The Recorder
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LEGISLATIVE UPDATE

Class C Misdemeanors

***Ex Parte* Communications Between a Member of the Board of Directors and the Chief Appraiser of an Appraisal District**
HB 402 Eff. September 1, 2007

Before this amendment, the law did not provide for a prohibition against communications between a board member and the chief appraiser of an appraisal district if the communications were made outside of an open or otherwise authorized meeting.

Creates Section 6.15 of the Tax Code to provide that it is a Class C misdemeanor for a member of the board of directors to communicate with the chief appraiser on any matter relating to the appraisal of property unless that communication takes place during an open meeting or an approved closed meeting to consult with the board's attorney. A chief appraiser also commits an offense if the appraiser communicates with a member of the board of directors on any matter relating to the appraisal of property unless that communication takes place during an open meeting or an approved closed meeting to consult with the board's attorney. This prohibition does not apply to routine communication between the chief appraiser and county assessor-collector.

Providing Restroom Access to Persons with Certain Medical Conditions
HB 416 Eff. September 1, 2007

There are more than 40 medical conditions that cause either permanent or temporary fecal or urinary incontinence. Millions of Texans are impacted by medical conditions, such as Crohn's disease and ulcerative colitis, which require immediate access to a restroom.

Amends Chapter 341 (Minimum Standards of Sanitation and Health Protection Measures) of the Health and Safety Code by creating Section 341.069, which provides that a retail establishment that has a restroom facility for its employees must allow a customer to use the restroom during normal business hours if no public restroom is readily available and the customer suffers from an eligible medical condition. The customer must provide evidence of the medical condition to the retail establishment. An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $100. This does not require the retail establishment to provide any greater degree of care than is owed to a licensee on the premises. Also, the customer is required to leave the restroom facility in the same condition it was in before he or she used the restroom facility. The retail establishment does not have to provide access if the restroom is in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment.

Age Requirements for Selling Fireworks; Criminal Penalty
HB 539 Eff. Immediately

Amends Section 2154.252(c) of the Occupations Code to prohibit the selling of fireworks to children younger than age 16, rather than the previous age limit of those under 12 years of age.

Amends Section 2154.254 of the Occupations Code. A person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks. An owner may employ a person less than 16 years of age if the person employed is a member of the owner's family, at least 12 years of age, and accompanied by another person who is at least 18 years of age. A person between the ages of 16 and 18 may not sell fireworks unless another person who is at least 18 years of age accompanies the person.

Amends Section 2154.303(c) of the Occupations Code. A violation of the age requirements for selling fireworks is a Class C misdemeanor.

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AROUND THE STATE

TMCA Fall Annual Meeting

The Texas Municipal Courts Association (TMCA) has scheduled its Annual Meeting on September 13-15, 2007 in Dallas. The host hotel will be the Hilton Lincoln Centre at the intersection of the LBJ Freeway and Dallas North Tollway. In addition to the annual business meeting of the Association, a legislative update will be offered on changes from the 80th 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:

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(TMCA First Vice-President)
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City of Missouri City
1350 NASA Parkway, Ste. 200
Houston, TX 77058
o: 281/333-9229
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The schedule is tentative, but highlights are shown below:

Thursday, September 13th	*Legislative Update* (1:30-4:30 pm)
Friday, September 14th	*The Legislative Process* (10:00-12:00 noon)
	Lunch on Your Own
	Interpreters (1:30-2:15 pm)
	State of TMCEC (2:15-3:15 pm)
	Innovative Technology (3:15-4:00 pm)
Friday, September 14th	Banquet & Award Presentations (7:00-10:00 pm)
Saturday, September 15th	Annual Business Meeting (9:00-11:00 am)

The program will be submitted for MCLE credit and counts towards clerk certification. It does not qualify for mandatory judicial education credit.

Please make your own reservations ASAP, to insure your space and the conference rate. (972.934.8400 or 800.445.8667)

Acronyms used in this Newsletter

CDL	Commercial Driver's License
CMV	Commercial Motor Vehicle
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

Table of Summaries

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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). In terms of prioritzation, 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).

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Prosecution and Punishment of Dog Fighting
HB 916 Eff. September 1, 2007

Amends Section 42.10 of the Penal Code to remove the provision that causing a dog to fight another dog, knowingly or intentionally and for a pecuniary benefit, is an offense. Now, just causing a dog to fight another dog is a state jail felony. Redesignates direct offenses such as hosting a dog fighting event or participating in the earnings of a facility used for dog fighting as state jail felonies. Indirect offenses, such as attending a dog fighting event and owning or training a dog with the intent that it be used in exhibition dog fighting, are now Class A misdemeanors; rather than Class C misdemeanors.

Although dog fighting has been illegal in this state for many years, illegal dog fights continue to draw a following. The treatment of the animals at these events and the training methods leading up to these fights is cruel, violent, and outside the norm of humane conduct. Also, dog fighting events are often enmeshed with other prohibited conduct such as illegal gambling, drug sales, and the unlawful possession of weapons. This legislation increases penalties against dog fighting.

Unlawful Restraint of Dogs; Criminal Penalties
HB 1411 Eff. September 1, 2007

Chaining a dog can make the animal more dangerous to public safety; potentially causing physical and behavioral damage to the dog, and excessive noise complaints by the public. Before this amendment, the law did not allow an animal control officer to intervene until a chained dog suffered from obvious signs of starvation, dehydration, or other signs of abuse or neglect.

Amends Chapter 821 (Treatment and Disposition of Animals) of the Health and Safety Code to create Subchapter D "Unlawful Restraint of Dog." This subchapter provides that an owner may not leave his or her dog unattended outdoors using: a restraint such as a pinch or choke collar; a lead less than 10 feet or five times the length of the dog, whichever is greater; or any restraint that causes injury to the dog or is unsafe.

The prohibition applies between the hours of 10 p.m. and 6 a.m., if the dog is located within 500 feet from a school, and in extreme weather conditions such as extreme cold or heat. The prohibition does not apply to dogs being walked on hand-held leashes, dogs reasonably restrained to a running line, dogs reasonably restrained for no more than three hours a day, or dogs reasonably restrained while the owner is engaged in herding livestock or agricultural cultivation.

It is an offense for a dog owner to knowingly violate this subchapter. If a peace officer or animal control officer has probable cause to believe an offense has occurred, he or she shall provide the owner of the dog written notice of the violation. If the owner fails to comply within 24 hours after receiving the written notice from the peace or animal control officer, it is a Class C misdemeanor. It is a separate offense for each dog that the owner unlawfully restrains. It is a Class B misdemeanor if a person who has previously been convicted under this subchapter commits a subsequent offense under this subchapter.

Note: Pursuant to Section 821.080, not withstanding any other law, the clerk of a court that collects a penalty under this subchapter shall remit the penalty for deposit in the general fund of the county.

Disclosure of Certain Relationships with Local Government Officers
HB 1491 Eff. Immediately

During the last session, the Legislature created a Class C misdemeanor for local officials or vendors who fail to disclose certain relationships. Before the law went into effect, the scope and application of the law was called into question. Problems with the legislation resulted in a request for an Attorney General Opinion. HB 1491 codifies the issues addressed in Texas Attorney General Opinion GA-0446 regarding the manner in which information about business relationships between local government officials and vendors that contract with local government entities is disclosed.

Amends Section 176.002 of the Local Government Code to provide that this chapter applies to a person who enters or seeks to enter into a contract with a local governmental entity, rather than a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity.

Amends Section 176.003 of the Local Government Code to require that a local government officer file a conflicts disclosure statement if the officer enters into or considers entering into a contract with the local governmental entity. The conflicts disclosure statement must be filed when the officer has a relationship with the local government officer or a family member of the officer and this business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the year following the day that the contract is executed or considered. This also applies to situations in which the person has given the officer or family member one or more gifts that have an aggregate value of more than $250 in the year prior to the date the contract is executed or considered.

A local officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member if the gift is given by a family member of the person accepting it; is a political contribution; or food, lodging, or entertainment received as a guest.

Also amends Section 176.005 of the Local Government Code to authorize the local governmental entity to extend the requirements of Sections 176.003 and 176.004 to any employee who has the authority to approve contracts on behalf of the local governmental entity. The local governmental entity must keep a list of all employees made subject to Sections 176.003 and 176.004. The list must be provided to any person who requests it.

Section 176.006 is amended to require a person entering or seeking to enter into a contract with a local governmental entity to file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and has a relationship with an officer of that local entity or an officer's family member, or has given an officer of that entity or a family member of the officer one or more gifts totaling more than $250 during the past year. The completed questionnaire must be filed no later than seven business days after the later date of when the person begins negotiations for a contract or submits a bid or other writing

related to a potential contract, or the person becomes aware of a relationship with a local officer or that the person has given one more gifts totaling more than $250.

A local government entity is under no duty to ensure that the person files a conflict of interest questionnaire. The validity of a contract between the person and a local government entity is not affected solely because the person fails to file a conflict of interest questionnaire.

Amends Section 176.009(a) of the Local Government Code to provide that although a local government entity that currently maintains a website must provide access to conflict of interest statements and questionnaires through that website, there is no duty for a local government entity to create or maintain a website.

Creates Sections 176.011 and 176.012 of the Local Government Code to provide that a records administrator must maintain the conflict of interest statements and questionnaires in accordance with the local governmental entity's records retention schedule.

The Texas Ethics Commission must adopt a conflicts disclosure statement and a conflict of interest questionnaire no later than October 1, 2007. A person is not required to file a conflicts disclosure statement or questionnaire during a period that begins on the effective date and ends on September 30, 2007.

Creating an Offense of Illumination of an Aircraft by Intense Light
HB 1586 Eff. September 1, 2007

Pointing a laser beam at an aircraft can damage the eyesight of the flight crew or distracting the crew from their duties. Since 2004, law enforcement authorities have reported increased numbers of incidents involving laser beams being intentionally pointed at aircrafts.

HB 1586 creates Section 42.14 of the Penal Code to provide that it is a Class C misdemeanor to intentionally shine a light at an aircraft from a laser pointer or other light source when the light has sufficient intensity to impair the pilot's ability to control the aircraft. If the intensity of the light actually impairs the pilot's ability to control the aircraft it is a Class A misdemeanor. It is a defense to prosecution that the light was being used to send an emergency distress signal.

Interfering with a Public Health Professional
HB 2703 Eff. September 1, 2007

State and local health officials carry out a variety of duties including entering private homes, businesses, and property in order to conduct inspections and assessments, respond to complaints, abate nuisances, and issue penalties. These officials face hostile or dangerous situations when performing their duties, yet before this Act the law did not provide any sort of prohibition against interfering with public health officials.

Amends Section 38.15(a) (Interference with Public Duties) of the Penal Code by creating Subsection (a)(7) which provides that it is a Class B misdemeanor to disrupt, impede, or interfere with the duty of a public health professional who has the responsibility of enforcing public health or safety measures for the state, county, or municipality and is performing an official duty. These official duties include assessing, enacting, or enforcing public health, environmental, radiation, or safety measures; investigating a particular site as a part of his or her responsibilities; performing a duty or exercising authority imposed or granted under the Agriculture Code, Health and Safety Code, Occupations Code, or Water Code.

Though not an offense within the jurisdiction of municipal courts, this a substantive law change that local governments have been calling for to ensure the safety of local code and regulatory officials.

Electioneering near a Polling Place
HB 3143 Eff. Immediately

Amends Section 32.075 of the Election Code by creating Subsection (e) which provides an enforcement exclusion applicable to a presiding judge or special peace officer appointed by this section which provides that the presiding judge or special peace officer appointed under this section may not enforce the prohibition against electioneering or loitering beyond the 100 feet limit established by Sections 61.003 and 85.063 of the Election Code. Under Section 61.003 of the Election Code it is a Class C misdemeanor if, during the voting period, a person loiters or electioneers within 100 feet of an outside door at a polling place. Section 85.036 establishes a Class C misdemeanor for electioneering within 100 feet of an outside door of an early voting polling place. A person who is arrested at a polling place while voting or waiting to vote must be permitted to vote, if he or she is entitled to do so, before being removed from the premises.

Prior to this amendment there was no provision which prohibited presiding judges or special peace officers from attempting to enforce the provisions of Sections 61.003 and 85.063 beyond the 100 feet limit.

Health Warnings for Tobacco Products
SB 91 Eff. September 1, 2007

Amends Section 161.084(b) of the Health and Safety Code to provide that the warning signage required to be displayed near the point-of-sale by retailers of tobacco products must now include the following language: "Pregnant women should not smoke. Smokers are more likely to have babies who are born premature or with low birth weight." Also, Section 161.084(f) is created to provide that the Comptroller may accept gifts or grants from public or private sources to provide for the signage required by this section. Violation of Section 161.084 is a Class C misdemeanor.

Before this amendment, there was no Texas law requiring point-of-sale health warnings for tobacco products, specifically regarding the risk of smoking during pregnancy. Smoking during pregnancy is a known cause of premature birth, which is the leading cause of newborn death. Fourteen percent of all babies born in Texas each year are premature.

NEW WAYS TO COMMIT OLD CRIMES

CODE	*CHANGE*	*PENALTY*
Education Code §37.125	Exhibition, use, or threat of exhibition or use of a firearm on a school bus or school property (HB 2112).	3rd Degree Felony
Government Code §2005.053	Knowingly making a false statement during a licensing procedure or tampering with a governmental record (HB 1168).	Class C – 2nd Degree Felony; *See Penal Code §37.10 for penalty provisions.*
Health & Safety Code §161.084	Failure to warn against the danger of smoking during pregnancy on the required warning signage near the point of sale at a retailer of tobacco products (SB 91).	Class C
Occupations Code §§2154.252, 2154.303	Fireworks may not be sold to a person under the age of 16, rather than 12 (HB 539).	Class C
Penal Code §21.12	Use of text messages or other electronic media by a primary or secondary school employee to commit sexual offenses against minors or students (HB 401).	2nd Degree Felony
Penal Code §21.15	Broadcasting or transmitting a visual image of another person without that person's consent for the purpose of sexual arousal or gratification (HB 1804).	State Jail Felony
Penal Code §22.01	Emergency services personnel are now included in the definition of public servants for the offense of assault causing bodily injury to a public servant (HB 495).	3rd Degree Felony
Penal Code §32.51	Fraudulent use or possession of identifying information now includes the use and possession of the identifying information of a deceased person or child (HB 126, HB 649).	State Jail Felony
Penal Code §33.021	Use of text messages or other electronic media are now included in the offense of online solicitation of a minor (HB 401).	State Jail Felony – 2nd Degree Felony
Penal Code §37.09	Altering, destroying, or concealing a human corpse are now included in the offense of tampering with or fabricating physical evidence (HB 872).	2nd Degree Felony
Penal Code §42.055	Funeral service disruption by picketing within 1,000 rather than 500 feet of a funeral service (HB 1093).	Class B
Transportation Code §502.409	Attaches or displays on a license plate blurring or reflective material (SB 369).	Class C ($0-$200)
Transportation Code §522.071	Operating a commercial motor vehicle on a highway in violation of an out-of-service order (SB 333).	Fine of $100-$500 and confinement in county jail for 72 hours to six months.
Transportation Code §545.307	Parking a CMV on or adjacent to a residential subdivision, or within 1,000 feet of a residence, school, place of worship, or public park between 10 p.m. and 6 a.m. (HB 1522).	Class C ($0-$200)
Transportation Code §§725.001, .002, .003, and .021	Refuse is now included in the definition of loose materials that may not be transported without a covering (SB 387).	Class C ($0-$200)

NEW PUNISHMENTS FOR OLD CRIMES

CODE	*OFFENSE*	*OLD PENALTY*	*NEW PENALTY*
Health &Safety Code §822.005	Dog attack on persons causing bodily injury or death (HB 1355).	Class C (injury); Class A (death)	3rd Degree Felony (injury), 2nd Degree Felony (death)
Natural Resources Code §§201.011, 201.014, & 201.041	Excavation, alteration, or destruction of a cave without a permit (HB 3502).	Class C – Class A	Class A – State Jail Felony
Occupations Code §1956.40	Selling stolen secondhand metal (SB 1154).	Class B – Class A	Class A – State Jail Felony
Penal Code §30.04	Vehicle burglary of a railroad car or by a defendant that has been previously convicted (HB 1887).	Class A – State Jail Felony	Class A with a minimum term of confinement of 6 months – State Jail Felony

NEW PUNISHMENTS FOR OLD CRIMES *continued*

CODE	*OFFENSE*	*OLD PENALTY*	*NEW PENALTY*
Penal Code §31.03	Theft of aluminum, bronze, or copper wiring with a value of less than $20,000 (HB 1766).	Class C – State Jail Felony	State Jail Felony
Penal Code §32.51	Fraudulent Use or Possession of a Person's Identifying Information (HB 495).	State Jail Felony	State Jail Felony – 1st Degree Felony
Penal Code §39.04	Improper sexual activity with an individual in the custody of the Texas Youth Commission (SB 103, SB 563).	State Jail Felony	2nd Degree Felony
Penal Code §42.09	Cruelty to livestock animals (HB 2328).	Class A – State Jail Felony	Class A – 3rd Degree Felony
Penal Code §42.10	Causing a dog to fight another dog, hosting a dog fighting event, participating in the earnings of a facility used for dog fighting events, attending a dog fighting event, owning/training a fighting dog (HB 916).	Class C – State Jail Felony	Class A – State Jail Felony
Transportation Code §521.457	Driving while license invalid (HB 1623).	Class A	Class C
Transportation Code §550.021	Failure to stop after an accident that resulted in a serious bodily injury or death (HB 1840).	Fine up to $10,000 and/or imprisonment in county jail for up to 1 year or in TDCJ for not more than 5 years.	3rd Degree Felony

NEW CLASS C FINE-ONLY OFFENSES

CODE	*OFFENSE*	*PENALTY*
Code of Criminal Procedure Art. 57B.03	Disclosing the name, address, or telephone number of a victim who is younger than age 17 to a person not assisting in the investigation or prosecution of the offense or to any person other than the defendant, his/her attorney, and any person specified by a court order (SB 74).	Class C
Health & Safety Code §341.609	Failure by a retail establishment to provide restroom access to persons with certain medical conditions (HB 416).	Class C ($0-$100)
Health & Safety Code §§821.076 – 821.081	Unlawful restraint of a dog (HB 1411).	Class C
Occupations Code §2303.302	Operating a vehicle storage facility or tow truck without a permit (HB 2094).	Class C ($200-$1,000)
Occupations Code §2308.504	Violation of license requirements regarding towing (HB 2094).	Class C
Occupations Code §2308.505	Violation of an ordinance, rule, or regulation regarding towing; charging or collecting a fee for towing that is not authorized or is in excess of the amount authorized (HB 2094).	Class C ($200-$1,000 per violation)
Parks & Wildlife Code §29.011	Operating, riding, or being carried on an off-highway vehicle on public property without wearing a safety helmet and eye protection (HB 3894).	Class C
Penal Code §28.03	Criminal Mischief – tampering with certain transportation signs, signals, or devices (HB 1767).	Class C - 3rd Degree Felony
Penal Code §42.14	Illumination of an aircraft by intense light (HB 1586).	Class C
Tax Code §6.15	*Ex Parte* communication between a member of the board of directors of an appraisal district and the chief appraiser (HB 402).	Class C
Transportation Code §451.113	Blocking or driving on a right of way of a metropolitan transit authority in connection with a rapid transit bus system (HB 1798).	Class C
Transportation Code §§503.067, 503.094	Purchase of a temporary cardboard tag by a person other than an automobile dealer or converter (SB 1786, SB 11).	Class C

NEW CLASS C FINE-ONLY OFFENSES *continued*

CODE	*OFFENSE*	*PENALTY*
Transportation Code §521.222	Violation by the person that is occupying the seat next to a driver who holds an instructional permit by: sleeping, being intoxicated, or being engaged in an activity that prevents the person from observing or responding to the driver's actions (SB 153).	Class C ($1-$200); *See §521.461 for the penalty relating to this offense.*
Transportation Code §545.413	Failure by a school bus operator to wear a safety belt if a safety belt is available for use (HB 3190).	Class C ($1-$200)
Transportation Code §545.426	Operator driving on or crossing a railroad grade without sufficient undercarriage clearance (SB 1372).	Class C ($50-$200)
Transportation Code §643.209	Tow truck arriving at an accident scene without having sheriff's or peace officer's authorization; soliciting towing services at an accident scene (SB 500).	Class C ($1-$200)

NEW CLASS A and B MISDEMEANORS; NEW FELONY OFFENSES

CODE	*OFFENSE*	*PENALTY*
Agriculture Code §§63.151 – 63.157	Tampering with ammonium nitrate; selling ammonium nitrate without registering with the Department of Agriculture; purchasing ammonium nitrate with the intent to manufacture an explosive device (HB 3502).	Class A – 3rd Degree Felony
Alcoholic Beverages Code §101.04	Refusal by an alcoholic beverages permit-holder to allow an inspection (SB 904).	Class A
Alcoholic Beverages Code §105.10	Selling or offering to sell an alcoholic beverage during prohibited hours; or to consume or permit the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours (SB 904).	Class A
Health & Safety Code §481.1122	Manufacture of a controlled substance in the presence of a child (HB 946).	3rd Degree Felony – 1st Degree Felony; *See the bill text for mandatory minimum imprisonment terms and fines.*
Penal Code §28.03	Criminal Mischief – tampering with certain transportation signs, signals, or devices (HB 1767).	Class C - 3rd Degree Felony
Penal Code §31.16	Organized retail theft (HB 3584).	State Jail Felony – 1st Degree Felony
Penal Code §42.092	Cruelty to non-livestock animals (HB 2328).	Class A – 3rd Degree Felony
Penal Code §38.15	Interfering with a public health official performing an official duty (HB 2703).	Class B
Transportation Code §522.072	Employer knowingly permitting a person to drive a CMV if the employer is subject to an out-of-service order or employee knowingly permitting a person to drive who has been disqualified from driving a CMV or is subject to an out-over-service order (SB 153).	Class B
Transportation Code §547.614	Installing, manufacturing, altering, or selling a counterfeit airbag (HB 71).	Class A – 2nd Degree Felony
Transportation Code §707.006	Use of a photographic traffic enforcement camera for purposes other than detecting signal violations (SB 1119).	Class A

Other Criminal Offenses

High Priority

Statute of Limitations for Certain Credit Abuse and Fraud Offenses
HB 887 Eff. September 1, 2007

In many cases identity theft is not discovered for several years after it has occurred. An example of this time gap in discovering the offense would be in the case of an elderly person who seldom uses a credit card, and upon attempting to use it discovers that someone has perpetrated identity theft at some point in the past. This may be applicable in a situation where the court becomes a "victim" of the crime. For example: debit or credit card abuse in the payment of a fine.

Amends Article 12.01 of the Code of Criminal Procedure to increase the statute of limitations for credit card or debit card abuse, false statements to obtain property or credit, and fraudulent use or possession of identifying information to seven years from the date of the offense. The previous statute of limitations was three years. This amendment does not apply to offenses that were time barred under the three-year statute of limitations prior to September 1, 2007.

Also see HB 2002 and HB 649 for more legislation regarding identity theft.

Medium Priority

Restrictions on Airbags
HB 71 Eff. September 1, 2007

Amends Section 547.614 of the Transportation Code. A person commits an offense if he or she installs, manufactures, alters, or sells a counterfeit airbag. The definition of "counterfeit airbag" is an airbag that does not meet all federal safety regulations.

An offense under this section is a Class A misdemeanor. The offense is a 2nd degree felony if an individual suffered bodily injury as a result of defective airbags. If the defendant was previously convicted under Section 547.614, the offense is a 3rd degree felony.

One in 25 previously damaged vehicles has a nonfunctioning counterfeit airbag installed in place of a deployed or stolen airbag, because the cost of replacing the airbag can be up to $2,000.

Engaging in Organized Criminal Activity
HB 126 Eff. September 1, 2007

Texas law provides that the penalties for various offenses may be enhanced by one level if the offense was committed as a part of an organized criminal activity. The crime of tampering with government records was not included in this list of offenses prior to this amendment.

Amends Section 32.51 of the Penal Code, which makes it a state jail felony to fraudulently use or possess the identifying information of another person, by amending the language of Subsection (b) to include identifying information about a deceased person and creating Subsection (b-1) to provide for a presumption of the intent requirement in cases where the defendant possesses the identifying information of three or more persons, deceased or living.

Also amends Section 71.02(a) of the Penal Code, which makes it an offense to engage in organized criminal activity, by creating Subsection (a-13) which adds "any offense under Section 37.10" to the list of attempted or committed crimes which may constitute the predicate offense necessary for an offense under Section 71.02(a). Section 37.10 makes it an offense to tamper with government records. Section 71.02 allows for an enhanced penalty to be sought if the predicate offenses listed in Subsection (a) were committed as part of an organized criminal activity.

Consent as a Defense for Assault; Unavailable if Actor or Victim is a Member of Criminal Street Gang
HB 184 Eff. September 1, 2007

Amends Section 22.06 (Assaultive Offenses) of the Penal Code by creating Subsection (b). A victim's consent or the actor's reasonable belief that the victim consented to assault is not a defense if the assault is committed due to the defendant's or victim's membership in a street gang.

Before this Act, assaultive conduct that occurred as a gang initiation process could not be prosecuted. Thus, gang members were able to commit assaultive acts against one another, while strengthening their membership levels, and continued to do so unscathed by the criminal justice system.

Use of Text Messages and Other Electronic Media to Commit Sexual Offenses Against Minors or Certain Students
HB 401 Eff. September 1, 2007

Amends Section 21.12(a) of the Penal Code, making it a crime for an employee of a public or private primary or secondary school to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with a student who is not the employee's spouse. Subsection (a-2) is created to include in the offense "conduct described by Section 33.021, with a person described by Subdivision (1), regardless of the age of that person." This expands the offense of improper relationship between an educator and student to include the online solicitation of a minor, regardless of the age of the victim.

Also amends Sections 33.021(b) and (c) of the Penal Code to include in the offense of "Online Solicitation of a Minor" using other electronic messaging systems or text messaging to contact a minor.

Prior to this Act, while it was a crime to use certain types of technology to solicit minors and a crime for teachers to have sexual relationships with students, the limited definitions of both crimes were a shortcoming.

Fraudulent Use or Possession of a Person's Identifying Information
HB 460 Eff. September 1, 2007

Amends Section 32.51(b), (c), and (e) of the Penal Code to provide that a person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses the identifying information of a deceased person without legal authorization or possesses an item of identifying information of another person without the person's consent. This offense is a state jail felony if the number of items of identifying information in question is less than five, a 3rd degree felony if the

number of items is five or more but less than 10, a 2nd degree felony if the number of items is 10 or more but less than 50 and a 1st degree felony if the number of items is 50 or more. If conduct under this section also constitutes an offense under another section, the defendant may be prosecuted under this section, the other law, or both.

Before this amendment, it was an offense for a person to possess or use another person's identifying information with the intent to harm or defraud another. However, there were no such protections provided for the use or possession of the identifying information of a deceased person.

Assault of Emergency Services Personnel; Criminal Penalty
HB 495 Eff. September 1, 2007

Amends Section 22.01 of the Penal Code, creating a new category of individuals, "emergency services personnel," against whom an assault causing bodily injury is a 3rd degree felony.

Assault causing bodily injury to a "public servant" is a 3rd degree felony. "Emergency services personnel" includes firefighters, emergency medical services personnel, and other individuals who provide services that benefit the public during emergency situations. The actor is presumed to have known that the victim is emergency services personnel if the victim is wearing a uniform or badge.

Prior to this amendment, assault causing bodily injury committed against certain individuals, including public servants, was a 3rd degree felony. Previously, Section 22.01 did not clearly include emergency services personnel under the definition of "public servant."

Fraudulent Use of a Child's Identifying Information
HB 649 Eff. September 1, 2007

Amends Section 32.51(b) of the Penal Code to provide that it is an offense for a person, with the intent to harm or defraud another, to obtain, possess, transfer, or use identifying information of another person without the person's consent; or of a child younger than 18 years of age.

Children are increasingly becoming targets of identity theft. Such an offense is likely to go undetected for years until the victimized child applies for a car loan, apartment lease, college financial aid, or a job. Additionally, most lenders require an identity theft victim to file a police report in order to remove fraudulent account records. This could put the victimized child in a difficult situation, since it could lead to the prosecution, conviction, and incarceration of a parent or other family member.

Tampering with or Fabricating Physical Evidence
HB 872 Eff. September 1, 2007

Amends Section 37.09 of the Penal Code, which makes it an offense to tamper with or fabricate physical evidence while an investigation or official proceeding is ongoing. Subsection (c) is amended to include altering, destroying, or concealing a human corpse as a 2nd degree felony.

There have been occurrences where the physical evidence that has been tampered with or fabricated is a human corpse. In some cases, more severe charges against a suspect cannot be pursued because the human corpse has deteriorated to the point that it is no longer useful as evidence in an investigation or trial.

Conduct Involving Controlled Substances that Endangers a Child
HB 946 Eff. September 1, 2007

Creates Section 481.1122 of the Health and Safety Code, which provides that when the offense of the manufacture of a controlled substance is committed and a child younger than 18 years of age is present, the punishments listed by Sections 481.112(b) and (c) are increased by one degree; the minimum term of imprisonment specified by Section 481.112(e) is increased to 15 years, and the maximum fine is increased to $150,000; and the minimum term of imprisonment specified by Section 481.112(f) is increased to 20 years, and the maximum fine is increased to $300,000.

Amends Section 22.041(c-1) of the Penal Code to provide that it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or impairment if: the person manufactured, possessed, or in any way introduced into the body of any person, methamphetamines in the presence of the child; the person's conduct related to the accessibility of methamphetamines to the child and the child's blood or urine has tested positive for the presence of methamphetamines; or the person unlawfully ingested, injected, or inhaled a Penalty Group 1 controlled substance.

Prior to this amendment the definition of imminent danger of a child included the manufacture of methamphetamine in the presence of a child. The use or possession of the drug was not included in the definition.

Statute of Limitations for the Offense of Injury to a Child
HB 959 Eff. September 1, 2007

Prior to this amendment the law did not allow for additional time in the statute of limitations for children who are unable to report an offense because they are under the age of 18 or reside with their abuser.

Amends Article 12.01 of the Code of Criminal Procedure to provide that the statute of limitations for the offense of injury to a child under Section 22.04 of the Penal Code is now 10 years from the child's 18th birthday.

Allowing Certain Students to Carry a Weapon While en Route to a Law Enforcement Class
HB 964 Eff. September 1, 2007

Amends Section 46.15(b) of the Penal Code to provide that Section 46.02 regarding the Unlawful Carrying of a Weapon does not apply to a student in law enforcement class that is carrying a weapon commonly used in the class while engaged in an activity required as a part of the class and either on the immediate premises where a class activity is conducted or en route between the premises and the student's home.

Prior to this amendment the law relating to the carrying of a weapon which outlined when a gun owner may legally carry a gun did not specifically name law enforcement students. That omission led to the occasional detainment of law enforcement students by local law enforcement officers.

Funeral Service Disruption
HB 1093 Eff. Immediately

Amends Section 42.055(b) of the Penal Code to provide that it is a Class B misdemeanor to picket within 1,000 feet of a facility or cemetery being used for a

funeral service during the time period beginning one hour before the service begins and ending one hour after the service is completed. The prior law only prohibited picketing within 500 feet of the cemetery or other facility used for funeral services.

A radical activist group launched a campaign claiming that the deaths of American soldiers in Iraq were divine punishment for a country that harbors homosexuals. The protests have occurred throughout Texas and across the country. Unfortunately, even after passage of prior legislation, some radical activists continued to protest military funerals.

