Important Note:

This document is provided as a courtesy for instructors. This handout is not a TCOLE-approved lesson plan – it’s learning objectives and the suggested student handout. All instructors are required to develop their own lesson plans prior to instructing this or any other courses. Feel free to use this document to help in developing your individual lesson plans and tailoring this course to your needs.

3185 Curriculum Committee:

- Chair: Clay Abbott, Esq., Texas District and County Attorneys’ Association
- SGT Steve Amerson, Bexar County SO
- Curriculum Specialist Susan K. Gregory-Brundage, TCOLE
- SGT Stephen Bynum, Texas Department of Public Safety
- Michael Ferguson, Kilgore College / East Texas Police Academy
- LT Veronica Garcia, Texas Department of Public Safety
- Director of Governmental Affairs Gretchen Grigsby, TCOLE
- SGT Bill Kennedy, Nacogdoches Police Department
- Retired Chief James Pierson, Henderson Police Department

Abstract:

Multiple bills passed by the 85th Legislature will have an impact on Texas law enforcement. There were administrative changes, changes in existing statues, and new laws. By pursuing equality in justice and ensuring public safety, Texas’ law enforcement professionals will better serve their communities by increasing their awareness of changes and additions to state statutes.

Case law, especially cases handed down by the Supreme Court of the United States (SCOTUS), is of incredible importance to the administration of Justice. This curriculum will briefly cover recent judicial decisions that are important for law enforcement officers, law enforcement administrators, and policy makers.

Caveat:

This material is a general summary of selected court cases and changes to Texas’ criminal law as wrought by the 85th session of the Texas Legislature. This is not an all-inclusive recitation of every change, nor is it intended as legal advice. Instructors and students must verify all legislative changes and case law holdings discussed herein and are responsible for appropriate implementation of these changes. The following are merely summaries of legislative changes and cases; there is simply no substitute, for both instructors and students, to read the actual statutes, legislative acts, and cases. If you have any questions, please consult your local city, county, or district attorney. The Commission on Law Enforcement provides this material as-is and accepts no responsibility for the actions of officers and/or agents who act on the information contained herein.
Target Population:

- Law Enforcement Administrators
- Peace Officers
- Judges
- Prosecuting Attorneys

Minimum Classroom Hours for TCOLE continuing education credit:

- Three hours; Four hours recommended

Prerequisites for class participation:

- None

Evaluation Process and Procedures:

Evaluation will be accomplished through classroom interaction with instructor and students, oral and written participation through case study, or discussion and written tests as instructor and/or department deems appropriate.

Student Training Materials:

- This handout covering the material presented in class.

Instructor Materials:

- State and Federal Law Update Lesson Plan and Course Objectives
- State and Federal Law Update PowerPoint/Keynote slides, if desired
- Final Examination
- Instructor Contact Information & Statement of Qualifications

Equipment and Supplies:

- Computer (desktop or laptop) for slide presentation, if necessary
- Presentation Materials, Handouts, Exams, and Lesson Plan
- Data Projector and screen for PowerPoint presentation, if necessary
- Audio equipment (e.g., microphone and speaker system), if needed
Classroom Setup:

- Chairs, desks, and tables arranged for easy viewing of visuals and note-taking
- Adequate facilities to accommodate classroom, restroom, and break areas
- Adequate audio equipment to accommodate related video or audio training material during presentation, if needed.

Preparation:

If you use a PowerPoint or Keynote presentation: review the presentation prior to class. Note that some of the points on a single law change (or additions to one specific law) are made with multiple slides. Print one set of the slides in outline style to be attached to this resource guide - if you have additional information to add to your presentation on any of the laws or how your agency will adapt or make changes, put those notes on the outline form. Also attach a copy of the test, the answer sheet and the handouts to your lesson plan.

Print handouts and tests from the master provided for the anticipated number of attendees prior to class time. Just prior to class, have the presentation on-screen and ready to go, handouts distributed, roster or registration forms signed and collected.

Presentation:

Introduce yourself, give your background and qualifications, and tell the students that it is each attendee’s responsibility to take notes on the changes, and to follow up for their own clarification if any changes or additions to the laws are related to their assigned duties. Also advise them that the sources for additional information on the Supreme Court cases are contained in their handout.

