



11-30-2017

# Report on the Texas Legislature, 85th Session: An Urban Perspective-Criminal Justice Edition

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## Recommended Citation

Guidry, Sarah R.; Whitfield, Zahra Buck; Walker, Amber K.; Williams, Marshaun; and Paris, Grady (2017) "Report on the Texas Legislature, 85th Session: An Urban Perspective-Criminal Justice Edition," *ECI Interdisciplinary Journal for Legal and Social Policy*: Vol. 4 : Iss. 1 , Article 1.

Available at: <https://digitalscholarship.tsu.edu/thebridge/vol4/iss1/1>

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*Report on the Texas Legislature, 85th Session: An Urban Perspective*

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## OVERVIEW

In Texas, the legislature meets every 2 years and at the end of a regular legislative session, hundreds of passed bills will have been sent to the governor for approval. The large number of bills and the wide range of topics they cover can make it difficult to gain an understanding of all the new laws that were passed. At the close of each legislative session the Earl Carl Institute publishes, for the benefit of its constituents, highlights from the session in a bi-annual legislative report. In this year's publication entitled *Report on the Texas Legislature, 85th Session: An Urban Perspective* the Institute attempted to cover matters that it believes to be of concern to the urban community, however, many of the highlights cover issues of particular concern to other traditionally disenfranchised communities as well. The legislation covered in these reports generally falls under such issues as Election, Criminal Justice (Human Trafficking, Criminal Procedure, Wrongful Convictions, Domestic Violence), Juvenile Justice, Family Law, Property, Education, Healthcare, Wills, Estate and Probate, Wealth and Litigation. We are pleased to present, via *The Bridge: Interdisciplinary Perspectives on Legal & Social Policy*, an excerpt this year's legislative report that highlights legislative actions in the area of criminal justice reform in the State of Texas. The full report, published in August 2017, can be accessed via the Institute's website [www.tsulaw.edu/centers/ECI/publications.html](http://www.tsulaw.edu/centers/ECI/publications.html).

## EXECUTIVE SUMMARY

The State of Texas' 85<sup>th</sup> Legislature's Regular Session introduced 10,672 bills, passed 4,960 of which 50 were vetoed, and 154 became law without the Governor's signature. By observation, the 85<sup>th</sup> Legislature has been noted to have become increasingly more gridlocked and has been described as less efficient by filing less bills than the previous legislature and passing even fewer bills through both chambers. There was also a great deal of contention as evidenced when a fight nearly broke out when Republican lawmaker Matt Rinaldi said he called immigration authorities on people protesting "sanctuary cities" legislation. His action enraged Hispanic legislators leading to a tussle with each side accused the other of threats and violence.

The 85<sup>th</sup> Legislature focused heavily on comprehensive Child Welfare and Foster Care reform. Much time was also spent on addressing various human issues including human trafficking as well as the "Sandra Bland Act" (SB 1849) and the Sanctuary Cities Bill (SB4). New laws were passed surrounding rules for attachment of a witness after a rape victim in Harris County was re-traumatized by being jailed pending her testimony (SB 291).

The legislature confirmed that it is okay to discriminate as long as it's based on a strongly held religious belief, even if it means you can continue interacting with the State including receipt of State funding without repercussion and even if that means foster children not being able to find a foster home and sometimes sleeping in CPS offices. (HB 3859). Many are now wondering what has happened to separation of church and state. We heard a lot about bathrooms during both the regular session and the special session called by the Governor. This was met with opposition, including from Speaker of the House Joe Straus, and ultimately failed to make it out of either session. Seventeen year olds are still considered adults in the criminal justice system despite numerous brain studies discussed in recent Supreme Court cases that recognize that the brain doesn't mature until about 25 years old. The failure to raise the age of juvenile jurisdiction in

Texas also fails to take into account to issues of security from potential rape in the adult system and that for all other purposes 17 year olds are not considered adults, e.g. they cannot vote in Texas, cannot join the armed services and cannot buy liquor in Texas.

## CRIMINAL JUSTICE HIGHLIGHTS

Several criminal justice reforms were enacted during the 85<sup>th</sup> legislature session. New laws include:

- Measures to reduce wrongful convictions (HB 34)
  - ✓ Requirement to videotape certain confessions
  - ✓ Criteria for Using Informant Testimony
  - ✓ Methods for eyewitness identification-photo and line-up
- Reducing the burden of criminal records by creating nondisclosure procedures for certain convictions (HB 3016)
- Reducing debtor prisons—decriminalizing poverty (SB 1913)
- Measures for diverting persons with mental illnesses from the justice system to treatment systems (SB 292, SB 1849)
- Making data driven solutions more reliable in reviewing racial profiling—through consistency of racial classifications across law enforcement agencies (HB 3051)
- Requiring training for law enforcement on proper interaction with civilians during traffic stops and other in-person encounters (SB 30)

The Sandra Bland Act. Spawnd by the tragic turn of events surrounding Sandra Bland’s traffic stop, arrest and death while in custody in Waller County, SB 1849 was written to address mental health issues of defendants while in custody. The events leading up to Sandra Bland’s unnecessary jailing and tragic death sparked a statewide and national discussion regarding criminal justice reform. SB 1849 aims to improve and correct Texas’ criminal justice system to make it better for both law enforcement and the public and prevent future tragedies like Ms. Bland’s.

The Sanctuary Cities Bill or the New Face of Racial Profiling. SB 4 bans “sanctuary cities, the common term for local governments that do not enforce federal immigration laws. The law allows local law enforcement officers to question the immigration status of people they detain or arrest and punishes local government department heads and elected officials who do not cooperate. SB 4 exempts school districts from enforcing this ban.

## CRIMINAL JUSTICE LEGISLATION

1. **HB 62** (Craddick/Cook/Lucio III/Davis, Yvonne/Wu) *Relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.*

**Summary** – HB 62 would make it a misdemeanor offense for a driver to use a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle was stopped. The first offense would be punishable by a fine between \$25 and \$99, and a subsequent offense would carry a fine between \$100 and \$200.

The driver would have a defense to prosecution if the driver was:

- using a hands-free device, including voice-operated technology;
- reporting illegal activity or summoning emergency help;
- reading an electronic message that the person reasonably believed concerned an emergency; or
- relaying information to a dispatcher or digital network through a device affixed to the vehicle as part of the driver's job.

The offense also would not apply to drivers of authorized emergency or law enforcement vehicles acting in an official capacity or to drivers licensed by the Federal Communications Commission operating a radio frequency device other than a portable wireless communication device.

HB 62 would require that the driver's license test cover knowledge about the effects of texting while driving or other actions that constitute distracted driving. The bill would prohibit the seizure or inspection of a driver's cell phone by a peace officer unless it was authorized by another law and would prohibit the Department of Motor Vehicles from assigning points to a driver's license for a texting-while-driving offense.

**HB 62 cont'd.**

The Texas Department of Transportation would be required to post signs on interstate and U.S. highways entering the state indicating that texting while driving is prohibited and carries a fine.

**Codification:** Section 545.424 of the Transportation Code

**Effective Date:** September 1, 2017

2. **HB 239** (Hernandez/White) *Relating to a report regarding the confinement of pregnant inmates by the Texas Department of Criminal Justice.*

**Summary** – HB 239 requires TDCJ to report on the implementation of healthcare services for pregnant inmates plus provide a detailed summary on nutritional standards, housing conditions, situations involving a pregnant inmate's physical restraint, as well as the number of miscarriages experienced by pregnant inmates while confined in a facility operated by or under contract with TDCJ. TDCJ is required to submit the report by December 1, 2018, to the governor, lieutenant governor, speaker of the House of Representatives, and house and senate committees with relevant jurisdiction.

**Codification:** Amends Section 501.066, Government Code

**Effective Date:** September 1, 2017; Expiration on February 1, 2019

3. **SB 47** (Zaffirini) *Relating to a study on the availability of information regarding convictions and deferred dispositions for certain misdemeanors punishable by fine only.*

**Summary** – SB 47 requires the Office of Court Administration of the Texas Judicial System (OCA) to conduct a study on how records regarding misdemeanors punishable by fine only, other than traffic offenses, are held in different Texas counties. The bill requires the study to address, with respect to each county, the public availability of conviction records for misdemeanors punishable by fine only, the public availability of records relating to suspension of sentence and deferral of final disposition for misdemeanors punishable by fine only, the public availability of those conviction and suspension and deferral records that are related to a child younger than 18 years of age, whether public access to and availability of those aforementioned records have been expanded or restricted by the county over time, whether local agencies holding those records destroy those records, the reasons and criteria for any

destruction of those records, and the retention schedule of each local agency holding those records, if the agency routinely destroys those records. The bill requires OCA, not later than January 1, 2019, to issue a report on the study to the lieutenant governor, the speaker of the House of Representatives, and the appropriate standing committees of the House of Representatives and the senate.