Licensing and Regulation of a State Agency; Provisions Relating to State Licenses and Permits
HB 1168 Eff. September 1, 2007

Amends Chapter 2005 of the Government Code by creating Subchapter B and Sections 2005.051, 2005.052, and 2005.053. Section 2005.052 provides that a licensing authority may deny a person's application for a license or suspend or revoke a person's license if the licensing authority determines that the person knowingly: made a false statement in connection with the application or renewal; made a material misrepresentation to the licensing authority in connection with the application or renewal; refused to provide information to the licensing authority; or failed to provide a full criminal history.

Section 2005.053 provides that a person who knowingly makes a false statement in connection with renewing or applying for a license may be subject to criminal prosecution under Section 37.10 of the Penal Code.

Amends Sections 247.045(d) and 247.045(e) to provide that the Attorney General may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the Attorney General fails to notify the department within 30 days of referral that the Attorney General will accept the case the department shall refer the case to the local district attorney, county attorney, or city attorney.

Creates Subsections (h) and (i) which define "affiliate" and provide that if a person who is liable under this section fails to pay any amount the person is obligated to pay under this section the state may seek satisfaction from any owner, controlling person, or affiliate of the person found liable.

Theft of Aluminum, Bronze, or Copper Wiring
HB 1766 Eff. September 1, 2007

Texas, along with many other states, is experiencing a significant increase in thefts of metals such as copper, bronze, and aluminum. Texas provides for penalties for the offenses of theft and criminal mischief. However, those penalties have not sufficiently deterred the crime.

Amends Section 31.03(e) of the Penal Code to provide that theft of wire or cable that consists of at least 50 percent aluminum, bronze, or copper metals and has a value of less than $20,000 is a state jail felony.

Also see SB 1154.

Criminal Mischief: Interfering with Certain Transportation Signs, Signals, or Devices
HB 1767 Eff. September 1, 2007

Amends Section 28.03(g) of the Penal Code by creating Subsections (g-4) through (g-8). These subsections define the terms "aluminum wiring," "bronze wiring," "copper wiring," "transportation communications equipment," and "transportation communications device."

Also creates a criminal penalty under Section 28.03(j) to provide that other than the penalties provided for under Subsection (b), offenses under this section are 3rd degree felonies if the property damaged, destroyed, or tampered with is transportation communications equipment or a transportation communications device and the amount of the pecuniary loss is less than $100,000.

Improper Photography or Visual Recording
HB 1804 Eff. September 1, 2007

Amends Section 21.15 of the Penal Code to provide that it is a state jail felony to broadcast or transmit a visual image of another person without that person's consent for the purpose of sexual arousal or gratification. Furthermore, it is a criminal offense to promote the broadcast or transmission of such visual images, knowing the character and content of the image.

Prior to this amendment the law provided that it was an offense to photograph or videotape another person without the person's consent for the purpose of sexual arousal or gratification. However, Texas law did not provide an offense for broadcasting or transmitting such images.

Carrying Handguns in Motor Vehicles
HB 1815 Eff. September 1, 2007

A law was passed in 2005 that was intended to legalize the carrying of handguns in private motor vehicles by persons not licensed by DPS to carry concealed handguns. However, some district attorneys instructed police departments to continue making arrests of motorists who would qualify for the traveling presumption despite the clear intent of the Legislature to establish protection for such motorists from such arrests in state code.

Amends Section 46.02(a) (Unlawful Carrying of Weapons) of the Penal Code and creates Subsections (a-1) and (a-2) to provide that a person commits an offense if he or she intentionally, knowingly, or recklessly carries a handgun, illegal knife, or club and is not on the person's own property or inside of or directly en route to the person's vehicle. It is also an offense if the person carries a handgun in a motor vehicle and the handgun is in plain view or the person is engaged in criminal activity other than a Class C misdemeanor traffic or ordinance violation, is prohibited from possessing a firearm by law or is a member of a gang. This is a Class A misdemeanor unless it is committed in any place licensed or permitted by the State to sell alcohol, in which case it is a 3rd degree felony.

Repeals Sections 46.15(h) and 46.15(i) of the Penal Code.

Punishment for and Prevention of Vehicle Burglary; Criminal Penalties
HB 1887 Eff. September 1, 2007

Until this amendment, offenders convicted of burglary of a motor vehicle could only be sentenced to up to one year in county jail, but due to plea bargaining, these offenders usually only received a 90 day confinement. However, the number of motor vehicle burglaries has risen sharply over the past several years. Multiple bills increasing the punishment for the offense were introduced.

Amends Subsection (d) of Section 30.04 of the Penal Code regarding the burglary of vehicles. Subsection (d) is amended to state that an offense under this section is a Class A misdemeanor except that the offense is a Class A misdemeanor with a minimum term of confinement of six months if it is shown that the defendant has been previously convicted under this section and that the offense is a state jail felony if it is shown that the defendant has been previously convicted two or more times of an offense under this section or if the vehicle or part of the vehicle broken into is a railcar.

Also, Subsection (d-1) is created stating that a defendant is considered to have been previously convicted under this section if he or she was found guilty, pled guilty, or pled *nolo contendere* regardless of whether the sentence was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

Amends Article 42.12 of the Code of Criminal Procedure, which states that the minimum period of community supervision for judge or jury ordered community supervision for an offense under Section 30.04 of the Penal Code is one year.

Prohibiting the Exhibition, Use, or Threat of Exhibition or Use of a Firearm in or on School Property or a School Bus
HB 2112 Eff. September 1, 2007

Amends Section 37.125(a) (Exhibition of Firearms) of the Education Code to provide that a person commits an offense if the person, with the intent to cause injury to another person or damage school property, intentionally exhibits, uses, or threatens to exhibit or use a firearm in or on any school property or on a school bus being used to transport children to or from school activities. An offense under this section is a 3rd degree felony.

Prior to this amendment, the Education Code did not include parking lots and parking garages in the list of premises on which a person could be prohibited from knowingly, intentionally, or recklessly possessing a firearm. As such, the language did not specifically allow for a district attorney to prosecute a person possessing a firearm on school property not defined as the premises, such as a parking lot.

Carrying of Weapons by Certain Judges, Justices, District, and County Attorneys
HB 2300 Eff. Immediately

Amends Section 411.179 of the Government Code by creating Subsection (c). This Subsection provides that DPS must establish a procedure for the licensure of a judge, justice, prosecuting attorney, or assistant prosecuting attorney to carry a concealed handgun. The license must indicate the license-holder's status as a judge, justice, prosecuting attorney, or assistant prosecuting attorney.

Also amends Section 411.181(a) of the Government Code to provide that if a license-holder's status as a judge, justice, prosecuting attorney, or assistant prosecuting attorney becomes inapplicable, the license-holder must notify the department within 30 days after the date of the status change and apply for a duplicate license to reflect the license-holder's new status.

Creates Section 411.1882 of the Government Code which provides that a person may not be required to submit to DPS a handgun proficiency certificate in order to obtain or renew a concealed handgun license if the person is currently serving as a judge or justice of a federal court; an active judicial officer (this includes municipal judges); or a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney; and a handgun proficiency instructor makes a sworn statement that the person has demonstrated proficiency to the instructor in the use of handguns in the year prior to the person's application. A license issued under this section automatically expires on the six-month anniversary of the day that the license-holder's status as a judge, justice, prosecuting attorney, or assistant prosecuting attorney becomes inapplicable.

Also amends Section 46.035 of the Penal Code regarding the unlawful carrying of a handgun by a license-holder, by creating Subsection (h-1) which provides that it is a defense to prosecution under this section that at the time of the offense the actor was a judge or justice of a federal court; an active judicial officer (this includes municipal judges); or a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney. Note that municipal attorneys are not included in this amendment but are included in HB 1889.

Section 46.15(a) of the Penal Code is amended to provide that Sections 46.02 criminalizing unlawfully carrying a weapon and 46.03 prohibiting weapons in certain places do not apply to a person who is judge or justice of a federal court; an active judicial officer (this includes municipal judges); or a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

Prior to this amendment the law only allowed for retired judicial officers to carry concealed handguns if they met the eligibility requirements of Chapter 411 of the Government Code.

Cruelty to Livestock and Non-Livestock Animals
HB 2328 Eff. September 1, 2007

Amends Section 42.09 of the Penal Code to refer to cruelty to livestock animals rather than cruelty to all animals. This section now provides that a person commits an offense if he or she intentionally or knowing tortures a livestock animal; unreasonably fails to provide necessary food, water, or care for a livestock animal in the person's custody; abandons a livestock animal; cruelly transports or confines a livestock animal; administers poison to livestock belonging to another person without that person's consent; uses livestock as a lure in a dog race; causes a livestock animal to fight with another animal; trips a horse; or seriously overworks a livestock animal. Existing text providing that a person commits an offense if the person intentionally or knowingly fails to provide shelter to an animal; kills or seriously injures livestock; injures animals belonging to another; or causing animals to fight with each other is deleted.

Before this amendment, the animal cruelty statute found in Section 42.09 of the Penal Code had created a situation in which certain acts of violence toward animals had escaped prosecution. Examples of acts which did not result in the punishment of the offender included drowning shelter

dogs in cages dropped into a city's sewage tank; burning and mutilating live kittens; killing a puppy with a power lawn-mower; and staking dogs and leaving them to die without food, water, or shelter.

Existing Subsections (h) and (i) are deleted. The remaining subsections are redesignated. Subsection (b) now defines the terms used in the remainder of the section. Subsection (c) provides that an offense under Subsections (a)(2), (3), (4), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has been previously convicted twice under this section, twice under Section 42.092, or once under this section and once under Section 42.092. An offense under Subsections (a)(1), (5), (6), (7), or (8) is a state jail felony, except that it is a felony in the 3rd degree if the person has been previously convicted twice under this section, twice under Section 42.092, or once under this section and once under Section 42.092.

It is a defense to prosecution under Subsection (a)(8) if the person tripped the horse in order to provide veterinary care or identify the horse's owner. It is also a defense that the actor was engaged in a *bona fide* experiment for the purposes of scientific research. The bill deletes existing defenses that the person killed or injured the animal upon discovering the animal upon the person's property in the act of or immediately after killing or injuring the person's animals or had a reasonable fear of bodily injury to the person or another by a wild animal.

It is an exception to this section if the actor was engaged in behavior that is generally accepted and lawful such as: hunting, trapping, fishing, wildlife management, or agricultural practices other than farming.

Creates Section 42.092 "Cruelty to Nonlivestock Animals," which provides that it is an offense for a person to intentionally, knowingly, or recklessly: torture an animal or kill or seriously injure an animal in a cruel manner; kill, seriously injure, or administer poison to an animal without the owner's consent; fail to provide necessary food, water, care, or shelter for an animal in the person's custody; abandon an animal; transport or confine an animal in a cruel manner; cause bodily injury to an animal without the owner's consent; cause two animals other than dogs to fight with one another; use a live animal as a lure in dog racing; or seriously overwork an animal.

It is a Class A misdemeanor to fail to provide necessary food, water, care, or shelter for an animal in the person's custody, to abandon an animal, to transport or confine an animal in a cruel manner, to cause bodily injury to an animal without the owner's consent, or seriously overwork an animal. The offense is a state jail felony if the person has been convicted twice previously under this section, twice previously under Section 42.09, or once under each.

It is a state jail felony to: torture an animal or kill or seriously injure an animal in a cruel manner; kill, seriously injure, or administer poison to an animal without the owner's consent; cause two animals other than dogs to fight with one another; use a live animal as a lure in dog racing. The offense is a 3rd degree felony if the person has been convicted twice previously under this section, twice previously under Section 42.09, or once under each.

It is a defense that the actor had a reasonable fear of bodily injury to the actor or another person by a dangerous wild animal, or that the actor was engaged in a *bona fide* experiment for the purposes of scientific research.

It is a defense to prosecution under Subsections (b)(2) or (6) that the actor killed or injured the animal upon discovering the animal upon the actor's property in the act of or immediately after killing or injuring the actor's animals; or that the actor killed or injured the animal within the scope of the person's employment as a public servant.

It is an exception to this section if the actor was engaged in behavior that is generally accepted and lawful such as: hunting, trapping, fishing, wildlife management, or agricultural practices other than farming.

Amends Section 54.0407 of the Family Code to require the juvenile court to order psychological counseling for a child who has been found to have engaged in delinquent conduct constituting an offense under Sections 42.09 or 42.092 of the Penal Code.

Amends Section 801.3585 of the Occupations Code to provide that a veterinarian who in good faith reports a suspected incident of animal cruelty is immune from civil or criminal liability arising from an action brought against the veterinarian for reporting the incident.

Amends Section 1702.283 of the Occupations Code to provide that a person who has been convicted of animal cruelty under either Section 42.09 or 42.092 of the Penal Code is ineligible for a license as a guard dog company or for registration as a dog trainer and also prohibits that person from being employed with dogs, a security officer by a security services contractor, or security department of a business that uses dogs to protect individuals or property.

Regulating Limousine Services
HB 2338 Eff. September 1, 2007

Amends Section 215.004 of the Local Government Code. A municipality with a population of more than 1.9 million may license, control, and regulate limousine transportation services. The ordinance may include regulation of the rates charged for services and the establishment of safety requirements.

Sale and Purchase of Ammonium Nitrate
HB 2546 Eff. September 1, 2007

Amends Chapter 63 of the Agriculture Code, requiring sellers of ammonium nitrate to register with the state and to record any purchases of ammonium nitrate.

Under Chapter 63, Subchapter I, a person selling ammonium nitrate must take steps to secure the ammonium nitrate against vandalism, theft, and other unauthorized access. These steps include fencing or otherwise enclosing and locking the storage facility, inspecting the facility daily for signs of vandalism, and establishing ongoing inventory procedures. Prior to selling ammonium nitrate, the seller must require the purchaser to display a driver's license or other form of identification, sign for the purchase, and the seller must record the sale.

If a person sold or offered to sell ammonium nitrate and did not follow these procedures, the seller's registration may be suspended for 90 days for a first violation and revoked or suspended for any subsequent violation. It is a Class A

misdemeanor to tamper with ammonium nitrate or sell ammonium nitrate without registering. It is a 3rd degree felony to purchase ammonium nitrate with the intent to manufacture an explosive device.

Ammonium nitrate is a chemical compound commonly used as a fertilizer. However, the compound can also be used to create explosives. Before this amendment there was no restriction on the sale and purchase of ammonium nitrate, nor was there any law requiring that sellers of ammonium nitrate register with the state.

Protection and Preservation of Caves
HB 3502 Eff. September 1, 2007

Amends Sections 201.011, 201.014, and 201.041 of the Natural Resources Code to provide that a permit is required to be obtained from the State prior to engaging in any excavation, alteration, or destruction of a cave. If a person fails to obtain a permit prior to beginning such an activity it is a Class A misdemeanor unless the person has been previously convicted under the same provision, in which case it is a state jail felony. The prior provision that a person who violates the procedure for obtaining a permit commits a Class C misdemeanor is deleted.

The bill also provides that it is now a state jail felony for a person to vandalize a cave in any way without prior written permission of the owner. If the person has been previously convicted of vandalizing a cave, any subsequent offenses under the same section are now 3rd degree felonies. A person who has sold speleothems without written permission of the owner of the cave from which the speleothems were harvested commits a Class A misdemeanor unless the person has been previously convicted under the same provision, in which case it is a state jail felony.

Prior to this amendment, a person who alters a cave without a permit was subject to a Class B misdemeanor charge. If the person vandalized the cave it was a Class A misdemeanor.

New Offense; Organized Retail Theft
HB 3584 Eff. September 1, 2007

Creates Section 31.16 of the Penal Code, Organized Retail Theft, to provide that a person commits a felony if he or she intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, sells, or barters stolen retail merchandise or merchandise represented to be stolen retail merchandise valued at $1,500 or more. The penalty is enhanced if the person organized or financed the activity, or if the person set off an alarm in the store to distract staff from the crime being committed.

Organized retail theft depends on multiple thieves organized by a central "fence" that collects the stolen merchandise and then resells it to the general public. Last year, it was estimated that organized retail theft cost retailers and the American public more than $37 billion and Texans $100 million in sales tax revenues. This bill provides specific criminal penalties for persons engaging in these activities and also increases the penalty for those supervising one or more individuals engaged in organized retail theft.

Disclosure of the Name of a Student Involved in an Improper Relationship with an Educator
HB 3659 Eff. September 1, 2007

Amends Section 21.12 of the Penal Code to create Subsection (d), which provides that the name of a minor or student involved in an improper relationship with an educator may not be released to the public. This information is not to be classified as public information under Chapter 522 of the Government Code.

Prior to this amendment there was no prohibition against releasing the name of a minor or student involved in an improper relationship with an educator to the public.

Improper Sexual Activity Pertaining to the Texas Youth Commission
SB 103 Eff. Immediately

Amends Section 39.04 of the Penal Code (Violations of the Civil Rights of Persons in Custody; Improper Sexual Activity with Person in Custody) to provide that a Texas Youth Commission (TYC) official or employee commits an offense if the official or employee: employs a person in TYC custody to engage in sexual conduct; authorizes sexual conduct with a person in TYC custody; or induces a person in TYC custody to engage in sexual conduct or performance. An offense under this section is a second degree felony, rather than a state jail felony.

In light of the recent scandal surrounding sexual abuse in the Texas Youth Commission system, the legislature passed this amendment to specifically criminalize any future abhorrent conduct.

Use of Deadly Force in Defense of a Person
SB 378 Eff. September 1, 2007

In 1973, the Legislature imposed a duty to retreat in the face of a criminal attack, permitting the use of deadly force only if a reasonable person in the situation would not have retreated. This, in effect, placed the burden on the victim to retreat in the face of an impending lethal attack and reversed what had been the long-standing practice of recognizing the right of a person to stand his or her ground in the face of an attack. In 1995, the Legislature created an exception to the duty to retreat before using deadly force in response to an unlawful entry into the habitation of the actor, but the duty still applies in any other location where a lethal attack might occur.

Amends Section 9.31(a) of the Penal Code making the subsection gender neutral by replacing the male pronoun with the term "the actor." Also amends Subsection (a) to provide a presumption of reasonableness that the actor believed the use of force or deadly force was immediately necessary if all of the following criteria are met:

- the actor knew or reasonably believed that the person against whom force or deadly force was used:
  - unlawfully and forcefully entered or was attempting to enter the occupied habitation, vehicle, or place of business, or employment of the actor;
  - unlawfully and forcefully removed or was attempting to remove the actor from any of the above locations; or
  - was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;
- the actor did not provoke the person against whom the force was used; and
- the actor was not engaged in criminal activities other than a Class C misdemeanor that is a violation of a

traffic law or ordinance at the time the force or deadly force was used.

Creates Subsections (e) and (f) providing that an actor who has a right to be present at the location the force was used has no duty to retreat if the actor has not provoked the person against whom the force is used and was not engaged in criminal activity at the time the force was used and that a finder of fact may not consider whether the actor failed to retreat in determining whether an actor reasonably believed that the use of force was necessary.

Amends Section 9.32 of the Penal Code to explicitly state that an actor has no duty to retreat before using force or deadly force authorized by Section 9.31 or 9.32 of the Penal Code, if the actor has a right to be present at the location where the force is used, if the actor has not provoked the person against whom the force is used, and the actor is not engaged in criminal activity at the time that the force is used. The fact that the actor did or did not retreat before using force cannot be considered by a finder of fact in determining whether the actor reasonably believed the use of force was necessary for the purposes of Section 9.31(a) or 9.32(a)(2).

Amends Section 83.001 of the Civil Practice and Remedies Code to create immunity from civil liability for personal injury or death if the defendant was justified in using deadly force under Chapter 9 of the Penal Code.

Public Intoxication and other Alcoholic Beverage Code Offenses
SB 904 Eff. September 1, 2007

This bill, which extends the sunset provision on the existence of the Texas Alcoholic Beverage Commission to 2019, clarifies the term "public place" for public intoxication cases and creates two Class A misdemeanors related to alcoholic beverages.

Amends Section 49.02 of the Penal Code and Section 105.06 of the Alcoholic Beverage Code providing that for the offense of public intoxication, any premises licensed or permitted under the Alcoholic Beverage Code is considered a "public place."

Amends Section 101.04 of the Alcoholic Beverage Code providing that a permit-holder commits a Class A misdemeanor if the permit-holder refuses to allow an authorized person or agency to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by the Alcoholic Beverage Code.

Creates Section 105.10 of the Alcoholic Beverage Code making it a Class A misdemeanor to sell or offer to sell an alcoholic beverage during prohibited hours; or to consume or permit the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours.

Regulated Material Violations
SB 1154 Eff. September 1, 2007

Texas, along with most states nationwide, is experiencing an increase in thefts of metals, such as copper, bronze, and brass. Several states are exploring ways to bring the problem under control. Texas provided for penalties for the offenses of theft and criminal mischief and the penalties could escalate to 2nd and 3rd degree felonies depending on the value of the property stolen or equipment or property damaged, but those penalties were not sufficient to stem the tide of this type of crime.

The perpetrators of such crime often turn to secondhand dealers to sell the metals. Prior to this amendment there were few records being kept relating to the sale of secondhand metal and the punishment for selling stolen metal was a Class B misdemeanor. This amendment makes it harder to sell stolen materials. Increases the penalty to a Class A misdemeanors and in certain instances a state jail felony.

Creates Section 1956.0025 of the Occupation Code to allow local municipalities to adopt rules or ordinances that are more stringent but not contradictory to this chapter. This new section also allows for local municipalities to issue a license or permit to a business to allow the business to act as a metal recycling entity in that municipality.

See also HB 1766.

See also HB 8, HB 1586.

Juveniles

High Priority

Limiting the Authority of School Districts to Create Rules that are Punishable as Class C Misdemeanors
HB 278 Eff. September 1, 2007

Amends Section 37.102(c) of the Education Code to provide that a person who violates any rule adopted under this subchapter providing for the operation and parking of vehicles on school property commits a Class C misdemeanor. The amendment repeals existing text stating that violations of school rules adopted pursuant to Subchapter D (Protection of Buildings and Grounds) are punishable as a Class C misdemeanor.

Under Section 37.102 (Rules; Penalty) of the Education Code, the board of trustees of a school district is authorized to adopt rules for the safety and welfare of students, employees, and property. Under prior law, violations of such rules were Class C misdemeanors.

Prior to the enactment of these provisions, some school districts utilized Section 37.102 to instigate criminal proceedings against students in municipal and justice courts. Such rule violations included not having a hall pass in the school parking lot, tardiness, and chewing gum. Students found guilty of such violations have criminal records for breaking a school policy. Some school districts even passed rules that were already addressed by state laws (*e.g.,* fighting) and then argued to prosecutors that defendants accused of such school rules were not able to assert the general defenses found in the Penal Code, such as self-defense.

The unbridled authority of school districts to create their own crimes further compounded and complicated the already voluminous number of juvenile cases filed in municipal and justice courts. Critics have claimed for some time that such cases do not belong in the judicial system.

As amended that statute provides that only a violation of adopted rules providing for the operation and parking of vehicles on school property is a criminal offense.

Compulsory School Attendance for 18-year-olds
HB 566 Eff. Immediately

Amends Section 25.085 of the Education Code to allow a board of trustees of a school district to adopt a policy requiring a student who voluntarily enrolls in school or attends

school after his or her 18th birthday to attend school until the end of the school year. The offense of "Failure to Attend School" is applicable to that student. Parents, however, are exempt from sanctions, such as "Parent Contributing to Nonattendance," under these rules.

Former school attendance laws were inapplicable to students who voluntarily enrolled in or attended school after their 18th birthday. Every year, schools lose funding due to the increased dropout rate of these students, and this legislation seeks to decrease the dropout rate for secondary schools in Texas. Municipal courts must be aware of the policies of the school districts in their jurisdiction to determine whether this special rule will apply.

Delivery of Juvenile in Custody
HB 776 and HB 2237 Eff. September 1, 2007

HB 776 amends Section 52.02(a) of the Family Code, to allow a peace officer to bring a juvenile in custody to the child's school if the principal, principal's designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the school day.

Prior to this amendment, Section 52.02(a) only authorized a child in custody to be released to (1) the child's parent or guardian, (2) an official designated by the juvenile board, (3) a detention facility, (4) a secure detention facility, or (5) a medical facility. Alternatively, the child could be processed pursuant to Section 52.03 (disposition without referral to court).

HB 2237 amends Section 25.091 of the Education Code and 52.01 of the Family Code to allow a peace officer who has probable cause to believe that a child is in violation of the compulsory school attendance law under Section 25.085 of the Education Code, to take the child into custody for the purpose of returning the child to the school campus of the child to ensure the child's compliance with compulsory school attendance requirements.

Legislative Council Reports that "current law is very specific about what a police or parole officer may do when a child is taken into custody, but it does not specify that the child may be returned to school. Even though in practice this often is what happens when a police officer apprehends a school-aged child during school hours, the current statute provides no clear authority for this practice." HB 776 and HB 2237 authorize a peace officer to bring the child to a school campus.

Court Appearances and Excused Absence
HB 2455 Eff. Immediately

Amends Section 25.087 of the Education Code to provide that a student required to make a court appearance, including days absent from school due to traveling, receive an excused absence to make the appearance. This amendment also allows school districts to receive attendance funding when students are absent from school because they are required to attend court.

Prior to HB 2455 court appearances have not been listed among the five statutory reasons a student may be absent from class and still be considered present for funding purposes. Accordingly, the Texas Education Agency has advised schools that a student is to receive an excused absence from school if the student has to make a court appearance.

HB 2455 applies prospectively to the 2007-2008 school year.

Juvenile Omnibus Bill
HB 2884 Eff. September 1, 2007

Amends Article 45.054 of the Code of Criminal Procedure by creating Subsection (a-2), prohibiting a court from entering an order requiring a student to attend a juvenile justice alternative education program. Article 45.054 contains specific procedures and a statutory "laundry list" of orders that may be imposed in adjudicating failure to attend school offenses.

Amends Section 51.095(f) of the Family Code. During the 79th Legislative Session changes were made to the Family Code in HB 1575 to ensure that the statement of a child recorded by electronic means were provided the same procedural safeguards as a child who confessed in writing. Under the former law, a child who confessed by means of a recording was not provided the benefit of a magistrate's determination of voluntariness. In an age of digital media, Section 51.095(f) is amended to eliminate references to "videotape" and substitutes the term "recording." Additionally, by specifying that the magistrate is to convey the determination of voluntariness in writing, Section 51.095(f) amended, remedies an oversight contained in HB 1575.

Performance of Community Service by Minors Accused of Certain Offenses
HB 3692 Eff. September 1, 2007

Amends 45.049 of the Code of Criminal Procedure by creating Sections (g) and (h). The amendments only apply to defendants charged with a traffic offense or possession of alcohol by a minor (Section 106.05, Alcoholic Beverage Code) and who are residents of Texas. As amended, if under Article 45.051(b)(10), as a condition of deferred disposition, the defendant is required to perform community service, the defendant is entitled to elect whether to perform the required community service in the county in which the court is located, or the county in which the defendant resides; but only if the entity or organization agrees to supervise the defendant in the performance of the defendant's community service work and report to the court on the defendant's community service work.

The amendment to Article 45.049(h) only applies to a defendant charged with an offense under Section 106.05 of the Alcoholic Beverage Code (Possession of Alcohol by Minor) who elects to perform the required community service in the county in which the defendant resides. The community service must comply with Sections 106.071(d) and (e) of the Alcoholic Beverage Code, except that if the educational programs or services described by Section 106.071(e) of the Alcoholic Beverage Code are not available in the county of the defendant's residence, the court may order community service that it considers appropriate for rehabilitative purposes.

HB 3692 generally relates to the denial or revocation of bail for a person who violates court orders or conditions of bond relating to victim or community safety. This amendment affecting Chapter 45 of the Code of Criminal Procedure was added on to HB 3692 in the final days of the Session. The essence of the amendment was drawn from SB 691 which passed the Senate but was left on the House general calendar and never received a final vote.

A notable improvement from SB 691, this amendment does not clutter up the deferred disposition statute with community service and alcohol related provisions. Rather, it logically modifies the provision of Chapter 45 relating to community service. Nor does it erroneously refer to the community service provisions in Article 43.09 that govern using community service to discharge fines and costs in county and district court.

One apparent problem with the amended

statute is its mistaken reference to Article 45.051(b)(10) of the Code of Criminal Procedure, as the statutory basis for mandating that MIP defendants perform community service. While Article 45.051(b)(10) gives the court the discretion to order any reasonable condition, Section 106.071(d)(1) of the Alcoholic Beverage Code mandates that the court order a minor placed on deferred disposition to perform community service. Presuming that Section 106.071(d)(1) is the statutory source for requiring defendants placed on deferred disposition to perform community service, are defendants still entitled to elect where they perform community service?

Another unintended consequence of the amendment to Article 45.059 relates to instances where judges order traffic offenders to perform community service as part of deferred disposition. While legislative history of the bill suggest that this amendment's thrust was aimed primarily towards cases involving minors accused of alcohol possession, it is noteworthy that any defendant, regardless of age, who is accused of a traffic offense and ordered to perform community service as a reasonable condition of deferred disposition would be entitled to elect where the community service would be performed.

Timing of Mandatory Filing of Complaints for Failure to Attend School/Parent Contributing to Nonattendance
SB 1161 Eff. Immediately

Amends Subsection (a), Section 25.0951 of the Education Code to provide that if a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall, within 10 school days of the student's last absence (*i.e.*, the 10th absence – see HB 2884), file a complaint against the student, the student's parent, or both in the appropriate court alleging an offense under Section 25.093 (parent contributing to nonattendance) or 25.094 (failure to attend school).

This bill responds to Attorney General Opinion *GA-0417* (2006). It increases the time in which a school district must file a complaint alleging failure to attend school or parent contributing to nonattendance. Under prior law, a school district had to file a complaint against a student who failed to attend school on 10 or more days without an excuse to a county, justice, or municipal court within seven days of the last absence. If the school district failed to comply with this requirement, the complaint had to be dismissed. Some school districts found this requirement to be too onerous. By changing the time limit to 10 school days, presumably, such school districts will be able to comply with the law.

Medium Priority

Education "Omnibus" Bill; Eligibility and Attendance Requirements in Public Schools
HB 1137 Eff. Immediately

Section 1. Public School for Students Between the Ages of 21 and 26. Amends Section 25.0001 of the Education Code to provide that a school district may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma. Furthermore, the school district is entitled to receive state funding for these students.

A student who is 21 years of age or older is not eligible for placement in a disciplinary alternative education program or a juvenile justice alternative education program. If the student engages in conduct that would require such placement if the student was under the age of 21, the district shall revoke the student's admission.

If the student is 21 years of age or older and has not attended school in more than three years, the student may not be placed in a classroom, cafeteria, or district-sanctioned school activity with students that are 18 years of age or younger. A student older than 21 years of age may attend school-sanctioned events that are open to the public.

Section 2. Attendance by Students Between the Ages of 18 and 21. Amends Section 25.085(f) of the Education Code. Prior to the 2007-2008 academic year, a school district could revoke a student's enrollment if a student at least 18 years of age was voluntarily enrolled in school or attended school and had more than five unexcused absences. The amended section allows a school district to require a person at least 18 years of age and under 21 years of age to attend school until the end of the school year.

Under Section 25.094 of the Education Code, it is a Class C misdemeanor if a student required to attend school fails to attend school on 10 or more days within a six-month period in the same school year or on three or more days within a four-week period. This offense may be prosecuted either in the county or municipality of the individual's residence or where the school is located. Municipal courts, justice courts, and constitutional county courts have jurisdiction.