Make your presentation while allowing attendees to comment and make comparisons on changes as they impact them. *Re-emphasize that they have the sources listed to answer any detailed questions that they may have.* Also remind them that any new laws or significant changes to existing statutes sometimes require an Attorney General’s opinion to know how the laws were intended to be enforced. Further, all legislative changes are subject to interpretation, conflict resolution, and implementation by trial court and appellate court opinions.

Topics Contained in the Course:

The course material contained in this document will cover a variety of topics. It is important to remember that instructors are free to add material to their lesson plans, provided that their additions are (1) relevant; (2) accurate; (3) documented; and (4) actually taught during the class.

The following learning objectives should be used to create lesson plans for use by instructors who teach this course:
1. The **Student Will Be Able To** ("SWBAT") identify current training requirements and TCOLE changes.
2. SWBAT identify recent court opinions that will have or have had an impact on the administration of justice in Texas
3. SWBAT recognize selected changes to the Texas Penal Code
4. SWBAT recognize selected changes to the Texas Code of Criminal Procedure
5. SWBAT recognize pertinent selected changes to the Texas Transportation Code
6. SWBAT recognize pertinent selected changes to the Texas Health and Safety Code
7. SWBAT recognize pertinent selected changes to other Texas statutes.

**Contact Information:**

Texas Commission on Law Enforcement  
ATTN: Curriculum Section  
6330 E Highway 290, Suite 200  
Austin, TX 78723

512.936.7700 (please have your PID ready when you call)

For information on this course, or to make comments on the content thereof, please contact the TCOLE Curriculum Section. If you find a typo or an error, **please let us know!**

**NOTE TO INSTRUCTORS:** pp. 2-5 may be omitted from the handouts given to students. This will not only save reproduction costs, but will also delete the pages that are non-applicable to the students themselves.
UNIT I: TRAINING REQUIREMENTS AND TCOLE CHANGES

LEARNING OBJECTIVE: The SWBAT identify current training requirements and TCOLE changes.

Texas peace officers are required to complete specific training requirements to maintain licensure. Officers holding a basic proficiency certificate or lower must, *in addition to all other training mandates*, complete the following courses within the 09/01/2017 through 08/31/2021 quadrennial training cycle:¹

- Special Investigative Topics #3232
- Cultural Diversity #3939
- Crisis Intervention Training #3843

*All* Texas peace officers, *regardless of certification level*, must complete a minimum of 40 hours of in-service training during each biennial training unit. This training must include a TCOLE-approved state and federal legal update course (these are TCOLE course number 3185 for the 2017-2019 unit and TCOLE Course 3186 for the 2019-2021 unit, respectively).²

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¹ A “cycle” is **four** years; training mandates are found in TCOLE Rules §218.3(d)

² A “unit” is **two** years; legal update mandate found in TCOLE Rules §218.3(a)

³ TCOLE Rules, §218.3(f)
Peace officers who were licensed for the first time on or after March 1, 2016, must complete the “Interacting with Drivers who are Deaf or Hard of Hearing” course (TCOLE #7887) within two years of initial licensure.\(^4\)

**Additional Training Requirements for Newly Licensed Peace Officers**

**New TCOLE Rule of Interest for training providers**

There have been some recent rule changes of note, too. These changes will affect certain groups of officers more than others. One particular rule related to instruction, though, is significant enough to bring to everyone’s attention. Please take the time to note the change below as it may have an impact on how you do your job.

**§215.10: Course Instructor Requirements**

(a) An instructor teaching a course must:
   (1) hold a valid instructor license;
   (2) certificate; or
   (3) be designated, in writing, as a subject matter expert in the course by the training coordinator.

(b) The instructor is responsible for:
   (1) ensuring compliance with commission rules and guidelines;
   (2) preparing, maintaining, and submitting the reports of training within the time frame specified by the Training Coordinator;
   (3) the administration and conduct of each course taught;
   (4) at a minimum, providing a complete lesson plan, clear learning objectives, instructor biography, approved class roster and original sign-in sheet, and course evaluation to the training coordinator for the training file;

\(^4\) Occupations Code §1701.261

\(^5\) Occupations Code §1701.253 (l).
(5) enforcing all attendance and other standards set by the commission or the training advisory board;
(6) maintaining the discipline and demeanor of each student during class;
(7) distributing or presenting learning objectives to all students at the beginning of each course;
(8) ensuring that all learning objectives are taught; and
(9) ensuring examinations are proctored or supervised to have fair, honest results.