**Codification:** None

**Effective Date:** September 1, 2017

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## **Human Trafficking**

**\*\* (African American girls comprise 40% of all sex trafficking victims nationally)**

4. **HB 29** (Thompson, Senfronia/Huberty/Collier/Cook/Frullo) *Relating to prostitution and the trafficking of persons, civil racketeering related to trafficking, the prevention, investigation, and prosecution of and punishment for certain sexual offenses and offenses involving or related to trafficking, reimbursement of certain costs for criminal victims who are children, and the release and reporting of certain information relating to a child; increasing criminal penalties; creating criminal offenses.*

**Summary** – HB 29 amends the Civil Practice and Remedies Code to authorize the attorney general, if the attorney general has reason to believe that a person may be in possession, custody, or control of any documentary material or other evidence or may have any information relevant to a civil racketeering investigation, to issue and serve in writing, before beginning a civil proceeding, a civil investigative demand requiring the person to produce any of the documentary material for inspection and copying, answer in writing any written interrogatories, give oral testimony, or provide any combination of such civil investigative demands. The bill sets out the required contents of a civil investigative demand, a demand for production of documentary material, a demand for answers to written interrogatories, and each demand for the giving of oral testimony. The bill authorizes both the person who has been served and, in the case of a demand for a product of discovery, the person from whom the discovery was obtained, at any time before the return date specified in a civil investigative demand or not later than the 30th day after the date the demand was served, whichever period is shorter, to file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or a district court of Travis County. The bill requires such a petition to specify each ground on which the petitioner relies in seeking the relief sought and authorizes the petition to be based on any failure of a demand to comply with statutory provisions governing procedures and evidence in a civil racketeering case related to trafficking of persons or on any constitutional or other legal right or privilege of the petitioner. The bill requires the petitioner to serve a copy of the petition on the attorney general and authorizes the attorney general to submit an answer to the petition. The bill requires the court, in ruling on the petition, to presume, absent evidence to the contrary, that the attorney general issued the demand in good faith and within the scope of the attorney general's authority. The bill sets out provisions authorizing specified manners of service of such demands or petitions and establishing that a verified return by the individual so serving such a demand or petition is proof of service. The bill requires a person on whom such a civil

investigative demand is properly served to comply with the terms of the demand, unless otherwise provided by court order and establishes that the time for compliance with the demand wholly or partly does not run during the pendency of any petition for an order modifying or setting aside the demand, provided that the petitioner complies with any portions of the demand not sought to be modified or set aside.

The bill creates an offense for a person who, with intent to avoid, evade, or prevent compliance with a civil investigative demand, knowingly removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information. The bill establishes that such an offense is a misdemeanor punishable by a fine of not more than \$5,000, confinement in a county jail for not more than one year, or both a fine and confinement.

HB 29 authorizes the attorney general to use information obtained in response to a demand, or any documentary material, product of discovery, or other record derived or created from the information as the attorney general determines necessary in the enforcement of the bill's provisions regarding civil racketeering related to trafficking of persons, including presentation before court. The bill prohibits the attorney general from releasing or disclosing information that is obtained in response to a demand or any documentary material, product of discovery, or other record derived from the information except under certain conditions as described by the bill. The bill exempts the civil investigative demand issued by the attorney general, any information obtained, maintained, or created in response to the demand, or any documentary material, product of discovery, or other record derived or created during an investigation from the information, from state public information law and from disclosure, discovery, subpoena, or other means of legal compulsion for the release.

HB 29 grants a district court, if a petition is filed in the district court in any county, jurisdiction to hear and determine the matter presented and to enter any order required to implement provisions regarding civil racketeering related to trafficking of persons. The bill makes any final order subject to appeal and establishes that failure to comply with any such order is punishable by the court as contempt of the order.

HB 29 amends the Code of Criminal Procedure to make eligible for compensation under the Crime Victims Compensation Act the amount of expense reasonably and necessarily incurred as a result of the specialized care for a child who is a victim and is younger than 18 years of age, is not married, or has not had the disabilities of minority duly removed. The bill includes among the reportable convictions or adjudications the basis of which requires registration under the sex offender registration program certain conduct constituting a continuous trafficking of persons offense; an attempt, conspiracy, or solicitation to engage in such conduct; and a violation of the laws of another state, federal law, foreign country, or Uniform Code of Military Justice for an offense containing elements substantially similar to the elements of such conduct. The bill includes a reportable conviction or adjudication for the offense of continuous trafficking of persons, if based partly or wholly on such conduct, among the convictions or adjudications requiring lifetime registration.

HB 29 amends the Education Code to require the Texas Higher Education Coordinating Board and the Texas Workforce Commission (TWC) by rule to require each public junior college and each career school or college, respectively, offering a commercial driver's license training program to include as a part of that program, education and training on the recognition and prevention of human trafficking and requires the board and the TWC to adopt rules, as applicable, not later than December 1, 2017.

HB 29 amends the Government Code to include among the offenses for which the trial courts of Texas are required to give preference to hearings and trials a trafficking of persons offense if the actor traffics a child who is younger than 18 years of age and causes the trafficked child to engage in or become the victim of certain sexual offenses or receives a benefit from participating in a venture that involves such an activity or engaging in sexual conduct with such a trafficked child. The bill repeals a provision that sets the expiration of the human trafficking prevention task force on September 1, 2017.

HB 29 provides the authorization for the commissioners court or governing body of a municipality to establish a prostitution prevention program for defendants charged with a prostitution offense in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee with the authorization for such a commissioners court or governing body of a municipality to establish a commercially sexually exploited persons court program for such a defendant.

HB 29 amends the Health and Safety Code to increase from under the age of 13 to under the age of 14 the age of a minor involved in a case of a sexually transmitted disease whose information may not be released, subject to certain exceptions, and to expressly establish that such a prohibition does not affect a person's duty to report child abuse or neglect, except that information made confidential under statutory provisions relating to communicable diseases may not be released.

HB 29 amends the Penal Code to revise the conduct constituting the offense of prostitution by specifying an offense for a person who knowingly offers or agrees to receive a fee from another to engage in sexual conduct or who knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another. The bill repeals the specification that the offense of prostitution based on receipt of a fee is established regardless of whether the actor is offered or actually receives the fee and that the offense of prostitution based on the payment of a fee is established regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee.

HB 29 specifies that a person who engages in conduct with a child constituting an offense of continuous sexual abuse of a young child or children, indecency with a child, sexual assault, aggravated sexual assault, sexual performance by a child, or employment harmful to children commits such an offense regardless of whether the person knows the age of the child or victim, as applicable, at the time of the offense. The bill establishes that the enhancements of the penalty for the offense of sexual performance by a child or an employment harmful to children offense apply to such an offense regardless of whether the actor knows the age of the victim at the time of the offense. The bill increases the penalty for promotion of prostitution from a Class A misdemeanor to a state jail felony and increases the penalty enhancement for a subsequent conviction of the offense from a state jail felony to a third degree felony. The bill increases the penalty for the offense of aggravated promotion of prostitution from a third degree felony to a second degree felony.

**Codification:** Chapter 140A, Civil Practice and Remedies Code; Articles 45.0216, 56.32, Code of Criminal Procedure; Chapter 132 of the Education Code; Sections 51.03(b), 51.13(e), Family Code; Sections 23.101, 126.002(a), Section 402.035 Government Code; Section 81.046(d), Health and Safety Code; Sections 20A.02(b), 43.02, 22.021(a), 43.03(b), 43.05, 43.25 and 43.251, Penal Code

**Effective Date:** September 1, 2017, except Section 102.102, Business & Commerce Code, as added by this Act, takes effect March 1, 2019.



5. **HB 1808** (Meyer | Thompson, Senfronia | Parker | Dale | Moody) *Relating to the prosecution and punishment of certain trafficking and sexual offenses; creating a criminal offense.*

**Summary** - HB 1808 amends the Penal Code to establish that an actor who engages in the conduct constituting the following offenses commits the applicable offense regardless of whether the actor knows the age of the victim at the time of the offense: continuous sexual abuse of a young child or children, indecency with a child, sexual assault of a child, aggravated sexual assault of a child, sexual performance by a child, and employment harmful to children.

**Codification:** Section 20A.02(b); Section 21.02(b); Section 21.11(a); Section 22.011(a), Penal Code, Section 22.021(a), Penal Code, Section 43.02; Section 43.03(b); Section 43.04(b); Section 43.05(a), Penal Code

**Effective Date:** September 1, 2017

6. **HB 2529** (Leach | Minjarez) *Relating to the definition of coercion for purposes of the offense of trafficking of persons.*

**Summary** – HB 2529 amends the Penal Code to include the following as actions that constitute coercion for purposes of an offense of trafficking of a person in which the actor causes the trafficked person to engage in a specified prostitution-related offense through coercion: receiving any form of support, whether financial or otherwise, from the proceeds of such conduct; controlling the proceeds of such conduct; or destroying, concealing, confiscating, or withholding from the trafficked person or threatening to destroy, conceal, confiscate, or withhold from the trafficked person the trafficked person's actual or purported government records or identifying information or documents.