Section 3. Students in Attendance Less than 90 Percent of Days. Amends Section 25.092 of the Education Code by creating Subsection (a-1). A student who is in attendance for at least 75 percent but less than 90 percent of days may receive credit if the student completes a plan approved by the school's principal that allows the student to meet the instructional requirements of the class. However, a student involved in a criminal or juvenile justice proceeding also needs the presiding judge's approval to participate in such a program.

Prior to this legislation, a student could not receive credit for a class unless the student attended 90 percent of classes. The amended section seeks to reduce dropout rates by lowering attendance requirements necessary to obtain credit, provided that the instructional requirements of the class are met.

Section 4. Free Prekindergarten for Certain Children. Amends Section 29.153(b) of the Education Code by creating Section 29.153(b)(6). A child is eligible for free enrollment in a prekindergarten class if the child is or ever has been in the conservatorship of the Department of Family and Protective Services.

Section 5. Eligibility for Foundation School Program. Amends Section 42.003(a) of the Education Code. A student at least 21 years of age and under 26 years of age that has been admitted by the school district to complete the requirements for a high school diploma is entitled to the benefits of the Foundation School Program. Prior to this amendment, only students between the ages of five and 21 were eligible for the program.

See also SB 123.

Traffic and Transportation Code

High Priority

Issuing and Renewing Driver's Licenses of Elderly Persons
HB 84 Eff. September 1, 2007

Creates Section 521.2711 and 522.054 of the Transportation Code to mandate that persons 85 years of age or older renew their driver's license or commercial driver's license every two years rather than every six years. Moreover, new licenses issued to persons 85 years or older will expire two years from the date of renewal.

Amends Section 521.274(b) of the Transportation Code to prohibit a driver who is 79 years of age or older from applying for driver's license renewal by mail or online. Section 521.421(i) is likewise amended to reduce the fee for issuance or renewal of a driver's license from $24 to $8, with the expiration date established under Section 521.2711.

For commercial driver's licenses, Section 522.029(a) of the Transportation Code is amended and Subsection (j) is added to reduce the fee for issuance or renewal of a commercial driver's license or commercial driver learner's permit from $60 to $25 for a license with an expiration date established under Section 522.054.

Deemed "Katie's Law" in memory of Katie Bolka, a Dallas teenager who was killed in 2006 when a 90-year-old driver ran a red light, this legislation addresses increasing public safety concerns regarding older drivers. Older drivers have more accidents, including fatal accidents, than any other group based on accidents per mile driven. DPS can subject anyone to a driving exam if they show up to renew or apply for a license in person and officials have doubts about whether they can drive safely. Vision tests are conducted every time someone applies for or renews a license at a DPS office. Under Katie's Law, DPS would have more opportunities to monitor the vision, responsiveness, and fitness of older drivers.

Establishes April as Child Safety Month
HB 1045 Eff. Immediately

Creates Section 662.103 of the Government Code, deeming the month of April "Child Safety Month." Child Safety Month may be observed through celebrations and activities to promote child protection and care.

By doing so, the State hopes to increase public awareness regarding the dangers of leaving children unattended in vehicles and to provide ways to reduce accidental injury and death through the use of helmets, seat belts, booster seats, and smoke alarms. Accidents claim the lives of thousands of children each year, and this legislation seeks to educate the public to increase prevention.

Modifying Traffic-Activated Detectors for Motorcycles
HB 1279 Eff. September 1, 2007

Creates Section 544.0075 of the Transportation Code to require that traffic-control signals where the cycle intervals vary according to traffic demands be able to detect motorcycles.

This legislation resolves light-weight vehicles, like motorcycles, not being able to trigger the cycling of a traffic light at an intersection that uses sensors to detect when vehicles are stopped there. However, it does not apply to traffic detectors that already exist at the effective date of the legislation.

Parking a Commercial Motor Vehicle on Certain Streets
HB 1522 Eff. September 1, 2007

Amends Section 545.307 of the Transportation Code to prohibit parking a commercial motor vehicle on a street maintained by a municipality where prohibitive signs are posted in a residential subdivision or adjacent to the subdivision and within 1,000 feet of the property line of a residence, school, place of worship, or public park between 10 p.m. and 6 a.m.

This law does not apply to a vehicle owned by a utility company where the employee of the utility company parks at the employee's residence, or to a vehicle owned by a commercial establishment that is parked on the street adjacent to where the establishment is located. Moreover, a person is authorized to park a commercial motor vehicle on a restricted street while transporting persons or property to or from the residential subdivision or performing work in the subdivision.

Prior law allowed a county or municipality to restrict overnight parking of commercial vehicles in a residential subdivision upon request from homeowners. That did not include streets adjacent to those areas; HB 1522 expands this application to minimize the disruption caused by parking commercial motor vehicles in residential areas.

Compliance Dismissals; Fees, Revenue from Red Light Cameras; Driving While License Invalid Now a Class C Misdemeanor
HB 1623 Eff. September 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

License Plates. Amends Section 502.404 of the Transportation Code by creating Subsections (f) and (g) regarding the dismissal of the offense of not having two license plates (front and rear) if the defendant remedies the defect before the first court appearance and pays a $10 administrative fee. The court may dismiss the charge if:

- the registration for the vehicle is current during the period the offense was committed; and
- the registration insignia was attached to the car before the defendant's first court appearance.

Registration. Amends Section 502.407(b) of the Transportation Code, which provides authority for a judge to dismiss the charge of expired motor vehicle registration to give the defendant 20 working days after the offense or before the defendant's court appearance, whichever is later, to obtain current vehicle registration. The administrative fee is amended to not exceed $20 when the charge is dismissed.

Obscured License Plates. Amends Section 502.409 of the Transportation Code to allow a court to dismiss the charges of attaching to or displaying on a motor vehicle a number plate or registration insignia that:

- is assigned for a registration period

other than the registration period in effect;

- has letters, numbers, or other identification marks that because of blurring or reflective matter are not plainly visible at all times during daylight;
- has an attached illuminated device or sticker, decal emblem, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate or the name of the state in which the vehicle is registered; or
- has a coating, covering, or protective material that distorts angular visibility or detectability; or alters or obscures the letters or numbers on the plate, the color of the plate, or another original design feature of the plate.

The defendant must remedy the defect before the first court appearance. The court may assess an administrative fee not to exceed $10. Also see SB 369 for more legislation concerning license plates.

Failure to Exhibit Driver's License. Amends Section 521.025 of the Transportation Code to allow the court to assess a fee not to exceed $10 when a defendant produces a driver's license issued to that person, appropriate for the type of vehicle operated, and valid at the time of the arrest for the offense of no driver's license or failure to display driver's license. Since this offense contains a defense to the prosecution, a prosecutor's motion is required before the court may dismiss and charge the fee.

Expired License. Amends Section 521.026 of the Transportation Code to give the defendant 20 working days after the offense or before the defendant's first court appearance, whichever is later, to obtain a current driver's license. The administrative fee is amended to not exceed $20 when the charge is dismissed.

Change of Address or Name. Amends Section 521.054 of the Transportation Code requiring a driver to change the address on his or her driver's license within 30 days of the moving to allow the court to dismiss the charge if the defendant remedies the defect not later than the 20th working day after the date of the offense and pays an administrative fee not to exceed $20. The court may waive the fee if the waiver is in the interest of justice.

License Endorsements. Amends Section 521.221 of the Transportation Code to allow the court to dismiss a charge for a violation of a special endorsement if:

- the driver's license endorsement was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense; or was in error and that is established by the defendant;
- the Department of Public Safety (DPS) removes the restriction or endorsement before the defendant's first court appearance; and
- the defendant pays an administrative fee not to exceed $10.

Driving While License Invalid. Amends Sections 521.457(f), (e), and (f-1) of the Transportation Code to change driving while license invalid from a Class A misdemeanor to a Class C misdemeanor (maximum fine $500) unless it is shown at trial that the person has been previously convicted of driving while license invalid, in which case the offense is a Class A misdemeanor. If it is shown at trial that the defendant's license was previously suspended for operating a motor vehicle while intoxicated, the offense is a Class B misdemeanor.

Red Light Camera Penalties and Funds. Creates Sections 542.405 and 542.406 of the Transportation Code to regulate a municipality's authority regarding civil enforcement of red light cameras. The civil or administrative penalty may not exceed $75. A late payment penalty may not exceed $25. Not later than the 60th day after the end of a city's fiscal year, after deducting amounts the city is authorized to retain, the city must send 50 percent of the revenue derived from the civil or administrative penalties related to red light camera enforcement to the Comptroller. The city must use the remainder of the money to fund traffic safety programs; including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement. Before calculating the 50 percent to send to the Comptroller, the city may retain an amount necessary to cover the costs of:

- purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system;
- installing the photographic traffic signal enforcement system at sites in the local authority, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;
- operating the photographic traffic signal enforcement system in the local authority, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the local authority, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and
- maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

The Comptroller has the authority to audit funds collected by red light traffic cameras. If the Comptroller determines that a city retained more than the amounts authorized or failed to deposit amounts as required, the Comptroller may impose a penalty on the city equal to twice the amount the city retained in excess of the amount authorized.

Amends Section 133.004 of Local Government Code by adding the portion of the civil or administrative fees from the red light cameras to the list of civil fees that are subject to the requirements of Chapter 133.

Creates Chapter 782 of the Health and Safety Code regarding regional emergency medical services. Section 782.002 creates the regional trauma account which is composed of money collected from the revenue from red light cameras.

Equipment Violations. Amends Section 547.004 of the Transportation Code by creating Subsections (c) and (d). The court may dismiss a charge under Chapter 547 if the offense does not involve a commercial motor vehicle, the defendant remedies the defect before the first court appearance, and pays an administrative fee not to exceed $10. Chapter 547 is regarding vehicle

equipment requirements. Consequently, courts will be able to dismiss defective equipment violations.

Expired Inspection. Amends Section 548.605(b) of the Transportation Code regarding dismissal of expired inspection certificate to give the defendant 20 working days after the offense or before the defendant's court appearance, whichever is later, to obtain a current inspection certificate. The administrative fee is amended to not exceed $20.

Expired Vessel Certificate. Amends Section 31.127 of Parks and Wildlife Code by creating Subsection (f) to allow a court to dismiss a charge of operating a vessel with an expired certificate of number under Section 31.021 if the defendant remedies the defect not later than the 10th working day after the date of the offense and pays an administrative fee not to exceed $10. This only applies when the certificate of number had not been expired for more than 60 days.

Enforcement of Commercial Motor Vehicle (CMV) Safety Standards by Certain Peace Officers
HB 1638, HB 2077, and SB 545 Eff. September 1, 2007

HB 1638 amends Section 644.101(b) of the Transportation Code. A police officer in a municipality with a population of less than 5,000 located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million people may apply for certification under this section for the enforcement of Chapter 644, Commercial Motor Vehicle Safety Standards.

HB 2077 amends Section 644.101(b) of the Transportation Code to allow a police officer in a municipality with a population of 60,000 or more that is located in a county with a population of 750,000 or more, and two or more counties with a combined population of one million or more to apply for certification under the CMV Safety Standards.

SB 545 amends Section 644.101(b) of the Transportation Code to provide that a peace officer is eligible to apply for certification in a municipality that has a population of 50,000 or more; a municipality with a population of 25,000 or more any part of which is located in a county with a population of 500,000 or more; a municipality with a population of less than 25,000 any part of which is located in a county with a population of 2.4 million and that contains or was adjacent to an international port; a municipality with a population of at least 34,000 that is located in a county that borders two or more states; or a municipality any part of which is located in a county bordering Mexico.

Prior to these amendments, the law established minimum requirements for law enforcement agencies to create a program to certify police officers to enforce CMV safety standards. However, smaller municipalities were unable to utilize this program unless the municipality was located in a county with at least 2.4 million people adjacent to an international port. Collectively, these amendments will result in increased enforcement of equipment violations throughout the state. Such an increase will result in more equipment violations being adjudicated in municipal courts.

Information Displayed on a Disabled Parking Placard
HB 1781 Eff. September 1, 2007

Amends Section 681.0031(b) of the Transportation Code to require the county assessor-collector to record on any disabled parking placard: (1) the county number assigned by the Comptroller; (2) the first four digits of the applicant's driver's license number; and (3) the applicant's initials, in that order.

Privacy concerns caused the 78th Legislature to require a county tax assessor-collector to record only the first four digits of a driver's license number followed by the applicant's initials on a disabled parking placard. This has made it difficult for law enforcement officers to identify fake placards or placards being used improperly. Having more information, such as the county issuing the placard, should help law enforcement officers trace the placards.

Using or Blocking Rapid Transit System Right of Way
HB 1798 Eff. September 1, 2007

Creates Section 451.113 of the Transportation Code to institute a Class C criminal penalty for a vehicle that uses or blocks a designated right of way of a metropolitan transit authority in connection with a bus rapid transit system. It is an exception that the person was driving a vehicle owned by or under the control of the authority and was authorized to drive the vehicle there. Emergency vehicles responding to a call are also exempt.

Several of the metropolitan transit authorities in Texas are considering the creation of a special bus rapid transit system, which will allow mass transit vehicles to travel on dedicated roadways or on restricted pieces of existing roadways. To allow these bus rapid transit systems to operate properly, certain designated rights-of-way need to be created to increase efficiency and avoid traffic slowdowns. This legislation would penalize motorists unlawfully using that right-of-way.

Vehicle Towing and Storage Omnibus Bill
HB 2094 Eff. September 1, 2007 except that Section 2308.504 of the Occupations Code as created by this Act, and Subchapters C and D of Chapter 2308 take effect September 1, 2008

Amends Chapter 2303 of the Occupations Code by creating Sections 2303.055, 2303.056, 2303.057, and 2303.058.

Section 2303.055 of the Occupations Code provides that the Texas Department of Licensing and Regulation may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information that is permitted by law.

Section 2303.056 of the Occupations Code provides that Department of Licensing and Regulation may enter and inspect the place of business of a person subject to regulation under Chapter 2303 of the Occupations Code; or any place in which the Department has reason to believe that a violation of this chapter, or a violation of a rule or order of the Commission of Licensing and Regulation or the Executive Director of the Department. This inspection can take place at any time during business hours. The Department must inspect a vehicle storage facility that holds a license at least once every two years. Additional inspections are to be based on a schedule of risk determined using factors such as the nature of the storage facility, the history of violations, and the inspection history. The storage facility is required to pay a fee for each risk-based inspection.

COMPLIANCE DISMISSAL CHART

Fees effective on offenses that occur January 1, 2008 and after

OFFENSE	STATUTE	LENGTH OF TIME TO COMPLY	OTHER REQUIRED CONDITIONS	AMOUNT OF FEE
Operate Motor Vehicle without License Plates or with One Plate	Section 502.404, Transportation Code	Before defendant's first court appearance.	• Registration for the vehicle must be current during period offense was committed; and • Registration insignia was attached to the car before the defendant's first court appearance. • Judge may dismiss.	Not to exceed $10. Fee Required.
Expired Motor Vehicle Registration	Section 502.407(b), Transportation Code	20 working days after the offense or before the defendant's first court appearance, whichever is later.	• Defendant must show proof of payment of late registration fee to county assessor-collector. • Judge may dismiss.	Not to exceed $20. Fee Optional.
Display Altered, Unclean, or Obscured License Plates	Section 502.409, Transportation Code	Before the defendant's first court appearance.	• None. • Judge may dismiss.	Not to exceed $10. Fee Optional.
Fail to Display Driver's License	Section 521.025, Transportation Code	None.	• Defendant must show proof of valid driver's license at time of offense; and • Prosecutor must make motion to dismiss.	Not to exceed $10. Fee Optional.
Expired Driver's License	Section 521.026, Transportation Code	20 working days after the offense or before the defendant's first court appearance, whichever is later.	• None. • Judge may dismiss.	Not to exceed $20. Fee Optional.
Fail to Report Change of Address or Name	Section 521.054, Transportation Code	20 working days after the date of the offense.	• None. • Judge may dismiss.	Not to exceed $20. Fee Required. Judge may waive in the interest of justice.
Violate Driver's License Restriction or Endorsement	Section 521.221, Transportation Code	Before the defendant's first court appearance.	• Driver's license endorsement was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense, or in error and that is established by the defendant; and • The Department of Public Safety removes the restriction or endorsement before the defendant's first court appearance. • Judge may dismiss.	Not to exceed $10. Fee Required.
Operate Vehicle with Defective Required Equipment (or in unsafe condition)*	Section 547.004, Transportation Code	Before the defendant's first court appearance.	• Does not apply if the offense involves a commercial motor vehicle. • Judge may dismiss.	Not to exceed $10. Fee Required.

**See list below for common equipment violations.*

OFFENSE	STATUTE	LENGTH OF TIME TO COMPLY	OTHER REQUIRED CONDITIONS	AMOUNT OF FEE
Expired Inspection (Less than 60 days)	Section 548.605(b), Transportation Code	20 working days after the offense or before the defendant's first court appearance, whichever is later.	• Judge shall dismiss.	Not to exceed $20. Fee Required.
Expired Inspection (More than 60 days)	Section 548.605(b), Transportation Code	20 working days after the offense or before the defendant's first court appearance, whichever is later.	• Judge may dismiss.	No fee allowed.
Expired Certificate of Number	Section 31.127, Parks and Wildlife Code	10 working days after the offense.	• Certificate of number cannot be expired more than 60 days. • Judge may dismiss.	Not to exceed $10. Fee Required.

*Operate Vehicle with Defective Required Equipment (or in unsafe condition) Section 547.004, Transportation Code

Section 547.004 provides that a person commits an offense that is a misdemeanor if the person operates or moves or as an owner, knowingly permits another to operate or move, a vehicle that:

- Is unsafe so as to endanger a person;
- Is not equipped in a manner that complies with the vehicle equipment standards and requirements established by Chapter 547; or
- Is equipped in a manner prohibited by Chapter 547.

The following is a list of common equipment violations:

- Allowed vehicle in unsafe condition to be moved or driven so as to endanger any person: Section 547.004;
- Allow vehicle not equipped with required equipment to be moved or driven: Section 547.004;
- Affix unauthorized sunscreening device to motor vehicle: Section 547.613(a)(2);
- Brakes not maintained in good working order: Section 547.402;
- Brakes not on all wheels when required: Sections 547.401 & 547.802;
- Clearance (or side markers improperly mounted): Section 547.354;
- Defective brakes or no brakes: Sections 547.401 & 547.408;
- Defective exhaust emission system: Section 547.605;
- Defective head lamps: Section 547.321, 547.302 & 547.801;
- Defective parking lamps: Section 547.383;
- Defective safety glazing material: Section 547.608;
- Defective stop lamp(s): Section 547.323;
- Defective tail lamp(s): Section 547.322;
- Defective or no windshield wiper: Section 547.603;
- Headlamp improperly located on motorcycle: Section 547.801;
- Improper flashing lights: Section 547.702(c);
- Improper use of back-up lamps: Section 547.332;
- Improperly directed lamps (over 300 candlepower): Section 547.305;
- Mirror violation (none or improperly located): Section 547.602;
- Muffler violation (none, defective, loud, cut-out, by-pass): Section 547.604;
- No beam indicator: Section 547.333;
- No electric turn signal lamps: Section 547.324;
- No exhaust emission system (originally equipped but removed): Section 547.605;
- No headlamps (when not equipped): Sections 547.321 & 547.801;
- No license plate lamp: Sections 547.322 and 547.801;
- No multiple beam lighting equipment (or defective): Sections 547.333 & 547.801;
- No parking brakes or defective parking brakes: Section 547.404;
- No parking lamps: Section 545.383;
- No red reflectors on rear: Sections 547.325 & 547.801;
- No safety belts: Section 547.601;
- No single control to operate all breaks: Sections 547.402 & 547.403;
- No stop lamps: Sections 547.323 & 547.801;
- No tail lamps: Section 547.322 & 547.801;
- No two means of emergency brakes: Section 547.405(a);
- No windshield wiper: Section 547.603;
- Obstructed view through windshield or side or rear windows: Section 547.613;
- Red lights on front: Section 547.305;
- Television receiver, video equipment improperly located (visible to driver): Section 547.611;
- Wrong color clearance lamps: Section 547.305; and
- Wrong color stop light, license plate light, back-up lamp, signal device: Section 547.332.

Creates Section 2303.1015 of the Occupations Code which provides that a person employed by a vehicle storage facility must be licensed by the Texas Department of Licensing and Regulation.

Section 2303.302 is amended to provide that a person who: violates the licensing requirements of Chapter 2303 or employs an individual who does not hold the appropriate license commits a Class C misdemeanor.

Creates Chapter 2308 of the Occupations Code regarding vehicle towing. This chapter allows for periodic inspections of vehicle towing companies. Subchapter C requires that each tow truck have a permit in order to be allowed to perform towing on a public roadway. A second permit for private property towing is required for a tow truck used for a non-consent tow on private property. These permits will be issued by the Department of Licensing and Regulation and are valid for one year. Each tow truck must have a cab card in it which shows the permit number, the vehicle identification number, and the type of permit issued. Subchapter D provides that a person may not operate a towing company, or perform towing operations if the person does not hold a towing operator's license issued by the Executive Director of the Department of Licensing and Regulation. A towing operator's license is valid for one year and may not be renewed unless the operator has completed continuing education and paid a renewal fee.

Pertinent towing laws found in the Transportation Code are consolidated into Chapter 2308 of the Occupations Code to provide that a license or permit holder may not charge a fee for a non-consent tow that is greater than the fee listed in the fee schedule most recently submitted to the Department of Licensing and Regulation; and to provide that a vehicle storage facility accepting a non-consent towed vehicle must post a sign stating that the fee schedule for non-consent tows is available upon request.

Section 2308.458 is amended to provide that a hearing for a vehicle owner or operator contesting towing and storage shall be held before the 14th working day after the date the court receives the request for the hearing. In addition to the person who requested the hearing and the person or law enforcement agency that authorized the removal of the vehicle, the court must notify the vehicle storage facility of the date, time, and place of the hearing. Furthermore, the court may award court costs and reimbursement of fees paid for vehicle towing and storage. The award may be enforced by any means available for the enforcement of judgment for debts. Prior to this amendment the law provided that the hearing had to be held before the 10th working day after the date the court received the request for the hearing.

Creates Subchapter K and Sections 2308.501 through 2308.504 of the Occupations Code to provide that the Licensing and Regulation Commission may impose an administrative penalty on a person who violates this subchapter or a rule or order of the Executive Director of the Commission. The Executive Director may issue a cease and desist order to enforce this chapter as necessary and the Department of Licensing and Regulation may impose sanctions. Section 2308.504 provides that a person commits a Class C misdemeanor if the person: violates the permitting or licensing requirements of this chapter; performs towing without a license; employs an individual who does not hold the appropriate license; or falsifies a certificate of training. Section 2308.504 takes effect September 1, 2008. Section 2308.505 is amended to provide that a person commits a misdemeanor punishable by a fine $200 to $1,000 per violation if the person: violates an order, ordinance, rule, or regulation of a political subdivision under Section 2308.201; charges a fee that is not authorized or is greater than the amount authorized under Sections 2308.201 and 2308.202; charges or collects a fee that is greater than the amount authorized under Section 2308.204; charges a fee in excess of the amount filed with the department; violates a rule regarding the storage of towed vehicles; or violates a rule applicable to a tow truck or towing company.

Amends Section 683.012 of the Transportation Code by creating Subsection (f) which provides that if a law enforcement agency takes an abandoned motor vehicle into custody, the agency must notify the person that files a theft report for the vehicle. The notice must be sent by regular mail on the next business day after the agency takes custody of the vehicle.

Solicitation on Roadway for Charitable Contributions
HB 3089 Eff. Immediately

Amends Section 552.0071 of the Transportation Code to broaden the definition of "roadway" to include the roadbed, shoulder, median, curb, safety zone, sidewalk, and utility easements located adjacent to or near the roadway. A person may stand in a "roadway" to solicit for a charitable contribution.

The 79th Legislature authorized employees or agents of a local authority to solicit a charitable contribution in a roadway if they properly fulfilled a designated application and furnished proof of liability insurance. However, some municipalities limited the scope of this law by interpreting a roadway to only be the actual road. This legislation clarifies and broadens the definition of a "roadway" for soliciting charitable contributions.

Video Equipment on a Motor Vehicle
HB 3832 Eff. Immediately

Amends Section 547.611(a) of the Transportation Code to authorize a motor vehicle to have video equipment if it is located so that the video display is not visible from the operator's seat unless the vehicle's transmission is in park or the vehicle's parking brake is engaged.

Prior law required that any video receiving equipment such as televisions or DVD players be located so that the video display was not visible from the motor vehicle operator's seat. Recently, auto manufacturers have begun to incorporate video receiving devices, specifically DVD players, into the navigation systems of newer-model vehicles. As a feature of these devices, if the screens are visible to the operator (for instance, while in use as a navigational/tracking device), the DVD playback device will not function unless the vehicle is set in park or the parking brake is engaged. The language of Chapter 547 is amended to allow for this newer technology.

Registration of All-Terrain Vehicles by the Texas Department of Transportation
HB 3849 Eff. Immediately

Amends Section 29.003(a) of the Parks and Wildlife Code to prohibit a person from operating an off-highway vehicle on any

public land that the Parks and Wildlife Department has authority over, owns, or leases, without obtaining and mounting a proper off-highway decal. Section 29.005(a) of the Parks and Wildlife Code is amended to require the Parks and Wildlife Department to issue off-highway vehicle decals once an owner has paid a fee.

Creates Section 29.011 of the Parks and Wildlife Code to prohibit a person from operating, riding, or being carried on an off-highway vehicle on public property without wearing a safety helmet and eye protection. Disobeying this provision is a Class C misdemeanor.

Repeals Sections 502.006(c) and (d), 502.169, 502.205, and 502.406 of the Transportation Code, which formerly authorized the registration of all-terrain vehicles by TxDOT and created a Class C misdemeanor offense for operating an all-terrain vehicle without a sticker or decal specified by the department.

Amends Section 502.001(1) of the Transportation Code to redefine "all-terrain vehicle" as a motor vehicle that is equipped with a saddle, bench, or bucket seats for the use of the rider and a passenger, designed to propel itself with three or more tires on the ground; designed for off-highway use; and not designed for the primary use of farming or lawn care. Also amends Section 29.001 of the Parks and Wildlife Code to redefine "off-highway vehicle" as an all-terrain vehicle; an off-highway motorcycle; or any other motorized vehicle used for off-highway recreation on public land over which the department has authority, or on land purchased, leased or grant-operated by the department.

Under prior law, both TxDOT and the Texas Parks and Wildlife Department could issue registration decals for all-terrain vehicles. However, TxDOT's registration program was voluntary, which led to an unsustainable need for educational programs and safety courses without a mandatory registration program to help to recoup those funds. Now, the Texas Parks and Wildlife Department will implement the state's only registration program of off-highway vehicles (which include all-terrain vehicles). All vehicles of this type operated on Parks and Wildlife land must be registered. Moreover, off-highway vehicle-users will be required to wear safety helmets and goggles while on public property.

April as Child Safety Month
HCR 73

The House of Representatives resolves that children are a precious resource; that traumatic brain injury is the predominant cause of death and disability among children nationally; that public awareness of preventing these tragedies is worthwhile; that risk of injury and death to children is greatly reduced by using bike helmets, safety and booster seats, smoke alarms, and disseminating helpful information about health preservation; and that the month of April is Child Safety Month.

Supervision of a Vehicle-Operator Holding an Instruction Permit
SB 153 Eff. September 1, 2007

Amends Section 521.222 of the Transportation Code by creating Subsections (g) and (h) to provide that a person who occupies the seat in a vehicle by a holder of an instruction permit may not sleep, be intoxicated, or be engaged in an activity that prevents the person from observing and responding to the actions of the operator. It is a defense to prosecution that at the time of the violation another person in addition to the defendant was in the vehicle occupying the seat by the operator and that this other person was qualified and capable to be the accompanying passenger to the instruction permit-holder.

Prior law required that an instruction permit could be issued to an enrolled student aged 15-17 who had completed and passed the classroom phase of an approved driver education course, and passed the vision and English tests administered by DPS. For persons aged 18 and up, current enrollment in school and the driver education course were not required to receive an instruction permit. An instruction permit could only be used when the holder was accompanied by a person who held a license to operate that kind of vehicle, who was at least 21 years of age, and who had at least one year of driving experience. This legislation will require that the accompanying passenger also be alert to his or her surroundings while acting in such a capacity.

Window Tinting Requirements
SB 329 Eff. Immediately

Amends Section 547.613 of the Transportation Code to exempt a CMV engaged in intrastate commerce from the state's restrictions on windows.

Window tinting requirements under Federal Motor Carrier Safety Regulations mandate a minimum of 70 percent of luminous transmission, a measurement of the amount of outside light coming through a tinted window. State law allows windshields to have sunscreening devices that allow a light transmission of 25 percent or more. This bill clarifies that a CMV must comply with federal window tinting requirements, and eliminates a conflict between federal and state law, allowing the State to continue applying for discretionary federal funding under the Motor Carrier Assistance Program.

Out-of-Service Orders for Non-Commercial Driver's License-holders
SB 333 Eff. September 1, 2007

Amends Section 522.071(a) of the Transportation Code to set forth that it is an offense to drive a CMV on a highway in violation of, rather than during a period in which a person is subject to, an out-of-service order. Also defines "commercial motor vehicle" (CMV) to comport with Section 644.001 of the Transportation Code.

Under prior law, commercial driver's license-holders driving CMVs weighing more than 26,000 pounds were subject to a Class B misdemeanor for violating an out–of–service order (if they travel without breaks, for example). A driver without a commercial driver's license (CDL) operating a CMV violating the out–of–service order was only subject to a Class C misdemeanor. Non-CDL holders do operate smaller CMVs, but were not subject to the same penalties for violating an out–of–service order as are those with commercial driver's licenses. This legislation applies the same penalty for violating an out–of–service order to the operators of smaller CMVs (with a gross weight rating of 10,001 lbs. to 26,000 lbs.).

THE BIG THREE: Registration, Inspection, and Financial Responsibility Requirements

	Registration	Inspection	Financial Responsibility
General Rule	Motor vehicles must be registered. Transportation Code §502.002.	Transportation Code §548.051: Those motor vehicles registered in this state must be inspected. (List of vehicles not required to be inspected found at Transportation Code §548.052.)	Transportation Code §601.051: Cannot operate a motor vehicle unless financial responsibility is established. [Motor vehicle defined in §601.002(5)]
"Off-highway Vehicles" (ATVs)	Parks & Wildlife Code §29.003: Cannot be registered for operation on a public highway, public land, or land under the control of the Texas Dept. of Parks & Wildlife without obtaining and properly mounting an off-highway vehicle decal. Exceptions: State, county, or municipality vehicle on a public beach or highway to maintain safety and welfare.	Not required	Required if all-terrain vehicle is designed for use on a highway. Not required if all-terrain is not designed for use on a highway. [See definition of motor vehicle in Transportation Code §601.002(5)]
"Electric Bicycles"	Transportation Code §502.0075: Not required to be registered.	Not required	Not required. Not a motor vehicle. [See Transportation Code §541.201(11)]
"Golf Carts"	Transportation Code §502.0071: Not required to be registered if operation occurs in daytime AND: (A) operated for distance not more than 2 miles from origin to/from golf course; or (B) operated entirely within a master planned community; or (C) operated on a public or private beach.	Only required if registered	No financial responsibility for golf carts that are not required to be registered under §501.0071.
"Moped"	Transportation Code §502.007: Treat as a Motorcycle; registration required.	Required	Required
"Motorized Mobility Device"	Transportation Code §502.0074: Not required to be registered.	Not required	Not required. Not a motor vehicle.
"Neighborhood Electric Vehicle"	Transportation Code §551.302: The Texas Department of Transportation may adopt rules relating to registration. (Has not done so.)	Only if required to be registered (Not at this time)	Not required
"Electric Personal Assistive Mobility Device"	Texas Administrative Code Rule 17.22(g): Not required to be registered.	Not required	Not required. Not a motor vehicle under §601.002.
"Motorcycle"	Transportation Code §§502.002 and 502.405: Motor vehicle; registration required.	Required	Required
"Pocket Bike or Minimotor Bike"	Chapter 502, Transportation Code contains no provisions for registration.	Not required	Not required. Not designed for use on highway.

