitle C. Rules of the Road, except offenses punishable by imprisonment or by confinement in jail;<br>• Chpt. 601. Safety Responsibility<br>• Chpt. 621. Vehicle Size & Weight;<br>• Chpt. 661. Motorcycles & All Terrain Vehicles;<br>• Chpt. 681. Parking, Towing & Storage of Vehicles. |

**MUNICIPAL JUVENILE/MINOR CHART**

| Penalties <sup>2</sup>  | Alcoholic Beverage Code   | Alcoholic Beverage Code/DUI   | Education Code   | Health and Safety Code  | Penal Code  | Transportation Code Chapter 729 |
|---|---|---|--|---|---|---------------------------------|
| <p>Sec. 106.071 for offenses under Secs. 106.02, 106.025, 106.04, 106.05, 106.07, A.B.C. and Sec. 49.02, P.C.</p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>• Class C misdemeanor (max \$500);</li> <li>• Mandatory alcohol awareness program, Sec. 106.115;</li> <li>• Mandatory 8-12 hours alcohol-related community service;</li> <li>• DL suspension or denial – 30 days; eff. 11<sup>th</sup> day after conviction.</li> </ul> <p><b>2<sup>nd</sup> conviction</b></p> <ul style="list-style-type: none"> <li>• Class C misdemeanor (max \$500);</li> <li>• Optional alcohol awareness program;</li> <li>• Mandatory 20-40 hours alcohol-related community service;</li> <li>• DL suspension or denial – 60 days; eff. 11<sup>th</sup> day after conviction.</li> </ul> <p><b>3<sup>rd</sup> conviction</b></p> <p>Under age 17:</p> <ul style="list-style-type: none"> <li>• See waiver provisions in chart.</li> </ul> <p>Age 17 &amp; under 21</p> <ul style="list-style-type: none"> <li>• Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</li> </ul> <p><b>Complete alcohol awareness program</b></p> <p>Court may reduce the fine to half the amount assessed.</p> <p><b>Failure to complete alcohol awareness program</b></p> <ul style="list-style-type: none"> <li>• Court may give another 90 days to complete.</li> <li>• 1<sup>st</sup> conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C.</li> <li>• 2<sup>nd</sup> or subsequent conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</li> </ul> | <p>Sec. 106.041</p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>• Class C misdemeanor (max \$500);</li> <li>• Mandatory alcohol awareness program;</li> <li>• Mandatory 20 to 40 hours alcohol-related community service;</li> <li>• Administrative DL suspension (separate proceeding—Chapters 524 and 724, T.C.).</li> </ul> <p><b>2<sup>nd</sup> conviction</b></p> <ul style="list-style-type: none"> <li>• Class C misdemeanor (max \$500);</li> <li>• Optional alcohol awareness program;</li> <li>• Mandatory 40 to 60 hours of alcohol-related community service;</li> <li>• Administrative DL suspension (separate proceeding—Chapters 524 and 724, T.C.).</li> </ul> <p><b>3<sup>rd</sup> conviction</b></p> <p>Under age 17:</p> <ul style="list-style-type: none"> <li>• See waiver provisions in chart.</li> </ul> <p>Age 17 &amp; under 21</p> <ul style="list-style-type: none"> <li>• Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</li> </ul> <p><b>Complete alcohol awareness program</b></p> <p>Court may reduce the fine to half the amount assessed.</p> <p><b>Failure to complete alcohol awareness program</b></p> <ul style="list-style-type: none"> <li>• Court may give another 90 days to complete.</li> <li>• 1<sup>st</sup> conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C.</li> <li>• 2<sup>nd</sup> or subsequent conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</li> </ul> | <p>Secs. 25.094, 37.102, 37.107, 37.122, 37.124, 37.126.</p> <p>Class C misdemeanors (max \$500)</p> <p><b>Sec. 25.094(c)</b><sup>3</sup> – In addition to a fine, a court may order a sanction under Art. 45.054, C.C.P.:</p> <ul style="list-style-type: none"> <li>• Attend school without unexcused absences;</li> <li>• Attend preparatory class for GED (older child that will not do well in classroom environment) or, if child is 16 or older, take GED exam;</li> <li>• Attend a special program:             <ul style="list-style-type: none"> <li>–alcohol &amp; drug abuse program,</li> <li>–rehabilitation program,</li> <li>–counseling program,</li> <li>–training in self-esteem &amp; leadership,</li> <li>–work and job skills training,</li> <li>–training in parenting,</li> <li>–manners training,</li> <li>–violence avoidance training,</li> <li>–sensitivity training,</li> <li>–advocacy, and</li> <li>–mentoring training;</li> </ul> </li> <li>• Attend class for student at risk of dropping out of school (may require parent to attend with child);</li> <li>• Participate in tutorial program;</li> <li>• Order DPS to suspend or deny issuance of a DL for a period of time not to exceed 365 days.</li> </ul> | <p>Sec. 161.252 and 161.253</p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>• A fine not to exceed \$250, but court shall suspend execution of sentence (court costs must still be assessed and imposed) and order tobacco awareness program.</li> </ul> <p>Court dismisses charge on completion of course.</p> <ul style="list-style-type: none"> <li>• If no course available, court shall require 8-12 hours tobacco-related community service.</li> <li>• Failure to complete tobacco awareness course or community service, court required to order DPS to suspend or deny issuance of DL for up to 180 days after date of order.</li> </ul> <p><b>Subsequent offenses</b></p> <ul style="list-style-type: none"> <li>• A fine not to exceed \$250;</li> <li>• Court shall suspend execution of sentence and order tobacco awareness course;</li> <li>• Upon completion of course, court may reduce fine to not less than half;</li> <li>• Failure to complete tobacco awareness course or community service, court required to order DPS to suspend or deny issuance of DL not to exceed 180 days after date of order.</li> </ul> | <p>Sec. 12.23</p> <p>Class C misdemeanor (max fine \$500) Under age 17 &amp; two prior convictions, see waiver provisions in chart.</p> <p><b>Public Intoxication (Sec. 49.02):</b></p> <p>Persons under age 21 (municipal court has jurisdiction if person is at least age 17) charged with public intoxication, the penalty is under Sec. 106.071, A.B.C.: See penalties for Alcoholic Beverage Code Offenses other than DUI.</p> | <p>Secs. 729.001 and 729.002</p> <p>Penalty same as adult defendant. See general and specific penalty clauses throughout Transportation Code.</p> |                                 |