(c) The effective date of this section is May 1, 2017.

Section 215.10 is directly related to who may teach courses for TCOLE credit and the responsibilities of the instructor. Please note that instructors now must be certified or licensed as instructors by TCOLE or must be documented as subject-matter experts by the training coordinator responsible for the course. This applies to each course taught by the instructor. Note also that the rule now allows the Commission to now take disciplinary action directly against instructors who engage in malfeasance while teaching courses (subsection (b) states that “the instructor is responsible for...”). Previously, the training coordinators were the individuals who were normally “on the hook” for courses that were not handled properly; §215.10 now makes the instructor himself or herself responsible for his or her actions.

This does not mean that training coordinators are now permitted to turn a blind eye toward the classes they supervise. What this rule means is that individual instructors are held responsible for the classes they themselves teach while training coordinators are held responsible for the overall operation of the training program itself. This change is designed to create a more effective, responsive, and professional training program.

**Senate Bill 1849, the Sandra Bland Act**

Governor Abbott on 06/15/2017 signed the Sandra Bland Act. This new law was named in memory of an African-American woman who died in jail after being arrested in Waller County. Ms. Bland’s death was ruled a suicide, but the circumstances surrounding her passing sparked a national discussion on the topics of race and law enforcement. The SBA makes multiple, serious, substantive changes across a large number of Texas codes. For purposes of this first section of the legal update, the following five SBA-mandated changes to TCOLE are listed in digest form. Other changes are documented, as appropriate, when covered in the various codes that follow.

1. **Expanded Crisis Intervention Training.** The Sandra Bland Act mandates that TCOLE update and increase the amount of CIT training provided to Texas peace officers. To that end, the CIT curricula in the Basic Peace Officer Course and the stand-alone CIT in-service course are now set at a minimum of 40 hours.

2. **De-escalation Training.** A separate, new course on de-escalation skills will be created by TCOLE. This de-escalation course is not the same class as the CIT course, but instead focuses on common interactions with the general public. This new curriculum
will be included in the BPOC and as a requirement for both an intermediate and an advanced peace officer certificate.

3. **Mental Health Training for County Jailers.** There will be new mental health training for jailers in both the Basic County Corrections Course and as an in-service course for those who are already licensed as jailers. The in-service must be completed by the end of the 2017-2021 quadrennial cycle.

4. **Changes to Racial Profiling Reports.** There will be no more partial exemptions for agencies using video equipment to record their traffic stops. All agencies that are subject to reporting requirements will now have to submit a full racial profiling report.

5. **Jail Administrator Testing.** Newly appointed jail administrators will have to take a state competency exam in order to qualify to hold that position. The exam itself will be developed and written by the Texas Commission on Jail Standards (TCJS), but the exam will be hosted and proctored by TCOLE.

UNIT II: IMPORTANT SCOTUS COURT OPINIONS

**LEARNING OBJECTIVE:** The SWBAT identify recent court opinions that will have or have had an impact on the administration of justice in Texas.

**Fourth Amendment Cases**


**Issue:** Does finding a valid warrant after an unreasonable warrantless stop attenuate the fruit of the poisonous tree and make the results of a post warrant arrest search incident admissible?

**Holding:** In this case, yes. The court found that although the officer’s stop of Strieff outside a suspected crack house was not supported by reasonable suspicion that a standard warrant check producing a valid warrant was an “extraordinary intervening circumstance” that prevented the doctrine of “fruit of the poisonous tree” from causing drugs found in the later search incident from being suppressed. The Court pointed out that the initial police conduct was a legitimate investigation and not flagrant misconduct.

**Commentary:** The Court made a great deal out of the lack of “flagrant misconduct.” This is not a bright line ruling that a warrant will always save an illegal stop. This case follows the reasoning of several Texas cases.


**Issue:** Can a defendant lawfully arrested for DWI be convicted for a crime of refusing a breath test or blood draw to test BAC?