**Codification:** Section 20A.02, Penal Code

**Effective Date:** September 1, 2017

7. **HB 2552** (Thompson | Senfronia | Dukes) *Relating to measures to address and deter certain criminal or other unlawful activity, including trafficking of persons, sexual offenses, prostitution, and activity that may constitute a public nuisance; increasing criminal penalties; creating a criminal offense.*

**Summary** - HB 2552 amends the Business & Commerce Code to include among the acts that constitute false, misleading, or deceptive acts or practices under the Deceptive Trade Practices-Consumer Protection Act owning, operating, maintaining, or advertising a massage establishment that is not appropriately licensed, is not in compliance with the applicable Occupations Code licensing or other requirements regarding massage therapy, or is not in compliance with an applicable local ordinance relating to the licensing or regulation of massage establishments.

HB 2552 amends the Civil Practice and Remedies Code to establish that, for the purposes of a suit to abate a common nuisance, proof in the form of a person's arrest or the testimony of a law enforcement agent that certain prostitution-related activity is committed at a place licensed as a massage establishment or advertised as offering massage therapy or massage services is prima facie evidence that the defendant knowingly tolerated the activity. The bill establishes that proof that an activity involving the provision of massage therapy or other massage services in violation of applicable state law is committed at a place maintained by the defendant is prima facie evidence that the defendant knowingly tolerated the activity and did not make a reasonable attempt to abate the activity. The bill establishes that evidence of a

previous suit filed to abate certain common nuisances that resulted in a judgment against a landowner with respect to an activity constituting a common nuisance at the landowner's property is admissible in a subsequent common nuisance suit to demonstrate that the landowner knowingly tolerated the activity and did not make a reasonable attempt to abate the activity.

HB 2552 amends the Penal Code to expand the conduct that constitutes the offense of promotion of prostitution to include knowingly providing a person or premises for prostitution purposes.

**Codification:** Section 17.46(b), Business & Commerce Code; Section 125.004, Civil Practice and Remedies Code; Section 411.042(b), Government Code; Section 169.004(c), Health and Safety Code; Section 43.03, Penal Code; Chapter 93, Property Code; Section 17.46(b), Business & Commerce Code; Section 43.03, Penal Code; Section 93.013, Property Code

**Effective Date:** September 1, 2017

8. **SB 128** (Garcia) *Relating to the inclusion of education and training regarding human trafficking in the curriculum of commercial driver's license training programs offered by public junior colleges and career schools and colleges and to certain requirements for commercial driver's licenses.*

**Summary** – SB 128 amends the Education Code and the Transportation Code to include education and training on the recognition and prevention of human trafficking in the curriculum of commercial driver's license training programs offered by public junior colleges and career schools and colleges. The bill requires the Department of Public Safety to provide informational materials regarding the recognition and prevention of human trafficking for distribution to commercial driver's license applicants.

**Codification:** Chapter 130 & 132, Education Code; Chapter 522, Transportation Code

**Effective Date:** Immediately

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## **Criminal Procedure**

9. **HB 238** (Hernandez/Romero, Jr. Faircloth) *Relating to the creation of records of the DNA of certain defendants for inclusion in the DNA database system.*

**Summary** – HB 238 amends the Government Code to require a person convicted of prostitution based on the payment of a fee to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.

**Codification:** Section 411.1471(a), Government Code

**Effective Date:** September 1, 2017

10. **HB 322** (Canales | Miller | Wilson | Shine | Blanco) *Relating to the expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction and to the eligibility of certain victims of trafficking of persons for an order of nondisclosure.*

**Summary** – HB 322 amends the Code of Criminal Procedure to entitle a person to expunction of all records and files relating to the person's arrest for the commission of a felony or misdemeanor if the person has been released and any charge has not resulted in a final conviction and is no longer pending, and there was no court-ordered community supervision

for the offense, unless the offense is a Class C misdemeanor, provided that, at any time following the arrest, the court finds that the indictment or information charging the person with the commission of the offense was dismissed or quashed because the person completed a certain veterans treatment court program. The bill requires a trial court dismissing a case following a person's successful completion of such a veterans' treatment court program, if the trial court is a district court, or a district court in the county in which the trial court is located, to enter an order of expunction not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. The bill requires the court, notwithstanding the 30-day time limit, to enter an order of expunction for a person who is entitled to an expunction based on the successful completion of such a veterans' treatment court program before the bill's effective date as soon as practicable after the court receives written notice from any party to the case about the person's entitlement to the expunction. The bill prohibits the court from charging any fee or assessing any cost for such an expunction.

HB 322 applies to the expunction of arrest records and files for a person who successfully completes a certain veterans' treatment court program before, on, or after the bill's effective date, with the exception of the provisions relating to the fees charged or costs assessed, which apply to an expunction order entered on or after the bill's effective date.

**Codification:** Article 55.01(a), Code of Criminal Procedure and Section 124.001(b), Government Code

**Effective Date:** September 1, 2017

11. **HB 1178** *Relating to the punishment for burglary and theft involving controlled substances.*

**Summary** – HB 1178 addresses the opioid abuse crisis by establishing penalties for a certain burglary or theft offense involving a controlled substance. It amends the Penal Code to establish a penalty of third degree felony for burglary if the premises is a building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, or nursing facility, and the actor entered or remained concealed in that building with intent to commit a theft of a controlled substance. HB 1178 expands the conduct that constitutes a third degree felony theft offense to include theft of property that is a controlled substance, regardless of the value of the controlled substance.

**Codification:** Section 30.02, Penal Code

**Effective Date:** September 1, 2017

12. **HB 2804** (Price | Fallon) *Relating to the emergency scheduling of certain controlled substances for the purpose of the prosecution and punishment of certain offenses under the Texas Controlled Substances Act expanding the application of certain criminal offenses.*

**Summary** – HB 2804 Under current law the commissioner of HHSC may emergency schedule a substance as a controlled substance if the commissioner determines the action is necessary to avoid an imminent hazard to the public safety. HB 2804 removes the requirement that the commissioner consider certain additional factors provided by the Texas Controlled Substances Act in determining whether a substance poses an imminent hazard to the public safety.

**Codification:** Section 481.0355, Health and Safety Code; Sections 481.0355(c) and (d), Health and Safety Code

**Effective Date:** September 1, 2017

13. **HB 3016** (Thompson, Senfronia | Alonzo | Workman | Collier | White) *Relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.*

**Summary** - HB 3016 is an expansion of last session's "Second Chances" law (SB1902 by Senator Perry), whereby individuals convicted of one low-level offense (driving while intoxicated (DWI) under 0.15 blood alcohol level (BAC) and certain non-sexual, non-violent Class C misdemeanors), can apply for an order of nondisclosure (OND). An OND is akin to "sealing" records, with several exceptions, following a waiting period, whereby a prosecutor has a chance to object and a judge has discretion to rule on the application. In all cases, law enforcement can see through the "sealing," as can sensitive industries such as finance and education. It can also be looked through by individuals if required by federal law. The legislation is supported by a variety of stakeholders, from criminal justice reform advocates and Mothers Against Drunk Driving (MADD), to political leaders on the left and right.

HB 3016 maintains prosecutorial notice and judicial discretion, expands the eligibility to more one-time offenders, and expands certain waiting requirements, including:

- Allow for an OND for first-time convictions of Class C misdemeanors. This would be an offender's first conviction or deferred adjudication/prosecution for any crime, except traffic offenses. The offender must be current on all fines connected to the offense. There would be no waiting period.
- Allow for an OND for first-time, low-level DWIs (no DWIs with a BAC of .15 or above). This would only be for offenders with no other criminal convictions or deferred adjudications/prosecutions, except for a traffic offense. With one exception (see below), offenders would have to wait two years after successful completion of community supervision or three years after completion of their sentence prior to petitioning for an OND. The following other restrictions are in place:

Other requirements:

- Must have paid all fines, fees, and restitution.
- Disallow individuals to petition for an OND convicted of a DWI—who either struck another vehicle with a victim inside, struck a pedestrian, or got into an auto accident with a passenger in their car during the event that led to their conviction.
- The petitioner must either provide evidence of at least six months of a successful interlock ignition program as a condition of community supervision or of the sentence or wait five years after successful completion of community supervision or sentence.

Clarifies existing law that those convicted of certain Class A and B misdemeanors do not physically have to spend time in jail to be eligible for an OND, bringing back original intent of SB 1902 from 2015.