MUNICIPAL JUVENILE/MINOR CHART

| Appearance   | Alcoholic Beverage Code   | Alcoholic Beverage Code/DUI  | Education Code  | Health and Safety Code   | Penal Code  | Transportation Code Chapter 729   |
|--|---|--|---|--|---|---|
| <p><b>Secs. 106.10, A.B.C.</b><br/>•Must be in open court;<br/><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Parent or guardian required to appear with child;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence, if unable to locate or compel parent's presence.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p> | <p><b>Secs. 106.10, A.B.C.</b><br/>•Must be in open court;<br/><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Parent or guardian required to appear with child;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence, if unable to locate or compel parent's presence.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p>  | <p><b>Secs. 106.10, A.B.C.</b><br/>•Must be in open court;<br/><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Parent or guardian required to appear with child;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence, if unable to locate or compel parent's presence.<br/><b>Art. 45.054, C.C.P.</b><br/>Failure to Attend School Proceedings: court required to summon parents to appear with defendant regardless of defendant's age.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p> | <p><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Must be in open court;<br/>•Parent or guardian required to appear with minor;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence, if unable to locate or compel parent's presence.<br/>Age 17 – parent's presence not required.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p>   | <p><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Must be in open court;<br/>•Parent or guardian required to appear with minor;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence if unable to locate or compel parent's presence.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child and parent's obligation to notify the court in writing of the child's current address.</p>   | <p><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Must be in open court;<br/>•Parent or guardian required to appear with minor;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence if unable to locate or compel parent's presence.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child and parent's obligation to notify the court in writing of the child's current address.</p>  | <p><b>Art. 45.0215, C.C.P.</b><br/>Under age 17:<br/>•Must be in open court;<br/>•Parent or guardian required to appear with minor;<br/>•Court must summon parent or guardian;<br/>•Court may waive presence if unable to locate or compel parent's presence.<br/><b>Art. 45.057, C.C.P.</b><br/>Court should provide notice of child and parent's obligation to notify the court in writing of the child's current address.</p>  |
| <p><b>Custody<sup>4</sup></b><br/><b>Art. 45.058, C.C.P.</b></p>   | <p>•A child at least age 10 and under age 17 may be taken into custody.<br/>•Child may be:<br/>-released to parents, guardian, custodian or other responsible adult;<br/>-taken before a municipal or justice court;<br/>-taken to a place of nonsecure custody – held for not more than 6 hours.<br/>•If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.<br/>•A minor age 17 when offense committed may be handled as an adult.</p> | <p>•A child at least age 10 and under age 17 may be taken into custody.<br/>•Child may be:<br/>-released to parent, guardian, custodian, or other responsible adult;<br/>-taken before a municipal or justice court;<br/>-taken to a place of nonsecure custody – held for not more than 6 hours.<br/><b>Sec. 25.094(d-1), E.C.</b><br/>•Order based on probable cause that individual failed to attend school:<br/>-A child may be taken into custody.<br/>•Individual may be:<br/>-released to parent, guardian, custodian, or other responsible adult;<br/>-taken before a municipal or justice court that has venue.</p>                       | <p>•A child at least age 10 and under age 17 may be taken into custody.<br/>•Child may be:<br/>-released to parent, guardian, custodian, or other responsible adult;<br/>-taken before a municipal or justice court;<br/>-taken to a place of nonsecure custody – held for not more than 6 hours.<br/>•If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.<br/>•A minor age 17 when offense committed may be handled as an adult.</p> | <p>•A child at least age 10 and under age 17 may be taken into custody.<br/>•Child may be:<br/>-released to parent, guardian, custodian, or other responsible adult;<br/>-taken before a municipal or justice court;<br/>-taken to a place of nonsecure custody – held for not more than 6 hours.<br/>•If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p> | <p>•A child at least age 10 and under age 17 may be taken into custody.<br/>•Child may be:<br/>-released to parent, guardian, custodian, or other responsible adult;<br/>-taken before a municipal or justice court;<br/>-taken to a place of nonsecure custody – held for not more than 6 hours.<br/>•If a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p> | <p>•A child at least age 10 and under age 17 may be taken into custody.<br/>•Child may be:<br/>-released to parent, guardian, custodian, or other responsible adult;<br/>-taken before a municipal or justice court;<br/>-taken to a place of nonsecure custody – held for not more than 6 hours.<br/>•If a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p> |

**MUNICIPAL JUVENILE/MINOR CHART**

|   | Alcoholic Beverage Code   | Alcoholic Beverage Code/DUI   | Education Code  | Health and Safety Code  | Penal Code  | Transportation Code Chapter 729   |
|---|---|---|---|---|---|---|
| <b>Failure to Appear</b>  | <p><b>Sec. 38.10 P.C.</b><br/>May be charged with penal offense of Failure to Appear.</p> <p><b>Art. 45.058, C.C.P.</b><br/>Court may issue a warrant for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b><br/>Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p><b>Secs. 521.201(8) and 521.294(6), T.C.</b><br/>Court may report failure to appear to DPS.</p>   | <p><b>Sec. 38.10 P.C.</b><br/>May be charged with penal offense of Failure to Appear.</p> <p><b>Art. 45.058, C.C.P.</b><br/>Court may issue a warrant for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b><br/>Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p><b>Secs. 521.201(8) and 521.294(6), T.C.</b><br/>Court may report failure to appear to DPS.</p>   | <p><b>Sec. 38.10 P.C.</b><br/>May be charged with penal offense of Failure to Appear.</p> <p><b>Art. 45.058, C.C.P.</b><br/>Court may issue a warrant for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b><br/>Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p><b>Secs. 521.201(8) and 521.294(6), T.C.</b><br/>Court may report failure to appear to DPS.</p>   | <p><b>Sec. 38.10 P.C.</b><br/>May be charged with penal offense of Failure to Appear.</p> <p><b>Art. 45.058, C.C.P.</b><br/>Court may issue a warrant for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b><br/>Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p><b>Secs. 521.201(8) and 521.294(6), T.C.</b><br/>Court may report failure to appear to DPS.</p>   | <p><b>Sec. 38.10 P.C.</b><br/>May be charged with penal offense of Failure to Appear.</p> <p><b>Art. 45.058, C.C.P.</b><br/>Court may issue a warrant for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b><br/>Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p><b>Secs. 521.201(8) and 521.294(6), T.C.</b><br/>Court may report failure to appear to DPS.</p>   | <p><b>Sec. 543.009, T.C.</b><br/>May be charged with offense of Violation of Promise to Appear for Subtitle C, Rules of the Road offenses.</p> <p><b>Sec. 38.10 P.C.</b><br/>May be charged with penal offense of Failure to Appear or other traffic offenses.</p> <p><b>Art. 45.058, C.C.P.</b><br/>Court may issue a warrant for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b><br/>Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p><b>Sec. 521.201(8) and 521.294(6), T.C.</b><br/>Court may report failure to appear to DPS.</p>   |
| <b>Violation of a Court Order; Failure to Pay Fine; Art. 45.050, C.C.P.</b> | <p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:<br/>• Failure to complete alcohol awareness course, see section on penalties this chart.</p> | <p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:<br/>• Failure to complete alcohol awareness course, see section on penalties this chart.</p> | <p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:<br/>• Failure to complete tobacco awareness course, see section on penalties this chart.</p> | <p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:<br/>• Failure to complete tobacco awareness course, see section on penalties this chart.</p> | <p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:<br/>• Failure to complete tobacco awareness course, see section on penalties this chart.</p> | <p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:<br/>• Failure to complete tobacco awareness course, see section on penalties this chart.</p> |