**Holding:** Yes for a breath test, but no for a blood draw. The court found a breath test, being less invasive, does not implicate significant privacy concerns and can be performed without a warrant. A blood draw requires a warrant. Therefore criminalization of breath
test refusals is constitutional; criminalization of blood test refusals is not. Civil and evidentiary penalties may still be allowed.

**Commentary:** This case is not a great shock after *McNeely v. Missouri*. It has very little impact in Texas since there has never been a criminal penalty for refusing either breath or blood. The case does point out one potential advantage of breath testing since the court found it did not significantly impact privacy concerns.

**Police Liability Cases**  

**Issue:** Was an officer that shot and killed a fleeing motorist who was posing a danger to others entitled to qualified immunity?

**Holding:** Yes. The Court reversed the trial court and the 5th Circuit and found that there was no clearly established law saying the use of deadly force in this circumstance violated the 4th Amendment.

**Commentary:** This case was a mess. But the Court held that shooting a car that is fleeing does not violate the 4th Amendment and without that violation the officer deserved qualified immunity. Don’t read a total green light to shoot from this case.

*White v Pauley, 137 S.Ct. 542* (decided 1/9/2017).

**Issue:** Was an officer who shot and killed an armed suspect without first identifying himself as an officer or giving a warning entitled to qualified immunity?

**Holding:** Yes. There is no “clearly established Fourth Amendment right” to be free of excessive use of force that requires the firing officer give a warning or identify himself as police. Since the officer joined a police action and his fellow officers were under fire, such a rule is overly broad.

**Commentary:** This case headed back to court to make sure someone identified themselves as police. Yes, someone still needs to do that, but the Court (as it has frequently done) said the cases must be viewed on their individual facts.

*Manuel V. City of Joliet, 137 S.Ct. 911* (decided 3/21/17).

**Issue:** Does a magistrate’s finding of probable cause and prosecution of a case end the Fourth Amendment claim and make it a 14th Amendment claim which would have been barred by the statute of limitations? In this case officers hid negative field tests on drugs and failed to tell prosecutors. This suit was barred by the statute of limitations against the officers, but not the prosecutor. The only way the civil suit could go forward is if there was prosecutorial misconduct.

**Holding:** The magistrate’s finding and subsequent prosecution were both a result of the officer’s misconduct. The Fourth Amendment claim survives both. There was prosecutor
misconduct although the prosecutor only became aware of the officer’s misconduct after the lab work came back.

Commentary: It really did not help that the prosecutor waited several weeks to dismiss the case. The only way to hold the officers responsible was to toss the prosecutor in with them. The case is remanded back for more findings on the statute of limitations. The key here is don’t frame people. There is also a pretty clear warning that hiding exculpatory evidence will get everyone sued, and defenses denied.

IMPORTANT NOTE REGARDING THE CASE BRIEFS ABOVE:

Officers should consult with their local district, county, or municipal attorney if there are any questions about the cases listed above. These are not, by any means, the only cases you should be aware of, nor are the briefs an exhaustive or legally binding opinion as to how officers should engage in law enforcement work. It’s important for you to determine how your local prosecutor wants to move forward within the parameters of the law.

ALL STATUTORY CHANGES ARE EFFECTIVE SEPTEMBER 1, 2017, UNLESS OTHERWISE NOTED.

UNIT III: CHANGES TO THE TEXAS PENAL CODE

LEARNING OBJECTIVE: The SWBAT recognize selected changes to the Texas Penal Code.

§20.02, Unlawful Restraint, is amended by adding to the F/2 enhancement, when the victim is a peace officer or judge lawfully discharging an official duty or in retaliation for or on account of an exercise of official power or performance of an official duty. This is one of many enhancements due to the addition of peace officers and judges to the list of potential victims of a hate crime.

ENABLING LEGISLATION: HB2908

§20A.02, Trafficking of Persons, is amended by removing the previous language regarding the victim’s age (“at the time the actor commits the offense”) and replacing it with “at the time of the offense.”

The new subsection (a-1) adds the definition of “coercion” as “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.”

ENABLING LEGISLATION: HB29, HB1808, HB2529, and HB2552
§21.02, *Continuous Sexual Abuse of Young Child or Children*, is amended to add that this offense is committed when the elements are met “regardless of whether the actor knows the age of the victim at the time of the offense.” This was the law as handed down by every Texas court. Now it is codified.