**Codification:** Subchapter E-1, Chapter 411; Sections 411.072(a) and (b); Section 32, Chapter 1279 (SB 1902), Acts of the 84th Legislature, Regular Session, 2015 Government Code

**Effective Date:** September 1, 2017

14. **HB 3019** (Burkett/Button) *Relating to the prosecution for the offense of injury to a child, elderly individual, or disabled individual.*

**Summary** – HB 3019 amends the Penal Code to expand the conduct that constitutes injury to a child, elderly individual, or disabled individual to include an owner, operator, or employee

of a boarding home facility intentionally, knowingly, recklessly, or with criminal negligence by omission causing to a child, elderly individual, or disabled individual who is a resident of that facility serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury. The bill includes a person with a mental illness among the individuals against whom conduct constituting an injury to a disabled individual applies.

**Codification:** Section 22.04, Penal Code

**Effective Date:** September 1, 2017

15. **HB 3152** (Thompson, Senfronia | Howard | Collier | Walle | Herrero) *Relating to the care and transportation provided to a sexual assault survivor by a health care facility.*

**Summary** - HB 3152 amends the Health and Safety Code to require the Department of State Health Services (DSHS) to designate a health care facility as a sexual assault forensic exam-ready facility, or SAFE-ready facility, if the facility notifies DSHS that the facility employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation to a licensed nurse or physician when conducting a sexual assault forensic medical examination. The bill includes a licensed freestanding emergency medical care facility among the facilities considered a health care facility for purposes of statutory provisions relating to emergency services for sexual assault survivors.

HB 3152 requires DSHS to develop a standard information form for sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility and prescribes the information required to be included on the information form. The bill requires a health care facility that is not a SAFE-ready facility to provide the standard information form to each sexual assault survivor who arrives at the facility.

**Codification:** Chapter 323, Health and Safety Code Health and Safety Code

**Effective Date:** September 1, 2017

16. **HB 3165** (Moody) *Relating to certain pretrial procedures in criminal cases.*

**Summary** - HB 3165 amends the Code of Criminal Procedure to specify that a personal bond pretrial release office's duty to prepare, routinely update, and file with the appropriate court a record containing information about any accused person who is released by a court on personal bond after the office's review applies with respect to such a person so released before sentencing in a pending case. The bill specifies that such an office's duty to include in the annual report on office operations submitted to the county commissioners court or district and county judges that established the office a statement of the number of accused persons who were released by the court on a personal bond after the office's review applies with respect to such persons so released before sentencing in a pending case. The bill removes the requirement for the office to include in the report the number of such released persons who were convicted of the same offense or of any felony within the six years preceding the date on which charges were filed in the matter pending during the person's release. The bill specifies that the requirement to include in the report a statement of the number of persons so released by a court on personal bond before sentencing in a pending case who were arrested for any other offense while released on personal bond applies with respect to an arrest for any other offense in the same county in which the persons were released.

**Codification:** Section 5(a), Article 17.42, Code of Criminal Procedure

**Effective Date:** September 1, 2017

17. **HB 3237** (Moody) *Relating to the return of executed search warrants and the public availability of search warrant affidavits.*

**Summary** – HB 3237 amends the Code of Criminal Procedure to change the time at which a sworn affidavit setting forth substantial facts establishing probable cause for a search warrant becomes public information, to set a deadline by which an officer is required to return an executed search warrant, and to establish that an officer's failure to timely return such a warrant or to submit an inventory of the property taken into the officer's possession under the warrant does not bar the admission of evidence.

**Codification:** Article 18.01, Code of Criminal Procedure

**Effective Date:** September 1, 2017

18. **HB 4094** (Klick) *Relating to the access of criminal history record information by the Department of Family and Protective Services.*

**Summary** – HB 4094 the 84th Legislative Session, SB 206 made changes to Section 411.114, Government Code, which governs the release by the Texas Department of Public Safety (DPS) of criminal history record information, including results from Federal Bureau of Investigations (FBI) fingerprint checks, to the Department of Family and Protective Services (DFPS). The changes removed a laundry list of the subjects on whom DFPS may obtain criminal history record information. Moreover, in the 84th Legislative Session, certain private entities were added to the list of organizations and individuals to whom DFPS is authorized to release criminal history record information. The FBI disapproved of these changes and indicated that the subjects should be listed in statute, and that private entities should be removed from those to whom DFPS may disseminate FBI criminal history record information. HB 4094 thus adds the list of subjects back into statute and removes the authorization for dissemination of FBI criminal history record information to a private entity. Moreover, HB 4094 makes changes to be in compliance with the Childcare Development Block Grant Act (CCDBG). CCDBG restricts new background checks every five years for certain populations.

HB 4094 also removes two-year background checks, as they are duplicative with information that will be available to DFPS from the FBI starting in February 2018—when the childcare licensing will be provided with any continual live criminal history information for any individual who has been fingerprinted for childcare licensing purposes.

**Codification:** Sections 411.114(a)(1) and 411.114(a)(2), (3), and (7), Government Code; Section 42.056, Human Resources Code, is repealed.

**Effective Date:** September 1, 2017

19. **SB 256** (Taylor, Van) *Relating to the confidentiality of home address information of certain victims of family violence, sexual assault or abuse, stalking, or trafficking of persons.*

**Summary** – SB 256 amends the Code of Criminal Procedure to extend eligibility to participate in the address confidentiality program administered by the attorney general for certain victims of family violence, sexual assault or abuse, stalking, or trafficking of persons to a victim of a continuous sexual abuse of a young child offense and a victim of an indecency with a child offense if the victim meets with a victim's assistance counselor from a state or local agency or other entity that is identified by the attorney general as an entity that provides certain services or counseling to victims of such offenses. The bill includes civil legal services among those services. The bill establishes the following circumstances as an alternative to satisfying the

program eligibility requirement to meet with such a counselor: the program applicant is protected under, or is filing an application on behalf of a victim who is the applicant's child or another person in the applicant's household and who is protected under, a specified temporary injunction or protective order; or the applicant possesses documentation of family violence, as identified by the rules adopted for program eligibility purposes, or of sexual assault or abuse or stalking, as described by statutory provisions relating to the right to vacate and avoid liability following certain sex offenses or stalking.

The bill adds as a program eligibility requirement filing an affirmation that the applicant has discussed safety planning with a specified victim's assistance counselor. The bill includes the following among the forms of independent documentary evidence of family violence, sexual assault or abuse, stalking, or trafficking of persons the attorney general may require an applicant to submit with the applicant's application for participation in the program: a health care provider's statement regarding the medical condition of the applicant's child or other person in the applicant's household as a result of the applicable violence or offense, a professional's statement regarding the professional's assistance to an applicant's child or other person in the applicant's household in addressing the effects of the applicable violence or offense, and any independent documentary evidence necessary to show the applicant's eligibility to participate in the program. The bill specifies the protective orders included as such evidence. The bill restricts the requirement for the attorney general to disclose a program participant's true residential, business, or school address if requested by a law enforcement agency to a request by a law enforcement agency for the purpose of conducting an investigation.

SB 256 amends the Election Code to include the residence address of an applicant among the information furnished on a voter registration application that is considered confidential and that does not constitute public information for purposes of state public information law if the applicant, the applicant's child, or another person in the applicant's household is a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons and the applicant provided the voter registrar with a copy of a specified protective order or other independent documentary evidence necessary to show that the applicant, child, or other person is a victim of such violence or offense or if the applicant is a participant in the address confidentiality program administered by the attorney general and provided the registrar with proof of certification of that participation.

SB 256 amends the Tax Code to remove the condition on the confidentiality of information in property tax appraisal records identifying the home address of a victim of family violence that the actor, as a result of the act of family violence against the victim, be convicted of a felony or a Class A misdemeanor. The bill extends confidentiality to information in property tax appraisal records identifying the home address of the following individuals: an individual who shows that the individual, individual's child, or another person in the individual's household is a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons by providing a copy of a specified protective order or other independent documentary evidence necessary to show that the individual, child, or other person is a victim of such violence or offense and an individual who is a participant in the address confidentiality program administered by the attorney general who provides proof of certification of that participation.

**Codification:** Article 56.81, Code of Criminal Procedure; Article 56.82(a), Code of Criminal Procedure; Section 56.83, Code of Criminal Procedure; Article 56.90(a), Code of Criminal Procedure; Section 13.004(c), Election Code; Section 25.025(a), Tax Code

**Effective Date:** September 1, 2017

20. **SB 291** (Whitmire) *Relating to the issuance of a writ of attachment for certain witnesses.*

**Summary** – Currently the Code of Criminal Procedure allows a grand jury foreman or a district attorney to request attachment for a witness to a crime, which can lead to them being ordered into custody of the county jail, without any legal representation or public due process. This happened to a rape victim in Harris County. SB 291 is designed to prevent crime witnesses being further traumatized by jailing to compel testimony by providing:

- A court upon receiving a motion for a writ of attachment on a crime witness must appoint an attorney to represent the witness.
- A hearing on the motion for a writ of attachment must be conducted in open court.
- If the witness is not a county resident, as in the example case, the hearing must be conducted by a magistrate in the county for which the witness resides.
- If the writ of attachment is granted, a bond must be offered. If the witness by sworn affidavit states they cannot post the bond, a personal bond must be issued.