**MUNICIPAL JUVENILE/MINOR CHART**

|   | Alcoholic Beverage Code   | Alcoholic Beverage Code/DUI   | Education Code  | Health and Safety Code  | Penal Code  | Transportation Code Chapter 729   |
|---|---|---|---|---|---|---|
| <b>Expunction<sup>5</sup></b>                     | <p><b>Sec. 106.12</b><br/>Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p><b>Sec. 106.12(d)</b><br/>Court shall charge \$30 fee for each application.</p>  | <p><b>Sec. 106.12</b><br/>Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p><b>Sec. 106.12(d)</b><br/>Court shall charge \$30 fee for each application.</p>  | <p><b>Sec. 25.094(g)</b><br/>Only for offense of failure to attend school.</p> <ul style="list-style-type: none"> <li>•Court must notify child of right;</li> <li>•Court must give copy of Art. 45.055, C.C.P.</li> </ul> <p><b>Art. 45.055, C.C.P.</b><br/>•May apply at age 18, if only one conviction for offense of Failure to Attend School; <li>•Must submit written request made under oath;</li> <li>•Form of submission determined by applicant;</li> <li>•Must pay \$30 fee.</li> <p><b>Art. 45.0216, C.C.P.</b><br/>Other fine-only Education Code Offenses:<br/>Court must notify child of right; <li>•Court must give copy of Art. 45.016, C.C.P.</li> <li>•Not more than one conviction;</li> <li>•Child may apply on or after age 17;</li> <li>•Apply to trial court;</li> <li>•Child makes request under oath;</li> <li>•Court shall charge \$30 fee.</li> </p></p> | <p><b>Sec. 161.255, H.S.C.</b><br/>Yes.</p> <ul style="list-style-type: none"> <li>•May apply to the court to have conviction expunged;</li> <li>•Applicant must have completed tobacco awareness course;</li> <li>•May have multiple convictions expunged as long as applicant completed tobacco awareness course for each conviction.</li> <li>•Court shall charge \$30 fee</li> </ul>  | <p><b>Art. 45.0216, C.C.P.</b><br/>•Court must notify child of right; <li>•Court must give copy of Art. 45.016, C.C.P.</li> <li>•Not more than one conviction;</li> <li>•Child may apply on or after age 17;</li> <li>•Apply to trial court;</li> <li>•Child makes request under oath;</li> <li>•Court shall charge \$30 fee.</li> </p>   | <p><b>Chpt. 55, C.C.P.</b><br/>Expunction order must be filed in district court.</p>  |
| <b>Child Turns age 17 after Failure to Appear</b> | <p><b>Art. 45.060, C.C.P.</b><br/>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p> | <p><b>Art. 45.060, C.C.P.</b><br/>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p> | <p><b>Art. 45.060, C.C.P.</b><br/>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>   | <p><b>Art. 45.060, C.C.P.</b><br/>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p> | <p><b>Art. 45.060, C.C.P.</b><br/>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p> | <p><b>Art. 45.060, C.C.P.</b><br/>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p> |

**MUNICIPAL JUVENILE/MINOR CHART**

|  | Alcoholic Beverage Code  | Alcoholic Beverage Code/DUI   | Education Code   | Health and Safety Code   | Penal Code   | Transportation Code Chapter 729  |   |
|--|--|---|--|--|--|--|---|
| <b>Child Turns age 17 after failing to pay fine; <i>capias pro fine</i>; Art. 45.045, C.C.P.</b> | <b>Art. 45.045, C.C.P.</b><br>Court must determine before issuing a <i>capias pro fine</i> :<br>• that person is age 17 or older;<br>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and<br>• that the court has proceeded under Art. 45.050, C.C.P.   | <b>Art. 45.045, C.C.P.</b><br>Court must determine before issuing a <i>capias pro fine</i> :<br>• that person is age 17 or older;<br>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and<br>• that the court has proceeded under Art. 45.050, C.C.P.  | <b>Art. 45.045, C.C.P.</b><br>Court must determine before issuing a <i>capias pro fine</i> :<br>• that person is age 17 or older;<br>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and<br>• that the court has proceeded under Art. 45.050, C.C.P. | <b>Art. 45.045, C.C.P.</b><br>Court must determine before issuing a <i>capias pro fine</i> :<br>• that person is age 17 or older;<br>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and<br>• that the court has proceeded under Art. 45.050, C.C.P. | <b>Art. 45.045, C.C.P.</b><br>Court must determine before issuing a <i>capias pro fine</i> :<br>• that person is age 17 or older;<br>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and<br>• that the court has proceeded under Art. 45.050, C.C.P.   | <b>Art. 45.045, C.C.P.</b><br>Court must determine before issuing a <i>capias pro fine</i> :<br>• that person is age 17 or older;<br>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and<br>• that the court has proceeded under Art. 45.050, C.C.P.   |   |
| <b>Reports</b>   | <b>Sec. 51.08(c), F.C.</b><br>Under age 17<br>• Juvenile court when case filed;<br>• Juvenile court when case disposed.<br><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17<br>• DPS, if child fails to appear;<br>• DPS, when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition.<br><b>Sec. 106.116, A.B.C.</b><br>• Tex. Alcoholic Bev. Commission, if requested.<br><b>Sec. 106.117, A.B.C.</b><br>All minors<br>• DPS, upon conviction or order of deferred. | <b>Sec. 51.08(c), F.C.</b><br>Under age 17<br>• Juvenile court when case filed;<br>• Juvenile court when case disposed.<br><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17<br>• DPS, if child fails to appear;<br>• DPS, when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition.<br><b>Sec. 106.116, A.B.C.</b><br>• Tex. Alcoholic Bev. Commission, if requested.<br><b>Sec. 106.117, A.B.C.</b><br>All minors<br>• DPS, upon conviction, order of deferred, and acquittal under 106.041. | <b>Sec. 51.08(c), F.C.</b><br>Under age 17<br>• Juvenile court when case filed;<br>• Juvenile court when case disposed of.<br><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17<br>• DPS, if child fails to appear;<br>• DPS when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition.  | <b>Sec. 161.254, H.S.C.</b><br>All minors<br>• DPS, if defendant fails to present evidence of completion of tobacco-related program or community service.<br><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17<br>• DPS, if child fails to appear;<br>• DPS when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition.               | <b>Sec. 51.08(c), F.C.</b><br>Under age 17<br>• Juvenile court when case filed;<br>• Juvenile court when case disposed of.<br><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17<br>• DPS, if child fails to appear;<br>• DPS when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition.<br><b>Sec. 15.27, P.C.</b><br>• Upon conviction, prosecutor required to notify school of conviction of assault and possession of drug paraphernalia. | <b>Sec. 51.08(c), F.C.</b><br>Under age 17<br>• Juvenile court when case filed;<br>• Juvenile court when case disposed of.<br><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17<br>• DPS, if child fails to appear;<br>• DPS when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition.<br><b>Sec. 15.27, P.C.</b><br>• Upon conviction, prosecutor required to notify school of conviction of assault and possession of drug paraphernalia. | <b>Sec. 543.203, T.C.</b><br>• Convictions reported to DPS.<br><b>Sec. 521.3452, T.C.</b> Under age 17<br>• Court required to report failure to appear.<br><b>Secs. 521.201(7) and 521.294(5), T.C.</b><br>• DPS, if child fails to appear;<br>• DPS when case adjudicated.<br><b>Sec. 521.3451, T.C.</b><br>• DPS, when child fails to pay under Art. 45.050, C.C.P.<br>• DPS, when child makes final disposition. |



## MUNICIPAL JUVENILE/MINOR CHART

<sup>1</sup>Art. 45.056, C.C.P., provides authority for municipal court to employ case managers for juvenile cases. Sec.51.08, F.C., provides that a court that has implemented a juvenile case manager program under Art. 45.056, C.C.P., may, but is not required to, waive its original jurisdiction under subsection (b)(1) of Section 51.08, F.C. Article 102.0174, C.C.P., provides that cities may adopt an ordinance creating a juvenile case manager fund and collect a \$5 fee to fund a juvenile case manager. (Effective January 1, 2006)

<sup>2</sup>Art. 45.057, C.C.P. – When a child who is at least 10 years old and younger than age 17 is charged with a fine-only offense, the court may, in addition to a fine, order the following sanctions: 1) Refer the child or child's parent for services under Sec. 264.302, F.C.; 2) Require child to attend a special program that is in best interest of child, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring program; 3) Require parents to do an act or refrain from an act that will increase the likelihood that the child will comply with court orders, including attending a parenting class or parental responsibility program and attending the child's school classes or functions; 4) Order the parents of a child required to attend a special program to pay an amount not greater than \$100 for the costs of the program; 5) Require both the child and parent to submit proof of attendance. (If program involves the expenditure of county funds, county must approve child's attendance.)