Definitions:

All-terrain vehicle (§502.001 TRANSP. Registration of Vehicles—General Provisions—Definitions / 663.001 TRANSP. All terrain Vehicles—General Provisions—Definitions) means a motor vehicle that is (A) equipped with a saddle, bench, or bucket seats for the use of: (i) the rider, and (ii) a passenger, if the motor vehicle is designed by the manufacturer to transport a passenger; (B) designed to propel itself with three or more tires in contact with the ground; (C) designed by the manufacturer for off-highway use; and (D) not designed by the manufacturer for farming or lawn care.

Bicycle (§541.201 TRANSP.—Rules of the Road – Definitions – Vehicles) means a device that a person may ride and that is propelled by human power and has two tandem wheels at least one of which is more than 14 inches in diameter.

Electric personal assistive mobility device (§551.201 TRANSP. – Rules of the Road—Operation of Bicycles, Mopeds and Play Vehicles—EPAMD—Definitions) means a two non-tandem wheeled device designed for transporting one person that is: (1) self-balancing; and (2) propelled by an electric propulsion system with an average power of 750 watts or one horsepower.

Electric bicycle (§541.201 TRANSP.—Rules of the Road—Definition—Vehicles) means a bicycle that: (A) is designed to be propelled by an electric motor, exclusively or in combination with the application of human power, (B) cannot attain a speed of more than 20 miles per hour without the application of human power, and (C) does not exceed a weight of 100 pounds.

Golf cart (§502.001 TRANSP. Registration of Vehicles – General Provisions—Definitions) means a motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

Light truck (§502.001 TRANSP. Registration of Vehicles—General Provisions—Definitions) means a commercial motor vehicle designed by the manufacturer primarily for carrying capacity of one ton or less.

Light truck (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a truck, including a pick-up truck, panel delivery truck, or carryall truck, that has a manufacturer's rated carrying capacity of 2,000 pounds or less.

Moped (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a motor-driven cycle that cannot attain a speed in one mile or more than 30 miles per hour and the engine of which: (A) cannot produce more than two-brake horse-power; and (B) is an internal combustion engine, has a piston displacement of 50 cubic centimeters or less and connects to a power drive system that does not require the operator to shift gears.

Motorcycle (§502.001 TRANSP. Registration of Vehicles—General Provisions—Definitions) means a motor vehicle designed to propel itself with nor more than three wheels in contact with the ground. The term does not include a tractor.

Motorcycle (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a motor vehicle, other than a tractor, that is equipped with a rider's saddle and designed to have when propelled not more than three wheels on the ground.

Motor-driven cycle (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a motorcycle equipped with a motor that has an engine piston displacement of 250 cubic centimeters or less. The term does not include an electric bicycle.

Motor assisted scooter (§551.301 TRANSP. – Rules of the Road— Operations of Bicycles, Mopeds, and Play Vehicles—Neighborhood Electric Vehicles— Definitions) means a self-propelled device with: at least two wheels in contact with the ground during operation; a braking system capable of stopping the device under typical operating conditions; a gas or electric motor not exceeding 40 cubic centimeters; a deck designed to allow a person to stand or sit while operating the device; and the ability to be propelled by human power alone.

Motor vehicle (§502.001 TRANSP. Registration of Vehicles—General Provisions—Definitions) means a vehicle that is self-propelled.

Motor vehicle (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. The term does not include an electric bicycle or an electric personal assistive mobility device, as defined by Section 551.201 TRANSP.

Motor vehicle (§601.002 TRANSP. Motor Vehicle Safety Responsibility Act—General Provisions—Definitions) means a self-propelled vehicle designed for use on a highway, a trailer or semitrailer designed for use with a self-propelled vehicle, or a vehicle propelled by electric power from overhead wires and not operated on rails. The term does not include: a traction engine, a road roller or grader, a tractor crane, a power shovel, a well driller, an implement of husbandry, or an electric personal assistive mobility device, as defined by Section 551.201 TRANSP.

Motorized mobility device (§542.009 TRANSP. Rules of the Road—General Provisions—Applicability) means a device designed for transportation of persons with physical disabilities that: (1) has three or more wheels; (2) is propelled by a battery-powered motor; (3) has not more than one forward gears; and (4) is not capable of speeds exceeding eight miles per hour. For the purposes of this subtitle, a person operating a nonmotorized wheelchair or motorized mobility device is considered to be a pedestrian.

Neighborhood electric vehicle (§551.301 TRANSP. – Rules of the Road— Operations of Bicycles, Mopeds, and Play Vehicles—Neighborhood Electric Vehicles—Definitions) means a vehicle subject to Federal Motor Vehicle Safety Standard 500 (49 C.FR. §571.500).

Off-highway vehicle (§29.001 PARKS & WILDLIFE) means (1) an all-terrain vehicle as defined by Section 663.001, TRANSP.; (2) an off highway motorycycle; and (3) any other motorized vehicle used for off-highway recreation on: (A) public land over which the department has authority or on land purchased or leased by the department; or (B) land acquired or developed under a grant made under Section 29.008 or any other grant program operated or admimistered by the department.

Passenger car (§502.001 TRANSP. Registration of Vehicles—General Provisions—Definitions) means a motor vehicle, other than a motorcycle, golf cart, light truck, or bus, designed or used primarily for the transportation of persons.

Passenger car (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator.

Truck (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a motor vehicle designed, used, or maintained primarily to transport property.

Truck tractor (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load.

Vehicle (§502.001 TRANSP. Registration of Vehicles—General Provisions—Definitions) means a device in or by which a person or property may be transported or drawn on a public highway, or other than a device used exclusively on stationary rails or tracks.

Vehicle (§541.201 TRANSP. – Rules of the Road—Definitions—Vehicles) means a device that can be used to transport or draw persons or property on a highway. The term does not include: (A) a device exclusively used on stationary rails or tracks; or (B) manufactured housing as that term is defined by Chapter 1201, Occupations Code.

Abatement of Certain Nuisances Involving Junked Vehicles
SB 350 Eff. September 1, 2007

Amends Section 683.071 of the Transportation Code to require that, in order to be classified as a junked vehicle, the vehicle must not have an unexpired license plate and a valid motor vehicle inspection certificate attached to it. Former law required only one of those to exempt a vehicle from junked status (for example, if the registration alone was valid, but the inspection was expired, the vehicle was "junked").

Also amends Section 683.074 of the Transportation Code to require that a public hearing for a junked vehicle be conducted only if a request is made no later than the date by which the nuisance was to be abated. Former law required a public hearing in all cases before a junked vehicle could be removed, which resulted in an excessive back-log of those cases on court dockets. This places the onus on the defendant to request a hearing before the established abatement date.

Notice of Abatement of an Abandoned Motor Vehicle
SB 351 Eff. Immediately

Amends Section 683.075 of the Transportation Code to authorize a notice of abatement of an abandoned vehicle to be sent by the U.S. Postal Service with signature confirmation service to allow the sender a more economical method of delivery, in addition to the existing methods of service by personal delivery or certified mail, return receipt requested.

Obscured License Plates
SB 369 Eff. September 1, 2007

Amends Section 502.409 of the Transportation Code providing an offense for attaching to or displaying on a motor vehicle number plate or registration insignia blurring or reflective matter that significantly impairs the readability of the name of the state in which the vehicle is registered or the letters/numbers of the license plate number. This includes a coating, covering, protective material, or other apparatus that obscures more than one half of the name of the state in which the vehicle is registered or alters or obscures the numbers or letters of the license plate number. This does not apply to a trailer hitch installed in the customary manner, a transponder, a wheelchair lift or carrier, a trailer being towed by a vehicle, or a bicycle rack attached in the customary manner.

Formerly, in combination with recent case law, this statute resulted in law enforcement officers issuing citations to otherwise law-abiding motorists with common license plate frames. SB 369 clarifies that a vehicle is not in violation of the law as long as half of the name of the state in which the vehicle is registered and the entirety of the license plate number are neither obscured nor altered. Moreover, it subjects motorists who obscure their license plate in order to prevent accurate readings from red light or toll enforcement cameras to criminal penalty.

Loose Material Transported by Vehicle
SB 387 Eff. September 1, 2007

Amends Sections 725.001, 725.002, 725.003, and 725.0021 of the Transportation Code to provide that refuse, as well as loose material, may not be transported by motor vehicles, trailers, or semi-trailers on a public highway without a covering to prevent the refuse from blowing off of the vehicle or spilling onto the roadway. Material that is not being transported by a commercial vehicle does not need to be covered if it is completely enclosed by the load-carrying compartment or does not blow from or spill over the top of the load-carrying compartment. These provisions do not apply to a vehicle or construction or mining equipment that is moving between construction barricades on a public works project; or that is crossing a public highway.

Formerly, these statutes prohibited loose material from being transported without a proper covering. However, refuse was not included in the definition of loose material, which led to confusion among law enforcement and transportation personnel as to what materials required covering. This amendment clarifies the statutes.

Establishment of a Tow Truck Rotation List in Certain Counties
SB 500 Eff. September 1, 2007

Creates Section 643.209 of the Transportation Code to allow the sheriff's office in specified unincorporated areas of counties to maintain a public list of towing companies to perform nonconsent tows of vehicles pursuant to a peace officer investigation of a traffic accident or incident. In the event that a peace officer initiates a tow, the sheriff must contact successive towing companies on the tow rotation list until a company agrees to tow the vehicle, considering equal distribution among towing companies and consumer protection and fair pricing.

In a county with a tow rotation list, if a tow truck arrives at the scene to perform a nonconsent tow without having first been contacted by sheriff's office, enters the scene of a traffic accident under the control of a peace officers without his or her permission, or solicits towing services related to accident-caused damages, the person commits a Class C misdemeanor punishable by a fine of not less than $1 or more than $200.

This section only applies to unincorporated areas of a county with a population of 300,000 or more that is adjacent to a county with a population of 2.3 million or more; an area with a population of less than 10,000 that is located in a national forest; or an area with a population of less than 75,000 that is adjacent to a county with a population of less than 10,000 that is located in a national forest.

This legislation is meant to curb the competition between wreckers to arrive at accident sites first, sometimes endangering other motorists by reckless driving and stalling traffic through an overabundance of flashing lights. It also ensures equal treatment of tow truck companies on the tow rotation list, and consumer protection from price-gouging.

Nonresident Commercial Driver's License
SB 1260 Eff. September 1, 2007

Amends Section 522.013 of the Transportation Code to allow DPS to issue a temporary nonresident commercial driver's license to a person who does not present a social security card but meets the other requirements for a nonresident commercial driver's license, including testing and licensing restrictions. "Nonresident" must appear on the face of the license.

A nonresident commercial driver's license expires on the earlier of: 60 days from issuance, the expiration date of the

applicant's visa, or the expiration date of the Form I-94 Arrival/Departure Form. A nonresident CDL may not be renewed, and no more than one temporary Nonresident CDL may be issued per person.

Prior law authorized DPS to issue nonresident commercial driver's licenses to residents of foreign jurisdictions, but DPS has refused to issue them without further action from the Legislature. This is a problem for workers driving trucks primarily in the agricultural industry. This legislation authorizes DPS to issue nonresident commercial driver's licenses subject to specific State restrictions and in accordance with federal regulations.

Operation of Vehicles and Driver's License Suspension
SB 1372 Eff. January 1, 2008

Creates Section 545.426 of the Transportation Code to prohibit an operator from driving on or crossing a railroad grade unless the vehicle has sufficient undercarriage clearance. A violation of this provision is a Class C misdemeanor with a fine range of $50 to $200. The Legislature sought to remedy the problem of damage caused to intersected railway tracks due to insufficient clearance between the low-lying body of a vehicle and a railroad grade crossing.

Amends Section 522.071(a) of the Transportation Code to expand the offense of driving a CMV on a highway when a person is subject to an out-of-service order, to those times when either the person's employer or the motor vehicle operated are subject to such an order. Likewise amends Section 522.072(a) of the Transportation Code to provide that an employer may not knowingly permit a person to drive a CMV when the person, the vehicle, or the employer is subject to an out-of-service order. This legislation accompanies SB 333 in expanding the seriousness and scope of out-of-service orders for commercial driver's license-holders. Now, employers and vehicles must be free of out-of-service orders, in addition to the individual driver.

Amends Sections 521.297, 522.081, and 522.087 of the Transportation Code to clarify license disqualification rules. A license disqualification takes effect on the 40th day after the person receives notice of the disqualification unless there is a disqualification currently in effect, in which case, the periods of disqualification run consecutively. A license disqualification from driving a CMV determined to constitute an imminent hazard runs concurrent to any existing disqualification for imminent hazard. A commercial driver's license disqualification for the commission of serious traffic violations or a railroad grade crossing violation runs consecutively to any other disqualification already in effect. This elucidates the obligation of DPS regarding license disqualifications in accordance with public safety interests and federal standards for commercial driver's license-holders. Imminent hazard license disqualifications are allowed to run concurrently, while any other disqualification would run consecutively.

Amends Section 521.049 of the Transportation Code by creating Subsection (d) to require DPS to respond to a request for a driving record check received from another state within 30 days of the request. Through this legislation, the standard has been set for reporting to similar state transportation data-collection agencies nationwide.

Creates Sections 522.054 and 522.055 of the Transportation Code to allow DPS to deny renewal of a Texas CDL after receiving necessary information regarding the license-holder's failure to appear or failure to pay or satisfy a judgment in a matter involving a motor vehicle traffic control violation in another state in accordance with federal regulations.

Amends two definitions in Section 522.003 of the Transportation Code: "conviction" now includes a plea of guilty or *nolo contendere* accepted by the court; "hazardous materials" now conforms to the definition under 49 C.F.R. Section 383.5.

Amends Subsection (a) of Section 522.004 of the Transportation Code to add to the exemption from CDL law, a CMV when used for military purposes or by military personnel. The new definition of "conviction" allows the defendant's plea of guilty or *nolo* to constitute a conviction, rather than the former definition requiring an "adjudication of guilt" or "payment of fine or court costs."

Medium Priority

Transfer of Registration and the Removal of License Plates for the Sale or Transfer of Used Vehicles
HB 310 Eff. January 1, 2008

Under prior law, the license plate and registration insignia affixed to a motor vehicle remained on the vehicle even after a sale or transfer. It was the responsibility of the buyer to file the proper paperwork with the TxDOT to transfer required vehicle information and ownership of the motor vehicle so that it was properly documented in Texas motor vehicle records. However, the process was not always followed by the buyer and a vehicle could be sold numerous times, which then made the process of determining ownership of a motor vehicle a difficult task for law enforcement.

Amends Section 502.180(b) of the Transportation Code to provide that subject to Subchapter I, TxDOT is required to issue only one license plate or set of plates for a vehicle during a five-year period.

Creates Subchapter I of the Transportation Code, entitled "Registration, Transfer and Removal of License Plates for the Sale or Transfer of Used Vehicles."

Section 502.451 authorizes the seller or transferor of a vehicle to remove each license plate and the registration insignia issued for the vehicle. If removed, the license plate(s) must be disposed of in a manner specified by TxDOT or transferred to another vehicle owned by the seller or transferor. The part of the registration period that remains at the time the vehicle is sold or transferred is required to continue with the vehicle; the registration does not transfer with the license plates or registration validation insignia.

Section 502.452 authorizes a person to use license plates removed from one vehicle under Section 502.451 on another vehicle that is titled in the person's name provided that the person obtains TxDOT approval, new registration insignia, and pays the appropriate fees under Section 502.453. A person may use the license plates removed from a vehicle under Section 502.451 on a new vehicle purchased from a licensed dealer after the person obtains TxDOT approval and pays the applicable title and

vehicle registration fees.

Section 502.454 authorizes a purchaser or transferee to obtain from TxDOT a temporary permit for a single-trip permit with a motor vehicle that has had the license plates and registration insignia removed and is not authorized to be driven on the public roadway because the registration and license plates are not attached. The temporary permit can be obtained by filling out an application form at TxDOT or on TxDOT's website. TxDOT can refuse a permit to an individual who appears to be abusing the privilege given by this section.

Section 502.455 provides that this subchapter applies only to passenger cars and light trucks and that in order to be transferred, license plates must be appropriate to the class of vehicle to which the plates are being transferred. This section expires on August 31, 2011.

Registration of Foreign Commercial Motor Vehicles
HB 313 Eff. September 1, 2007

Amends Section 648.101 of the Transportation Code. A foreign CMV is not required to be registered in Texas if the vehicle is used solely for the transportation of cargo across the border, the vehicle remains in Texas for less than 48 hours for each load of cargo transported, and the vehicle is registered and licensed in another country.

Prior to this amendment, a full exemption from registration existed for a foreign commercial vehicle operating within a border commercial zone if the vehicle is registered to another state. As such, many commercial carriers that resided in Mexico purchased their commercial vehicles in another state in the United States to avoid Texas's registration fees, yet operated these vehicles in Texas's border zones. HB 313 requires a foreign commercial vehicle to be registered in the country of origin in order to be exempt from registering in Texas.

Three-Point Seat Belts on Buses Transporting Schoolchildren
HB 323 Eff. September 1, 2007

Prior to this amendment, all vehicles were required to have safety belts including cars and small buses. However, the definition of "bus" did not include a large school bus or charter bus. With nothing restraining a student, if there were an accident the student could be thrown from his or her seat or even ejected from the bus.

Section 547.701 of the Transportation Code is amended by creating Subsection (e) which defines "bus" and provides that a bus operated or contracted for use by a school must be equipped with three-point seat belts for each passenger. This section applies to each bus purchased by a school district on or after September 1, 2010, and each bus chartered by a school for use by a school district after September 1, 2011.

Chapter 34 of the Education Code is also amended to create Sections 34.012, 34.013, 34.014, and 34.015. These sections provide that the State Board of Education shall develop and make available a program of instructions regarding the proper use of a three-point seatbelt. Also, a school district shall require all students riding a bus operated by the school district to wear a seatbelt. A school district may implement a disciplinary procedure to enforce the use of seat belts by students. Further, school districts must make an annual report to the State regarding the number of accidents in which the district's buses were involved. The report must include the type of bus involved in the accident; whether the bus was equipped with seat belts; the number and type of injuries sustained during the accident; and whether injured passengers were wearing seat belts at the time of the accident.

Suspending Driver's License; Vehicle used in the Commission of Manslaughter
HB 1049 Eff. September 1, 2007

Amends Section 521.341 of the Transportation Code to provide that on final conviction of an offender who used a motor vehicle in the commission of manslaughter the offender's driver's license is automatically suspended. Prior to this legislation, the driver's license of a person convicted of certain offenses, such as criminally negligent homicide, driving while intoxicated, and intoxicated manslaughter was automatically suspended. This legislation adds using a vehicle in the commission of manslaughter to the list of offenses that result in the suspension of the offender's license.

Failure to Stop after Motor Vehicle Accident
HB 1840 Eff. September 1, 2007

Amends Section 550.021 of the Transportation Code. The penalty for failing to stop after an accident that resulted in serious bodily injury or death is increased to a 3rd degree felony. If the accident did not result in serious bodily injury or death, the offense is punishable by imprisonment in a county jail for not more than one year or in the Texas Department of Criminal Justice for not more than five years, a fine not to exceed $5,000, or both the fine and imprisonment.

Prior to this legislation, the punishment for failure to render aid was confinement in a county jail for up to one year, confinement in a penitentiary for up to five years, and/or a fine not to exceed $10,000.

Use of All-Terrain Vehicles for Utility Work
HB 2127 Eff. September 1, 2007

Amends Section 663.037 of the Transportation Code. The operator of an all-terrain vehicle may drive on a public street, road, or highway that is not an interstate or limited-access highway if the operator is performing utility work.

Prior to this amendment, privately owned utility companies were prohibited from using all-terrain vehicles on public streets, roads, or highways yet employees of municipal utility companies were permitted to use such vehicles. This legislation allows employees of municipal utility companies and privately owned companies to use all-terrain vehicles in the same manner.

Registration of Semi-Trailers
HB 2992 Eff. September 1, 2007

Amends Section 502.167(j) of the Transportation Code to remove the requirement that a person own 50 or more semi-trailers at the time the application for a five-year registration is made.

Prior to this legislation, a company or person had to own 50 or more semi-trailers in order to be eligible to register the trailers for a period of five consecutive years. This requirement caused some companies to register their semi-trailers in other states that have more flexible regulations.

School Bus Safety
HB 3190 Eff. September 1, 2007

Nearly 1.5 million schoolchildren rely on school buses for transportation to and from school and school events. In recent years, the number of school buses in operation in Texas has increased by almost 20 percent. The safety of children on those buses is of paramount importance.

Amends Section 521.022(d) of the Transportation Code to provide that the minimum standards permitted by the Department of Transportation for a person operating a school bus must provide that a person's driving record is not acceptable if the person has been convicted within the last 10 years of: driving while intoxicated, driving while intoxicated with a child passenger, intoxication assault, or intoxication manslaughter.

Amends Section 541.201 of the Transportation Code to define "multifunction school activity bus" as a bus that is used to transport schoolchildren on a school-related activity trip other than the routes to and from school. Section 545.001 is also amended to provide that the term "school bus" includes a multifunction school activity bus.

Amends Section 545.413(a) of the Transportation Code to provide that a person commits an offense if the person operates a school bus equipped with safety belts for the operator's seat and the person does not wear a safety belt.

Creates Section 545.426 which provides that a person may not operate a school bus if the door to the bus is open or the bus is over capacity. The operator also must prohibit passengers from standing or sitting on the floor while the bus is being operated.

Creates Section 547.7012 which provides that a multifunction school activity bus may not be painted the National School Bus Glossy Yellow color.

Also creates Section 34.0021 of the Education Code providing that each school district must conduct a training session for students and teachers concerning procedures for evacuating a school bus in the event of an emergency. This training must take place at least twice per year; once in the fall and once in the spring. Once a training session has been completed the school district must provide TxDOT with a record stating that the district has completed the training.

Parking for Disabled Veterans
SB 251 Eff. September 1, 2007

Amends Section 681.009 of the Transportation Code to provide that vehicles displaying a disabled veterans license plate may park in any parking spot reserved for vehicles with a disabled parking placard or license plate.

Responsibility of an Employer of Commercial Drivers
SB 332 Eff. September 1, 2007

Amends Section 522.072(a) of the Transportation Code and creates Subsections (b-1) and (d) to provide that an employer may not knowingly permit a person to drive a CMV during a period in which the person has been denied a commercial driver's license (CDL), has been disqualified from driving a commercial vehicle, is subject to an out-of-service order in a state, or has more than one CDL. An employer also may not knowingly permit a person to drive a commercial vehicle if the employer is subject to an out-of-service order that affects the driver of the vehicle. A violation of Subsections (a) or (b) is a Class B misdemeanor.

Unmarked Vehicles for Fire Marshals and Arson Investigators
SB 526 Eff. Immediately

Amends Section 721.005 of the Transportation Code to provide that automobiles that are used to perform an official duty by a municipal fire marshal or arson investigator can be unmarked.

See also HB 195, HB 586, HB 2267, SB 1083.

Note

The TMCEC Academic Schedule and At-A-Glance list of courses can be located at www.tmcec.com. Please remember to register early. Courses fill up quickly!

Deferred Disposition and DSC

Driving Safety Course for Military Dependents and Speeding 95 mph or Greater
HB 586 Eff. September 1, 2007

Amends Article 45.0511(b) of the Code of Criminal Procedure to prohibit a defendant who is charged with speeding 95 miles per hour or more from seeking dismissal through a driving safety course or motorcycle operator course.

Further amends Article 45.0511, Subsections (b) and (c) to permit spouses and dependent children of military personnel to take a driving safety course even without a valid Texas driver's license or permit. As is currently the practice for active duty members of the U.S. military, spouses and dependants should swear to an affidavit stating that they are not taking a driving safety course in a different state and have not completed one in the last 12 months.

Prior law prohibited someone who was charged with speeding 25 miles per hour or more over the posted speed limit from seeking dismissal by taking a driving safety course. The 79th Legislature, however, increased the speed limit in some rural areas to 80 miles per hour. That would enable someone driving up to 104 miles an hour to be eligible to take a driving safety course rather than face other penalties, presenting a significant safety risk. Now, only someone driving 94 miles per hour or lower would be eligible to take the driving safety course.

Senate Transportation & Homeland Security Committee changes applied the deferential treatment of military personnel to their spouses and dependants with regard to driving safety course eligibility in Texas in accordance with national trends extending in-state treatment to military personnel and their dependents.

Deferred Disposition and Indigent Issues
HB 2267 Eff. September 1, 2007

Amends Article 45.051 of the Code of Criminal Procedure by amending Subsections (d) and (d-1) and creating Subsections (a-1), (c-1), and (c-2).

Notwithstanding any other provision of law, Subsection (a-1) authorizes a judge to allow the defendant to discharge court costs associated with deferred disposition: (1) in installments during the defendant's probation period; (2) by performing community service under Article 45.049 (Community Service in Satisfaction of Fine or Costs), if the defendant is deemed eligible; or (3) by a combination of the aforementioned actions.

Subsection (c-1) requires the court to provide the defendant with an opportunity to show cause if the defendant fails to present the court with satisfactory proof of compliance within the deferral period. The court is required to notify the defendant in writing, mailed to either the address on file with the court or the address that appeared on the citation. The court shall require the defendant to appear at the time and place stated in the notice and show cause why the deferral should not be revoked.

Subsection (c-2) authorizes a court, on the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements imposed by the judge under this article, to allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements.

Subsection (d) authorizes a judge, after a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2), to impose the fine or impose a lesser fine.

Subsection (d-1) extends the requirement of Subsection (c-1) and (c-2) to circumstances where it is mandatory that the defendant complete a driving safety course or an examination under Subsection (b-1). However, if the defendant does not show cause or fails to provide proof by the conclusion of an additional period provided under Subsection (c-2), the court shall impose the original fine assessed.

In *Tate v. Short,* 401 U.S. 395 (1971), the U.S. Supreme Court held that when it comes to fines and court costs, due process requires that indigent persons be provided an alternative means of discharging them. While the Code of Criminal Procedure generally reflects the holding in *Tate*, one exception has been deferred disposition. As written previously, judges had no express authority to grant deferred disposition unless the defendant first pays all court costs. No such requirement exists in courts that utilize deferred adjudication, and many judges have ignored the express language of the statute in order to comply with *Tate*. Other judges have been reluctant to offer such accommodations absent express statutory authorization. Some local governments have feared that by not collecting all court costs pursuant to the statute they would forfeit the 10 percent of state court costs that are retained locally. This amendment addresses such concerns.

Another feature of HB 2267 is that it requires a show cause hearing if the defendant fails to provide satisfactory proof of complying with the court's deferral order. This amendment parallels the longstanding requirement in Article 45.0511(i) of the Code of Criminal Procedure governing court ordered driving safety courses.

Upon a showing of good cause, the court may allow an additional period to present proof of compliance with the court's order. "Additional period," however, is not defined. Presumably, in light of Subsection (a) such a period is a period not to exceed 180 days.

Resolving Redundancies in the Deferred Disposition Statute
SB 545 Eff. September 1, 2007

Amends Article 45.051(f) of the Code of Criminal Procedure to provide that the suspension of a sentence and deferral of final disposition allowed in Article 45.051 does not apply to an offense under Section 542.404 of the Transportation Code (penalty range doubled for offenses that occur in a construction or maintenance work zone with workers present). The provision that an offense under Section 729.004(b) (Operation of a Motor Vehicle by a Minor) does not qualify for the suspension of sentence and deferral of final disposition provided for by Article 45.051 is deleted.

This purports to be a conforming change similar to one contained in HB 3167. Both amendments are aimed at resolving the conflict of having two Subsections (f) in the deferred disposition statute.

COMPARISONS OF DEFERRED OPTIONS

(Effective September 1, 2007)

	Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.	Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.
Application/Use	Applies to the following traffic offenses: • Section 472.022, T.C.; (Obeying Warning Signs) • Subtitle C, Title 7, T.C.; (Rules of the Road) • Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minors) Exceptions: • 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. • 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.); • Passing a school bus loading and unloading children Sec. 545.066, T.C.; • Leaving the scene of an accident Sec. 550.022 or 550.023, T.C.; or • Speeding 25 m.p.h. or more over the limit or in excess of 95 m.p.h. Art. 45.0511(b)(5), C.C.P. Court must advise person charged with offenses under Subtitle C, Rules of the Road, T.C., of right to take course.	Applies to fine-only offenses except: • 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 • 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. • A traffic offense committed by a person who holds a commercial driver's license; or held a commercial driver's license when offense committed (Art. 45.051(f)(2), C.C.P.). (Traffic offense is defined in Section 720.001(f)(2), T.C., to mean an offense under Chapter 521 (driver's license offenses) or Subtitle C, Rules of the Road offense.)
How Often	Defendant may request if the defendant has not had a driving safety course within the 12 months preceding the date of the current offense. Under Subsection (u), defendants may take DSC for a violation of Sec. 545.412, T.C., even if they have taken DSC in the last 12 months. Defendants may do this only if the judge requires the defendant to take a specialized 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. If the defendant is on active military duty, is the spouse or dependant child of a person on active military duty, the defendant cannot have taken a driving safety course/motorcycle operator course in another state within the 12 months preceding the date of the current offense. Under Subsection (d), (notwithstanding subsections (b)(2) & (3)), the court may grant DSC/MOC before final disposition of the case.	Deferred may be granted any time at the judge's discretion. (Court reports to the Department of Public Safety (DPS) the order of deferred for Alcoholic Beverage Code offenses when deferred is granted.)
Plea Required	A plea of guilty or *nolo contendere* is required when the request is made. Request must be made on or before answer date on citation. Judge has discretion to grant course before final disposition of the case under Subsection (d).	A plea of guilty of *nolo contendere* or a finding of guilt required.
Proof of TX DL or on Active Military Duty	Defendant must have a Texas driver's license or permit unless the defendant is on active military duty or the spouse or dependent child of a person on active military duty, then the defendant does not have to have a Texas driver's license or permit.	NO
Proof of Financial Responsibility	Defendants are required to present proof of financial responsibility under Chapter 601, Transportation Code.	NO
Court Costs Collected	YES Due when request made.	YES Judge may allow defendant to pay out during deferral period by time payments or performing community service or both time payments and community service.
Time Limit	Court defers imposition of the judgment for 90 days. The defendant must take the course and present evidence of completion by the 90th 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. Under Subsection (u), the defendant's driver's license record and affidavit are required to show that defendant did not have specialized DSC in preceding 12 months.	Not to exceed 180 days. (1 to 180 days)
Optional Administrative or Special Expense Fee	If defendant makes request on or before answer date, the court may only assess an administrative $10 non-refundable fee. 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.	OPTIONAL SPECIAL EXPENSE FEE not to exceed the amount of fine assessed at the time the court grants the deferral, but collected at the end of the deferral period after the court dismisses the case.