**Codification:** Article 2.212, Chapter 24, Code of Criminal Procedure;

**Effective Date:** September 1, 2017

21. **SB 343** (Perry) *Relating to the prosecution of the offense of improper sexual activity with a person under supervision.*

**Summary** – SB 343 amends the Penal Code to expand the conduct that constitutes an offense for improper sexual activity with a person in custody to include engaging in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who the actor knows is under the supervision of a community supervision and corrections department but not in the custody of the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, a probation department, or a community supervision and corrections department. The bill includes an employee of a community supervision and corrections department, a person other than an employee who works for compensation at a juvenile facility or local juvenile probation department, and a volunteer at a juvenile facility or local juvenile probation department among the actors to which conduct that constitutes such an offense applies.

**Codification:** Section 39.04(f), Penal Code

**Effective Date:** September 1, 2017

22. **SB 527** (Birdwell) *Relating to a defendant's payment of costs associated with a court-appointed counsel.*

**Summary** – SB 527 Under previous law, a court is required to order a defendant to pay all or part of the cost of legal services provided to the defendant, if the defendant has the financial resources to do so. However, the court's authority to order such payment ends with the sentencing of the defendant. Senate Bill 527 amends the Code of Criminal Procedure to provide for a judge's discretion to order a defendant who at the time of sentencing to confinement or placement on community supervision did not have the financial resources to pay the maximum amount of costs associated with a court-appointed counsel to pay any unpaid portion of the



amount if the judge determines that the defendant has the financial resources to pay the additional portion. The bill authorizes the judge to amend such an order on a subsequent determination that the defendant is indigent or demonstrates an inability to pay the amount ordered. The bill provides that a judge, in making such a determination, may only consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The bill prohibits the judge from revoking or extending the defendant's period of community supervision solely to collect the amount the defendant has been ordered to pay under the bill's provisions.

**Codification:** Article 26.05, Code of Criminal Procedure

**Effective Date:** September 1, 2017

23. **SB 998** (West) *Relating to the statute of limitations for the offense of exploitation of a child, elderly individual, or disabled individual.*

**Summary** – SB 998 amends the Code of Criminal Procedure to extend the statute of limitations for the offense of exploitation of a child, elderly individual, or disabled individual to seven years from the date of commission of the offense.

**Codification:** Article 12.01, Code of Criminal Procedure

**Effective Date:** September 1, 2017

24. **SB 1203** (Perry) *Relating to the issuance of subpoenas or certain other court orders with respect to an online service provider in the investigation or prosecution of certain criminal offenses.*

**Summary** – SB 1203 amends the Code of Criminal Procedure to include among the entities to which statutory provisions governing the response by an Internet service provider to a subpoena, search warrant, or other court order relating to the investigation or prosecution of an online solicitation of a minor offense apply a search engine, web hosting company, web browsing company, manufacturer of devices providing online application platforms, and company providing online social media platforms. The bill includes among the subpoenas, search warrants, or other court orders to which those provisions apply such an order relating to the investigation or prosecution of certain sexual offenses, a trafficking of persons offense, or public indecency offenses that is served on or issued with respect to such an online service provider that provides service in Texas.

**Codification:** Chapter 24A, Code of Criminal Procedure

**Effective Date:** September 1, 2017

25. **SB 1264** (Huffman) *Relating to psychological counseling for certain grand jurors.*

**Summary** – SB 1264 amends the Code of Criminal Procedure and Government Code to include a grand juror or alternate grand juror serving in a grand jury investigation involving graphic evidence or testimony among the jurors who, on request, are eligible to receive psychological counseling through a commissioner's court-approved programs provided the grand juror or alternate grand juror requests the counseling not later than the 180th day after the date on which the grand jury is dismissed.

**Codification:** Article 56.04(f), Code of Criminal Procedure; Section 61.003(a), Government Code

**Effective Date:** September 1, 2017

26. **SB 1298** (Huffman) *Relating to the selection and summons of prospective grand jurors.*  
**Summary** – SB 1298 amends the Code of Criminal Procedure to increase from 125 to 250 the maximum number of prospective grand jurors that a district judge may direct to be selected and summoned. It also make changes to the qualifications for an individual to serve on a grand jury.  
**Codification:** Article 19.01, Code of Criminal Procedure  
**Effective Date:** September 1, 2017
27. **SB 1326** (Zaffirini) *Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness.*  
**Summary** – SB 1326 requires sheriffs to provide notice to the relevant magistrate regarding a defendant suspected of having mental illness no later than four hours upon receipt of credible information that the person has a mental illness or intellectual disability; increase flexibility regarding bond availability for mentally ill, non-violent defendants; provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting, including outpatient residential, community inpatient, and jail settings that meet appropriate standards; and broaden judicial discretion to choose the best use of local competency restoration options. These changes would not only ensure that criminal defendants with a mental illness are referred timely to adequate treatment options, but also help reduce backlogs in county jails and free up capacity in state hospitals for other persons who need treatment at a state mental health facility.  
**Codification:** Amends Articles 15.17, 16.22, 17.032, 32A.01, 46B.001, 46B.0095 of the Code of Criminal Procedure  
**Effective Date:** September 1, 2017
28. **SB 1343** (Hughes) *Relating to the capture, use, or recording of certain items for commercial purposes, including the prosecution of criminal offenses regarding unauthorized recordings.*  
**Summary** – SB 1343 amends the Business & Commerce Code and Code of Criminal Procedure to update statutory provisions relating to the offense of improper labeling of a recording and to require a court to order a person convicted of such an offense to make restitution to the applicable victim in an amount based on a calculation specified by the bill.  
**Codification:** Chapter 641.001(4), Business & Commerce Code; Article 42.037 and Article 59.01(2), Code of Criminal Procedure  
**Effective Date:** September 1, 2017
29. **SB 1584** (Garcia) *Relating to the conditions of community supervision.*  
**Summary** – SB 1584 seeks to ensure that community supervision is more thoughtful and meaningful for each defendant. The bill make four changes to the Code of Criminal Procedure: First, the bill requires a judge to consider the results of a risk and needs assessment when determining the conditions of community supervision. Second, it requires that the community supervision departments use validated assessment tools. Third, the bill requires that conditions imposed are not duplicative. Lastly, the judge must consider the defendant’s ability to satisfy these conditions in conjunction with their work, education, community service, and financial obligations. Services for successful diversion include mental health and/or substance abuse

treatment, education assistance, job training and placement, housing assistance, and other life skills training. This bill enables judges to create a comprehensive strategy to give the defendant the best opportunity for success. SB 1584 amends current law relating to the conditions of community supervision.

**Codification:** Article 42A.301, Code of Criminal Procedure

**Effective Date:** September 1, 2017

30. **SB 1649** (Watson) *Relating to increasing the punishment for certain conduct constituting the offense of criminal trespass.*

**Summary** – SB 1649 amends the Penal Code to expand the conduct that constitutes the Class A misdemeanor offense of criminal trespass to include trespass on or in property of a public institution of higher education if, as shown at the trial of the offense, the actor has previously been convicted of such an offense relating to entering or remaining on or in property of an institution of higher education or an offense relating to trespassing on the grounds of a public, private, or independent institution of higher education. The bill clarifies that a person has previously been convicted of such offenses if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from deferred adjudication community supervision.

**Codification:** Section 30.05, Penal Code

**Effective Date:** September 1, 2017

31. **SB 1913** (Zaffirini) *Relating to the administrative, civil, and criminal consequences, including fines, fees, and costs, imposed on persons arrested for, charged with, or convicted of certain criminal offenses*

**Summary** – SB 1913 amends the Code of Criminal Procedure and Transportation Code to revise provisions relating to the administrative, civil, and criminal consequences, including fines, fees, and costs, imposed on persons arrested for, charged with, or convicted of certain criminal offenses. The bill provides for alternatives to the payment of those fines, fees, and costs, such as waiving the payment, discharging the payment through community service, or imposing a combination of the alternatives, due to the defendant's inability to provide the payment, as applicable.