### Deferred Disposition

- If the court grants deferred for all Alcoholic Beverage Code offenses except DUI, the court must require the defendant to perform the community service requirements and attend an alcohol awareness course; for DUI, the court must require an alcohol awareness course.
- If defendant charged with the offense of public intoxication is at least age 17 and under age 21, and the court grants deferred, the court must order the community service requirements under Sec. 106.071, A.B.C., and attendance at an alcohol awareness course.

<sup>3</sup> A dispositional order under Art. 45.054, C.C.P., is effective for the period specified by the court in the order but may not extend beyond the 180<sup>th</sup> day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

<sup>4</sup>Art. 45.059, C.C.P., Children Taken into Custody for Violation of Juvenile Curfew or Order: 1) Release person to parent, guardian or custodian; 2) Take person before a justice or municipal court; or 3) Take person to juvenile curfew processing office (similar to nonsecure custody and not held for more than six hours).

<sup>5</sup>Art. 45.0216, C.C.P., provides that proceedings under Art. 45.051, C.C.P. (Deferred Disposition), and proceedings under Art. 45.052, C.C.P. (Teen Court), may be expunged under Art. 45.0216, C.C.P.

<sup>6</sup>Under Sec. 25.093(f), E.C., when a court grants deferred disposition to a parent charged with parent contributing to nonattendance, the court may require the defendant to attend a program that provides instruction designed to assist the parent in identifying problems that contribute to his or her child's absence from school and strategies for resolving those problems.

*"My object all sublime, I shall achieve in time, to let the punishment fit the crime, the punishment fit the crime."*

-The Mikado (Gilbert & Sullivan)

| <b>NEW WAYS TO COMMIT OLD CRIMES</b>     |   |  |
|--|---|--|
| <b>CODE</b>                              | <b>CHANGE</b>   | <b>PENALTY</b>   |
| <b>Election Code §61.004</b>             | Sound amplification device added to the list of devices that are prohibited near a polling area for the purpose of campaigning (HB 535)   | Class C  |
| <b>Health &amp; Safety Code §343.011</b> | Failing to properly maintain a drainage easement added to the list of public nuisances (SB 1238)  | \$50-200; \$200-1000 and/or up to six months jail time for subsequent offenses             |
| <b>Local Government Code §352.021</b>    | A property owner failing to cooperate with the fire investigation of his property added to the ways of committing contempt of fire investigation (HB 1634)  | \$0-2000   |
| <b>Penal Code §19.03</b>                 | Killing a judge added to the list of capital murder offenses (SB 1791)  | Death or life without parole   |
| <b>Penal Code §22.11</b>                 | "Chunking" offense victims (involving inmates throwing bodily fluids and excrement) expanded to specifically list public servants (HB 1095)   | 3 <sup>rd</sup> degree felony  |
| <b>Penal Code §30.05</b>                 | Critical infrastructure facility ( <i>i.e.</i> , water treatment plant) added to the list of locations where the penalty for trespass is heightened (SB 9)  | Class A  |
| <b>Penal Code §34.02</b>                 | Financing or investing funds used to further the commission of criminal activity added to the list of ways the offense of money laundering may be committed (HB 3376)   | State jail felony-1 <sup>st</sup> degree felony, depending on the value of funds laundered |
| <b>Penal Code §38.14</b>                 | An officer's stun gun added to the list of items that may not be intentionally or knowingly removed from an officer (HB 582)  | 3 <sup>rd</sup> degree felony; state jail felony if attempted only                         |
| <b>Penal Code §38.15</b>                 | Animal control officers added to the list of public servants that may not be interfered with as they perform their duties (HB 825)  | Class B  |
| <b>Transportation Code §370.355</b>      | Using the transit system, not possessing appropriate evidence that the fare has been paid, and failing to pay the fare on or before the 30 <sup>th</sup> day after notification that payment was required (HB 2702) | Class C  |

| <b>NEW PUNISHMENTS FOR OLD CRIMES</b>     |   |   |  |
|---|---|---|--|
| <b>CODE</b>                               | <b>OFFENSE</b>  | <b>OLD PENALTY</b>                            | <b>NEW PENALTY</b>                             |
| <b>Alcoholic Beverage Code §105.06</b>    | Consuming or possessing with intent to consume alcohol during prohibited hours (HB 2451)                      | \$0-50  | Class C  |
| <b>Penal Code §25.01</b>                  | Bigamy (SB 6)   | Class A                                       | 3 <sup>rd</sup> -1 <sup>st</sup> degree felony |
| <b>Penal Code §§ 28.03(f) &amp; 42.08</b> | Desecrating a cemetery (HB 1012)  | Class C                                       | Class A-state jail felony                      |
| <b>Transportation Code §472.022</b>       | Driving around a high-water sign or barricade (HB 1481)   | \$1-200                                       | Class B  |
| <b>Transportation Code §521.451</b>       | Using another person's driver's license (HB 699)  | Class B                                       | Class A  |
| <b>Transportation Code §550.022</b>       | Failing to leave a freeway after an accident if the vehicle is drivable (HB 1484)                             | Class C-Class B, depending on value of damage | Class C  |
| <b>Transportation Code §684.085</b>       | Violating provisions regarding removal of unauthorized vehicles from parking facilities and roadways (HB 480) | \$200-500                                     | \$500-15,000                                   |
| <b>Transportation Code §725.003</b>       | A truck driver failing to cover his load of aggregate or refuse carried by the truck (HB 754)                 | \$25-200; \$200-500 for subsequent offenses   | \$25-500 for all offenses                      |