Rev. 07/07

	Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.	Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.
Twelve Dollar Fee* for Driving Record	Court may, at time defendant requests DSC/MOC, require defendant to pay a $12* fee for copy of defendant's driving record and court may obtain a copy of driving record from TexasOnline. Twelve dollar fee must be remitted to State Comptroller like other court costs.	Court not required to obtain driving record and there is no authorization for judge to collect a fee for a driving record.
Other Requirements	Request may be oral or in writing. If mailed, request must be sent certified mail. (Article 45.0511(b)(3), C.C.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, or show that he or she is on active military duty.On or before the 90th day after the request the defendant must present: 1. Evidence of course completion; 2. A copy of his or her driving record as maintained by DPS, if any; 3. If the defendant is on active military 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. 4. 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 date of the current offense. 5. If the offense is charged under section 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.	Requirements: Judge <u>may</u> require the following: 1. Post bond in the amount of the fine assessed to secure payment of the fine; 2. Pay restitution to the victim of the offense in an amount not to exceed the fine assessed; 3. Submit to professional counseling; 4. Submit to diagnostic testing for alcohol or controlled substance or drug; 5. Submit to psychosocial assessment; 6. Participate in an alcohol or drug abuse treatment or education program; 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; 8. Complete DSC or other course as directed by the judge; 9. Present to the court satisfactory evidence of compliance with the terms imposed by the judge; and 10. Comply with any other reasonable condition. --- Requirements - Judge <u>must</u>: If defendant under age 25 is charged with a moving traffic offense, Subsection (b)(8) does not apply. The judge shall require DSC. 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. For 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. 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. **1st offense**: Eight to 12 hours. **2nd offense**: 20 to 40 hours.
Satisfactory Completion	Judge shall remove the judgment and dismiss the case; the dismissal must be noted in the docket. Court reports the completion date of the course after the court dismisses the case.	Judge shall dismiss and note in docket that complaint is dismissed. (Only report to DPS the order of deferred for Alcoholic Beverage Code offenses when deferred is granted.)
Failure to Complete	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. If a defendant fails to appear at the show cause hearing, the court may issue a *capias pro fine*.	If defendant fails to comply with terms of the deferral, the court shall set a show cause hearing and notify the person in writing by mail to the address on file and required the person to show cause why the order of deferral should not be revoked. The judge may on a showing of good cause allow an additional period during which the defendant may present evidence of the compliance with requirements. If at the show cause hearing or by conclusion of the additional period person does not present satisfactory evidence of compliance, the judge may enter judgment that imposes the fine or may reduce the fine if the person is at least age 25 or older and not charged with a traffic offence. If the person is under age 25 and charged with a traffic offense, the judge may not reduce the fine. If the offense is a traffic offense, the court must report the traffic conviction to DPS. The defendant may pay the fine or appeal. If a defendant fails to pay, the court may issue a *capias pro fine*.
Appeal	The defendant may appeal after judge imposes the judgment.	After the judge enters the judgment and imposes the fine, the defendant may appeal.

**Effective January 1, 2008*

Driving Records Procured by Electronic Means and Related Costs
SB 1083 Eff. September 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

Amends Article 45.0511(c-1) of the Code of Criminal Procedure to define "TexasOnline." It authorizes a judge, at the time the defendant requests a driving safety course or motorcycle operator training course, to require the defendant to pay a $12 fee for obtaining the defendant's driving record by using TexasOnline, and requires DPS to provide by means of TexasOnline a copy of the defendant's driving record on request to the court "as soon as practicable." The custodian of a municipal or county treasury who receives fees collected under this Subsection is required to keep a record of the fees and, without deduction or prorating, forward the fees to the Comptroller of Public Accounts in the manner required for other fees and costs received in connection with criminal cases.

Currently, a judge is authorized to require a defendant to pay $10 for a copy of his or her driving record from DPS. If the defendant's driving record shows that the defendant has not completed a driving safety course or motorcycle operator training course, the judge may allow the defendant to complete the appropriate course. Fees are forwarded to the Comptroller of Public Accounts, who then sends the money to DPS.

Red Light Cameras

Warning Signs at Intersections with Red Light Cameras
HB 1052 Eff. September 1, 2007

Creates Section 544.012 of the Transportation Code, "Notification of Photographic Traffic Monitoring System," to require a municipality that employs a photographic traffic monitoring system to install signs along each roadway leading to an intersection where a red light camera is in use. The signs must be at least 100 feet from the intersection, be easily read by those approaching, indicate the presence of a red light camera, and state that a violation may result in the issuance of a notice of the violation and a monetary penalty.

Prior law did not require Texas cities to notify drivers regarding red light camera use at intersections, but this legislation requires that the public be made aware of their use by posting informational signs approaching each affected intersection. A municipality that fails to post the necessary signs may not impose administrative or civil penalties against a person for failure to comply with the instructions of a traffic control signal, but a peace officer may still issue a citation or arrest an individual who the officer observes to have failed to comply with the instructions of a traffic control signal located at the intersection.

Red Light Cameras
SB 1119 Eff. September 1, 2007

Creates Chapter 707 of the Transportation Code, authorizing a local governmental entity, by ordinance, to implement a photographic traffic signal enforcement system ("system"). The bill provides that the owner of a motor vehicle is liable to the local government for a civil penalty if the vehicle is operated in violation of the instructions of that signal. If a contract is entered into for the administration and enforcement of the system, a local authority will be prohibited from agreeing to pay the contractor a specified percentage of or dollar amount from, each civil penalty collected.

Provisions of the bill establish requirements related to installation and operation of a photographic traffic signal enforcement system, as well as required ordinance provisions and procedures for violation notices. Among the requirements are that the entity conduct a traffic engineering study of the approach at which a system will be installed to determine whether, in addition to or as an alternative to the system, a design change to the approach or a change in the signalization would likely reduce the number of red light violations at the intersection. The local authority is required to report results of the study to a citizen advisory committee appointed to advise on the installation and operation of the system. Certain criteria must be met in selecting an intersection at which a system would be installed.

A local government is required to install signs along each roadway that leads to an intersection at which a system is installed to indicate the presence of a system. See HB 1052 for a description of such signs.

In addition to conducting a traffic engineering study before installing a system, the local authority is required to report the number and type of traffic accidents that occurred at the intersection during the preceding 18 months. After installation, the authority is required to monitor and report annually to the TxDOT the number and type of traffic accidents at the intersection to determine whether the system resulted in a reduction in accidents or their severity. The report must be in writing in the form prescribed by TxDOT. Not later than December 1st of each year, TxDOT is required to publish the information from the report.

The system shall be used for detecting signal violations only. It is a Class A misdemeanor to use the system to produce a recorded image other than in the manner and for the purpose specified in the chapter.

Persons in receipt of a notification of a violation of a photographic traffic control signal enforcement system are allowed to contest imposition of a civil penalty by filing a written request for an administrative hearing. A hearing officer designated by the local government entity will conduct the hearing. The hearing officer's decision may be appealed to a justice court located in the county in which the local government entity is located, or if the local entity is a municipality, in a municipal court within the municipality.

If the owner of a motor vehicle is delinquent in the payment of a civil penalty, the county assessor-collector or TxDOT will be authorized to refuse to register the motor vehicle alleged to have been involved in the violation.

The bill defines system expenses and allows local authorities to retain certain expense amounts before remitting 50 percent of the net revenues to the state for deposit in a Regional Trauma Account. The remainder, after expenses and remittance to the state, will be deposited into a special account in the local treasury to be used for traffic safety programs. The bill provides that the maximum civil or administrative penalty is $75; and the maximum late penalty is $25.

The bill allows the Comptroller to audit local authorities and impose a penalty equal to twice the amount of the money retained

in excess of permissible amounts for retention.

The bill also adds Chapter 782 to the Health and Safety Code to create the General Revenue Account—Regional Trauma Account to receive the remittances. Money in the account is dedicated and can only be appropriated to the Health and Human Services Commission to make distributions to trauma service area regional advisory councils to fund uncompensated care provided by designated trauma centers. The distributions are proportional to the amounts deposited to the account by local authorities.

See also HB 1623.

Ordinances & Related Municipal Law Issues

High Priority

Municipality May Not Enforce Compliance with Speed Limits by an Automated Traffic Control System
HB 922 Eff. Immediately

Creates Section 542.2035 of the Transportation Code, prohibiting a municipality from implementing or operating a photographic device, radar device, laser device, or other electrical or mechanical device on a highway or street to record a vehicle's speed and enforce compliance with posted speed limits. The Attorney General is required to enforce this mandate.

Several municipalities have begun using radar, speed vans, and speed enforcement cameras to record evidence of speeding offenses and then issue citations to the registered vehicle owner by mail. This bill will prohibit municipalities from implementing or operating these devices on their highways and streets to enforce speed limits. However, county and state governments are not subject to this legislation, and the Texas Department of Transportation (TxDOT) is currently launching a $2.5 million project on I-10 in Hudspeth County and at two locations on Texas 6 near Bryan that will issue letters, not citations, to offenders and monitor whether average speeds in those areas decrease.

Confidentiality of Appraisal Records for Current and Former Peace Officers and Certain Attorneys
HB 1141 Eff. Immediately

Amends Section 25.025(a) of the Tax Code by amending Subsection (a)(1) and creating Subsection (a)(6). Information in appraisal records is confidential if the individual is a current or former peace officer or current or former district, criminal district, county, or municipal attorney. The information is confidential if it identifies the individual's home address and the individual chooses to restrict the public's access to the information.

Due to their roles in the criminal justice system, employees in prosecutors' offices and their families are at risk of retaliation and harassment from criminal defendants. The purpose of this legislation is to protect these current and former employees.

Prior to this legislation, information was confidential only for a current peace officer, county jailer, employee of the Texas Department of Criminal Justice, commissioned security officer, or victim of family violence.

Dog Attacks on Persons
HB 1355 Eff. September 1, 2007

Amends the Health and Safety Code as it relates to dog attacks on persons. The crux of the amendments relate to prescribing tougher criminal penalties for owners of dangerous dogs. Under the provisions of the bill, a dog attack that results in serious bodily injury would be punishable as a felony of the 3rd degree and a dog attack that results in death would be punishable as a felony of the 2nd degree. A dog attack that results in bodily injury would remain punishable as a Class C misdemeanor. The bill also repeals Section 822.044(d) of the Health and Safety Code, which created civil penalties in addition to criminal prosecution for offenses under the code.

Under prior law, a person committed an offense if the person did not properly secure a dog that had been declared a dangerous dog and that dog injured a person. A dog can be declared a dangerous dog by animal control authorities only after there is evidence produced that a dog is aggressive or has injured someone in the past. If a dog is declared a dangerous dog, it is the responsibility and duty of the owner to properly secure the dog, post warnings, and obtain insurance. The prior criminal penalties were a Class C misdemeanor if a dangerous dog injured a person and a Class A misdemeanor if the dog caused serious bodily injury or death. In addition, the dog could be ordered destroyed.

HB 1355 requires all dog owners to properly secure their dogs on their property, regardless of whether the dog has been declared a "dangerous dog" in the past. The bill provides that the dog owner can be held criminally responsible if the dog causes serious bodily injury or death at a location other than the owner's property in an unprovoked attack and if the owner, by criminal negligence, failed to secure the dog. The bill provides that a person commits an offense if the person knows the dog is a dangerous dog and the dog makes an unprovoked attack on another person that occurs at a location other than a secure enclosure in which the dog is restrained, and that causes serious bodily injury or death to the other person. The bill provides that a person's "real property" includes property the person is entitled to possess or occupy under a lease or other agreement.

The bill also provides defenses to prosecution for many professionals who deal with dogs on a regular basis. It is a defense to prosecution that a person is a veterinarian, a peace officer, an animal shelter employee, or a city, county, or state employee who deals with stray animals and has temporary control of the dog in connection with that position; an employee of the Texas Department of Criminal Justice or a law enforcement agency that trains or uses dogs for law enforcement or corrections purposes and is training or using the dog in connection with the person's official capacity; a dog trainer or an employee of a guard dog company and has temporary ownership,

custody, or control of the dog in connection with that position; or disabled and uses the dog to provide assistance, the dog is trained to provide assistance to a person with a disability, and the person is using the dog to provide assistance in connection with the person's disability.

Finally, the bill provides that it is a defense to prosecution if the person attacked by the dog was engaged in criminal conduct at the time of the attack. It is an affirmative defense to prosecution that, at the time of the conduct charged, the person and the dog are participating in an organized search and rescue effort at the request of law enforcement, an organized dog show, a lawful hunting activity, a farming activity, or a ranching activity. It is a defense to prosecution that, at the time of the conduct charged, the person's dog was on a leash and the person was in immediate control of the dog or the person was making immediate and reasonable attempts to gain control of the dog. The bill does not prohibit a city or county from adopting leash or registration requirements applicable.

Remedies for Common Nuisances
HB 1551 Eff. Immediately

Amends Section 125.002(e) of the Civil Practice and Remedies Code. If a judgment is in favor of the petitioner, the court shall grant an injunction ordering the defendant to close the place where the nuisance exists for one year. An exception currently exists for defendants who post bond. The amended section deletes this exception; the place where the nuisance exists must be closed for one year, even if the defendant posts bond.

Previously, the law allowed a bond to be posted that permitted a property or business identified as a public nuisance to remain open. Chapter 125 of the Civil Practice and Remedies Code was intended to be used by local governments to address locations where owners, landlords, or property managers fail to take the necessary steps to prevent nuisance activities. This bill strengthens the provisions of Chapter 125 by eliminating the ability of a defendant to continue to maintain a public nuisance. Such nuisances include habitual commission of certain crimes and maintaining a multiunit residential property where persons are habitually allowed to commit certain felonious acts.

Contacting Security Alarm Customers
HB 1784 Eff. September 1, 2007

Amends Sections 214.199 and 1702.284 of the Local Government Code. A municipality may use the list of security alarm customers residing within their municipality to notify customers of any proposed changes to the city's alarm response policy or to inform the occupant of his or her option to contract with a security services provider to respond to the occupant's alarm.

Injunction for Unlicensed Massage Therapy Establishments
HB 2644 Eff. September 1, 2007

Amends Section 455.351(e) of the Occupations Code. Under Section 455.351(a), the Attorney General, a district or county attorney, a municipal attorney, or the department may institute an action for injunctive relief to restrain a person operating an unlicensed massage therapy establishment. Prior to the amendment, the Attorney General, district and county attorney, and department could recover reasonable expenses incurred in obtaining injunctive relief. This legislation adds municipal attorneys to the list of individuals who may recover expenses. These expenses include court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

City or County May Designate a Code Enforcement Official to Issue Search Warrants
HB 3558 Eff. September 1, 2007

Authorizes each city or county to designate one or more code enforcement officials for the purpose of being issued a search warrant to inspect specified premises in order to determine the presence of fire or health hazards, unsafe building conditions, or violations of any fire, health, or building regulation, statute, or ordinance.

Under prior law, a city or county was authorized to designate only one code enforcement official for the purpose of being issued a search warrant for fire, health, and code inspections. This limitation created unnecessary backlogs for counties and cities.

Broadening the Method of Delivery for Notices Regarding Substandard Buildings
SB 352 Eff. September 1, 2007

Amends Sections 54.035(a), 54.039(a), 214.001(d) and (g), and 214.0012 of the Local Government Code. Requires notices regarding substandard buildings to be sent by personal delivery, by certified U.S. Mail with return-receipt-requested, or by delivery via the U.S. Postal Service using signature confirmation service.

Under prior law, notices regarding substandard buildings were required to be sent by personal delivery or by certified U.S. Mail, return-receipt-requested. Since there are less expensive delivery methods that provide verification procedures, broadening the method of delivery may be more cost-effective.

Sale and Consumption of Alcoholic Beverages near Homeless Shelters and Substance Abuse Treatment Centers
SB 1238 Eff. September 1, 2007

Creates Section 109.36 of the Alcoholic Beverage Code. A commissioners court or the governing board of city or town may prohibit the possession of an open container or consumption of an alcoholic beverage on a public street, alley, or sidewalk within 1,000 feet of a homeless shelter or substance abuse treatment center that is not located in a central business district. The authority of a commissioners court to impose such restrictions is limited to unincorporated areas within the county.

Medium Priority

Food Manager Certificates
HB 1064 Eff. September 1, 2007

Amends Section 12.0112(b) of the Health and Safety Code. Food-manager certificates are exempt from Section 12.0112 (Term of License) in the Health and Safety Code.

In 2003, the Texas Department of State Health Services increased the term for food safety certificates to two years. Food-manager certificates, which previously had a term of five years, were unintentionally shortened by this legislation. HB 1064 restores the five-year term for food-manager certificates.

Municipal Consent to the Addition of a Political Subdivision of Land Located in the ETJ of the Municipality
HB 2091 Eff. Immediately

Amends Subchapter C of Chapter 42 of the Local Government Code. The heading of the Subchapter is changed to: Creation or Expansion of Governmental Entities in Extraterritorial Jurisdiction.

Creates Section 42.0425 of the Local Government Code providing that a political subdivision whose purpose is to provide fresh water for domestic or commercial uses may not add land that is located in the ETJ of a municipality unless the governing body of the municipality gives written consent. Written consent can be given by ordinance or resolution. The municipality may not place any conditions or other restrictions on the political subdivision other than those that are expressly permitted by the Water Code. An owner of land in the area proposed to be added to the political subdivision may not unreasonably refuse to enter into a contract for water or sanitary sewer services with the municipality under Section 42.042(c).

Amends Subchapter B of Chapter 54 of the Water Code to include the expansion of water districts in the heading.

Creates Section 54.0165 which provides that a water district may not add land that is located in the ETJ of a municipality unless the governing body of the municipality provides written consent. Written consent can be given by ordinance or resolution. The municipality may not place any conditions or restrictions on the political subdivision other than those that are expressly permitted by the Water Code. An owner of land in the area proposed to be added to the political subdivision may not unreasonably refuse to enter into a contract for water or sanitary sewer services with the municipality under Section 54.016(c).

In areas that are adjacent to urban or developed areas it is important that there be adequate utilities in the area to support the high density of population and mixed uses of residential and commercial properties. Prior to this amendment, the law required that before a special district was created to provide water, sewer, roadway, or drainage in the ETJ of a municipality, the municipality's consent was required to avoid duplication of utility services, roads, or provision of other services.

Consolidation of Municipalities
HB 2212 Eff. Immediately

Amends Section 61.001 of the Local Government Code to provide that the following types of municipalities may consolidate under one government: two or more contiguous municipalities in the same county; or two noncontiguous municipalities located in the same county if the distance between the two municipalities is less than 2.5 miles and each municipality is located within one mile of an international boundary.

Municipality Approval of Certain Replats
HB 2281 Eff. Immediately

Amends Section 212.0065(a) of the Local Government Code. In addition to minor plats, the governing body of a municipality may delegate to employees of the municipality or a utility owned or operated by the municipality the ability to approve replats. The plats or replats must involve four or fewer lots facing an existing street and cannot require the creation of a new street or extension of municipal functions.

Use of Municipal Quarry Site Located in Different Municipality
HB 2910 Eff. Immediately

Amends Chapter 113 of the Natural Resources Code by creating Subchapter G. The subchapter applies only to a rock quarry owned or leased by a municipality with a population of more than 650,000, that is located in a municipality with a population of less than 50,000, and situated within one mile of residential property.

Before the municipality that owns or leases the quarry may dispose of water treatment by-products, the municipality must receive consent from the governing body of the municipality in which the quarry is located. The governing body of the municipality where the quarry is located cannot provide consent if the health, safety, or welfare of residents may be negatively affected, the quarry site violates zoning regulations, or the quarry site does not correspond with the municipality's development plans.

Several cities own property in the boundaries of neighboring cities, and there are times when a city with property in a neighboring city proposes a use for the property that is not compatible with local land use regulations or the wishes of the citizens. The purpose of this legislation is to ensure that a city does not violate a neighboring city's local regulations and/or the desires of the city's citizenry.

Extent of ETJ of Certain Municipalities
HB 3325 Eff. Immediately

Amends Section 42.021 of the Local Government Code to provide that the ETJ of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality that is located within five miles of those boundaries on the barrier island if the municipality has a population of more than 2,000; and is located entirely on a barrier island in the Gulf of Mexico and within 30 miles of an international border.

As a result of the unique challenges of development on a barrier island, an environmentally sensitive part of the state, the Town of South Padre Island wishes to extend its ETJ to better protect the beach and dune system of southern South Padre Island. This amendment grants the Town of South Padre Island a five mile extension.

Tax in Crime Control and Prevention Districts Created by a Municipality
HB 3417 Eff. Immediately

Creates Section 321.108 of the Tax Code. In order to fund a crime control and prevention district, a sales and use tax shall

Special appreciation is expressed to Representative Burt R. Solomon for sponsoring HR 973 ***(summarized on page 57).***

be adopted in a municipality with such a district. The revenue from the tax must be used only for the purpose of financing the operation of the crime control and prevention district. The governing body of the municipality may call an election in the district to raise or decrease the tax in one-eighth of one percent increments. An item, transaction, or service that is taxable in a municipality under a sales or use tax authorized by another section of the Tax Code is also taxable under this section.

Statewide Mutual Aid System between Local Governments
SB 11 Eff. September 1, 2007

Establishes a statewide mutual aid system between local governments, emergency management directors in political subdivisions, and disaster districts to engage in homeland security preparedness and response activities.

Amends Section 161.009 of the Health and Safety Code to expand the Class A misdemeanor penalties for disclosure of information to a person who fails to remove a person's immunization information in violation of the disaster and emergency recording guidelines.

Amends Section 81.151 of the Health and Safety Code, providing that municipal attorneys, along with county and district attorneys, at the request of the health authority, may be required to file a sworn application for a court order for the management of a person with a communicable disease. A single application may be filed for a group if the department or health authority reasonably suspects that five or more persons have been exposed to a communicable disease. The application should contain a description of the group and the location where the members may be found; a narrative of how the group was exposed or infected; an estimate of how many persons are in the group; and a list of the group members' names and addresses, or a statement regarding why they are unavailable.

Amends Section 51.212 of the Education Code to authorize campus security personnel at private institutions of higher education to employ and commission peace officers to enforce state and local laws and applicable municipal ordinances. These officers' powers, privileges, and immunities extend to the property limits of the private institution or while performing other duties assigned to him or her by the institution consistent with the educational mission of the institution, or if he or she is requested by another law enforcement agency to provide assistance in enforcing state or local laws, including municipal ordinances.

Creates Section 51.2125 of the Education Code. For private institutions with a municipal population of one million and a fall head-count enrollment of more than 10,000, the school board and the city council may enter into a written mutual assistance agreement where peace officers commissioned by the institution or the municipality assist the other party to the agreement at their direction. The agreement must be reviewed annually and may be terminated at any time.

Amends Section 20A.02 of the Penal Code to expand the offense of person trafficking involving forced labor to a person with intent or knowledge that the trafficked person will intentionally or knowingly benefit from participating in a venture that involves forced labor or services.

Amends Article 61.02 of the Code of Criminal Procedure to require criminal information collected by a criminal justice agency for investigating or prosecuting the criminal activities of criminal street gangs to include: judgments under laws that include participation in a criminal street gang as an element or finding of the offense (for example, Section 37.121 of the Education Code); self-admission of participation in a gang made during a judicial proceeding; or evidence that the individual used expressions of letters, numbers, words, or marks associated with a criminal street gang.

For criminal justice agencies, including municipal agencies, required to collect this criminal information, it must be maintained for three years and then removed pursuant to Article 61.06 of the Code of Criminal Procedure. Amends Subsection (c) to exclude from this three-year period: any time when the individual is confined in a correctional facility associated with the Texas Department of Criminal Justice, Texas Youth Commission, or a county jail or facility operated by a juvenile board instead of confinement in a correctional facility. Creates Article 61.075 of the Code of Criminal Procedure to allow a person, parent, or guardian to request a law enforcement agency to determine whether the agency has collected or is maintaining such criminal information.

Creates Section 418.005 of the Government Code to require "appointed public officers" whose position description, job duties, or assignment includes emergency management responsibilities; or who plays a role in emergency preparedness, response, or recovery; to complete a three-hour course of training offered by the Governor's Office of Emergency Management regarding the responsibilities of state and local governments. The course must be taken not later than 180 days after taking the oath of office or assuming responsibilities of the office (if no oath is required). Any public officer who has taken the oath of office before January 1, 2008 must complete the training by January 1, 2009.

A public officer is someone who maintains a sovereign function of the government to be exercised by him or her for the benefit of the public, largely independent of the control of others. Appointed marshals and bailiffs with independent leadership (not reporting to a higher body such as the court or police department) may be required to take this training. The Attorney General has defined police officers as non-public officers, but a police chief would be a public officer. A city manager created by a city charter, not by ordinance, would also be a public officer, but may not be required to take the training unless their job duties specifically include emergency management. Consult your city attorney for assistance in determining who must submit to this training.

Member of Governing Body of Municipality to Fill Certain Vacancies
SB 653 Eff. Immediately

Amends Sections 22.010, 23.002, 24.026, and 26.047 of the Local Government Code. A member of the governing body of a municipality is eligible to fill a vacancy in the office of mayor of the municipality. However, the member of the governing body cannot vote on his or her own appointment.

Hotel and Motel Tax Revenue for Sports Facilities
SB 765 Eff. Immediately

Amends Section 351.101 of the Tax Code.

Revenue from the municipal hotel occupancy tax may be used to promote tourism by upgrading sports facilities if the municipality owns the facilities or fields, the municipality meets certain population requirements, and the sports facilities were used in the previous year for a combined total of more than 10 sports tournaments. Prior to this legislation, a municipality met the population requirements if it had a population of 80,000 or more in a county with a population of 350,000 or less or a population between 65,000 and 70,000 in a county with a population of 155,000 or less. The amended section includes municipalities with a population between 34,000 and 36,000 in a county with a population of 90,000 or less. This amendment is meant to allow Texarkana and Huntsville to use the tax to upgrade sports facilities.

Bond Requirements for Certain Defendants in Common Nuisance Suits
SB 1288 Eff. Immediately

Amends Sections 125.002 and 125.045 of the Civil Practice and Remedies Code. If a hotel, motel, or other establishment that rents overnight lodging to the public is declared a common nuisance, the bond must require the defendant to post information regarding a toll-free hotline for victims of human trafficking in a conspicuous place in the guest rooms.

Human trafficking in Texas grows exponentially every year. The victims of trafficking are typically young girls and women who are trafficked for the purposes of performing forced sexual services. The purpose of this bill is to encourage victims to receive aid and to decrease human trafficking in Texas.

Attendance by a Quorum of a Governmental Body at Certain Events
SB 1306 Eff. Immediately

Prior to this amendment, the attendance of a quorum of a governmental body at a social event unrelated to the business conducted by the governmental body, or at a regional, state, or national convention was not considered a meeting under the Texas Open Meetings Act. However, the types of social functions included were not clearly defined.

Amends Section 551.001 of the Government Code to clarify the types of social events that would not be subject to the Texas Open Meetings Act if attended by a quorum of a governmental body. The term "meeting" does not include attendance at a ceremonial event or press conference. A governmental body is restricted from taking any formal action at such events.

Procedural Requirements for a Political Subdivision to Adopt Airport Zoning Regulations
SB 1360 Eff. Immediately

Chapter 241 of the Local Government Code allows for "airport hazard areas" and "controlled compatible land use areas" zoning around airports. The City of Houston's charter requires that if the City Council adopts a zoning ordinance it must wait six months and then hold a citywide referendum. Courts have held that "zoning" in this context refers only to citywide zoning.

Amends Sections 211.015(c) and (f) of the Local Government Code to provide that an airport zoning regulation may not be repealed because its adoption violated a city's waiting period for the adoption of zoning regulations.

Also amends Section 241.017 of the Local Government Code by creating Subsection (d) which provides that a procedural requirement imposing a waiting period before the adoption of a zoning regulation or requiring the submission of a zoning regulation to a binding referendum does not apply to this chapter providing for airport zoning.

See also HB 413, HB 195, SB 123, SB 175.

Jurisdiction

Signs on Right-of-Ways; Justice and County Courts Authority to Hear Related City Ordinance Violations in Extraterritorial Jurisdiction
HB 413 Eff. September 1, 2007

Amends Subchapter B of Chapter 392 of the Transportation Code (Signs on State Highway Rights-of-Way) to create a civil penalty of not less than $500 or more than $1,000 for each violation of the subchapter. The Attorney General or a district or county attorney is authorized to sue to collect the penalty. Amounts collected by the Attorney General would be deposited to the state highway fund and amounts collected by the district or county attorney would be deposited to the county road and bridge fund.

Amends Chapter 393 of the Transportation Code (Outdoor Signs on Public Rights-of-Way) by authorizing a sheriff, constable, or other trained volunteer to discard a sign of less than $25 in value that is posted in violation of the code without having to give notice to the owner of the sign (there are no comparable provisions for municipal law enforcement or volunteers). In addition, Chapter 393 is amended to create a civil penalty of not less than $500 or more than $1,000 for each violation of the chapter. A district attorney, county attorney, or municipal attorney would be authorized to sue to collect the penalty. Penalties collected by a municipality would be deposited in the municipality's general fund; those collected by a district or county attorney are deposited in the county road and bridge fund.

Amends the Government Code and the Code of Criminal Procedure to authorize concurrent jurisdiction for county and justice courts with municipal courts in cases that arise under ordinances of the municipality's extraterritorial jurisdiction (ETJ) under Section 216.906 of the Local Government Code (Regulation of Outdoor Signs in Municipality's Extraterritorial Jurisdiction).

Restitution and Authority to Collect
HB 485 Eff. September 1, 2007

Amends Section 32.41(e) of the Penal Code to authorize restitution in cases in which its collection and processing for an offense involving a bad check were not initiated through the prosecutor's office, to be collected by a law enforcement agency with the approval of the court in which the offense is filed, when executing a warrant against the person charged.

Amends Article 45.041 of the Code of Criminal Procedure by amending

MUNICIPAL COURT JURISDICTION

Effective September 1, 2007

		Cite
City Ordinance	Territorial limits (exclusive jurisdiction)	Art. 4.14, C.C.P. 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: concurrent jurisdiction with justice and county court under Section 216.906, L.G.C. (regulation of outdoor signs)	Sec. 26.045, G.C. Art. 4.11, C.C.P.
	Appeals red light civil penalties: A municipal court, including a municipal court of record, shall have exclusive appellate jurisdiction within the municipality's territorial limits in cases arising from Ch. 707, T.C. (Photo Traffic Signal Enforcement)	Sec. 29.003(g), G.C.
	Municipal Court of Record Only: Criminal cases arising under ordinances adopted by home-rule cities authorized by Secs. 215.072, 217.042, 341.903, 401.002, L.G.C. (exclusive jurisdiction): • Cases arising from the inspection of dairies, slaughterhouses, or pens in or outside the city limits from which milk or meat is furnished to the residents of the city. (Sec. 215.072) • Nuisances within 5,000 feet outside the city limits. (Sec. 217.042) • Cases from the following areas owned by and located outside a home-rule city: Parks and grounds; lakes and land contiguous to and used in connection with a lake; and speedways and boulevards. (Sec. 341.903, L.G.C.) • Watersheds if population greater than 750,000 and groundwater constitutes more than 75 percent of city's source of water supply. (Sec. 401.002)	Sec. 30.00005, G.C.
	Municipal Court of Record Only: By ordinance, the governing body can provide for concurrent civil jurisdiction with county courts to enforce nuisance abatement and junk vehicle provisions of Chapters 54 and 214, L.G.C., and Chapter 683, T.C.	Sec. 30.00005(d), G.C.
Joint Board Operating an Airport	Territorial limits: resolution, rule, or order (exclusive jurisdiction) Property owned by city in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C. Sec. 29.003, G.C.
State Law	Territorial limits 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.
	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.