SB 1913 authorizes a court, including a justice or municipal court, to impose a fine and costs at the punishment stage in a case in which the defendant entered a plea in open court only if the court makes a determination that the defendant has sufficient resources or income to pay all or part of the fine and costs. The bill requires the court, in making that determination, to consider the defendant's financial history and any other information relevant to the defendant's ability to pay. The bill prohibits a court, including a justice or municipal court, from issuing a *capias pro fine* for the defendant's failure to satisfy a judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and the defendant fails to appear at the hearing or, based on evidence presented at the hearing, the court makes either of the following determinations: the defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs or the defendant is indigent, has failed to make a good faith effort to discharge the fine or costs by performing community service, and could have discharged the fine or costs by performing community service without experiencing any

undue hardship. The bill requires the court to recall a *capias pro fine* if before the *capias pro fine* is executed the defendant voluntarily appears to resolve the amount owed.

SB 1913 raises the rate at which the length of a defendant's confinement in a county jail or manual labor in specified county programs and facilities is credited for the purposes of discharging a fine and costs that the defendant is unable to pay from \$50 for each day of confinement or day of such labor, as applicable, to \$100 for each such day. The bill raises the rate for calculating the time that a defendant who is placed in jail by a justice or municipal court for failure to pay a fine and costs must remain in jail to satisfy the fine and costs from \$50 for each period between eight and 24 hours, as specified by the convicting court, to \$100 for each such period. The bill raises the rate at which a defendant's performance of community service ordered by a justice or municipal court is considered to have discharged the defendant's fines or costs from \$50 for each eight hours of community service to \$100 for each eight hours of community service.

SB 1913 includes among the information a court, including a justice or municipal court, must specify in an order requiring the performance of community service the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service. The bill includes attending a work and job skills training program, preparatory class for the high school equivalency examination, or similar activity as an alternative method by which a court, including a justice or municipal court, may order a defendant to perform community service and includes a religious organization, a neighborhood association or group, or an educational institution among the authorized entities for which community service may be performed. The bill replaces the provision specifying that a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community is an authorized entity for which community service may be performed with a provision specifying that a nonprofit organization that provides such services or another organization that provides such services is determined by the applicable court. The bill specifies that the supervision of a defendant's community service that an entity receiving the service must agree to provide is either on-site or remote supervision.

SB 1913 revises provisions relating to a waiver of payment of fines and costs for certain defendants by authorizing a court, including a municipal court or a justice court, to waive payment of all or part of a fine or costs imposed on the defendant by removing the specification that the defendant is a defendant who defaults in payment and by extending the application of the waiver to a defendant who does not have sufficient resources or income to pay all or part of the fine or costs. The bill includes the condition that the court determines that the waiver is in the interest of justice as an alternative to the condition that the court make one of the specified determinations as to the circumstances of the defendant.

SB 1913 prohibits a justice or municipal court judge from issuing an arrest warrant for a defendant's failure to appear, including failure to appear as required by a citation issued by a peace officer charging a person with a Class C misdemeanor other than a public intoxication offense, unless the justice or judge provides a notice containing certain specified information to the defendant by telephone or regular mail and the defendant fails to appear before the justice or judge. The bill authorizes a defendant who receives such notice to request an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice. The bill requires a justice or judge to recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

SB 1913 replaces the authorization of a justice or judge to require a defendant to give bail to secure the defendant's appearance in accordance with state law with an authorization for such a justice or judge to require a defendant to give a personal bond to so secure the defendant's appearance but prohibits a court that requires a defendant to give such a personal bond from assessing a personal bond fee. The bill prohibits a justice or judge who requires a defendant to give a personal bond to secure the defendant's appearance from requiring the defendant to give a bail bond, either instead of or in addition to the personal bond, or requiring a surety or other security unless the defendant fails to appear in accordance with state law with respect to the applicable offense and the justice or judge determines that the defendant has sufficient resources or income to give a bail bond or that a surety or other security is necessary to secure the defendant's appearance. The bill requires the justice or judge to reconsider the requirement for a defendant to give the bail bond and presume that the defendant does not have sufficient resources or income to give the bond if before the expiration of a 48-hour period following the issuance of the applicable order a defendant for whom a bail bond or other surety or security requirement is not prohibited by the bill does not give a required bail bond. The bill authorizes the justice or judge in such an instance to require such a defendant to give a personal bond. The bill revises the authorization to hold a defendant who fails to give bail in custody by instead authorizing the defendant to be held in custody if the defendant refuses to give a personal bond or, except as provided by the bill, refuses or otherwise fails to give a bail bond. The bill replaces references to bail and bail bond with references to an appeal bond in provisions relating to an appeal from a justice or municipal court.

SB 1913 amends Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (HB 350), Acts of the 82nd Legislature, Regular Session, 2011, to revise provisions relating to community service in satisfaction of a fine or costs for certain juvenile defendants by making them consistent with provisions relating to community service ordered by a court, including a justice or municipal court, as amended by the bill. The bill revises provisions authorizing tutoring program attendance as an alternative method by which a court may order such a juvenile defendant to perform community service, in addition to the other alternatives provided by the bill that apply to community service in general. The bill repeals a provision relating to a tutoring program's supervision of and reporting on the work of a defendant.

SB 1913 amends Article 45.0492, Code of Criminal Procedure, to revise provisions relating to community service in satisfaction of a fine or costs for certain juvenile defendants by making them consistent with provisions relating to community service ordered by a court, including a justice or municipal court.

SB 1913 includes among the required contents of a communication sent to an accused person under provisions relating to collection contracts regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case a statement that the person should contact the court regarding the alternatives to full payment that are available to resolve the case if the person is unable to pay the full amount of payment that is acceptable to the court.

SB 1913 amends the Transportation Code to establish that information of a past due fine, fee, or tax owed to a county by the owner of a motor vehicle that is provided to a county assessor-collector or to the Texas Department of Motor Vehicles (TxDMV) as grounds to refuse registration of the motor vehicle, if such information concerns the past due status of a fine or fee imposed for a criminal offense and owed to the county, expires on the second anniversary of the date the information was provided and may not be used to refuse registration

after that date. The bill establishes that once information about a past due fine or fee is so provided subsequent information about other fines or fees that are imposed for a criminal offense and that become past due before the second anniversary of the date the initial information was provided may not be used, either before or after the second anniversary of that date, to refuse registration of the motor vehicle unless the vehicle is no longer subject to refusal of registration because of notice received of the person's payment or other discharge of, or perfection of an appeal contesting, the past due fine, fee, or tax to which the initial information applied. The bill specifies that such a discharge includes a waiver and authorizes a municipal court judge or justice of the peace who has jurisdiction over the underlying offense to waive the county's additional fee if the judge or justice makes a finding that the defendant is economically unable to pay the fee or that good cause exists for the waiver. The bill prohibits the county from imposing the additional fee on the defendant if a county assessor-collector is notified that the court having jurisdiction over the underlying offense has waived the past due fine or fee due to the defendant's indigency.

SB 1913 expands the exceptions to the requirement that a person who fails to appear for a complaint or citation pay an administrative fee of \$30 for each such complaint or citation reported to TxDMV by a political subdivision as grounds to deny renewal of the person's driver's license to include the following circumstances: the charges on which the person failed to appear were dismissed with prejudice by the appropriate prosecuting attorney for lack of evidence, the failure to appear report was sent to TxDMV in error, or the case regarding the complaint or citation is closed and the failure to appear report has been destroyed in accordance with the applicable political subdivision's records retention policy. The bill prohibits a person from being required to pay such an administrative fee if the court having jurisdiction over the underlying offense makes a finding that the person is indigent and sets out the criteria under which a person is presumed to be indigent for those purposes.

SB 1913 provides for the applicability of its changes to specified Code of Criminal Procedure provisions to a sentencing proceeding that commences before, on, or after the bill's effective date and establishes that the bill takes effect only if a specific appropriation for the implementation of the bill is provided in a general appropriations act of the 85th Legislature.

**Codification:** Article 14.06(b), Code of Criminal Procedure; Section 4(a), Article 17.42, Code of Criminal Procedure; Section 502.010, 706.005 and 706.006 Transportation Code

**Effective Date:** September 1, 2017

## **Wrongful Convictions**

**\*\* (The reflection of disparate impact on the African American community is caught in Texas' DNA exonerations; of the first 45 persons found to be wrongfully convicted, based on DNA tests, more than 80 % are African American.)**

32. **HB 34** (Smithee | Moody | Canales) *Relating to measures to prevent wrongful convictions.*

### **Summary:**

**Informant Testimony** – HB 34 amends the Code of Criminal Procedure to require the state, if the state intends to use at a defendant's trial testimony of a person to whom the defendant made a statement against the defendant's interest while the person was imprisoned or confined in the

same correctional facility as the defendant, to disclose to the defendant certain information regarding such a testifying person. The bill requires an attorney representing the state to track the use of proffered testimony of such a testifying person, regardless of whether the testimony is presented at trial and any benefits offered or provided to the person in exchange for such testimony. The bill authorizes evidence of a prior offense committed by such a testifying person to be admitted in a criminal case for the purpose of impeachment if the person received a benefit given by the state in exchange for the person's testimony with respect to the offense, regardless of whether the person was convicted of the offense.