| <b>NEW CLASS C/FINE-ONLY OFFENSES</b>      |   |   |
|--|---|---|
| <b>CODE</b>                                | <b>OFFENSE</b>  | <b>PENALTY</b>  |
| <b>Agriculture Code §161.056</b>           | Failing to comply with a rule or guideline set out by the Animal Health Commission enforcing an animal identification program (HB 1361)   | Class C   |
| <b>Business &amp; Commerce Code §35.60</b> | Restaurant or bar owner failing to post signage in prominent places that warns employees against fraudulent use or possession of identifying information (HB 982)   | \$0-25  |
| <b>Family Code §2.004(c)</b>               | Knowingly providing false information on a marriage license application concerning the county of marriage, name of parties, identifying documents, or whether either of the parties were divorced in the last 30 days (SB 6)                                      | Class C   |
| <b>Health &amp; Safety Code §382.0191</b>  | A driver using a vehicle's sleeper berth idling a vehicle in a school zone during its hours of operation (HB 1540)  | \$0-500   |
| <b>Health &amp; Safety Code §468.005</b>   | Making a false report of a purchase or theft of products used to make methamphetamine (SB 66)   | Class C   |
| <b>Local Government Code §176.003</b>      | A local government official failing to file a conflicts disclosure statement when a local government enters into a contract with a vendor with whom the official has a business relationship or from whom the official has received gifts (HB 914)                | Class C   |
| <b>Local Government Code §176.005</b>      | An employee of a local government official failing to file a conflicts disclosure statement when a local government enters into a contract with a vendor with whom the official has a business relationship or from whom the official has received gifts (HB 914) | Class C   |
| <b>Local Government Code §176.006</b>      | A vendor failing to file a conflicts disclosure questionnaire when the vendor enters into a contract with a local government and the vendor shares a business relationship with a local government official or has given the official gifts (HB 914)              | Class C   |
| <b>Local Government Code §240.087</b>      | Failing to comply with an order relating to the construction of communication facility structures in counties of 1.4 million or more (HB 843)   | Class C   |
| <b>Local Government Code §352.082</b>      | Burning household refuse outdoors in an unincorporated area adjacent to a county with a population of 3.3 million or more (HB 39)   | Class C plus 60 hours community service   |
| <b>Parks &amp; Wildlife Code §29.003</b>   | Operating an off-highway vehicle on a trail or in a recreation area maintained by the Department of P&W without the proper off-highway vehicle decal (SB 1311)  | Class C Parks & Wildlife misdemeanor<br><i>See §29.009 for the penalty relating to this offense</i> |
| <b>Parks &amp; Wildlife Code §43.652</b>   | Hunting migratory or upland game birds without proper stamp (SB 1192)   | Class C Parks & Wildlife misdemeanor<br><i>See §43.665 for the penalty relating to this offense</i> |
| <b>Parks &amp; Wildlife Code §62.0121</b>  | Shooting across another person's property line while hunting (HB 505)   | Class C Parks & Wildlife misdemeanor  |
| <b>Parks &amp; Wildlife Code §62.002</b>   | Hunting over submerged privately-owned property without the consent of the owner of the property (HB 506)   | Class C Parks & Wildlife misdemeanor<br><i>See §62.013 for the penalty relating to this offense</i> |
| <b>Penal Code §37.10</b>                   | Tampering with government records used to establish residency for enrollment in a public school (HB 126)  | Class C   |
| <b>Penal Code §38.114</b>                  | Introducing contraband into a correctional facility or possessing contraband while confined in a correctional facility (HB 549)   | Class C; Class B for employees/volunteers of the correctional facility                              |
| <b>Transportation Code §544.0055</b>       | Using, selling, purchasing, or operating a traffic-control signal preemption device unless authorized to do so (HB 364)   | Class C   |

| <b>NEW HIGHER-LEVEL OFFENSES</b>            |  |  |
|---|--|--|
| <b>CODE</b>                                 | <b>OFFENSE</b>   | <b>PENALTY</b>   |
| <b>Alcoholic Beverage Code §54.12</b>       | Unlicensed out-of-state direct shipment of wine to consumer in Texas (SB 877)  | Class B; Class A for second offense; state jail felony for 3 <sup>rd</sup> or subsequent offense                       |
| <b>Business &amp; Commerce Code §35.935</b> | Unauthorized operation of a recording device in a motion picture theatre (SB 481)  | Class A; state jail felony for second offense; 3 <sup>rd</sup> degree felony for 3 <sup>rd</sup> or subsequent offense |
| <b>Education Code §61.304</b>               | Unauthorized granting or awarding of a degree or class credit; soliciting unauthorized grant or award (HB 1173)  | Class A  |
| <b>Education Code §61.312</b>               | Offering or granting an honorary degree without institutional authority (HB 1173)  | Class A  |
| <b>Education Code §61.313</b>               | Using a protected term ( <i>i.e.</i> , law school) in name of institution; soliciting a person to seek a degree or earn a credit from an institution violating the protected name provisions (HB 1173) | Class A  |
| <b>Election Code §501.029</b>               | Misrepresenting the purpose or intent of a petition for a local option election for alcohol sales (HB 1799)  | Class B  |
| <b>Election Code §501.108</b>               | A county clerk issuing a petition for a local option election to an applicant who has not made the requisite deposit (HB 1799)   | \$200-500 and/or 0-30 days in county jail  |
| <b>Family Code §2.004(d)</b>                | Knowingly providing false information on a marriage license application concerning the marital status of the parties or the familial relationship between the parties (SB 6)                           | Class A  |
| <b>Family Code §2.005</b>                   | Knowingly providing false, fraudulent or otherwise inaccurate information concerning ones age or identity when applying for a marriage license (SB 6)  | Class A  |
| <b>Family Code §2.102(g)</b>                | Knowingly providing parental consent for an underage applicant to marry when the person giving consent is not a parent, guardian or managing conservator of the applicant (SB 6)                       | Class A  |
| <b>Family Code §2.102(h)</b>                | Knowingly providing parental consent for an applicant to marry when the applicant is under 16 or is already married (SB 6)   | 3 <sup>rd</sup> degree felony  |
| <b>Family Code §2.202(c)</b>                | Knowingly conducting a marriage ceremony without authorization (SB 6)  | Class A  |
| <b>Family Code §2.202(d)</b>                | Knowingly conducting a marriage ceremony for a minor who is prohibited from marrying by the law or if the marriage results in bigamy (SB 6)  | 3 <sup>rd</sup> degree felony  |
| <b>Family Code §2.403</b>                   | Knowingly providing false, fraudulent, or otherwise inaccurate information concerning ones age or identity when declaring an informal marriage (SB 6)  | Class A  |
| <b>Family Code §261.3032</b>                | Interfering with the transport of a child for a videotaping interview conducted by the Department of Family and Protective Services (SB 6)   | Class B  |
| <b>Finance Code §151.708</b>                | Fraudulent or unlicensed currency exchange services (HB 2218)  | 3 <sup>rd</sup> degree felony  |
| <b>Health &amp; Safety Code §161.0825</b>   | Illegally accessing or using electronically-readable personal information (SB 1465)  | Class A  |
| <b>Health &amp; Safety Code §431.059</b>    | Engaging in wholesale distribution of pseudoephedrine products in violation of Chapter 431, subchapter N (HB 164)  | \$0-50,000; 0-15 years in jail and/or \$0-500,000 if knowingly committed   |
| <b>Health &amp; Safety Code §481.1245</b>   | Possessing anhydrous ammonia in an unauthorized container or using or tampering with an authorized container without the owner's express consent (HB 164)  | 3 <sup>rd</sup> degree felony  |
| <b>Health &amp; Safety Code §481.136</b>    | Failing to keep required pseudoephedrine sales reports by wholesaler (HB 164)  | State jail felony; 3 <sup>rd</sup> degree felony for subsequent offenses   |