Abbreviations:
C.C.P. = Code of Criminal Procedure
A.G. Op. No. = Attorney General Opinion
G.C. = Government Code
T.C. = Transportation Code
L.G.C. = Local Government Code

Rev. 07/07

Subsection (b) and creating Subsection (b-1), as follows:

(b) Deletes existing text providing for a $500 limit on the amount of restitution to be provided to a victim of an offense that a justice or judge is authorized to direct the defendant to make.

(b-1) Prohibits restitution made under Subsection (b)(2) from exceeding $5,000 for an offense under Section 32.41 of the Penal Code (Issuance of Bad Check).

The impact of this bill is much broader than bad check cases and a peace officer's authority to collect restitution. Courts governed by Chapter 45 will no longer have a statutory cap on the amount of restitution that the court can order defendants to pay. Lingering questions include: (1) how judges will fairly determine the amount of such restitution; and (2) how courts will construe the term "victim" in the context of many Class C misdemeanors that do not neatly fall within the context of offenses against the person or offenses against property.

Concurrent Jurisdiction of Attorney General and Local Prosecutor in Cases Involving State Property; Prosecution of Unlawful Conduct in State-Funded Facilities
SB 563 Eff. September 1, 2007

Before this amendment the law did not provide for the Attorney General's Office to seek concurrent jurisdiction over certain matters involving state property or abuse of office in the event that the prosecutor did not pursue a case.

Creates Section 1.09 of the Penal Code. With the consent of the local county or district attorney, the Attorney General has concurrent jurisdiction with the local prosecutor for any offense that occurs on state property or any offense that involves the use, unlawful appropriation, or misapplication of state property.

Creates Section 39.015 of the Penal Code. With the consent of the local county or district attorney, the Attorney General has concurrent jurisdiction to prosecute offenses listed in Chapter 39. The offenses in Chapter 39 deal with abuse of office.

Amends Section 39.04 of the Penal Code. It is a 2nd degree felony, rather than a state jail felony, if improper sexual activity is committed against a juvenile offender detained in or committed to a correctional facility that is financed primarily with state funds.

See also HB 2091, HB 2212.

Peace Officers and Bailiffs

Transfer of Abandoned of Forfeited Property to County or Municipal Agencies or School Districts
HB 195 Eff. September 1, 2007

HB 195 makes amendments to the Code of Criminal Procedure and the Transportation Code that expand the ability of law enforcement agencies and the state's attorney to transfer certain abandoned or forfeited property to another municipal or county agency.

Section 1. Amends Article 59.06(b) of the Code of Criminal Procedure. Previously, if a local agreement existed between the state's attorney and law enforcement agencies, then the state's attorney could transfer the property to law enforcement agencies. The receiving law enforcement agency could then maintain, repair, use, and operate the property for official purposes, provided that the property was free of any interest of an interest holder (no liens filed against the property). The agency could purchase any existing interest from the interest holder so that the property may be released for use by the agency. If the property was a motor vehicle subject to registration under the motor vehicle registration laws of this state, then the agency receiving the forfeited vehicle is to be considered the purchaser of that vehicle and certificate of title is issued to the agency.

Amendments contained in HB 195 allow a law enforcement agency to which property is transferred to at any time transfer or loan the property to any other municipal or county agency or to a school district for the use of that agency or district. A municipal or county agency or school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for that vehicle that is required by law.

Also creates Subsection (b)(1) of Article 59.06 of the Code of Criminal Procedure to establish that if a loan of property is made by a sheriff's office or by a municipal police department, then the commissioners court of the county in which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction may revoke the loan at any time. To revoke the loan, a notification must be sent to the receiving agency or district by mail and the receiving agency or district must then return the loaned vehicle to the loaning agency before the seventh day after the date that they received the notice.

Subsection (b)(2) is created to clarify the records that must be kept in relation to loaned property. An agency that loans property to another agency or district shall keep a record of the loan. The record must include the name of the agency to which the vehicle was loaned, the fair market value of the vehicle, and the location where the receiving agency will use the vehicle. The loaning agency must also update the record when the information relating to that vehicle changes.

Section 2. Amendments are made to Section 683.016 of the Transportation Code with relation to the loan or transfer of forfeited or abandoned property. Subsection (a) is amended to read that the law enforcement agency that takes an abandoned motor vehicle into custody that is not claimed under Section 683.012 may use the vehicle for agency purposes or may transfer the vehicle to any municipal or county agency or school district for the use of that agency or district. Subsection (b) discusses procedures relating to the auction of a vehicle. The law enforcement agency that is auctioning the vehicle shall do so as provided by this subchapter if the law enforcement agency or the municipal or county agency or school district to which the vehicle was transferred under Subsection (a) ceases its use of the vehicle.

Subsection (e) states that a law enforcement agency must comply with the notice requirements of Section 683.012 before the law enforcement transferring a vehicle under Subsection (a)(2).

Section 3. Applicability of this bill to Article 59.06(b) of the Code of Criminal Procedure and to Section 683.016 of the Transportation Code is applied to personal property seized or taken into custody on or after the effective date of this Act. Personal property seized or taken into custody before the effective date of this Act is governed by the law in effect on the date that the property was seized or taken into custody and the former law is continued in effect for that purpose.

Allowing Active Judicial Officers and Bailiffs to Carry Weapons
HB 1889 Eff. Immediately

Judges are often the victims of hostile acts, ranging from harassment to murder. Before this Act, the law authorized a properly licensed judge to carry a concealed weapon in certain forums, but not a bailiff who escorted the judge. In addition, neither a judge nor a bailiff was authorized to carry a concealed handgun on the premises of a courthouse.

Amends Section 46.15(a) of the Penal Code to provide that municipal attorneys licensed to carry a concealed handgun and bailiffs designated by an active judicial officer who are licensed to carry a concealed handgun and are engaged in escorting the judicial officer are exempt from the prohibition against carrying handguns on the premises of any government court or offices utilized by the court.

Peace Officers in Navigation Districts
HB 3435 Eff. Immediately

Amends Section 60.077 of the Water Code to provide that a peace officer employed or appointed by the Navigational and Canal Commission has the same power and duties as a peace officer described by Article 2.12 of the Code of Criminal Procedure in prosecutions involving the enforcement of regulatory provisions found in the Water Code or the enforcement of any ordinance, rule, or regulation of the navigation district.

There has been some question as to port police officers' status and authority as peace officers. These questions may impede the port officers' ability to act as first responders, investigate, and act upon port security breaches. This amendment clarifies the authority and status of port police officers as peace officers.

Authority of Certain Municipal Peace Officers on Lakes
SB 410 Eff. Immediately

Previously, municipalities were only authorized to enforce the laws of a lake on that portion of the body of water that fell within the municipality's jurisdiction. The remainder of the lake's territory was patrolled for Texas Parks and Wildlife Department and/or the county under whose jurisdiction the lake fell. The purpose behind this change in the statute, which increases the enforcement authority of municipal peace officers, is to increase patrols and protection on those waters.

Creates Section 31.1211 of the Parks and Wildlife Code, relating to the jurisdiction of a peace officer of a municipality who is certified as a marine safety enforcement officer under Section 31.121. Notwithstanding any other law limiting enforcement, such a peace officer may enforce the provisions of this chapter within an area of the lake that is outside the enforcement jurisdiction of that peace officer if any portion of the lake is contained in the corporate limits or ETJ of the municipality. The municipality must have entered into a memorandum of understanding (MOU) with the governmental entity having enforcement jurisdiction in that area granting the peace officer enforcement jurisdiction in that same area.

Subsection (b) more fully addresses the MOU. The MOU must designate the jurisdiction with authority to conduct any prosecution or ongoing investigation of a violation resulting from an enforcement action under this section. In addition, the MOU must be approved by the Parks and Wildlife Department.

See also HB 485, HB 1141, HB 1638, HB 2210, SB 545, HB 2077.

Municipal Bailiffs & Warrant Officers Conference

Bailiffs and warrant officers are essential resources for judges and clerks in maintaining courtroom security, serving processes for the court, and assisting in fine collection and enforcement. In FY 2007-2008, TMCEC is offering two 12-hour conferences for municipal bailiffs and warrant officers, accompanied by four-hour pre-conferences. The courses will include segments on court security. This may allow for participants' registration fees and travel to be paid for by local court security funds. Credit of 12 TCLEOSE hours will be awarded to participants who complete all 12 conference hours. Four hours of TCLEOSE credit is offered at the pre-conference. Partial credit is not given for the pre-conference or conference participation.

San Antonio — January 20-22, 2008 (S-M-T)
Crown Plaza Riverwalk
Register by: 12/20/07

Dallas — June 30-July 2, 2008
Omni Dallas Park West
Register by: 5/30/08

Pre-Conference
Optional four-hour pre-conferences will be held prior to each of the 12-hour programs. Pre-conference topics will be announced at a later date via the TMCEC newsletter and in conference confirmation letters. Registration forms will be enclosed with conference confirmation letters. An additional four TCLEOSE hours will be awarded to those who choose to attend the pre-conference.

Judge's Signature
TMCEC requires a signature authorizing attendance on the registration form from the municipal judge in whose courtroom the bailiff or warrant officer serves. Registration for may be found at **www.tmcec.com.**

TCLEOSE
Questions about TCLEOSE and status of credit should be addressed to: TCLEOSE, 6330 U.S. Highway 290, Austin, Texas, 78723. Telephone: 512.936.7700. Website: www.tcleose.state.tx.us.

Magistration

High Priority

Detention and Examination of Mental Health Patients
HB 518 Eff. September 1, 2007

Amends Section 573.021 of the Health and Safety Code by authorizing the detention of a person accepted for a preliminary mental health examination for up to 48 hours, rather than 24 hours, after being presented to the facility, unless a written order for protective custody is obtained. Formerly, an order for further detention allowed an officer to detain a person for an extended time, but now a protective custody order from county court is required. The 48-hour period includes time spent waiting in the medical facility for an examination and may run until 12 p.m. on the first succeeding business day if the 48-hour period ends on a Saturday, Sunday, a legal holiday, or before 4 p.m. If the 48-hour period ends after 4 p.m. on a regular business day, the period may run until 4 p.m. of the last day of detainment. A judge or magistrate may still extend a time period by 24 hours in the case of disaster or extremely hazardous weather conditions.

Also requires a physician to examine the person as soon as possible within 12, rather than 24, hours after being apprehended by the peace officer or transported for emergency detention by a guardian.

Amends Section 574.021(d) of the Health and Safety Code to require a motion for protective custody in county court to be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined a patient not earlier than the third day, rather than fifth day, before the day the motion is filed.

Prior law authorized a the detention of a person without a warrant if there was reasonable cause to believe that the person was mentally ill and that the mental illness caused a substantial risk of imminent serious harm to the mentally ill person or others. This detention could last no longer than 24 hours, excluding nights, weekends, and time receiving medical care in the emergency room. This significantly limited the amount of time available for examining physicians to examine and observe a person and determine whether protective custody was necessary. The new 48-hour period will relax this time constraint and will be studied by the Department of State Health Services over the next year to quantify any resultant reduction in the overall number of admissions and the number of brief stays in state mental health facilities.

Citations for Certain Class A and B Misdemeanors
HB 2391 Eff. September 1, 2007

Amends Article 14.06 Subsection (a) of the Code of Criminal Procedure and creates Subsections (c) and (d).

Subsection (c) authorizes peace officers to issue citations for certain non-Class C misdemeanors, however, this new discretionary authority is contingent on the arrested person being a resident of the county where the offense is believed to have occurred.

In lieu of a full custodial arrest and presenting the accused before a magistrate, the peace officer may issue a citation stating the time and place the person must appear before a magistrate.

Peace officers now have the discretion to issue citations for the following Class A and B misdemeanors:

1. possession of four ounces or less of marihuana (Section 481.121(b)(1)-(2), Health & Safety Code);
2. criminal mischief, where the value of damage done was $50 or more, but less than $500 (Section 28.03(b)(2), Penal Code);
3. graffiti, where the value of the damage done was $50 or more, but less than $500 (Section 28.08(b)(1), Penal Code);
4. theft, where the value of the property stolen was $50 or more, but less than $500 or the value of property obtained by a hot check was $20 or more, but less than $500 (Section 31.03(e)(2)(A), Penal Code);
5. theft of a service, where the value of the service stolen was $20 or more, but less than $500 (Section 31.04 (e)(2), Penal Code);
6. possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor (Section 38.114, Penal Code); or
7. driving with an invalid license (Section 521.457 of the Transportation Code).

Amends Article 15.17 of the Code of Criminal Procedure by creating Subsection (g) which provides that a magistrate who processes a defendant that was issued a citation for a Class A or B misdemeanor perform magistrate duties in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After "magistrating" the judge may, unless good cause is shown, release the person on a personal recognizance bond. If the defendant fails to appear, the magistrate shall issue an arrest warrant for the defendant.

Issuance of Certain Search Warrants
HB 3131 Eff. September 1, 2007

Amends Article 18.01(i) of the Code of Criminal Procedure by providing that in a county that does not have a judge of a municipal court of record who is an attorney licensed by the state, a county court judge who is an attorney licensed by the state, or a statutory county court judge, any magistrate may issue a search warrant under Subdivision (10) (*i.e.*, property or items, except personal writings by the accused, constituting incriminating evidence) or Subdivision (12) (*i.e.*, contraband subject to forfeiture) of Article 18.02.

Under current law, a non-attorney magistrate of a non-record court may only sign a search warrant for the items of "mere evidence" listed above if the only lawyer-judge serving the county is a district judge in a multi-county district. Such a "rural parts" exception has been problematic for two reasons. First, the prior law already allows all magistrates to issue search warrants for a wide array of objects affiliated with criminality. Second, the unamended law required non-attorney magistrates to not only know how many attorney-judges were in the county but also if the district judge's judicial district encompassed more than one county.

HB 3131 allows magistrates to issue search warrants for "mere evidence" in counties that do not have (1) a judge of a municipal court of record who is a licensed attorney; (2) a county judge who is a licensed attorney; or (3) a statutory county court judge.

Denying Bail for Violation of Conditions of Bond and Court Orders
HB 3692 Eff. January 1, 2008 Contingent upon Voter Approval of Related Constitutional Amendment

Amends Sections 25.07 of the Penal Code by changing the title of the section to read "Violation of Certain Court Orders or Conditions of Bond in a Family Violence Case." Article 25.07 provides that a person commits an offense if the person knowingly or intentionally violates: (1) a condition of bond set in a family violence case and related to the safety of the victim or the community; (2) an order issued under Article 17.292 of the Code of Criminal Procedure (magistrate's order for emergency protection); (3) an order issued under Chapter 83, Family Code (temporary *ex parte* orders) that has been served on the person; or (4) other certain orders issued by another state pursuant to Chapter 88 of the Family Code.

Creates Article 17.152 of the Code of Criminal Procedure, entitled "Denial of Bail for Violation of Certain Court Orders or Conditions of Bond in a Family Violence Case."

Subsection (b) authorizes a person who commits an offense under Section 25.07 of the Penal Code whose bail in the case under that section or in the family violence case is revoked or forfeited for a violation of a condition of bond to be taken into custody and, pending trial or other court proceedings, denied release on bail if, following a hearing by a judge or magistrate who determines by a preponderance of the evidence that the person violated a certain condition of bond.

Subsection (c) authorizes a person who commits an offense under Section 25.07 of the Penal Code, other than an offense related to a violation of a condition of bond set in a family violence case, except as otherwise provided by Subsection (d), to be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing by a judge or magistrate who determines by a preponderance of the evidence that the person committed the offense.

Subsection (d) authorizes a person who commits an offense under Section 25.07(a)(3) of the Penal Code to be held without bail under Subsection (b) or (c), as applicable, only if following a hearing the judge or magistrate determines by a preponderance of the evidence that the person went to or near the place described in the order or condition of bond with the intent to commit or threaten to commit certain offenses.

Subsection (e) authorizes the judge or magistrate, in determining whether to deny release on bail under this article, to consider certain information, such as the order or condition of bond, the nature and circumstances of the alleged offense, and the relationship between the accused and the victim.

Subsection (f) requires a person arrested for committing an offense under Section 25.07 of the Penal Code, without unnecessary delay and after reasonable notice is given to the attorney representing the state, but not later than 48 hours after the person is arrested, to be taken before a magistrate in accordance with Article 15.17 (duties of arresting officer and magistrate). The magistrate must at that time conduct the hearing and make the determination required by this article. Also see HJR 6.

Historically, the right to bail in Texas has been an absolute right. Currently, bail can be denied in limited circumstances involving felonies. Unless a defendant has a prior conviction, it is a Class A misdemeanor to violate an emergency protective order or a protective order. Accordingly, such defendants could not be denied bail. HB 3692 is intended to provide increased protection to victims of family violence in cases where there is a violation of conditions of bail, a magistrate's order of emergency protection, and/or a protective order by authorizing the denial of bail. This amendment is contingent upon voters approving HJR 6 which is a conforming amendment to the Texas Constitution allowing the denial of bail under the circumstances described.

A last minute amendment to this bill pertains to performance of community service by a minor accused of being in possession of alcohol and a traffic offender. The implications of the amendment are addressed in our discussion of juvenile legislation.

Denying Bail for Violation of Conditions of Bond and Court Orders
HJR 6 Eff. Contingent Upon Voter Approval

HJR 6 proposes a constitutional amendment to authorize the denial of bail to a person who violates an emergency protective order issued by a judge or magistrate after an arrest for an offense involving family violence, or who violates an active protective order, including a temporary *ex parte* order that has been served on the person.

Amends Sections 11b and 11c of Article I of the Texas Constitution.

Section 11b: Authorizes any person who is accused in this state of a felony or an offense involving family violence, rather than just accused of a felony, who is released on bail pending trial and whose bail is subsequently revoked or forfeited for a violation of a condition of release, to be denied bail pending trial if a judge or magistrate in this state determines by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community. Deletes existing text providing for such authorization by a district judge at a subsequent hearing to set or reinstate bail.

Section 11c: Authorizes the Legislature to allow any person who violates an order for emergency protection issued by a judge or magistrate after an arrest for an offense involving family violence or who violates an active protective order rendered by a court in a family violence case, including a temporary *ex parte* order that has been served on the person, or who engages in conduct that constitutes an offense involving the violation of an order described by this section to be taken into custody; and, pending trial or other court proceedings, to be denied release on bail if following a hearing a judge or magistrate in this state determines by a preponderance of the evidence that the person violated the order

or engaged in the conduct constituting the offense.

Requires that this proposed constitutional amendment be submitted to the voters at an election to be held on November 6, 2007.

Also see HB 3692.

Temporary Sealing of Certain Affidavits for Search Warrants
SB 244 Eff. September 1, 2007

Amends Article 18.01(b) of the Code of Criminal Procedure to provide an exception to making an affidavit public information after a search warrant is executed.

Creates Article 18.011 of the Code of Criminal Procedure to allow an attorney representing the state in the prosecution of felonies to request a district judge or the judge of an appellate court to seal an affidavit presented under Article 18.01(b).

The district or appellate judge may seal the affidavit if the prosecuting attorney establishes a compelling state interest that:

- public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence; or
- the affidavit contains information obtained from a court-ordered wiretap that has not expired at the time the attorney representing the state requests the sealing of the affidavit.

The order may not prohibit the disclosure of information relating to the contents of a search warrant, return of a search warrant, or inventory of the property taken pursuant to a search warrant, or affect the right of the defendant to discover the contents of an affidavit. When the order expires, the affidavit must be unsealed.

Technology Used to Conduct Certain Mental Health Proceedings
SB 778 Eff. September 1, 2007

Amends Section 573.012 of the Health and Safety Code by creating Subsections (h) and (i) as follows: A judge or magistrate may permit an applicant who is a physician to present an application for an emergency detention warrant via two-way electronic communication. The two-way electronic communication must be secure, must be available to the judge or magistrate, and must provide for a simultaneous, compressed full-motion video, and interactive communication of image and sound between the judge or magistrate and the applicant.

In addition, the judge or magistrate shall provide for a recording of the presentation of the applicant under the above-mentioned conditions and requirements to be made and preserved until the patient or proposed patient has been released or discharged. A copy of the recording may be obtained by the patient upon payment of a reasonable amount sufficient to cover the costs of reproduction. If the patient or proposed patient is indigent, the court shall provide a copy without charging a cost for the copy upon the patient or proposed patient's request.

Subject: Criminal Defendants with Mental Retardation and Mental Illness
SB 867 Eff. September 1, 2007

For the third time the Legislature has made substantive changes to Chapter 46B of the Code of Criminal Procedure (Incompetency to Stand Trial). Since its creation in 2003 Chapter 46B has been a work in progress. In 2005 the Legislature passed a bill to correct errors and address oversights in the original legislation. SB 867 contains 25 amendments to Chapter 46B aimed at expediting competency cases, freeing up hospital beds for the mentally ill and reducing some of the procedural burdens placed on probate courts.

Section 1 amends Article 16.22 of the Code of Criminal Procedure to allow a magistrate, upon notice by the sheriff that a defendant committed to the sheriff's custody has a mental illness or mental retardation, to either order the examination, as was the former practice, or use the results of a past evaluation if the defendant was found to have a mental illness after submitting to an evaluation in the year preceding the date of arrest or if the defendant was found to be a person with mental retardation by the local mental health or mental retardation authority or another mental health or mental retardation expert.

All written reports of such examinations must be submitted within 30 days from the order date in felonies, and not later than 10 days from the order date in misdemeanors. The court may, pending an evaluation of the defendant: (1) release a mentally ill or mentally retarded defendant from custody on personal or surety bond; or (2) order an examination regarding the defendant's competency to stand trial.

While SB 867 contains multiple references to "magistrates," the references, other than that in Article 16.22, refer to the work done in the legal context of the mental health proceedings (typically the realm of probate courts), not the preliminary stages of criminal procedure. While there are exceptions, most municipal judges in their role as magistrates are not involved in the procedures governed by Chapter 46B.

Subject: Magistrate's Notice of Arrest
SB 909 Eff. Immediately

Amends Article 15.19 of the Code of Criminal Procedure to refer to the person taken into custody as the "arrested person" rather than the "accused" making the statute gender-neutral. It also extends the magistrate's duty to immediately notify the sheriff of the county in which the offense was committed: (1) that the arrest and commitment occurred; and (2) whether the person was also arrested under a warrant issued under Section 508.251 of the Government Code in relation to the conditions of his or her parole or mandatory supervision.

Amends Article 15.20 of the Code of Criminal Procedure to require the sheriff, upon receiving notice under Article 15.19 of a person's arrest pursuant to a warrant for violation of a condition of parole or mandatory supervision, to have the arrested person brought before the proper magistrate or court before the 11th day after the day the person was committed to jail.

Amends Article 15.21 of the Code of Criminal Procedure to allow the arrested person to be discharged from custody if the proper office of the county where the offense is alleged to have been committed does not demand the arrested person and take charge of him or her before the 11th day after the date the person is committed to the jail of the county in which the person is arrested.

Medium Priority

Issuance of Protective Orders for Victims of Sexual Assault, Aggravated Sexual Assault, or Indecency with a Child
HB 1988 Eff. September 1, 2007

HB 1988 amends Article 7A of the Code of Criminal Procedure by extending the time during which a protective order is valid when issued to victims of sexual assault, aggravated sexual assault, or indecency with a child. In addition, the bill adds the parent and/or guardian of the victim as a party who may apply for the protective order. The time extension and amendments to the process of applying for a protective order should not be applied to or confused with any of the requirements and/or components of a magistrate's order of emergency protection. The bill applies only to protective orders, not to magistrate's orders of emergency protection.

Section 1. Article 7A.01(a) is amended to allow a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense under Section 21.11, Penal Code (Indecency with a Child) to file an application for a protective order on behalf of the victim. Previously, the statute only allowed the victim of the offense or a prosecuting attorney to make an application for a protective order.

Section 2. Article 7A.03(a) is amended to change the required court findings for issuance of a protective order. With this change to the law, the court must find reasonable grounds to believe that the victim is younger than 18 years of age; or regardless of the victim's age, that they are the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender. Article 7A.03(b) adds the language "younger than 18 years of age, or regardless of age" to the qualifications of those who can file a protective order.

Section 3. Article 7A is further amended by the creation of Article 7A.07. Section 7A.07(a) provides that a protective order that is issued under 7A.03 is effective for the duration of the lives of the victim and the offender or for any shorter period of time specified in the order. If no specified time is stated in the order, then the order is effective until the second anniversary of the date that the order was issued. Section 7A.07(b) requires that a protective order issued under 7A.03 can be made effective for the duration of the life of the victim and the offender only if the court finds reasonable cause to believe that the victim is the subject of a threat from the offender that reasonably places the victim in fear of further harm from the alleged offender. Section 7A.07(c) authorizes a victim who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age to file an application with the court to rescind the protective order at any time. Section 7A.07(d) addresses the situation of a person who is the subject of the protective order issued under 7A.03 being confined or imprisoned. With this addition, the period of the protective order's effectiveness is extended and authorizes that the order will expire on the first anniversary of the date that the person is released from confinement or imprisonment. Section 7A.07(e) authorizes that the protective order is not affected by Section 85.025, Family Code (Duration of Protective Order).

See also HB 3558, HB 3060, SB 244, SB 584.

Orientation for New Judges and Clerks

Not mandatory for judicial education credit.

Meet with TMCEC staff members to discuss key concepts and processes for municipal courts in Texas. This orientation carefully examines procedures related to Driving Safety Courses (DSC) and Deferred, and will strengthen your understanding of the structure of Texas non-municipal courts.

10:00 a.m. - 3:30 p.m. — Lunch provided at no charge.

Check the Orientation date that you would like to attend:
☐ Wednesday, October 24, 2007
☐ Wednesday, February 20, 2008
☐ Wednesday, March 12, 2008

There is no registration fee for this program.

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Warrants

Distinguishing the *Capias*, *Capias Pro Fine*, and Arrest Warrants
HB 3060 Eff. September 1, 2007

A lack of definitions in the Code of Criminal Procedure compounded by inconsistent use of terminology by appellate courts has resulted in great confusion surrounding the difference between a *capias*, an arrest warrant, and a *capias pro fine*. While the issuance of each writ results in a person being arrested, the circumstances, procedures, and authority to issue each writ differs. More than a matter of semantics, failure to discriminate between the various applications of each writ impacts the administration of justice and potentially the rights of defendants. HB 3060 seeks to end much of the confusion surrounding the use of the three writs by conforming to the original chronological chapter structure of the Code of Criminal Procedure as written in 1965. Critical chapters amended by HB 3060 include Chapter 15 (Arrest Under Warrant), Chapter 17 (Bail), Chapter 23 (*Capias*), Chapter 43 (Execution of Judgment) and Chapter 45 (Justice and Municipal Courts). Collectively, the amendments in HB 3060 result in a meaningful delineation between arrest warrants issued by magistrates, *capiases* issued by trial judges prior to judgment pursuant to Chapter 23, *capiases* issued by trial judges after judgment pursuant to Chapter 43, and *capias pro fine*s issued by trial judges pursuant to Chapter 43 and 45.

Section 1. Amends Article 15.18 of the Code of Criminal Procedure by creating Subsection (d) to provide that this article (Arrest for Out-of-County Offense) does not apply to an arrest made pursuant to a *capias pro fine* issued under Chapter 43 (Execution of Judgment) or Article 45.045 (*Capias Pro Fine*).

In 2001, when Article 15.18 of the Code of Criminal Procedure became law, many believed the bright line distinction between the role of magistrates and judges in Texas became blurred. Despite the long-understood distinction between the two roles, Article 15.18 authorizes magistrates to take pleas and accept fines stemming from out-of-county warrants for Class C misdemeanors. Although some courts have complained that the statute is unworkable and critics have called for its repeal, Article 15.18 remains on the books. The good news for critics of Article 15.18 relates to *capias pro fine*s. Since shortly after its inception, judges have complained about magistrates in neighboring counties giving excessive amounts of jail time credit for defendants arrested on *capias pro fine*s. Ostensibly, Article 15.18 was never intended to apply to cases once there was a judgment of guilt. Unfortunately, because of ambiguous content, the absence of a judgment has not stopped some judges from mistakenly believing that it applies to *capias pro fine*s. As amended, HB 3060 clarifies that Article 15.18 is not applicable to post-judgment enforcement measures, specifically the *capias pro fine*.

Section 2. Amends Articles 17.19(b) and (c) of the Code of Criminal Procedure to require a court, rather than a court or magistrate, that finds cause for the surety to surrender the surety's principal, to issue a *capias*, rather than a warrant, for the arrest of the principal. Also requires a magistrate, in a prosecution pending before the magistrate, to issue a warrant of arrest for the principal if the magistrate finds that there is cause for the surety to surrender the surety's principal.

Chapter 17 of the Code of Criminal Procedure governs bail. Article 17.19, as amended, clarifies that in instances where a surety surrenders a principal before filing a formal charging instrument in a court of proper jurisdiction, a magistrate issues an arrest warrant, not a *capias*, for the custody of the defendant. In contrast, after a charging instrument in a court of proper jurisdiction has been filed, the judge (not acting in the capacity as a magistrate) issues a "*capias*." See Section 6 below.

Section 3. Amends Article 23.01 of the Code of Criminal Procedure, the definition of "*capias*" as it pertains to Chapter 23. As revised, a *capias* is "issued by a judge of the court having jurisdiction of a case after commitment or bail and before trial or by a clerk at the direction of the judge."

A lot of the confusion surrounding the term "*capias*" and its application throughout the Code of Criminal Procedure stems from the fact that the only definition of the term is contained in Chapter 23. That definition is inadequate because the term also appears in Chapter 43 but is not used in the same chronological context as in Chapter 23.

Article 23.01 as amended distinguishes the "*capias*" issued prior to trial pursuant to Chapter 23 of the Code of Criminal Procedure from the "*capias*" issued pursuant to Chapters 43 of the Code of Criminal Procedure that occurs after judgment and sentence. Meaningful distinction is accomplished by having the definition couched in terms of how it relates to the purpose of each chapter. Thus, a "*capias*" in Chapter 23 by definition is not the same as a "*capias*" in Chapter 43 (and neither is the same as a *capias pro fine*). Furthermore, this amendment codifies *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984), holding that a *capias* may not be issued by a clerk unless acting under the direction of the judge.

Section 4. Amends Article 23.031 of the Code of Criminal Procedure to delete existing text including failure to pay a fine as a reason for which a district clerk, county clerk, or court is authorized to issue a *capias* in electronic form.

A "*capias*" is issued for the seizure of a person; while a "*capias pro fine*" is a post-judgment enforcement mechanism for a criminal defendant who has failed to satisfy the terms of a judgment relating to the payment of a pecuniary fine. As written, Article 23.031 failed to note the difference between a pre-judgment *capias* and post-judgment *capias pro fine*. While the issuance of a *capias* in electronic form is ideal, any authorization for the issuance of a *capias pro fine* in electronic form (stemming from failure to pay a fine) should be contained in Chapter 43 of the Code of Criminal Procedure.

Section 5. Amends Article 23.04 of the Code of Criminal Procedure as follows:

Article 23.04 (*Capias* and Summons in Misdemeanor Cases) requires the issuance of a *capias* or summons in a misdemeanor case from a court having jurisdiction of the case on the filing of an information or complaint. It also requires that the summons or *capias* be issued only upon the request of the attorney representing the state and on the determination of probable by the judge.

Article 23.03 of the Code of Criminal Procedure provides that a "*capias* shall be issued by the district clerk upon each indictment for felony presented." In felony cases, the indictment embodies a necessary determination of probable cause. Since its inception, Article 23.04 has not expressly required a finding of probable cause before issuing a *capias* in misdemeanor cases. Such a finding, however, is required by state and federal case law. *Sharp v. State,* 677 S.W.2d 513 (Tex. Crim. App. 1984); *Crane v. Texas*, 759 F.2d 412 (5th Cir. 1985). This amendment codifies the holdings of those cases and also specifies that such a *capias* may be issued upon the filing of an appropriate misdemeanor charging instrument (either an information or a complaint).