Recording Custodial Interrogations – The bill requires a law enforcement agency to make an electronic recording of any custodial interrogation that is of a person suspected of committing or charged with the commission of a felony offense and that the agency conducts in a place of detention and exempts the recording from public disclosure as provided under state public information law. HB 34 clarifies the circumstances under which an oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of an offense is admissible against the accused in a criminal proceeding, without the required electronic recording, if the attorney introducing the statement shows good cause, as defined by the bill, as to the lack of the recording.

Eyewitness Identifications – HB 34 revises the information required to be included in the model policy developed by the Bill Blackwood Law Enforcement Management Institute of Texas, or a law enforcement agency's own policy, regarding the administration of photograph or live lineup identification procedures, specifically requiring that the information included in the policy addresses certain evidence-based practices. The bill requires a witness who makes an identification based on a photograph or live lineup identification procedure to be asked immediately after the procedure to state, in the witness's own words, the witness's level of confidence in making the identification and requires a law enforcement agency to document any such statement in accordance with the applicable policy.

HB 34 makes the in-court eyewitness identification of an accused admissible into evidence against the accused only if the evidence is accompanied by the details of any prior identification made of the accused by the witness, including the manner in which that identification procedure was conducted, and by evidence showing the witness's confidence level as described by the witness at the time of the prior identification. HB 34 clarifies the circumstances under which an oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of an offense is admissible against the accused in a criminal proceeding, without the required electronic recording, if the attorney introducing the statement shows good cause, as defined by the bill, as to the lack of the recording.

HB 34 amends the Occupations Code to require the Texas Commission on Law Enforcement to establish not later than January 1, 2018, as part of the minimum curriculum requirements for law enforcement officers, a statewide comprehensive education and training program on eyewitness identification, including the variables that affect a witness's vision and memory, practices for minimizing contamination, and effective eyewitness identification protocols.

HB 34 requires the Texas Forensic Science Commission to conduct a study regarding the use of drug field test kits by law enforcement agencies in the state and to conduct a separate study regarding the manner in which crime scene investigations are conducted in Texas. The bill sets out requirements of the commission in conducting each study and requires the

commission, not later than December 1, 2018, to submit to the governor, the lieutenant governor, and each member of the legislature a written report for each study that summarizes the results of the applicable study and includes any legislative recommendations.

**Codification:** Chapter 2, Code of Criminal Procedure

**Effective Date:** September 1, 2017

33. **SB 1253** (West) *Relating to the electronic recording and admissibility of certain custodial interrogations.*

**Summary** – SB 1253 amends the Code of Criminal Procedure to require a law enforcement agency of the state or of a county, municipality, or other political subdivision of the state that employs peace officers who, in the routine performance of the officers' duties, conduct custodial interrogations of persons suspected of committing criminal offenses, to make a complete and contemporaneous audiovisual electronic recording, or an audio recording if an audiovisual electronic recording is unavailable, that is authentic, accurate, and unaltered, unless good cause exists that makes such electronic recording infeasible, of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of the following offenses: murder, capital murder, kidnapping, aggravated kidnapping, trafficking of persons, continuous trafficking of persons, continuous sexual abuse of a young child or children, indecency with a child, improper relationship between an educator and student, sexual assault, aggravated sexual assault, or sexual performance by a child. The bill establishes that such an electronic recording of a custodial interrogation is complete only if the recording begins at or before the time the person being interrogated enters the area of the place of detention in which the interrogation will take place or receives a Miranda warning, whichever is earlier, and continues until the time the interrogation ceases. The bill sets out specific circumstances constituting good cause that makes electronic recording infeasible and exempts a recording of a custodial interrogation that complies with the bill's provisions from public disclosure, except as provided by state public information law provisions relating to certain law enforcement, corrections, and prosecutorial information. These provisions apply to the use of a statement resulting from a custodial interrogation that occurs on or after March 1, 2018, regardless of whether the criminal offense giving rise to that interrogation is committed before, on, or after that date.

**Codification:** Article 2.32 and 38.22, Code of Criminal Procedure

**Effective Date:** September 1, 2017

## **Civil Rights**

34. **HB 3051** (King|Phil) *Relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.*

**Summary:** HB 3051 amends the Code of Criminal Procedure and the Transportation Code to change the definition of "race or ethnicity," for purposes of law enforcement policy on racial profiling and for purposes of court records submitted to the Department of Public Safety in cases in which a person is charged with a violation of law regulating the operation of vehicles on highways, respectively, from being of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent to the following categories:



Alaska native or American Indian, Asian or Pacific Islander, black, white, and Hispanic or Latino.

**Codification:** Article 2.132(a)(3), Code of Criminal Procedure

**Effective Date:** September 1, 2017

35. **SB 1314** (Rodríguez) *Relating to the regulation of substance abuse facilities and programs for juveniles.*

**Summary** – SB 1314 amends the Human Resources Code to require the Texas Juvenile Justice Board to adopt reasonable rules that provide minimum standards for the operation of substance abuse facilities or programs that are juvenile justice facilities or juvenile justice programs, as those terms are defined by certain Family Code provisions. The bill expressly does not require a substance abuse facility or program operating under such standards to be licensed or otherwise approved by any other state or local agency. SB 1314 amends the Health and Safety Code to exempt a juvenile justice facility and juvenile justice program as defined by those Family Code provisions from statutory provisions governing the regulation of chemical dependency treatment facilities.

**Codification:** Section 221.002, Human Resources Code

**Effective Date:** September 1, 2017

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## **Juvenile Justice**

36. **HB 932** (Johnson, Jarvis) *Relating to the collection of information concerning the number of juvenile offenders committed to the Texas Juvenile Justice Department who have been in foster care.*

**Summary** - HB 932 amends the Human Resources Code to require the Texas Juvenile Justice Department (TJJD), during the admission process, to determine whether a child committed to TJJD has at any time been in foster care. The bill requires TJJD to record on the child's intake form whether the child is currently in foster care and, if applicable, the number of times the child has previously been placed in foster care. The bill requires TJJD not later than January 31 of each even-numbered year to submit a report to the governor, the lieutenant governor, the speaker of the House of Representatives, and each standing committee having primary jurisdiction over TJJD. The bill requires the report to summarize statistical information concerning the total number and percentage of children in TJJD custody during the preceding two years who have at any time been in foster care.

**Codification:** Chapter 243, Human Resources Code

**Effective Date:** September 1, 2017

37. **HB 1204** (White | Wu | Bernal) *Relating to the provision of services as an alternative to adjudication for certain children who engage in conduct in need of supervision or delinquent conduct and to a study on certain juvenile justice issues.*

**Summary** – HB 1204 amends the Family Code to require a person who is conducting a preliminary investigation of a child referred to a juvenile court to, as appropriate, refer the case to a community resource coordination group (CRCG), a local-level interagency staffing group, or other community juvenile service provider for services under the bill's provisions if the

person determines that the child is younger than 12 years of age, there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision, the child's case does not require referral to the prosecuting attorney, the child is eligible for deferred prosecution, and the child and the child's family are not currently receiving services under the bill's provisions and would benefit from receiving the services. The bill requires a CRCG, a local-level interagency staffing group, or other community juvenile services provider, on receipt of such a referral, to evaluate the child's case and make recommendations to the applicable juvenile probation department for appropriate services for the child and the child's family.

HB 1204 amends the Human Resources Code to require a juvenile board to establish policies that prioritize the diversion of children younger than 12 years of age from referral to a prosecuting attorney under the juvenile justice code and the limitation of detention of children younger than 12 years of age to circumstances of last resort.

**Codification:** Section 53.01, Family Code

**Effective Date:** September 1, 2017

38. **HB 3705** (White) *Relating to local juvenile justice information systems.*

**Summary** – HB 3705 amends the Family Code to authorize a local juvenile justice information system to contain, among other components, case management for juveniles in a facility that serves juveniles under a juvenile court's jurisdiction and is operated as a holdover facility, a pre-adjudication detention facility, a nonsecure facility, or a post-adjudication secure correctional facility. The bill revises the entities that may access the information system and the level of access of such entities.

**Codification:** Section 58.301, Family Code; Section 58.303, Family Code; Section 58.304, Family Code; Section 58.305, Family Code; Section 58.306, Family Code; Section 58.307(e), Family Code

**Effective Date:** September 1, 2017

39. **HB 3706** (Lucio III) *Relating to certain alternative education programs designed to address workforce development needs for at-risk students.*

**Summary** – HB 3706 amends the Education Code to authorize a public school district's community-based dropout recovery education program to be offered at a campus or through the use of an online program that leads to a high school diploma and prepares the student to enter the workforce. The bill limits the application of existing program requirements to a campus-based program and requires an online program to include as a part of its curriculum credentials, certifications, or other course offerings that relate directly to employment opportunities in Texas; to employ as faculty and administrators persons with baccalaureate or advanced degrees; to provide an academic coach and local advocate for each student; to use an individual learning plan to monitor each student's progress; to establish satisfactory requirements for the monthly progress of students according to standards set by the commissioner of education; to provide a monthly report to the student's school district regarding the student's progress; to perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and to comply with state public education law and rules adopted under that law. The bill authorizes a school district, to enable the district to provide an optional flexible school day program, to allow a student to enroll in a dropout recovery program in which courses are conducted online and exempts such an online course

from the requirement that a course offered under an optional flexible school day program provide a certain amount of instructional time and be a certain school day length. The bill applies beginning with the 2017-2018 school year.