|  |   |   |
|--|---|---|
| <b>Health &amp; Safety Code §781.403(a)(1)</b> | Knowingly falsifying fingerprints or documents submitted to the Department of State Health Services (SB 568)  | 3 <sup>rd</sup> degree felony   |
| <b>Health &amp; Safety Code §781.403(a)(2)</b> | Knowingly contracting for/employing an unlicensed person when the person must be licensed (SB 568)  | Class A   |
| <b>Health &amp; Safety Code §781.403(a)(3)</b> | Violating a provision of Chapter 781, related to personal emergency response systems (SB 568)   | Class A; 3 <sup>rd</sup> degree felony for subsequent offenses  |
| <b>Human Resources Code §42.0447</b>           | Knowingly or intentionally making a false report that a child-care or family-care facility fails to meet minimum standards (HB 877)   | Class A; state jail felony for subsequent offenses  |
| <b>Occupations Code §201.606</b>               | Providing chiropractic treatment or services while intoxicated (HB 972)   | State jail felony   |
| <b>Occupations Code §455.352</b>               | Unlicensed practice of massage therapy (HB 2696)  | Class B; Class A for 2 <sup>nd</sup> and 3 <sup>rd</sup> offense; state jail felony for 4 <sup>th</sup> or subsequent offense                                 |
| <b>Occupations Code §2305.101</b>              | Disallowing the inspection of automobile business records for the purpose of preventing automobile theft (HB 3221)  | Class A   |
| <b>Parks &amp; Wildlife Code §62.002</b>       | Computer-assisted hunting (HB 2026)   | Class B Parks & Wildlife misdemeanor; Class A P&W misdemeanor for subsequent offenses   |
| <b>Parks &amp; Wildlife Code §62.0065</b>      | Unauthorized deer hunting with dogs (HB 1959)   | Class A Parks & Wildlife misdemeanor; state jail felony for subsequent offenses   |
| <b>Penal Code §25.02</b>                       | Engaging in sexual intercourse or deviant sexual acts with a first degree cousin (SB 6)   | 2 <sup>nd</sup> degree felony   |
| <b>Penal Code §28.02(a)(1)</b>                 | Recklessly starting a fire or causing an explosion while manufacturing methamphetamine (HB 1634)  | State jail felony; 3 <sup>rd</sup> degree felony if bodily harm or death resulted from the fire   |
| <b>Penal Code §28.02(f)</b>                    | Intentionally starting a fire that results in reckless damage (HB 1634)   | 3 <sup>rd</sup> degree felony   |
| <b>Penal Code §32.52</b>                       | Using or claiming to hold a fraudulent, substandard or fictitious degree (HB 1173)  | Class B   |
| <b>Penal Code §33.021(b)</b>                   | A person 17 or older communicating with a minor on the Internet for the purpose of sexual gratification or distributing sexually explicit material to a minor over the Internet (HB 2228) | State jail felony; 2 <sup>nd</sup> degree felony if minor is under 14 (or someone the actor believes is under 14)   |
| <b>Penal Code §33.021(c)</b>                   | A person 17 or older soliciting a minor over the Internet with the intent of meeting the minor to engage in sexual conduct (HB 2228)  | 3 <sup>rd</sup> degree felony; 2 <sup>nd</sup> degree felony if minor is under 14 (or someone the actor believes is under 14)                                 |
| <b>Penal Code §33.05</b>                       | Tampering with an electronic voting machine (HB 56)   | 1 <sup>st</sup> degree felony; 3 <sup>rd</sup> degree felony if attempted only  |
| <b>Penal Code §35A.02</b>                      | Knowingly committing Medicaid fraud by making false statements or claims (SB 563)   | Class C-1 <sup>st</sup> degree felony, depending on the value of the monetary or in-kind benefit provided by Medicaid in response to the statements or claims |
| <b>Property Code §70.307</b>                   | Improperly obtaining possession of an aircraft subject to lien (SB 149)   | Class B   |

# COURT COSTS

## For Conviction of Offenses Committed on or after September 1, 2005

Changes to amounts assessed for costs underlined.

| OFFENSE/DESCRIPTION   | State<br>CF | Local<br>TFC | Local<br>CS    | State<br>STF | State<br>SJF | Total* <sup>2</sup> |
|---|-------------|--------------|----------------|--------------|--------------|---------------------|
| <b>MUNICIPAL ORDINANCES</b><br>■ Parking (authorized by Sections 542.202-542.203, Transportation Code)<br>■ Pedestrian<br>■ Other Municipal Ordinances <ul style="list-style-type: none"> <li>• Punishable by a fine of \$200 or less</li> <li>• Punishable by a fine of \$201-\$500</li> <li>• Punishable by a fine of more than \$500</li> </ul>  | N/A         | N/A          | * <sup>1</sup> | N/A          | N/A          | * <sup>1</sup>      |
|   | N/A         | N/A          | N/A            | N/A          | N/A          | N/A                 |
|   | 40.00       | N/A          | N/A            | N/A          | <u>4.00</u>  | <u>44.00</u>        |
|   | 40.00       | N/A          | N/A            | N/A          | <u>4.00</u>  | <u>44.00</u>        |
| 40.00   | N/A         | N/A          | N/A            | N/A          | <u>4.00</u>  | <u>44.00</u>        |
| <b>STATE LAW</b><br>■ Transportation Code, Subtitle C, Rules of the Road <ul style="list-style-type: none"> <li>• Parking &amp; Pedestrian (in school crossing zone)</li> <li>• Parking &amp; Pedestrian (outside school crossing zone)</li> <li>• Overtaking &amp; Passing a School Bus, Section 545.066</li> <li>• Other (outside school crossing zone)</li> <li>• Other (in school crossing zone)</li> </ul> ■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility <ul style="list-style-type: none"> <li>• First conviction</li> <li>• Subsequent convictions</li> </ul> ■ Education Code <ul style="list-style-type: none"> <li>• Parent Contributing to Nonattendance, Section 25.093</li> <li>• Failure to Attend School, Section 25.094</li> </ul> ■ All other misdemeanors <ul style="list-style-type: none"> <li>• Punishable by a fine of \$500 or less</li> <li>• Punishable by a fine of more than \$500</li> </ul> | N/A         | 3.00         | 25.00          | 30.00        | N/A          | 58.00               |
|   | N/A         | 3.00         | 25.00          | 30.00        | N/A          | 33.00               |
|   | 40.00       | 3.00         | 25.00          | 30.00        | <u>4.00</u>  | <u>102.00</u>       |
|   | 40.00       | 3.00         | N/A            | 30.00        | <u>4.00</u>  | <u>77.00</u>        |
|   | 40.00       | 3.00         | 25.00          | 30.00        | <u>4.00</u>  | <u>102.00</u>       |
|   | 40.00       | N/A          | N/A            | N/A          | <u>4.00</u>  | <u>44.00</u>        |
|   | 40.00       | N/A          | N/A            | N/A          | <u>4.00</u>  | <u>44.00</u>        |
|   | 40.00       | N/A          | 20.00          | N/A          | N/A          | 64.00               |
|   | 40.00       | N/A          | 20.00          | N/A          | N/A          | <u>64.00</u>        |
|   | 40.00       | N/A          | N/A            | N/A          | N/A          | 64.00               |
|   | 40.00       | N/A          | N/A            | N/A          | <u>4.00</u>  | <u>64.00</u>        |

**\*Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.**

For the purpose of assessing, imposing and collecting court costs and fees, a person is considered to have been convicted if:

- (1) a judgment, a sentence or both a judgment and a sentence are imposed on the person;
- (2) the person receives community supervision, deferred adjudication or deferred disposition; or
- (3) the court defers final disposition of the case or imposition of the judgment and sentence.

- \*<sup>1</sup> ■ \$2-5 court costs for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation or order (mandatory).
- Up to \$5 court costs for cities with population less than 850,000 that have adopted appropriate ordinance, regulation or order (optional).