While both a *capias* and an arrest warrant culminate in the arrest of a person, the context in which the seizure occurs is different. This amendment clarifies that a *capias*, as defined in Chapter 23, is issued either by a judge or by a clerk at the direction of the judge having jurisdiction of the case prior to judgment. It is issued upon the request of the prosecuting attorney and requires a determination of probable cause by the judge. Instances of the *capias* under Chapter 23 include when a defendant forfeits bail, fails to appear, or fails to comply with a court order. The *capias* in Chapter 23 is not issued by a judge in the capacity of magistrate, but rather by a trial court after the filing of the appropriate charging instrument.

Section 6. Amends Article 23.05(a) of the Code of Criminal Procedure to require a *capias* to be immediately issued for the arrest of the defendant if a forfeiture of bail is declared by a court or a surety.

Conforming to the amendment of Article 17.19, this amendment also states that the *capias* issued as a result of bond forfeiture or surrender, is issued by a court and not made by a judge in his or her capacity as a magistrate. In the event that a forfeiture or surrender occurs prior to the filing of a charging instrument in the appropriate trial court, a magistrate would issue a warrant rather than a *capias* for the arrest of the principle as described in Article 17.19 of the Code of Criminal Procedure. See Section 2 above.

Section 7. Amends Chapter 43 of the Code of Criminal Procedure by creating Article 43.015 to define "*capias*" and "*capias pro fine*" differently than the *capias* defined in Article 23.01 in that it is issued post-judgment in order to seize the defendant and have him or her brought before the sentencing court. A "*capias pro fine*" is a post-judgment enforcement mechanism for unpaid fines and/or court costs. Though the "*capias pro fine*" has been expressly authorized for use in courts governed by Chapter 45 since 1999, until this amendment, it was undefined in the Code of Criminal Procedure. Because of the term's absence in Chapter 43 at least one district judge opined it inapplicable in felonies. The lack of definitions, compounded by inconsistent terminology usage by appellate courts, has contributed to widespread confusion among courts and criminal law practitioners. Many people mistakenly use the terms "*capias*" and "*capias pro fine*" interchangeably. HB 3060 is intended to rectify such confusion and emphasize that the use of such words is more than a matter of semantics.

Section 8. Amends Chapter 43 of the Code of Criminal Procedure by creating Article 43.021 to authorize the issuance of a *capias* or *capias pro fine* in electronic form including those issued pursuant to Article 45.045.

Section 9. Amends Article 43.03 of the Code of Criminal Procedure by amending Subsection (d) and creating Subsection (e), as follows:

Subsection (d) prohibits a court from ordering a defendant confined under Subsection (a) of this article (Fine Discharged) unless the court makes a written determination at a hearing that the defendant is not indigent and has failed to make a good faith effort to discharge the fines and costs, or that the defendant is indigent and has failed to make a good faith effort to discharge the fines and costs and could have made said discharge without experiencing any undue hardship. Deletes existing text prohibiting a confined defendant unless the court makes a determination that the defendant willfully refused to take certain actions to pay a fine and determines that no alternative method of discharging fines and costs provided by Article 43.09 is appropriate for the defendant.

Subsection (e) provides that this article does not apply to a court governed by Chapter 45.

As courts governed by Chapter 45 already contain a similar provision (in Article 45.046(a)), this article applies to county and district courts. Notably, a friendly amendment to the bill requires that all commitment determinations be made in writing (a hearing was already required). The statute, as amended, clearly contemplates that both non-indigent and indigent defendants can be incarcerated pursuant to *capias pro fine*. However, in order to incarcerate an indigent defendant, the court must make a written determination that the indigent defendant failed to make a good faith effort to discharge fine and costs under Article 43.03(f) and could have discharged the fines and costs without experiencing undue hardship. See Section 19 below.

Section 10. Amends Article 43.04 of the Code of Criminal Procedure to delete existing text authorizing the court to order a *capias* for the defendant's arrest when a judgment and sentence have been rendered against a defendant specifically for a fine.

As amended, Article 43.04 contemplates the issuance of a *capias* as the post-judgment statutory means of bring an absent defendant into custody in instances that do not involve the default of payment of fine or courts costs. In such instance, a *capias pro fine* would be issued.

Section 11. Amends Article 43.05 of the Code of Criminal Procedure to require a *capias pro fine* issued for the arrest and commitment of a defendant convicted of a misdemeanor or felony, or found in contempt and whose penalty includes a fine, to recite the judgment and sentence, and to command a peace officer, rather than the sheriff, to immediately bring the

defendant before the court. Deletes existing text requiring a *capias* to state the rendition and the amount of the judgment and sentence.

Subsection (b) is created from existing text to provide that a *capias pro fine* authorizes a peace officer to place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

Article 43.05, with the following three exceptions, contains provisions of Article 43.12 (which HB 3060 repeals). First, it expressly applies to the *capias pro fine*. Second, it provides that a *capias pro fine* can be issued in both misdemeanor and felony cases (not just misdemeanors). Third, while Article 43.12, as currently enacted, only authorizes sheriffs to execute a *capias pro fine*, as revised, it may be executed by any peace officer.

While typically the *capias pro fine* is used post-judgment to enforce unpaid fines and court costs owed by criminal defendants, this amendment implies that it may be used in limited instances where contemnors (who may or may not be defendants) have been ordered to pay a fine for contemptuous conduct and have refused to pay such fines.

While Article 15.17 of the Code of Criminal Procedure provides that individuals accused of a crime are required to brought before a magistrate no later than 48 hours after arrest, Texas law has been silent as to the amount of time that can pass, post-judgment, between an arrest on a *capias pro fine* and the presentation before the issuing court. This amendment provides that such defendants are to be brought immediately before the court no later than the business day following the defendant's arrest. This is another instance in HB 3060 where readers are to delineate between the pre-judgment role of a magistrate and the post-judgment role of a trial judge.

Section 12. Amends Article 43.06 of the Code of Criminal Procedure to authorize the issuance of a *capias* or *capias pro fine*, rather than a *capias* as provided for in this chapter, to any county in the state. Prior to this amendment it was unclear if a *capias pro fine* could be executed anywhere in the state. The amendment to Article 43.06 clarifies that an individual arrested pursuant to either *capias* or *capias pro fine* is not entitled to bail.

Section 13. Amends Article 43.07 of the Code of Criminal Procedure to replace text referring to a *capias* with text referring to a *capias pro fine* in relation to a case of pecuniary fine. This clarifies that the "*capias pro fine*," not the "*capias*" is used to collect unpaid fines or costs even if a court decides to simultaneously use civil enforcement to collect the judgment.

Section 14. Amends Article 43.09 of the Code of Criminal Procedure by creating Subsection (n) to provide that this article does not apply to courts governed by Chapter 45. Limiting the scope of Article 43.09 to courts not governed by Chapter 45 makes sense in light of Attorney General Opinions MW-386 (1981) and JC-246 (2000). Both opinions explain that Chapter 45 contains a similar, but more specific, provision (Article 45.049) that governs municipal and justice courts. It is for this reason that Subsection 43.09(m), as amended, is relocated to Article 45.049.

Section 15. Amends Article 43.091 of the Code of Criminal Procedure authorizing a court, rather than certain types of courts, to waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that the defendant is indigent and that each alternative method of discharging the fine or cost would impose an undue hardship on the defendant.

Article 43.091 of the Code of Criminal Procedure was added during the 77th Legislative Session. As amended, Article 43.091 may be used by trial courts not governed by Chapter 45 (*i.e.*, county and district courts). Because Article 43.091, as originally enacted, was intended to be used in municipal and justice courts, it is recodified as Article 45.0491.

Section 16. Amends Article 45.045(a) of the Code of Criminal Procedure by referencing a definition contained in Article 43.015. Provides that a *capias pro fine* authorizes a peace officer to place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

While Articles 45.045 and 45.046 specifically relate to the use of a *capias pro fine* by courts governed by Chapter 45 (mostly municipal and justice courts), this amendment anchors such provisions back to Chapter 43 which contains the definition of "*capias pro fine*" and other articles relating to its use by all criminal trial courts (*e.g.*, Articles 43.05, 43.06, 43.07, 43.08).

Additionally, this amendment requires that individuals arrested on *capias pro fine* be brought immediately before the issuing court or placed in jail until the business day following the arrest. While Article 15.17 of the Code of Criminal Procedure provides that individuals accused of a crime are required to be brought before a magistrate no later than 48 hours after arrest, Texas law has been silent as to the amount of time that can pass, post-judgment, between the arrest on a *capias pro fine* and the presentation before the issuing court. This amendment is in response to complaints that some judges issuing *capias pro fine*s do not make legally required determination relating to commitment in a timely manner.

Section 17. Amends Article 45.049 of the Code of Criminal Procedure by creating Subsection (g) to authorize a community supervision and corrections department or a court-related services office to provide the administrative and other services necessary for supervision of a defendant required to perform community service under this article (Community Service in Satisfaction of Fine or Costs).

Section 18. Creates Article 45.0491 of the Code of Criminal Procedure (Waiver of Payment of Fines and Costs for Indigent Defendants). Authorizes a municipal court, regardless of whether the court is a court of record, or a justice court to waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that the defendant is indigent and that alternative methods of discharging the fine or cost would impose an undue hardship on the defendant.

With conforming changes, Article 45.0491, governing the waiver of fines and costs by municipal and justice courts, is relocated from Article 43.091 which now applies to courts not governed by Chapter 45. See comments to Article 43.091.

Section 19. Amends Article 45.046(a) of the Code of Criminal Procedure to authorize a court to order a defendant to be confined, when a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment if the court makes a written determination at a hearing that the defendant is not indigent and has failed to make a good faith effort to discharge the fines and costs, or that the defendant is indigent and has failed to make a good faith effort to discharge the fines and costs and could have made said discharge without experiencing any undue hardship.

In the same vein as changes to Article 43.03(d) (see Section 9), this amendment codifies part of the U.S. Supreme Court decision of *Tate v. Short*, 401 U.S. 395 (1971). Specifically, a court may not commit an indigent defendant to jail on a *capias pro fine* without first providing the defendant an alternative means of discharging the judgment. As written, courts may currently, in violation of *Tate*, commit a defendant to jail under (a)(1) without considering whether the defendant is indigent. Further codifying *Tate*, this amendment provides that an indigent defendant after being given the opportunity to discharge the judgment, via community service or according to a payment plan, may nonetheless be committed to jail.

After the bill was introduced, it was amended by the sponsor to include three safeguards to ensure that indigent defendants are not wrongfully incarcerated. First, the judge committing the defendant to jail following arrest on a *capias pro fine* is required to have a hearing. Second, the determination resulting in incarceration is required to be in writing. Third, in the event that the defendant is indigent, not only must the judge find that the defendant failed to make a good faith effort to discharge the fine and costs by means of community service, but that the defendant could have performed such community service without experiencing undue hardship.

Section 20. Amends Article 102.011(a) of the Code of Criminal Procedure, to require a defendant convicted of a felony or misdemeanor to pay $50 for the execution or procession of an issued arrest warrant, *capias*, or *capias pro fine*.

This amendment provides that court cost for a *capias pro fine* is $50. Currently courts throughout the state inconsistently collect court costs related to the execution of a *capias pro fine*. Much of this has to do with the general confusion surrounding the *capias* and *capias pro fine*. Some courts have charged $50 pursuant to (a)(2), while some have assessed a $35 fee pursuant to (a)(4) (a provision most often associated with criminal summons and other writs). Others have opted not to charge any court cost because the *capias pro fine* is issued after judgment and is viewed as being similar to contempt.

Section 21. Amends Article 102.011(a) of the Code of Criminal Procedure to authorize the collection for the processing of a warrant or *capias*.

Ostensibly, this last minute floor amendment allows courts to assess a $50 fee for "processed" arrest warrants and *capias* that have not been executed. Notably, the *capias pro fine* is omitted from this amendment. As the term "processed" is still undefined by state law, courts throughout the state are left devising its meaning. At a minimum, for this fee to be assessed as a court cost, a law enforcement agency must engage in some act related to the warrant or *capias* (made a telephone call, placed it in a data base, *etc.*).

Section 22. Articles 43.09(m) (regarding certain authorities of a municipal court and a community supervision and corrections department or a court-related services office that are duplicated by amendments made by this Act) and 43.12 (*Capias* for Confinement) of the Code of Criminal Procedure are repealed.

See also HB 3131.

Attorneys

Confidentiality of Information Regarding People Licensed to Practice Law
HB 1237 Eff. September 1, 2007

Prior law allowed for certain personal information about individual attorneys to be acquired by the public as public information. This may have put attorneys at risk of harm from disgruntled individuals or at risk of having their homes burglarized.

Creates Section 552.1176 of the Government Code to provide that certain information of a person licensed to practice law in Texas is confidential and may not be disclosed to the public if the person chooses to restrict public access to the information and notifies the State Bar of that choice. The confidential information includes: a home address, a date of birth, home telephone number, e-mail address, and social security number. This does not apply to documents filed with the district or county clerk.

State Bar of Texas Fee to Provide Legal Services to Indigents
SB 168 Eff. Immediately

The Texas Supreme Court shall set an additional legal services fee in the amount of $65 to be paid annually by each active member of the State Bar except as provided by Subsection (k). The exceptions include:

- an attorney who is 70 years of age or older;
- an attorney who has assumed inactive status under the rules governing the State Bar;
- an attorney who is a sitting judge;
- an attorney who is an employee of the state or federal government;
- an attorney who is employed by a city, county, or district attorney's office and who does not have a private practice that accounts for more than 50 percent of the attorney's time;
- an attorney who is employed by a 501(c)(3) nonprofit corporation and is prohibited from the outside practice of law;
- an attorney who is exempt from MCLE requirements because of nonpracticing status; or
- an attorney who resides out of state and does not practice law in Texas.

Family Violence and Sex Crimes

Related to Prosecution, Punishment, and Supervision of Certain Sex Offenders and to Certain Crimes Involving Sex Offenders
HB 8 Eff. September 1, 2007

HB 8 (The Jessica Lunsford Act) places tougher penalties on sexual predators that target children. Changes and additions are made to the Code of Criminal Procedure, Penal Code, and the Government Code, relating to the creation, prosecution, and punishment of offenses. Additional amendments are made to the way that cases involving the prosecution of certain sex offenses are prioritized. The following amendments and/or additions to the statutes and codes are relevant for municipal courts and for magistration.

Amends Section 21.02 of the Penal Code with the new offense of Continuous Sexual Abuse of a Young Child or Children. Subsection (b) establishes the elements of the crime. The crime is committed when during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether those acts of sexual abuse are committed against one or more victims and at the time of the commission of each of the acts, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.

Subsection (c) indicates that an "act of sexual abuse" means any act that is a violation of one or more of the following penal laws: Section 20.04(a)(4) – aggravated kidnapping if the actor committed the offense with the intent to violate or abuse the victim sexually; Section 21.11(a)(1) – indecency with a child if the actor committed the offense in a manner other than touching, including touching through clothing, the breast of the child; sexual assault under Section 22.011; aggravated sexual assault under Section 22.021; burglary under Section 30.02 if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1) – (4); and sexual performance by a child under Section 43.25.

Amends Section 22.021 of the Penal Code to indicate that a minimum term of imprisonment for an offense under this section is increased to 25 years under the following circumstances: 1) the victim of the offense is younger than six years of age at the time the offense is committed; or 2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

Amends Section 38.05 of the Penal Code (Hindering Apprehension or Prosecution) to clarify that an offense under this section is a 3rd degree felony if the person who is harbored, concealed, provided with a means of avoiding arrest / effecting escape, or warned of discovery or apprehension, and is under arrest for, charged with, or convicted of a certain felony. The felony would fall under Section 62.102 of the Code of Criminal Procedure (Failure to Comply with Sex Offender Registration Requirements). The person might also be in custody or detention for, or have been alleged in a petition to have engaged in, or may have been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony, including an offense of Failing to Comply with Sex Offender Registration Requirements. In addition the person charged with this offense, must have known that the person they were assisting by harboring had engaged in or been convicted of delinquent conduct that violates a state penal law.

Amends Sections 43.25(c) and (e) of the Penal Code (Sexual Performance by a Child). An offense under Subsection (b) is a 2nd degree felony, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed. Additionally, an offense under Subsection (d) is a 3rd degree felony, except that the offense is a felony of the 2nd degree if the victim is younger than 14 years of age at the time the offense is committed.

Amends a portion of the Civil Practice and Remedies Code (Section 125.0015a) regarding common nuisance. The relevant portion now reads, "A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance… ." Now included in the list is "continuous sexual abuse of young child or children as described in Section 21.02, Penal Code." A suit for nuisance may be brought by a city attorney.

Also amends Article 17.091 of the Code of Criminal Procedure (Notice of Certain Bail Reductions Required). Before a judge or magistrate reduces the amount of bail set for a defendant charged with an offense, which now includes continuous sexual abuse of a young child or children, the judge or magistrate shall provide certain items. Reasonable notice of the bail reduction shall be given to the attorney representing the state. Also, on request of the attorney representing the state or the defendant or the defendant's counsel, an opportunity for a hearing concerning the proposed bail reduction is required.

Section 3.21 of the bill refers to amendment of Article 56.02(a) of the Code of Criminal Procedure (Crime Victim's Rights). The new offense of continuous sexual abuse of a child or children is added to the list of offenses under which specified crime victim rights are mandated.

Law Enforcement Reports Concerning the Commission of Assaultive Offenses; the Provision of Information in those Reports to Victims
HB 2210 Eff. September 1, 2007

Creates Article 2.30 of the Code of Criminal Procedure providing that in cases involving assault, aggravated assault, sexual assault, aggravated sexual assault, and terroristic threats, the peace officer investigating the offense must prepare a written report containing specific information required by Article 5.05(a). This information includes the names of the suspect and complainant; the date, time, and location of the offense; any visible or reported injures; and a

description of the incident and a statement of its disposition. At the request of the victim, the law enforcement agency responsible for investigating the offense must provide to the victim, at no cost, any information that is contained in the written report which is not exempt from disclosure under Chapter 552 of the Government Code.

Amends Article 5.05 of the Code of Criminal Procedure to provide that on request of a victim of an incident of family violence, the local law enforcement agency responsible for investigating the offense must provide to the victim, at no cost, any information that is contained in the written report required by Subsection (a) that is not exempt from disclosure under Chapter 552 of the Government Code.

Victims of domestic violence frequently rely on the help of non-profit organizations to provide access to basic resources which can help the victim to start a new life. However, the victims are often required to provide written documentation to the organization to prove their status as a victim of domestic violence in order to receive assistance. This amendment eliminates a hurdle for victims seeking assistance.

Completion of Court-Ordered Counseling by Certain Family Violence Offenders
HB 3593 Eff. September 1, 2007

Amends Section 85.024(a) of the Family Code to adjust the time by which a person found to have engaged in family violence must file an affidavit with the court stating that they have completed a court-ordered counseling program. Under the previous law, a court was authorized to order a person who had been found guilty of family violence to attend a counseling program. That person was then required to file an affidavit with the court within 60 days of when the order is rendered, stating either that the person has begun the counseling program or that no such program is available within a reasonable distance from that person's residence. Persons filing an affidavit indicating commencement of a counseling program must subsequently file an affidavit to certify program completion due within 30 days of the expiration date of the protective order.

The purpose of HB 3593 is to correct the Legislature's oversight by requiring an offender to file a completion affidavit with the court within 30 days of the expiration of the protective order or not later than the 30th day before the first anniversary of its issuance, whichever date is earlier. It should be noted that this amendment applies only to protective orders and NOT to magistrate's orders of emergency protection.

Confidentiality of Certain Information Regarding Victims of Family Violence, Sexual Assault, or Stalking; Creation of an Address Confidentiality Program
SB 74 Eff. Immediately

Creates an address confidentiality program, administered through the Attorney General's Office to protect the identity of family violence, sexual assault, and stalking victims. The purpose of the program is to protect victims by providing a way in which they can conceal their whereabouts so that their assailants cannot locate them.

Section 1. Amends Chapter 56 of the Code of Criminal Procedure by creating Subchapter C. A substitute post office box address may be designated for a victim to use instead of his or her true residential, business, or school address. The Attorney General is required to act as an agent to receive service of process and mail on behalf of the victim.

The requirements to participate in the program include: 1) specific procedures for filing an application; 2) a state or local agency forwarding the application to the Attorney General; 3) meeting the Attorney General's eligibility requirements and procedural requirements for independent documentary evidence by the victim; and 4) assistance or counseling by the Attorney General or an employee or agent thereof to an applicant does not constitute legal advice.

Articles 56.89–56.90 require a state or local agency to accept a substituted post office box address that has been designated by the Attorney General if it is presented by the victim as a substitute, except when the Attorney General permits an agency to require the victim's true address under specific circumstances. The Attorney General is required to disclose a victim's true address if it is required by certain state agencies and departments or is required by a court order. Article 56.91 provides immunity from liability for the Attorney General or an agent or employee of the Attorney General for any act or omission in the administration of the confidentiality program if that person acted in good faith in the scope of his or her assigned responsibilities. However, the Attorney General or an agent or an employee of the Attorney General is subject to prosecution under Chapter 39 (Abuse of Office) of the Penal Code, if that person failed to act in the matter.

Section 2. Amends Article 56.54 of the Code of Criminal Procedure to give authorization to the Attorney General to use the crime victim's compensation auxiliary fund to cover costs of administering the address confidentiality program.

Section 3. Title I of the Code of Criminal Procedure is amended by the addition of Chapter 57B, related to the confidentiality of identifying information of family violence victims. Article 57B.01 provides important definitions. The Attorney General's Office shall develop and distribute to all state law enforcements agencies a pseudonym form. The form shall be used to record the name, address, telephone number, and the pseudonym of a victim. The victim may choose a pseudonym that will be used instead of his or her name in all public files and records concerning the offense. This includes in police summary records, press releases to the media, and the records of judicial proceedings. The victim must complete the form and return it to the law enforcement agency that is investigating the offense. The completed and returned form is confidential. It may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction. A court of competent jurisdiction may order the disclosure of the victim's name, address, and telephone number only if the court finds that the information is essential in the trial of the defendant or if the identity of the victim is in issue. This court finding is not required to disclose the confidential pseudonym form to the defendant in the case or to the defendant's attorney.

Upon completion and return of the form

by the defendant to the appropriate law enforcement agency, the agency shall remove the victim's name and replace it with the pseudonym on all reports, files, and records in the agency's possession. The agency shall notify the state's attorney of the pseudonym and that the victim has elected to be designated by that pseudonym. An attorney for the state who receives notice of the victim's participation in the program and election of a pseudonym shall ensure that the victim is referred to by the pseudonym in all legal proceedings related to the offense. Except where another law permits or requires it or a court order exists, a public servant or another person who has access to or who can obtain the name, address, telephone number, or other identifying information of a victim who is younger than 17 years of age may not release or disclose this identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. However, this does not apply to the victim or the victim's parents, conservator, or guardian – unless one of the above mentioned individuals committed the offense.

A Class C misdemeanor is created under Article 57B.03. Unless the disclosure is required or permitted by other law, a public servant or other person commits an offense if they have access to or obtain the name, address, or telephone number of a victim who is younger than 17 and they knowingly disclose this information to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified by court order. However, it is an affirmative defense to this offense that the actor is the victim or the victim's parent, conservator, or guardian; unless the parent, conservator, or guardian allegedly committed family violence or was in the same criminal episode.

Section 4. Amends Section 13.002 and Chapter 82 of the Election Code to explain that a person who desires to register to vote must submit an application to the registrar of the county in which the person resides. Except as provided by the addition of Subsection (e), an application must be submitted by personal delivery or by mail. Subsection (e) indicates that a person who is certified for participation in the address confidentiality program is not eligible for early voting by mail unless the person submits an application under this section by personal delivery.

Section 5. Creates Section 18.0051 of the Election Code to explain that an original or supplemental list of registered voters must contain a voter's substitute post office box address designated by the Attorney General under Article 56.82(b) of the Code of Criminal Procedure for use by the voter in place of the voter's true residential, business, or school address if the voter is eligible for early voting by mail under Section 82.007 and has submitted an early voting ballot application as required by Section 84.0021.

Section 6. Creates Section 221.018 of the Election Code, relating to the examination of certain confidential information. Notwithstanding Section 84.0021(b), the tribunal hearing an election contest may examine the information contained in an application under Section 84.0021 relating to the address at which the applicant is registered to vote. The only reason that the information may be examined is for the purpose of hearing an election contest.

The Attorney General is required to establish the address confidentiality program and no later than June 1, 2008. The pseudonym form must be distributed to all law enforcement agencies no later than October 1, 2007.

Subject: The Issuance of a Magistrate's Order for Emergency Protection for Offenses Involving Sexual Assault or Aggravated Sexual Assault
SB 584 Eff. Immediately

Amends Article 17.292(a) of the Code of Criminal Procedure to provide that at a defendant's appearance for an offense involving family violence, sexual assault, aggravated sexual assault, or stalking, the magistrate may issue an emergency protective order on the magistrate's own motion or upon the request of the victim, the guardian of the victim, a peace officer, or an attorney representing the state.

Also amends Section 25.07(a) of the Penal Code to provide that a person commits an offense if the person violates a Magistrate's Order of Emergency Protection and knowingly or intentionally commits an act in furtherance of sexual assault or aggravated sexual assault.

Prior law authorized a magistrate to issue an order for emergency protection for a victim of family violence or stalking. However, sexual assault and aggravated sexual assault were not included as a basis for an emergency protective order. The time period immediately following the arrest of a sexual offender is a particularly dangerous time for the victim. This bill provides express protection during that crucial timeframe for victims of sexual assault and aggravated sexual assault.

Notifications Required for Misdemeanors Involving Family Violence
SB 1470 Eff. September 1, 2007

Amends Article 26.13 and creates Article 42.0131 of the Code of Criminal Procedure to require an admonishment to the defendant before accepting a guilty plea or a plea of *nolo contendere* explaining that it is unlawful to possess or transfer a firearm or ammunition if the defendant is convicted of a misdemeanor involving family violence, as defined in the Family Code.

The U.S. Congress recently reauthorized the Violence Against Women Act, which originally became effective in January 2006. Under the Act, in order for a state to receive federal dollars, it must certify that its judicial administrative policies and practices include notification to domestic violence offenders of the prohibition of firearms for someone who is convicted of a family violence crime or subject to a family violence protective order.

Prior Texas law did include a requirement that such a warning be placed in protective orders issued in Texas. There was not, however, a similar provision in the Code of Criminal Procedure that requires the same notice to be given to defendants convicted of a family violence offense.

See also HB 3692, HJR 6, HB 1988.

Administrative

High Priority

Sets Time for Court Reporter to Provide Transcript of Evidence in a Trial
HB 335 Eff. September 1, 2007

Amends Section 52.047(a) of the Government Code to require the official court reporter to furnish a transcript to a person requesting a transcript not later than the 120th day after the:

- application for the transcript is received by the court reporter; and
- the transcript fee is paid or the person establishes indigence.

This rules apply to official court reporters in municipal courts of record.

Disposition of Surplus Computer Equipment and the Grant of Money by the Office of Court Administration
HB 368 Eff. September 1, 2007

Amends Section 72.021 of the Government Code by creating Subsections (c) and (d) to provide that the Office of Court Administration may award a grant of money to a local or state court to fund programs that are approved by the Judicial Committee on Information Technology and that provide technological support for the judiciary.

The Office of Court Administration is required to file an annual report with the Legislative Budget Board on the amount, recipient, and purpose for each grant awarded. All money expended under a grant is subject to audit by the State Comptroller and the State Auditor.

Creates Section 2175.307 of the Government Code to provide that state rules regarding the disposition of surplus equipment do not apply to the Office of Court Administration. The Office of Court Administration is required to give preference to the judicial branch of local and state government in the disposition of such surplus equipment.

Operation and Funding of Drug Court Programs, Rules and Fees for Drug Courts
HB 530 Eff. Immediately

Amends Chapter 469 of the Health and Safety Code to include municipalities as having authority to establish drug court programs. Although the Act provides funding through the collection of court costs for counties to pay for drug courts, the Act does not provide this same funding for cities to pay for their drug courts. Cities will have to rely on grants and fees charged to defendants in the drug court program to fund their drug courts.

Amends Section 469.002 to provide authority for the governing body of a municipality to establish a drug court for persons arrested for, charged with, or convicted of the following:

- an offense in which an element of the offense is the use or possession of alcohol or the use, possession, or sale of a controlled substance, a controlled substance analogue, or marihuana; or
- an offense in which the use of alcohol or a controlled substance is suspected to have significantly contributed to the commission of the offense and the offense did not involve the carrying, possessing, or using a firearm or other dangerous weapon, the use of force against the person of another, or the death of or serious bodily injury to another.

Note: For municipal courts, this would include the offenses of public intoxication, possession of drug paraphernalia, driving under the influence of alcohol by a minor (DUI), 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. It could also include municipal court defendants that committed other fine-only offenses in which alcohol or a controlled substance is suspected to have significantly contributed to the commission of the offense.

Section 469.002 provides for drug courts that hear cases involving juveniles who have engaged in delinquent conduct or conduct indicating a need for supervision in which an element of the conduct is the use or possession of alcohol or the use, possession, or sale of a controlled substance. Note: Municipal courts do not have jurisdiction over delinquent conduct or conduct indicating a need for supervision. These cases are filed in juvenile court.

Amends Section 469.003 to require a drug court program established under Chapter 469 to notify the Criminal Justice Division of the Governor's Office before implementation of the program and to provide information regarding the performance of the program to the Criminal Justice Division on request.

A drug court established under Chapter 469 may collect from a participant in the program a program fee not to exceed $1,000 and an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of testing, counseling, and treatment. The judge may allow the fees to be paid on a time-payment basis. The fees collected under the drug court program must be used specifically for the program.

Amends Section 469.006 to require the commissioner's court of a county with a population of more than 200,000 to establish a drug court program. Prior law required counties with a population of more than 500,000 to establish a drug court program. The county, however, was required to establish a drug court program only if the county received federal or state funding for that purpose.

Creates Section 469.0025 to provide authority for the commissioner's courts of three or more counties, or the governing bodies of three or more municipalities to elect to establish a regional drug court program for participating counties or municipalities.

Each county or municipality that elects to establish a regional drug court program can retain fees under Article 102.0178 of the Code of Criminal Procedure in the same manner as if the county or municipality had established a drug court program without participating in a regional program. Note: Municipal courts do not collect any costs under Article 102.0178 of the Code of

Criminal Procedure because they are not expressly authorized to do so.

A municipal judge of a drug court established under Chapter 469 has the authority to order that an occupational license be issued to any participant in the drug court program in the judge's court. Section 469.009 does not appear to be specific to the offense currently filed in the drug court. For example, if the county does not have a drug court but the municipality does, and the defendant's driver's license is suspended because of a DWI, and the municipal drug court is seeing the defendant for a public intoxication charge, the municipal judge has the authority to order that the occupational license be issued.

Creates Article 102.0178 of the Code of Criminal Procedure to impose a $50 court cost on the conviction of an offense punishable as a Class B misdemeanor or any higher category of offense under Chapter 49 of the Penal Code or Chapter 481 of the Health and Safety Code. The county may retain a 10 percent handling fee. If the county has established a drug court program, in addition to the 10 percent, the county may retain another 50 percent of the funds exclusively for the development and maintenance of a drug court program. Note: Municipal courts will not collect this court cost. The portion of the costs under Article 102.0178 that is remitted to the State is to be credited to the drug court account to help fund drug court programs. The Criminal Justice Division of the Governor's Office shall appropriate the money to drug court programs applying for it.