**ENABLING LEGISLATION**: HB29 and HB1808

§21.07, *Public Lewdness*, is amended by removing an “act involving the person's mouth or genitals and the genitals or anus of an animal or fowl” from the prohibited conduct. The reasoning for this is that these actions are now covered in the new *Bestiality* statute, PC §21.09.

**ENABLING LEGISLATION**: SB1232

§21.09, *Bestiality*, is added. This new offense is created and states that:

(a) A person commits an offense if the person knowingly engages in an act involving contact between:

1. The person's mouth, anus or genitals and the genitals or anus of an animal.
2. The person's anus or genitals and the mouth of an animal.
3. Fondles or touches the anus or genitals of the animal in a manner that is not generally accepted or otherwise lawful animal husbandry or veterinary practice, including touching through clothing.
4. Causes the animal to touch the seminal fluid of the person.
5. Inserts any part of a person's body or any object into the anus or genitals of an animal in a manner that is not generally accepted or otherwise lawful animal husbandry or veterinary practice.
6. Possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that it be used for these purposes.
7. Organizes, promotes, conducts, or participates as an observer of the described conduct.
8. Causes a person to engage or aids a person in engaging in the described conduct.
9. Permits the described conduct to occur on any premises under the person's control.
10. Engages in the described conduct in the presence of a child under the age of 18.
11. Advertises, offers, or accepts the offer of an animal to be used in this state for the described conduct.

This offense is a SJF unless it is committed in the presence of a child under the age of 18 or it results in serious bodily injury or death to the animal, in which case it is a F/2. This is a reportable conviction under the Sex Offender Registration Program. The elements include the exception of husbandry or veterinarian practice, there is also a separate defense on that basis. Many of the later sections would fall under the law of parties, but they are specifically added as prohibited conduct.

**ENABLING LEGISLATION**: SB1232
§21.11, *Indecency with a Child*, is amended to add that this offense is committed when the elements are met “regardless of whether the actor knows the age of the victim at the time of the offense.”
**ENABLING LEGISLATION:** HB29 and HB1808

§21.12, *Improper Relationship Between Educator and Student*, is amended by removing language regarding whether the actor holds, or is required to hold, a permit or certificate and replacing it with “holds a position described by Section 21.003 (a) or (b), Education Code, regardless whether the employee holds the appropriate certificate, permit, license, or credential for the position.” The previous requirement that the actor be employed by the same school attended by the victim or that the actor provides educational services to the victim is also removed. This offense is now expanded to apply to private schools. A conviction under this offense does include a requirement that the actor be registered as a sex offender. In essence, this makes a sexual relationship between any teacher and anyone they know to be a student a crime.
**ENABLING LEGISLATION:** SB7

§21.16, *Unlawful Disclosure or Promotion of Intimate Material*, is now a SJF. It was previously a M/A.
**ENABLING LEGISLATION:** HB2552

§21.18, *Sexual Coercion*, is added. This is a new offense that states:

A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit any of the following offenses:

1. Any offense under Chapter 43, Prostitution
2. 20.A02(a), (3), (4), (7), or (8), Trafficking of Persons
3. 21.02 Continuous Sexual Abuse of Young Child or Children
4. 21.08 Indecent Exposure
5. 21.11 Indecency with a Child
6. 21.12 Improper Relationship Between Educator and Student
7. 21.15 Invasive Visual Recording
8. 21.16 Unlawful Disclosure or Promotion of Intimate Visual Material
9. 22.011 Sexual Assault
10. 22.021 Aggravated Sexual Assault

To obtain, in return for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:

1. Intimate Visual Material
2. An act involving sexual conduct causing arousal or gratification.
3. A monetary benefit or other benefit of value.

The same conduct is an offense if the person intentionally threatens these offenses:

1. Any offense under Chapter 19, Criminal Homicide
2. Any offense under Chapter 20, Kidnapping, Unlawful Restraint and Smuggling of Persons.
3. The sections of 20A.02 not mentioned above
But only to obtain, in return for not committing these threatened offenses or in connection with the threatened offense, any of these following benefits:

(1) Intimate Visual Material
(2) An act involving sexual conduct causing arousal or gratification

Note that the second portion removes the benefit of “a monetary benefit or other benefit of value.” This offense is a SJF unless the actor has a previous conviction, making it a F/3.