\*<sup>2</sup> FEES (Add the following fees whenever they apply):

Effective September 1, 2005

Rev. 6/05 – Regular 79<sup>th</sup> Legislative Session

- **Administrative Fee:** The court may impose an administrative fee when a defendant requests to take a driving safety course under Art. 45.051(d), C.C.P., which allows a court to grant a request before final disposition of a case. The administrative fee may not exceed the maximum possible amount of fine. (Art. 45.051(f)(2), C.C.P.)
- **Applicable fees for services of peace officers under Art. 102.011, Code of Criminal Procedure (C.C.P.):**
  - **Arrest Fee:** \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the State, 20% (\$1) is sent to the State.
  - **Warrant Fee:** \$50 for executing or processing an issued arrest warrant or *captias*. When service is performed by a peace officer employed by the State, 20% (\$10) is sent to the State.
  - **Summoning a Witness:** \$5 for serving a subpoena.
  - **Summoning a Jury:** \$5 for summoning a jury.
  - **Service of a Summons** (for a defendant or a child's parents): \$35.
  - **Other costs:** Costs for peace officer's time testifying while off duty.
- **Expunction Fee:** \$30 fee to expunge the record of an offense involving a minor. (Art. 42.0216, C.C.P.)
- **Fees Created by City Ordinance:**
  - **Juvenile Case Manager Fee:** \$5 fee for every fine-only misdemeanor offense if governing body has passed the required ordinance establishing a juvenile case manager fund. (Art. 102.0174, C.C.P.) **Effective January 1, 2006.**
  - **Municipal Court Building Security Fee:** \$3 on every conviction if governing body has passed required ordinance establishing building security fund. (Art. 102.017, C.C.P.)
  - **Municipal Court Technology Fund:** Up to \$4 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund. (Art. 102.0172, C.C.P.)
- **Jury Fee:** \$3 fee collected upon conviction when case tried before a jury. \$3 fee collected upon conviction if defendant had requested a jury trial and then withdrew the request not earlier than 24 hours before the time of trial; fee to be paid even if case is deferred. (Art. 102.004, C.C.P.)
- **Restitution Fee:** \$12 optional fee for defendants paying restitution in installments. (Art. 42.037, C.C.P.)
- **Special Expense Fees:** 1) At the conclusion of the deferral period under Article 45.051, C.C.P., upon dismissal of the charge, the court may assess a special expense fee not to exceed the amount of fine assessed but not imposed at the beginning of the deferral. (Art. 45.051(c), C.C.P.); and 2) An amount not to exceed \$25 that may be collected for execution of a warrant for *failure to appear* or *violate promise to appear*. City ordinance required to authorize collection. (Art. 45.203, C.C.P.)
- **Time Payment Fee:** The court shall collect a fee of \$25 from a person who has been convicted and pays any part of the fine, court costs or restitution on or after the 31<sup>st</sup> day after the date on which the judgment is entered. One-half (\$12.50) is sent to the State. One-tenth (\$2.50) is retained locally for judicial efficiency. Four-tenths (\$10) are retained locally with no restrictions. (Section 133.103, Local Government Code (recodified from Government Code))
- **Traffic Law Failure to Appear (FTA):** \$30 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense if city has contracted with the court has jurisdiction of under Art. 4.14, C.C.P. (Chapter 706, T.C.)

**Seat Belt & Child Safety Systems:** City must remit to the State 50 percent of the fines collected for violations of the seat belt and child safety systems (Secs. 545.412 & 545.413(b), T.C.). Remittance must be done at the end of the city's fiscal year. (City must remit 50 percent of the \$100 to \$200 fines. Change applies only to a city fiscal year ending on or after September 1, 2003.)

**Excess Fines:** Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 45.051, C.C.P. for Title 7, T.C. offenses when the fines and special expenses for such offenses reach 30 percent of the city's budget less any federal money. (Section 542.402(b), T.C.)

**Ten Dollar Fees:** A court may assess a \$10 fee when a defendant elects to take a driving safety course on or before the answer date on his or her citation (Art. 45.051(f)(1), C.C.P.). When a court grants teen court, the court may collect two \$10 fees – one is kept by the city for administering teen court, the other is disbursed to the teen court program (Art. 45.052(e) & (g), C.C.P.). A \$10 fee may be collected upon dismissing a case: 1) Expired driver's license or expired registration when a defendant remedies it within 10 working days. (Secs. 521.026 & 502.407, T.C.); 2) An inspection certificate expired less than 60 days when defendant remedies it within 10 working days (Sec. 548.605, T.C.).

| Name of Cost/Fee  | Legal Reference                              | Abbreviation |
|-------------------|--|--------------|
| Consolidated Fee  | Local Government Code, Section 133.102       | CF           |
| Traffic Fund      | Transportation Code, Section 542.403         | TFC          |
| Child Safety Fund | Code of Criminal Procedure, Article 102.014  | CS           |
| State Juror Fee   | Code of Criminal Procedure, Article 102.0045 | SJF          |
| State Traffic Fee | Transportation Code, Section 542.4031        | STF          |

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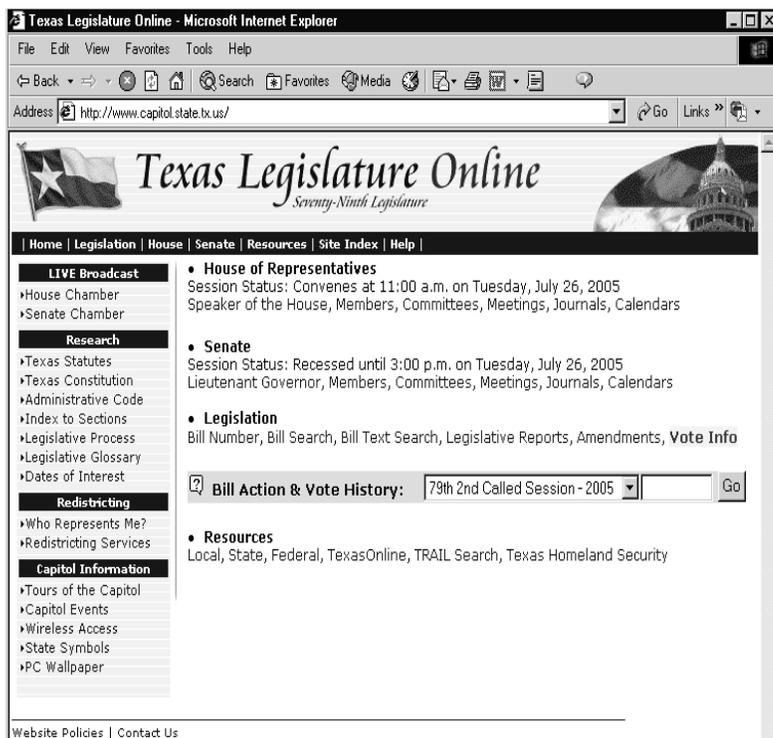
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| HB 269/<br>SB 166 | DPS must destroy expunged records.   | 5/27/2005      |
| HB 364            | Penalty for unauthorized use or possession of traffic signal preemption devices.   | 5/16/2005      |
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| HB 914            | Disclosure of interest between local government officers and vendors.  | 5/26/2005      |
| HB 1012           | Heightened penalty for desecration of a cemetery.  | 5/27/2005      |
| HB 1044           | Overweight vehicle permits in Chambers County.   | 5/24/2005      |
| HB 1137           | Reciprocity with foreign countries and Class C driver's licenses.  | 5/24/2005      |
| HB 1165           | Traffic officer limit removed for counties of over 2 million.  | 5/20/2005      |
| HB 1394           | Appointment of magistrates to serve the Kennedale municipal court of record.   | 5/24/2005      |
| HB 1596           | Motor-assisted scooter regulations.  | 5/25/2005      |
| HB 1925           | Removing/covering signs in work zone when no work is being done.   | 6/18/2005      |
| HB 2026           | Prohibiting computer-assisted remote hunting.  | 5/27/2005      |
| HB 2228           | Criminal penalty for the online solicitation of a minor for sex.   | 5/25/2005      |
| HB 2257           | Speed limit of 80 mph on I-10 and I-20 in certain sparsely populated counties.   | 6/15/2005      |
| HB 2509           | Municipal courts given concurrent jurisdiction with county courts and county courts at law in enforcement of dealer and manufacturer license plate laws. | 5/25/2005      |
| HB 2702           | Pocket bike defined; various traffic-related provisions.   | 5/30/2005      |
| SB 9              | Heightened penalty for trespass in a critical infrastructure facility.   | 5/28/2005      |