Although municipalities have authority to establish drug courts, they will not have access to the $50 court cost since it does not apply to any fine-only offenses. Hence, to pay the costs of developing and maintaining a drug court program, a municipality would have to apply for a grant from the Criminal Justice Division of the Governor's Office and rely on program fees collected from defendants in the program.

Creates Subchapter GG to Chapter 54 of the Government Code to provide for magistrates for drug court programs. These magistrates are to be appointed by either a district or county court with criminal jurisdiction. Subchapter GG provides for the rules for magistrates and proceedings in those drug courts.

Creates Section 102.0215 of the Government Code to list the $50 court cost with the other court costs. Chapter 102 is a listing of all court costs—criminal and civil.

Recording and Availability of Certain Court Documents
HB 587 Eff. September 1, 2007

Amends Article 33.07 of the Code of Criminal Procedure to change the name of the "docket" to "record" for a court of record. Article 33.07 is a general statute that contains five requirements to be included in the "record." Note: Municipal courts, including municipal courts of record, have specific rules regarding their docket in Article 45.017 of the Code of Criminal Procedure. Article 45.017 contains nine requirements for a municipal court docket. Thus, the terminology used in the Code is now incongruous. While courts at other levels of the judiciary will have a "record" rather than "docket," municipal courts, including courts of record, will still have a "docket" because they are governed by the more specific laws of Chapter 45 of the Code of Criminal Procedure.

Amends Article 20.02 of the Code of Criminal Procedure by creating Subsection (h) to provide that a subpoena or summons relating to a grand jury proceeding or investigation must be kept secret.

Amends Article 20.22 of the Code of Criminal Procedure to change grand jury "minutes" to "record."

Amends Section 12.014(c) of the Property Code to note that if a transfer of judgment is filed, the clerk shall record the transfer appropriately. The previous law provided that the clerk shall note the transfer on the margin of the minute book at the place where the judgment is recorded.

Use of Money in the Courthouse Security Fund
HB 1380 Eff. September 1, 2007

Amends Subsections (d) and (d-1) and creates Subsections (d-2) and (f) to Article 102.017 of the Code of Criminal Procedure.

Amends Subsection (d) to provide that the courthouse security fund is specifically to be used for security personnel, services, and items related to buildings that house the operations of district, county, justice, or municipal courts.

For purposes of this statute, operations of a district, county, municipal, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery.

Creates Subsection (f) to require a local administrative judge to provide to the Office of Court Administration a written report not later than the third business day after an incident involving court security that occurs in or around a building housing a court for which the judge serves a local administrative judge. This amendment was presumably in response to heightened awareness of security issues in courts.

Posting of Criminal Dockets; Timing of Pre-Trial Appeals by the State
HB 1801 Eff. September 1, 2007

Creates Article 17.085 of the Code of Criminal Procedure, Notice of Appearance Date, which creates a requirement that the clerk of a court without Internet access to that court's criminal case records post in a designated public place in the courthouse, notice of a criminal court docket setting not less than 48 hours before the docket setting.

Amends Article 44.01(d) of the Code of Criminal Procedure to increase the time in which prosecutors may appeal an order, ruling, or sentence in a criminal case from 15 days to 20 days.

The import of HB 1801 is two-fold. First, while prior law allowed 15 days for a prosecutor to appeal an order, ruling, or sentence in a criminal case, some prosecutors claimed that this time period was not sufficient time for decision-making. Second, this bill requires all criminal courts to provide timely public access to criminal dockets.

Disclosure of a Social Security Number by a Governmental Body
HB 2061 Eff. Immediately

Amends Section 552.147 of the Government Code to provide that although a government body may redact the social security number from information provided under Section 552.021 of the Government Code, the social security number of a living person is not confidential.

The amendment also provides that a *county or district clerk* may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office (emphasis added). The disclosure is not official misconduct and the clerk is not subject to a criminal penalty under Section 552.352 or to civil or criminal liability for the disclosure of the number.

Chapter 552 of the Government Code is the codification of the Public Information Act. In Section 552.003 which defines "governmental body," the judiciary is excepted from the Public Information Act. The Act applies to city and state governments but not to courts. Public access to court records (cases filed in the court) is governed by common law and by constitutional law. Remember that the county and district clerk handle government documents other than court documents. The amendments to Chapter 552 pertain to information filed with the county and district clerk in civil cases.

Municipal Courts Week
HR 973 Eff. Immediately

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

The Legislature recognizes the important work of the municipal courts in our state and resolves that November 5-9, 2007 and November 3-7, 2008 will be recognized each year as Municipal Courts Week.

Temporary Sealing of Certain Affidavits for Search Warrants
SB 244 Eff. September 1, 2007

Amends Article 18.01(b) of the Code of Criminal Procedure to provide an exception to making an affidavit public information after a search warrant is executed.

Creates Article 18.011 of the Code of Criminal Procedure to allow an attorney representing the state in the prosecution of felonies to request a district judge or the judge of an appellate court to seal an affidavit presented under Article 18.01(b).

The district or appellate judge may seal the affidavit if the prosecuting attorney establishes a compelling state interest that:

- public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence; or
- the affidavit contains information obtained from a court-ordered wiretap that has not expired at the time the attorney representing the state requests the sealing of the affidavit.

The order may not prohibit the disclosure of information relating to the contents of a search warrant, return of a search warrant, or inventory of the property taken pursuant to a search warrant, or affect the right of the defendant to discover the contents of an affidavit. When the order expires, the affidavit must be unsealed.

Duration of Judgment Liens in Favor of the State
SB 300 Eff. Immediately

Amends Section 52.006 of the Property Code and creates Subsection (b) to provide that notwithstanding Section 34.001 of the Civil Practice and Remedies Code, a judgment in favor of the state or a state agency does not become dormant. Further, a properly filed abstract of the judgment lien remains a lien under Section 52.001 until the earlier of the 20th anniversary of the date the abstract is recorded and indexed or the date the judgment is satisfied or the lien is released.

Prior to this amendment, the law provided that a judgment became dormant if a writ of execution was not issued every 10 years. A writ of execution had the effect of renewing the judgment lien once an abstract of the judgment is recorded. Ordinarily, the judgment lien expires if not properly renewed, and studies have found that the renewal process is both time-consuming and costly. This change will make the process more time and cost-efficient.

Administration of Oaths by Municipal Judges and Clerks
SB 397 Eff. Immediately

Amends Section 602.002 of the Government Code to provide broader authority for municipal judges, retired municipal judges, and municipal court clerks to administer oaths.

Prior law gave municipal judges and municipal court clerks the authority to administer oaths only in matters pertaining to a duty of the court. Now judges and clerks may administer any oath including, but not limited to, the oath to a newly elected mayor and council members without having to be a notary public.

Attachment of a Judgment Lien to Homestead Property
SB 512 Eff. September 1, 2007

The Texas Constitution protects a person's homestead from being foreclosed on by a judgment lien. The issue has been that there is sometimes great difficulty in determining what land is a person's homestead and then whether a judgment lien would attach to said property. This legislation intends to clarify that determination.

SB 512 further specifies that a judgment lien does not attach and does not work as a lien against a debtor's exempt real property, such as a homestead residence. The bill further establishes that when the property is no longer serving as the debtor's homestead, then a judgment lien would be created against it.

Amends Section 52.001 of the Property Code, which discusses the release of records of lien on homestead property. With regard to the establishment of a lien, a first or subsequent abstract of judgment, when recorded and indexed as prescribed by this chapter and if the judgment is not dormant, constitutes a lien on and attaches to any real property of the defendant. The exception to this is any real property of the defendant's that is exempt from seizure or forced sale under Chapter 41 of the Texas Constitution or any other law that is located in the county where the abstract is recorded and indexed. This includes real property that is acquired after such a recording and indexing.

Creates Section 52.0012 of the Property Code, allowing a judgment-debtor at any

time to file an affidavit in the real property records of the county in which the judgment-debtor's homestead is located; that is in substantial compliance with the newly created section (f). Such an affidavit serves as a release of the record of a judgment lien which has been established under this chapter. A *bona fide* purchaser, mortgagee, or an assignee of a *bona fide* purchaser or a mortgagee for value may rely conclusively on such an affidavit, if the following are included with the affidavit as evidence: 1) a letter sent by the judgment-debtor, along with a copy of the affidavit without attachments and before execution of the affidavit that notified the judgment-creditor of the affidavits and the judgment-debtor's intent to file the affidavit; and 2) the letter and the affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before the affidavit was filed. The letter and affidavit must have been sent to the judgment-creditor's last known address; the address appearing in the judgment-creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment-creditor's last known address; the address of the judgment-creditor's last known attorney as shown in the pleading or another court record; and the address of the judgment-creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

This affidavit does not serve as a release of the record of a judgment lien with respect to a purchaser or mortgagee of real property who has acquired the purchaser's or mortgagee's interest from the judgment-debtor after the judgment-creditor files a contradicting affidavit in the real property records of the county in which the real property is located. A form for the affidavit is provided.

Provides for Other Notice for the Presumption for the Offense of Theft by Check and for Certain Fees
SB 548 Eff. September 1, 2007

Amends Section 31.06(b) of the Penal Code to include notice to the issuer of a check to be sent by first class mail, evidenced by an affidavit of service. Prior law allowed notice to be delivered by registered or certified mail with return receipt requested or by telegram with report of delivery requested. Delivery by telegram is repealed.

Amends Article 102.007 of the Code of Criminal Procedure by creating Subsection (g) to require the issuer of a check to be liable for a fee in an amount equal to the costs of delivering notification by registered or certified mail with return receipt requested. The fee must be paid to the holder of the check upon proof of the actual costs expended.

Creates Section 3.507 of the Business and Commerce Code to allow, before prosecution, the holder of a check, the holder's assignee, agent, representative, or any other person retained by the holder seeking collection of the dishonored check to charge the drawer or endorser of the check the costs of delivery notification by registered or certified mail with return receipt requested under Section 31.06 or Section 32.41 of the Penal Code. If the fee has been collected under Article 102.007(g) of the Code of Criminal Procedure, the fee under the Section 3.507 may not be charged. If a holder of a check receives a fee under Article 102.007(g) and one under Section 3.507, the fee under Section 3.507 must be refunded. This remedy does not affect any right or remedy the holder of a check may be entitled to under any rule, written contract, judicial decision, or other statute.

Reimbursement for and Counseling Related to Jury Service
SB 560 Eff. September 1, 2007

Amends Section 61.001 of the Government Code, providing for the payment of jurors. The amount of payment did not change from the prior law. The Legislature changed the wording requiring courts to pay a juror who attends in response to a summons and discharges his or her jury duty.

Subsection (c) provides that a person who reports for jury service in a municipal court is not entitled to reimbursement under Chapter 61, but the municipality may provide reimbursement for expenses to the person in an amount to be determined by the municipality. Chapter 61 provides that a person who reports for jury duty is entitled to receive not less than $6 for the first day or fraction of the of first day and then not less than $40 for each or fraction of each day the person is in attendance in response to the summons and discharges the person's duty for that day.

Since all money appropriated by a city must be approved by the city council, if courts plan to pay jurors, they must budget for that expense in the city budget and have council approval.

Creates Section 61.0011 of the Government Code to define "person who reports for jury service" to mean a person who reports in person for duty on a grand jury or petit jury, regardless of whether the person is selected to serve on the jury.

Amends Subsections (a) and (c) of Section 61.002 of the Government Code to include in the list of programs that jurors may donate to under Article 56.04(f) of the Code of Criminal Procedure, offering psychological counseling to jurors in criminal cases involving graphic evidence or testimony.

The letter regarding the donation must have a blank on it where the juror may indicate how much the juror wants to donate. Also see HB 1158 for more legislation concerning juror pay.

Subsection (f) is created in Article 56.04 of the Code of Criminal Procedure to provide authority for a commissioners court to approve a program of post-trial psychological counseling for a person serving as a juror or an alternate juror in a trial of certain offenses involving graphic evidence or testimony.

Medium Priority

Confidentiality of Home Addresses of Public Officials and Their Spouses
HB 41 Eff. September 1, 2007

Creates Section 13.0021 of the Election Code, which provides that federal and state judges may opt to have their personal information kept confidential and not published on the voter registration list. To do so, the judge must provide an affidavit stating that he or she is a federal or state judge to the registrar of the voter rolls. This does not apply to municipal judges because only district, appellate, and county court judges are included in the definition of "state judges" under this section.

Bond Forfeiture Citation to Sureties
HB 1158 Eff. September 1, 2007

Amends Article 22.03(b) of the Code of Criminal Procedure to require a citation to a surety who is an individual to be served at

the address shown on the face of the bond or the last known address of the individual.

Creates Article 22.035 of the Code of Criminal Procedure to require a citation to a defendant who posted a cash bond to be served to the defendant at the address shown on the face of the bond or the last known address of the defendant.

Under prior law, the clerk of the court was directed to provide notice to the surety at the address shown on the face of the bond. Frequently, the address shown on the face of the bond was inaccurate due to the surety relocating without providing an updated address. The result was that notices are often returned undeliverable, which caused a delay in the process and an unnecessary use of the process server's time.

HB 1158 directs the clerk of the court to serve the individual at the address shown on the face of the bond or at the last known address of the individual in order to provide more accurate notice without delay. Local governments will presumably recognize a savings in the form of postage and other resources spent in preparing citations and serving notice.

Donations of Juror Reimbursements
HB 1204 Eff. September 1, 2007

A juror reporting for jury duty is authorized to donate the entire juror's per diem payment for jury duty to the county. The counties use this money for the compensation to the Crime Victims' Fund, the Child Welfare Board, battered women's shelters, safe houses, and other programs approved by the county commissioner's court. However, some jurors may not want to donate their entire per diem since the rates increased to $40 per day after the first day of jury duty.

Amends Section 61.003(a) of the Government Code to provide that each prospective juror must be provided with a form that allows the juror to request that all or a portion of the juror's daily reimbursement be donated to the Crime Victims' Fund; the child welfare board of the county; or any program selected by the commissioners court operated by a nonprofit organization that provides shelter and services to victims of family violence. Also creates Subsection (a-1) to require that the form letter provided must include a blank space in which the prospective juror may enter the amount of daily reimbursement he or she wishes to donate.

As municipal courts are not required to pay jurors pursuant to Chapter 61, this bill does not impact juror reimbursement practices barring the adoption of local ordinances. Also see SB 560 for more legislation concerning juror pay.

Services Provided to the State by Court-Reporting Firms, Shorthand Reporting Firms, and Affiliate Offices
HB 1518 Eff. September 1, 2007

Amends Section 52.001 of the Government Code to provide that a court reporting firm, shorthand reporting firm, or an affiliate office is considered to be providing court reporting or related services in this state if: any act that constitutes a court reporting or shorthand service occurs partially or entirely in the state; the firm or office recruits a Texas resident through an intermediary to provide services in Texas; or the firm or office contracts with a resident of Texas for either party to provide court reporting or shorthand services in Texas. This allows the Court Reporting Certification Board and the Attorney General to take enforcement action against non-resident firms that violate the Government Code.

Since 2004, several complaints have been filed with the Court Reporting Certification Board regarding non-resident firms. The language of the Government Code did not allow the Board to take action against these firms.

Prosecution of Graffiti Cases; Juvenile Delinquency Prevention; Graffiti Eradication Fee
HB 2151 Eff. September 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

Creates Subsection (s) of Article 42.037 of the Code of Criminal Procedure to provide that if a defendant is convicted of putting graffiti on a victim's property and the defendant is ordered to pay restitution to the victim, the defendant may provide monetary compensation to the victim or may personally remove or paint over any markings the defendant made.

Amends Articles 102.0171(a) and (c) of the Code of Criminal Procedure to provide that a defendant convicted of a graffiti offense must pay a $50 juvenile delinquency and graffiti eradication fee. The court clerks must collect this fee, which may be used to repair damage caused by graffiti, to provide educational and intervention programs and materials to schoolchildren, and to provide rewards for citizens who identify offenders.

Also amends Section 54.046 of the Family Code to provide that if a juvenile court adjudicates a juvenile who has participated in a graffiti offense the court may order the child to reimburse the property owner for the cost of restoring the property or public property. If a child is financially unable to make restitution, the court may order the child to perform community service to satisfy the restitution.

Creates Section 54.0481 of the Family Code to provide that in a disposition hearing in juvenile court regarding a child who has damaged property with graffiti the court may require the child to reimburse the property owner for the cost of restoring the private or public property. If a child is financially unable to make restitution, the court may order the child to perform community service to satisfy the restitution.

Prior to 1997 graffiti offenses were prosecuted as criminal mischief. Today the punishment for the offense ranges from a Class B misdemeanor to a 1st degree felony. As such, the offense is outside of the jurisdiction of municipal and justice courts.

Municipal Court of Record in the City of Laredo
HB 2617 Eff. Immediately

Amends Chapter 30 of the Government Code by creating Subchapter WW. This subchapter creates and establishes rules for the municipal courts of record in the City of Laredo. The presiding municipal judge must be a licensed attorney in Texas and is elected to serve a four-year term. The city manager must nominate a clerk, and the governing body of the city must appoint the clerk by a majority vote.

Although the Municipal Courts of Record Act (Chapter 30 of the Government Code) was intended to allow cities to create

municipal courts of record without legislative enactment, some cities wanting specific provisions not featured in Chapter 30 still go through the legislative process. Notably, the presiding judge of the Laredo Municipal Court may be the only elected judge in Texas subject to a term limit of two four-year terms. Other cities who went to the 80th Legislature to create a municipal court of record include the City of Corpus Christi. See SB 2009.

Municipality Must Keep Confidential Certain Personal Information on Minors
SB 123 Eff. September 1, 2007

Creates Section 552.148 of the Government Code to require a municipality to keep certain personal information about minors confidential. Chapter 552 is the codification of the Public Information Act (PIA).

"Minor" is defined as a person who is younger than 18 years old. If a minor participates in a recreational program or activity run by a municipality, the following information about the minor is excepted from disclosure:

- name, age, home address, home telephone number, or social security number of the minor;
- photograph of the minor; and
- name of the minor's parent or legal guardian.

The PIA does not apply to the judiciary. The information in cases filed in courts is governed by common law and by the U.S. and Texas Constitutions.

Calculation of Deadlines Under the Public Information Law
SB 175 Eff. Immediately

Prior to this amendment, various statutes, including the Public Information Act (PIA), used different terminology in referring to a business day or work day. This variation, at times, caused complications in calculating deadlines.

Amends Section 552.263 of the Government Code to provide that a person requesting public information who fails to pay the copying fee within 10 business days is considered to have withdrawn his or her request.

Also amends Section 552.011 of the Government Code to provide that the Attorney General must determine within 45 business days whether or not the information requested falls under an exception to the public information disclosure requirements.

Section 552.307 is amended to provide that if the information requested does not require an Attorney General opinion then the governmental body must release the information within 10 business days after the request.

The PIA does not apply to the judiciary. The information in cases filed in courts is governed by common law and by the U.S. and Texas Constitutions.

Creation of an Appellate Judicial System for the Ninth Circuit Court of Appeals District
SB 325 Eff. September 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

Creates Section 22.2101 of the Government Code to provide that the commissioners court in each county in the Ninth Circuit Court of Appeals must establish an appellate judicial system. The appellate judicial system will assist the Court of Appeals in processing cases that are appealed from that county, defray costs and expenses incurred by the county, and reimburse Jefferson County for supplemental salaries and benefits provided to the Ninth Circuit Appellate Court justices. In order to fund the judicial system the commissioners court must set a court fee of $5 for each civil suit filed in county court, county court at law, probate court, or district court in the county. This fee does not apply to suits filed by the county or suits filed to recover delinquent taxes.

Prior to this Act, appellate judicial systems had been created in eight of the 14 appellate courts in Texas. The systems were created in order to give the commissioners court of each county within a district's discretion to set a court cost fee to be collected to benefit the appellate court.

Use of Parts of Driver's License and Social Security Numbers in Certain Court Documents
SB 699 Eff. September 1, 2007

Amends Section 52.003 of the Property Code to require an abstract judgment to show the last three numbers of the defendant's driver's license, if available, and the last three numbers of the defendant's social security number, if available.

Because Article 45.047 of the Code of Criminal Procedure allows municipal courts to order a fine and costs to be collected by civil execution against a defendant's property in the same manner as a judgment in a civil suit, municipal courts may also file an abstract judgment against a defendant's property when a defendant defaults in payment of fine. The Texas Municipal Courts Education Center (TMCEC) has a sample abstract judgment form in its *Forms Book*.

Creation of Municipal Courts of Record in the City of Corpus Christi
SB 2009 Eff. Immediately

Prior to this Act, the City of Corpus Christi did not have a municipal court of record. An appeal from a non-record municipal court results in trial *de novo*. A municipal court of record negates the need for a new trial on appeal.

Creates Subchapter ZZ of Chapter 30 of the Government Code to provide that the city manager shall appoint a director of the municipal court to serve as the clerk of the municipal courts of record. The municipal court director must perform all the duties generally assigned to a municipal court clerk. The director must also maintain docket records for all cases filed in the municipal court; maintain an index of judgments using the same method used for criminal cases in the county court; and request the jurors needed for jury trials. The director may hire, direct, and remove personnel authorized by the city's budget and may appoint the court reporter.

See also HB 2391, HB 485

Trouble finding a bill?

Go to the TMCEC website and download the version of this newsletter that is in bill number order.

www.tmcec.com

Court Costs

Compensation and Reimbursement for Appointed Counsel; Creating an Indigent Defense Fund
HB 1267 Eff. September 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

HB 1267 streamlines requests for payment of appointed defense attorneys by trial judges. The bill encourages prompt rulings on fee vouchers. Attorneys may either be paid or appeal a decision reducing or denying the fee that they have requested. The attorney is now provided an option to appeal the refusal of his or her bill for service when the judge has been non-responsive to the issue for more than 60 days. This can be done by filing a motion with the presiding judge of the administrative judicial region. The judge of the administrative judicial region shall review the denial or failure to act and determine the appropriate payment and may conduct a hearing to do so.

The State shall reimburse a county for attorney compensation and expenses, and a court seeking reimbursement for a county shall certify the reimbursement amount to the Comptroller of Public Accounts. Not later than 60 days after the date the Comptroller receives the court's request for reimbursement, the Comptroller shall issue a warrant to the county in the amount specified by the court.

The Government Code is amended by creating Section 102.023, stating that a person convicted of an offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay a cost upon conviction of $2.00 under Section 133.107 of the Local Government Code (Fee for Support of Indigent Defense). The Local Government Code is further amended by the inclusion of language indicating that the treasurer shall remit a fee collected under Section 133.107 to the Comptroller in the manner provided by the statute. The Comptroller shall credit the remitted fees to the credit of the fair defense account, which was established under Section 71.058 of the Government Code.

Fees in the Administration of Teen Court Programs in the Texas-Louisiana Border Region
HB 2949 Eff. September 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

Amends Article 45.052 of the Code of Criminal Procedure (Dismissal of Misdemeanor Charge Upon Completion of Teen Court Program) so that a justice or municipal court located in the Texas-Louisiana border region may charge a $20 fee. In the past, the fee was $10.

The increased fee is also made applicable under Section 54.032 of the Family Code, also related to the deferral of adjudication or dismissal in certain cases upon completion of a teen court program. This relates to incidents where participation in a teen court program is part of a juvenile court order.

Expanded Use of the Judicial and Court Personnel Training Fund
SB 496 Eff. January 1, 2008

Amends Subsection 56.003 of the Government Code regarding the Judicial and Court Personnel Training Fund, which funds judicial training for organizations including the Texas Municipal Courts Education Center.

Amends Subsection (a) to provide that unless the Legislature specifically appropriates or provides additional funding for administering grants, the Court of Criminal Appeals may not use more than three percent of the money appropriated in any one fiscal year for administration.

Creates Subsection (g) to allow the Court of Criminal Appeals to grant legal funds (from the Judicial and Court Personnel Training Fund) to statewide professional associations and other entities that provide innocence training programs (related to defendants claims of factual innocence following conviction) to law enforcement officers, law students, and other participants in innocence training programs.

Amends Section 56.004(b) of the Government Code to provide that the Legislature shall appropriate funds from the Judicial and Court Personnel Training Fund for innocence training programs for law enforcement officers, law students, and other participants.

Amends Section 56.006 of the Government Code to provide authority for the Court of Criminal Appeals to adopt rules for programs relating to such education and training for law enforcement officers, law students, and other participants; and provides for the administration and oversight of innocence training programs for law enforcement officers, law students, and other participants.

County Judges' Salaries; State Court Costs
SB 600 Eff. October 1, 2007 (Pursuant to Section 51.607 of the Government Code, fees in this Act take effect January 1, 2008.)

Amends Sections 25.0005(a) and (b) of the Government Code regarding statutory county court judges' salaries to be not less than $1,000 less than that total annual salary received by district judges in the county. The commissioners shall set the salaries of county judges who engage in the private practice of law.

Amends Section 25.0015(a) of the Government Code to require the State to annually compensate each county in an amount equal to 60 percent of the state salary of a district judge in the county for each statutory county court judge in the county who does not engage in the practice of law and presides over a court with at least the jurisdiction provided for in Section 25.0003 of the Government Code.

Amends Section 133.105 of the Local Government Code to provide that the judicial support fee collected by municipal courts and all other courts with criminal jurisdiction is increased to $6. The current amount collected is $4. Despite the increase, the amount retained by local government remains 60 cents.

Amends Section 133.154 of the Local Government Code to provide that the district clerk and the statutory county clerk of any county court shall collect a fee of $42 for support of the judiciary. The current amount is $37.

The following sections in the Government Code are repealed: Subsection (e), (f), and (g), Section 25.005; Subsection (b) and (c), Section 25.0005; Section 25.0016; Subsection (e), Section 25.0362; and Subsection (f) through (m), Section 51.702.

See also HB 1623, HB 2151, SB 548, SB 1083, SB 1183.

COURT COSTS

For Conviction of Offenses Committed on or after January 1, 2008

OFFENSE/DESCRIPTION	State CF	Local TFC	Local CS	State STF	State SJRF	State JSF	State IDF	Total*2
MUNICIPAL ORDINANCES								
■ Parking (authorized by Sections 542.202-542.203, Transportation Code)	N/A	N/A	*1	N/A	N/A	N/A	N/A	*1
■ Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
■ Other Municipal Ordinances								
• Punishable by a fine of $200 or less	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00
• Punishable by a fine of $201-$500	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00
• Punishable by a fine of more than $500	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00
STATE LAW								
■ Transportation Code, Subtitle C, Rules of the Road								
• Parking & Pedestrian (in school crossing zone)	N/A	3.00	25.00	30.00	N/A	N/A	N/A	62.00
• Parking & Pedestrian (outside school crossing zone)	N/A	3.00		30.00	N/A	N/A	N/A	37.00
• Overtaking & Passing a School Bus, Section 545.066	40.00	3.00	25.00	30.00	4.00	6.00	2.00	110.00
• Other (outside school crossing zone)	40.00	3.00	N/A	30.00	4.00	6.00	2.00	85.00
• Other (in school crossing zone)	40.00	3.00	25.00	30.00	4.00	6.00	2.00	110.00
■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility								
• First conviction	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00
• Subsequent convictions	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00
■ Education Code								
• Parent Contributing to Nonattendance, Section 25.093	40.00	N/A	20.00	N/A	4.00	6.00	2.00	72.00
• Failure to Attend School, Section 25.094	40.00	N/A	20.00	N/A	4.00	6.00	2.00	72.00
■ All other misdemeanors								
• Punishable by a fine of $500 or less	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00
• Punishable by a fine of more than $500	40.00	N/A	N/A	N/A	4.00	6.00	2.00	52.00

***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.

***1** $2-5 court costs for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

***1** Up to $5 court costs for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).

Effective January 1, 2008 **Rev. 07/07**

***[2] FEES (Add the following fees whenever they apply):**

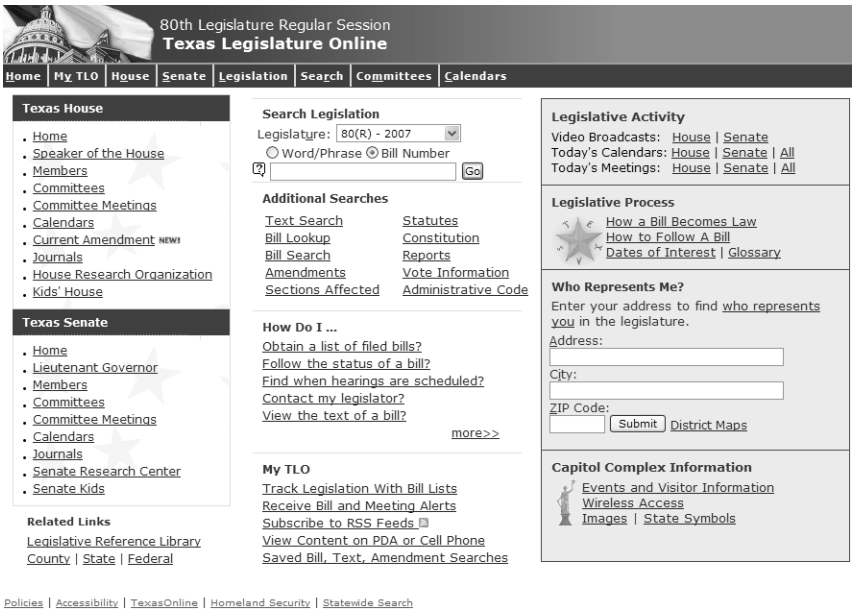
- **Administrative Fee:** The court may order an administrative fee to be paid when the court grants DSC under Art. 45.0511(d), C.C.P.—court's discretionary authority. The fee may not exceed the maximum amount of the possible fine for the particular offense charged.
- **Applicable fees for services of 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, *capias* or *capias pro fine*. 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 Any Other Writ (**includes 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 (except traffic) involving a minor. (Arts. 45.0216(i) & 45.055(d), C.C.P.; Sec. 106.12, A.B.C.; Sec. 161.255, H.S.C.)
- **Fees Created by City Ordinance:**
  - **Juvenile Case Manager Fee**: Up to $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.)
  - **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 31st 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)
- **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 Department of Public Safety** to deny renewal of driver's licenses. Two-thirds ($20) are sent to the State. One-third ($10) is retained locally. Applies to any violation that municipal 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 failing to secure a child in a child passenger safety system or to secure a child in a safety belt (Secs. 545.412 & 545.413(b), T.C.). Remittiture must be done at the end of the city's fiscal year. City must remit 50 percent of the $100 to $200 fines.

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.)

Additional Fees: A court may assess a $10 fee when a defendant elects to take a driving safety course (DSC) on or before the answer date on his or her citation (Art. 45.0511(f)(1), C.C.P.). The court may require the defendant to pay $12 for the court to request the defendant's certified Texas DL record from DPS for DSC (money sent to State). 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 (Teen court near Louisiana border may charge two $20 fees) (Art. 45.052(e) & (g), C.C.P.). For dismissal fees for compliance dismissals, see TMCEC Compliance Dismissal Chart.

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 Reimbursement Fee	Code of Criminal Procedure, Article 102.0045	SJRF
State Traffic Fee	Transportation Code, Section 542.4031	STF
Judicial Support Fee	Local Government Code, Section 133.105	JSF
Indigent Defense Fee	Local Government Code, Section 133.107	IDF



This is the home page for Texas Legislature Online. This site has an enormous amount of information about the Texas Legislature, the legislative process and pending and passed legislation.

Need a copy of a bill?

Most bills summarized in this newsletter can be found in the Appendix to the Bill Summaries on the Legislative page of our website (www.tmcec.com).

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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.

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