Please also note that the statute as written states that the definition of “Intimate Visual Material” is located in §21.16 (b)(1) or (c). This citation is incorrect. The actual definition is located in §21.16 (a)(5). This unintentional oversight may potentially be problematic. Consult your local prosecutor if you are investigating an offense that you believe meets the elements of this offense.

**Enabling Legislation:** HB1808 and HB2552

§22.01, Assault, is amended to create some new enhancements. It is now a M/A to commit assault by threat against a pregnant individual to force that individual to have an abortion. It is now a F/3 to commit an assault causing bodily injury against a pregnant individual to force the individual to have an abortion.

An assault causing bodily injury against a peace officer or judge has now been elevated one degree above the other types of public servants or security guards. Whereas assaulting certain security guards and other public servants can be prosecuted as a F/3, HB2908, known as the “Blue Lives Matter” bill, makes these assaults against peace officers and judges a F/2-level offense as well as a potential hate crime. If the court makes an affirmative finding that the reason the actor committed the offense was because of bias or prejudice, the F/2 could, theoretically, be further enhanced to a F/1! Discretion in overusing this section is advised. Please seek guidance from your local prosecutor.

**Enabling Legislation:** HB2552 and HB2908

§22.011, Sexual Assault, is amended by adding the language “regardless of whether the person knows the age of the child at the time of the offense.” It is further changed by adding “coercion” to the methods by which an actor could compel a victim, used as evidence that the act was without the victim's consent.

**Enabling Legislation:** HB29 and HB1808

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§22.021, Aggravated Sexual Assault, is amended by adding that the offense is committed “regardless of whether the person knows the age of the child at the time of the offense.” It also modifies the language regarding so-called “date rape” drugs. The statute previously listed three drugs (flunitrazepam, otherwise known as rohypnol; gamma hydroxybutyrate; and ketamine) that, if used in this context, would make a sexual assault into an aggravated sexual assault. Those three drugs are no longer listed to the exclusion of others. This section now states that sexual assault becomes aggravated sexual assault if the actor, “with the intent of facilitating the commission of the offense, administers or provides to the victim of the offense any substance impairing the victim’s ability to appraise the nature of the act or to resist the act” (Note: emphasis added by TCOLE 3185 curriculum committee; and yes, “any substance” includes alcohol).  

ENABLING LEGISLATION: HB29 and HB1808

§22.04, Injury to a Child, Elderly Individual, or Disabled Individual, is amended by changing some language; by adding “boarding home facility” to the offense; changing the term “mental retardation” to “an intellectual or developmental disability”; and by adding “mental illness” to the list of definitions for “disabled individual.”

“Mental Illness” is defined in the Health and Safety Code as: “an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that: (A) substantially impairs a person's thought, perception of reality, emotional process, or judgement; or (B) grossly impairs behavior as demonstrated by recent disturbed behavior.”  

ENABLING LEGISLATION: HB3019

§22.07, Terroristic Threat, is amended by making the offense a SJF if it is committed against a person the actor knows is a peace officer or judge.  

ENABLING LEGISLATION: HB2908

§25.081, Unregulated Custody Transfer of Adopted Child, is created. According to this new statute,

- “Adopted Child” means a person younger than 18 who was legally adopted, including a person who is in foster care or from a foreign county at the time of adoption.
- “Unregulated custody transfer” means the transfer of permanent physical custody of an adopted child by the parent, managing conservator, or guardian of the child without receiving approval of the transfer by a court as required by §162.026, Family Code.

A person commits this new offense if the person knowingly conducts an unregulated transfer or facilitates or participates in an unregulated transfer, which includes transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining an adopted child for that purpose.

This offense is a F/3 unless the actor commits it with the intent to commit 20A.02, Trafficking of Persons; 43.02, Prostitution; 43.05, Compelling Prostitution; 43.25, Sexual
Performance by a Child; 43.251, Employment Harmful to Children; or 43.26, Possession or Promotion of Child Pornography; in which case it is a F/2. The statute contains a long list of circumstances where it does not apply.