|         |  |  |
|---------|--|--|
| SB 66   | Class C misdemeanor for making a false report of a purchase or theft of products used to manufacture methamphetamine.                                  | 5/25/2005  |
| SB 149  | Offense for fraudulently obtaining possession of an aircraft subject to a lien.  | 5/18/2005  |
| SB 256  | School districts are required to give parents notice about directory information.  | 5/25/2005  |
| SB 348  | Magistrates must be available at the request of a drug addict taken into custody.  | 4/22/2005  |
| SB 399  | An employee of a property owner may be served when owner is out-of-state.  | 5/20/2005  |
| SB 450  | Personal information of municipal prosecutors to be kept confidential.   | 5/25/2005  |
| SB 552  | Appointment and duties of magistrates in Nolan County.   | 5/12/2005  |
| SB 611  | Expanded ability to use electronic documents in court proceedings.   | 5/20/2005  |
| SB 734  | Municipalities may not regulate the discharge of firearms on recently annexed tracts of land under certain conditions.                                 | 4/25/2005  |
| SB 737  | Jurisdiction for municipal courts over all fine-only offenses involving overweight vehicles.   | 5/25/2005  |
| SB 866  | More types of peace officers allowed to be police escorts.   | 5/25/2005  |
| SB 877  | Permit required for direct shipment of wine from out-of-state to Texas consumers.  | 4/27/2005<br><i>Permit requirement takes effect 90 days after effective date</i> |
| SB 1014 | Standardizing the language of the Uniform Municipal Court of Record Act to conform to the Rules of Appellate Procedure and Code of Criminal Procedure. | 4/27/2005  |
| SB 1192 | Class C P&W misdemeanor to hunt upland and migratory birds without a proper stamp.   | 5/27/2005  |
| SB 1275 | Duration of a magistrate's protective order of emergency protection extended.  | 5/25/2005  |
| SB 1863 | Collection improvement program.  | 5/29-9/1/2005<br><i>(see bill)</i>   |

# 2005-2006 TMCEC Academic Schedule At-A-Glance

| Conference:  | Dates(s):                               | City:            | Hotel Information:       |
|--|---|------------------|--------------------------|
| Elective Judges/Clerks Conference (TMCA)                                 | September 16-17, 2005                   | San Antonio      | St. Anthony              |
| 32-Hr New Clerks   | September 19-23, 2005                   | Austin           | Holiday Inn Northwest    |
| 12-Hr Regional Clerks Conference   | October 25-26, 2005                     | Tyler            | Holiday Inn Select       |
| 12-Hr Regional Judges Conference   | October 27-28, 2005                     | Tyler            | Holiday Inn Select       |
| 12-Hr Regional Judges/Clerks Conferences                                 | November 8-9, 2005                      | Austin           | Omni Southpark           |
| Judges Traffic Technology School (ABA)                                   | November 16-18, 2005                    | Dallas           | Westin Park Central      |
| 32-Hr New Judges/Clerks Conferences                                      | December 5-9, 2005                      | Austin           | Doubletree Hotel         |
| Court Administrators: Special Topic Seminar Caseflow Management          | December 5-7, 2005 & December 7-9, 2005 | Austin           | Doubletree Hotel         |
| 12-Hr Low Volume Seminar   | January 10-11, 2006                     | Horseshoe Bay    | Marriott Resort          |
| 12-Hr Regional Judges/Clerks Conferences                                 | January 18-19, 2006                     | San Antonio      | Crowne Plaza Riverwalk   |
| Texas Association of Counties and Local Government Technology Conference | January 31-February 2, 2006             | Austin           | Convention Center        |
| 12-Hr Prosecutors Conference   | February 8-9, 2006                      | Irving           | Harvey Hotel DFW         |
| 12-Hr Bailiffs/Warrant Officers Conference                               | February 8-9, 2006                      | Irving           | Harvey Hotel DFW         |
| 12-Hr Regional Judges/Clerks Conferences                                 | February 20-21, 2006                    | Plano            | Marriott Legacy          |
| 12-Hr Regional Judges/Clerks Conferences                                 | February 28-March 1, 2006               | Galveston        | San Luis Resort/Spa      |
| Level III Assessment Clinic  | March 24-26, 2006                       | New Braunfels    | TbarM Ranch              |
| 12-Hr Regional Judges/Clerks Conferences                                 | April 20-21, 2006                       | Lubbock          | Holiday Inn Park Plaza   |
| 12-Hr Regional Attorney Judges Conference                                | May 1-2, 2006                           | S. Padre Island  | Radisson Resort          |
| 12-Hr Regional Non-Attorney Judges Conference                            | May 3-4, 2006                           | S. Padre Island  | Radisson Resort          |
| 12-Hr Regional Clerks Conference   | May 8-9, 2006                           | S. Padre Island  | Radisson Resort          |
| 12-Hr Low Volume Seminar   | May 25-26, 2006                         | Corpus Christi   | Omni Bayfront            |
| 12-Hr Prosecutors Conference   | May 25-26, 2006                         | Corpus Christi   | Omni Bayfront            |
| Level III Assessment Clinic  | June 5-7, 2006                          | Austin           | Vintage Villas           |
| 12-Hr Court Administrators Conference                                    | June 13-14, 2006                        | Austin (Lakeway) | Lakeway Inn              |
| 12-Hr Low Volume Seminar   | June 27-28, 2006                        | College Station  | Hilton Conference Center |
| 12-Hr Bailiffs/Warrant Officers Conference                               | June 27-28, 2006                        | College Station  | Hilton Conference Center |
| 12-Hr Regional Judges/Clerks Conferences                                 | July 12-13, 2006                        | El Paso          | Camino Real              |
| 32-Hr New Judges/Clerks Conferences                                      | July 24-28, 2006                        | Horseshoe Bay    | Marriott Resort          |



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### **TMCEC MISSION STATEMENT**

To provide high quality judicial education, technical assistance and the necessary resource material to assist municipal court judges, court support personnel and prosecutors in obtaining and maintaining professional competence.

**Change Service Requested**