**Codification:** Section 29.081, Education Code; Sections 29.0822(b) and (c), Education Code  
**Effective Date:** September 1, 2017

40. **SB 30** (West | Whitmire) *Relating to inclusion of instruction regarding interaction with peace officers in the required curriculum for certain public school students and in driver education courses and to civilian interaction training for peace officers.*

**Summary** – SB 30 amends the Education Code to require the State Board of Education (SBOE) and the Texas Commission on Law Enforcement (TCOLE) to enter into a memorandum of understanding that establishes each agency's respective responsibilities in developing instruction on proper interaction with peace officers during traffic stops and other in-person encounters. The bill sets out the topics of information the instruction must include and requires the SBOE and TCOLE to develop the instruction not later than September 1, 2018. The bill authorizes the SBOE and TCOLE to consult with any interested party in developing the instruction. The bill authorizes a public school district or open-enrollment charter school, subject to rules adopted by the SBOE, to tailor the instruction as appropriate for the district's or school's community and requires a district or school to solicit input from local law enforcement agencies, driver training schools, and the community in tailoring that instruction.

SB 30 requires the Texas Commission of Licensing and Regulation by rule to require that information relating to law enforcement procedures for traffic stops be included in the curriculum of each driver education course and driving safety course. The bill requires the curriculum to include a demonstration of the proper actions to be taken during a traffic stop and the same topics of information required by the bill to be included in the instruction on interaction with law enforcement.

SB 30 amends the Occupations Code to require TCOLE and the SBOE to enter into a memorandum of understanding that establishes each agency's respective responsibilities in developing a training program on proper interaction with civilians during traffic stops and other in-person encounters that includes the same topics of information required by the bill to be included in the instruction on interaction with law enforcement and requires TCOLE and the SBOE to develop the training program not later than September 1, 2018.

SB 30 requires TCOLE to require a peace officer or reserve law enforcement officer, as part of the minimum curriculum requirements for law enforcement officers, to complete the civilian interaction training program established under the bill and requires such an officer to complete the training program not later than the second anniversary of the date the officer is licensed unless the officer completes the program as part of the officer's basic training course. The bill requires a peace officer or reserve law enforcement officer who holds a license issued by TCOLE on or before January 1, 2018, to complete a civilian interaction training program not later than January 1, 2020.

**Codification:** Subchapter A, Chapter 28, Education Code; Section 28.025, Education Code; Subchapter C, Chapter 1001, Education Code; Section 1701.253, Occupations Code; Subchapter F, Chapter 1701, Occupations Code

**Effective Date:** September 1, 2017

41. **SB 179** (Menéndez | Zaffirini) *Relating to harassment, bullying, and cyberbullying of a public school student or minor and certain mental health programs for public school students; increasing a criminal penalty.*

**Summary** – SB 179 amends the Education Code to change the definition of "bullying" in provisions relating to bullying prevention policies and procedures in schools from engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the school district and that meets certain criteria relating to the effect of the conduct to a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct, that satisfies certain location-related applicability requirements provided by the bill, and that meets similar criteria relating to the effect of the conduct or meets one of the following criteria added by the bill: materially and substantially disrupts the educational process or the orderly operation of a classroom or school or infringes on the rights of the victim at school. The bill includes cyberbullying in the definition of "bullying" and defines "cyberbullying" as bullying that is done through the use of electronic communication, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, a website, or any other Internet-based communication tool.

SB 179 authorizes a student's removal from class and placement in a disciplinary alternative education program or expulsion if the student engages in bullying that encourages a minor to commit or attempt to commit suicide, incites violence against a minor through group bullying, or releases or threatens to release intimate visual material of a minor or of a student who is 18 years of age or older without the student's consent. The bill establishes that nothing in provisions relating to this authorization exempts a school from reporting a finding of intimate visual material of a minor. The bill defines "bullying" for such purpose as having the same meaning as in provisions relating to bullying prevention policies and procedures in schools and defines "intimate visual material" by reference as visual material that depicts a person with the person's intimate parts exposed or engaged in sexual conduct.

SB 179 explicitly subjects an open-enrollment charter school to prohibitions, restrictions, or requirements, as applicable, relating to bullying prevention policies and procedures and imposed by Education Code provisions relating to public education or by a rule adopted under those provisions. SB 179 amends the Civil Practice and Remedies Code to authorize a recipient of cyberbullying behavior who is younger than 18 years of age at the time the cyberbullying, as defined by the bill, occurs or a parent of or person standing in parental relation to the recipient to seek injunctive relief against the individual who was cyberbullying the recipient or, if the individual is younger than 18 years of age, against a parent of or person standing in parental relation to the individual. The bill authorizes a court to issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent any further cyberbullying, including an order or injunction enjoining a defendant from engaging in cyberbullying or compelling a defendant who is a parent of or person standing in parental relation to an individual who is younger than 18 years of age to take reasonable actions to cause the individual to cease engaging in cyberbullying. The bill defines "cyberbullying" by reference to the applicable Education Code provisions, as amended by the bill.

SB 179 entitles a plaintiff in an action for injunctive relief for the cyberbullying of a child to a temporary restraining order on showing that the plaintiff is likely to succeed in establishing

that the individual was cyberbullying the recipient and expressly does not require the plaintiff to plead or prove that, before notice can be served and a hearing can be held, immediate and irreparable injury, loss, or damage is likely to result from past or future cyberbullying by the individual against the recipient.

SB 179 requires the Supreme Court, as the court finds appropriate, to promulgate forms for use as an application for initial injunctive relief by individuals representing themselves in suits involving cyberbullying and instructions for the proper use of each form or set of forms.

SB 179 amends the Penal Code to expand the conduct that constitutes the Class B misdemeanor offense of harassment to include engaging in bullying, as defined by reference to the applicable Education Code provisions. The bill enhances the penalty to a Class A misdemeanor offense for an actor who engages in bullying if the actor has previously violated a temporary restraining order or injunction issued under the bill's provisions or if the actor's conduct results in serious bodily injury or death. The bill includes in the definition of electronic communication, as it relates to the offense of harassment, communication initiated through the use of a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, a website, or any other Internet-based communication tool. SB 179 repeals Section 37.0832(b), Education Code.

**Codification:** Section 37.0832, Education Code; Subchapter A, Chapter 37, Education Code; Title 4, Civil Practice and Remedies Code; Chapter 22, Penal Code; Section 42.07(b)(1), Penal Code; Section 37.0832(b), Education Code; Chapter 100B, Civil Practice and Remedies Code  
**Effective Date:** September 1, 2017

42. **SB 1548** (Menéndez) *Relating to post-discharge services offered by a juvenile board or juvenile probation department to a child after the child's probation period ends.*

**Summary** – SB 1548 amends the Human Resources Code to authorize a juvenile board or juvenile probation department, provided that existing resources are available, to provide post-discharge services to a child for not more than six months after the date the child is discharged from probation, regardless of the age of the child on that date. The bill prohibits a juvenile board or juvenile probation department from requiring a child to participate in post-discharge services. The bill defines "post-discharge services" as community-based services offered after a child is discharged from probation to support the child's vocational, educational, behavioral, or other goals and to provide continuity for the child as the child transitions out of juvenile probation services and specifies that the term includes behavioral health services, mental health services, substance abuse services, mentoring, job training, and educational services.

**Codification:** Chapter 142, Human Resources Code  
**Effective Date:** September 1, 2017

43. **SB 1571** (Huffman) *Relating to the release of a child taken into possession by a law enforcement officer.*

**Summary** – SB 1571 amends the Code of Criminal Procedure to add clarifying language that law enforcement who takes possession of a child in an emergency without a court order may release the child to certain entities. These entities are juvenile probation departments; the Department of Family and Protective Services (DFPS); a residential child-care facility licensed by DFPS, if the facility is authorized by DFPS to take the child; and any other person authorized by law to take the child. Before law enforcement releases the child, the officer must verify certain information regarding the child and the person to whom the child is being released. SB

1571 also requires law enforcement to log identifying information of the child and the person to whom the child is being released.

**Codification:** Article 2.273, Code of Criminal Procedure

**Effective Date:** September 1, 2017