Enabling Legislation: **HB834**

§25.09, Advertising for Placement of Child, is updated by adding “... or any other form of permanent physical custody of the child,” thus making the definition of the unlawful act broader than stating specifically that the actor must be advertising for “adoption.”

Enabling Legislation: **HB834**

§28.03, Criminal Mischief, is amended by adding “property used for flood control purposes or a dam” to the list of enhancements, making damage to this type of property a SJF.

The statute is further amended by stating that the offense is a F/3 if the actor, by discharging a firearm, other weapon, or by any other means, causes the death of one or more head of cattle, bison, or horses, regardless of value – basically bringing the punishment range into the same punishment scheme as if they had been stolen. There is a defense to prosecution if the actor was actually discharging official duties as a member of the US armed forces or state military forces or during regular agricultural labor duties and practices.

Enabling Legislation: **HB1257** and **HB2817**

§30.02, Burglary, is amended by adding that the offense is now a F/3 if the premises are a commercial building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, nursing facility, or warehouse, and the person acted with the intent to commit a theft of a controlled substance.

Enabling Legislation: **HB1178**

§30.04, Burglary of Vehicles, is amended by adding that the offense is a F/3 if the vehicle entered is owned or operated by a wholesale distributor of prescription drugs and the person acted with the intent to commit theft of a controlled substance.

Enabling Legislation: **HB1178**

§30.05, Criminal Trespass, is amended by adding an enhancement from a M/B to a M/A if the offense is committed on or in the property of an institution of higher education and the actor has been previously convicted for trespassing on the property of an institution of higher education or has a previous conviction for the trespassing prohibition in Education Code §51.204, Trespass, Damage or Defacement. It’s important to note that all previous convictions can be used for this enhancement, including deferred adjudication.

Enabling Legislation: **SB1649**
§30.06, Criminal Trespass by License Holder with a Concealed Handgun, is amended by adding that there is a defense to prosecution under this section that the license holder is a volunteer emergency services personnel as defined by §46.01, Penal Code.

ENABLING LEGISLATION: HB435

§30.07, Criminal Trespass by License Holder with an Openly Carried Handgun, is amended by adding that there is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by §46.01, Penal Code.

ENABLING LEGISLATION: HB435

§31.03, Theft, is amended by adding that the offense is a F/3 if the property stolen is a controlled substance with a value of less than $150,000, if stolen from a pharmacy; clinic; hospital; nursing facility; warehouse; or a vehicle owned or operated by a wholesale distributor of prescription drugs.

ENABLING LEGISLATION: HB1178

§31.19, Theft of Petroleum Product, is added. For purposes of this new law, “petroleum product” is defined as crude oil, natural gas, or condensate. A person commits an offense if the person unlawfully appropriates a petroleum product with the intent to deprive the owner of the petroleum product by:

• Possessing, removing, delivering, receiving, purchasing, selling, moving, concealing, or transporting the product; or
• Making or causing a connection to be made with, or drilling or tapping or causing a hole to be drilled or tapped in, a pipe, pipeline, or tank used to store or transport the product.

Appropriation of a petroleum product is unlawful if it is without the owner’s effective consent. An offense under this section is:

• A SJF if the value is less than $10,000
• A F/3 if the value is $10,000 or more but less than $100,000
• A F/2 if the value is $100,000 or more but less than $300,000
• A F/1 if the value is $300,000 or more.

ENABLING LEGISLATION: SB1871

§33.01, Definitions, creates definitions of “aggregate amount,” “decryption,” “decrypt,” “decrypted,” “encrypted private information,” “encryption,” “encrypt,” “encrypted,” “encryption service,” and “privileged information.”

ENABLING LEGISLATION: HB9
§33.022, *Electronic Access Interference*, is added. This new statute says that a person, other than a network provider or online service provider acting for a legitimate business purpose, commits an offense if the person intentionally interrupts or suspends access to a computer system or computer network without the effective consent of the owner. This offense is always a F/3. It is a defense if the action was done for legitimate law enforcement purpose. This is general known as “denial of service” attacks.

**ENABLING LEGISLATION:** HB9

§33.023, *Electronic Data Tampering*, is added. For purposes of this new statute, “ransomware” means a computer contaminant or lock that restricts access in exchange for money, property or a service.

1. A person commits an offense if the person intentionally alters data as it transmits between two computers in a computer network or computer system through deception and without a legitimate business purpose. A person also commits an offense if the person intentionally introduces ransomware onto a computer, computer network or computer system through deception and without a legitimate business purpose. Both of these actions are a M/C unless:
   (d-1) It is shown that the defendant acted with the intent to harm or defraud another, in which case the offense follows the standard value ladder based on the aggregate amount involved.
   **OR**
   (d-2) It is shown that the defendant knowingly restricted a victim’s access to privileged information, in which case the offense starts at a SJF and follows the standard value ladder, with some additions:
   - **SJF:** less than $2,500
   - **F/3:** $2,500 or more but less than $30,000 OR a client or patient of a victim suffered harm attributable to the offense.
   - **F/2:** $30,000 or more but less than $150,000 OR a client or patient of a victim suffered bodily injury attributable to the offense.
   - **F/1:** $150,000 or more OR a client or patient of a victim suffered serious bodily injury or death attributable to the offense.

All amounts may be aggregated, whether or not in a single incident, in determining the grade of the offense.

**ENABLING LEGISLATION:** HB9

§33.024, *Unlawful Decryption*, is added. This is a new statute wherein a person commits an offense if the person intentionally decrypts encrypted private information through deception and without a legitimate business purpose. This offense is a M/C unless (subsection b-1) it is shown that the defendant acted with the intent to harm or defraud another, in which case the level of offense follows the standard value ladder. If it is shown that the defendant knowingly decrypted privileged information, subsection b-2 says that the level of offense then starts at a SJF and follows the standard value ladder, with some additions:
SJF: less than $2,500
F/3: $2,500 or more but less than $30,000 OR a client or patient of a victim suffered harm attributable to the offense.
F/2: $30,000 or more but less than $150,000 OR a client or patient of a victim suffered bodily injury attributable to the offense.
F/1: $150,000 or more OR a client or patient of a victim suffered serious bodily injury or death attributable to the offense.

ENABLING LEGISLATION: HB9

§37.12, False Identification as Peace Officer, Misrepresentation of Property, is amended to add vehicles to the list of prohibited items. Specifically, “A person commits an offense if the person intentionally or knowingly misrepresents an object, including a vehicle, as property belonging to a law enforcement agency.” For purposes of this subsection, “intentionally or knowingly misrepresenting an object as property belonging to a law enforcement agency” includes intentionally or knowingly displaying an insignia of a law enforcement agency in a manner that would lead a reasonable person to interpret the item as property belonging to a law enforcement agency. SB683 also adds Subsection (c-1), which states, ‘For the purposes of this section, an item bearing an insignia of a law enforcement agency includes an item that contains the word “police,” “sheriff,” “constable,” or “trooper.”’

It is now an exception to this offense if the use of such items was exclusively for decorative purposes or in an artistic or dramatic presentation; this was previously a defense to prosecution. But now the state must prove the negative. It continues to be a defense to prosecution under this section that the card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse; or the person identified as a peace officer or reserve law enforcement officer by the item bearing the insignia was commissioned in that capacity when the item was made.

ENABLING LEGISLATION: HB683

§39.04, Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody or Under Supervision, is amended by not only updating the offense title, but also by expanding the list of persons prohibited from engaging in sexual relations with an individual the person knows is under supervision or in custody of TDCJ, TJJD, community supervision, or juvenile probation. Employees and volunteers of such an entity is now prohibited from such acts.

ENABLING LEGISLATION: SB343

§39.07, Failure to Comply with Immigration Detainer Request, is added. This is a new statute that is part of the “Sanctuary Cities” law. The new section states that

(a) A person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail commits an offense if the person:
has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement; and
(2) knowingly fails to comply with the detainer request.

(b) An offense under this section is a Class A misdemeanor.
(c) It is an exception to the application of this section that the person who was subject to an immigration detainer request described by Subsection (a)(1) had provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.

According to the Texas District and County Attorneys Association, “a conviction for this offense constitutes official misconduct for the purposes of removing a county official from office.” Additionally, at the time this legal update document is being written, there are multiple federal lawsuits in progress related to this particular statute. We strongly encourage officers, agencies, and officials to seek legal guidance from their city, county, or district attorney in order to best adhere to the law and any federal court decisions that may come down the pike.

ENABLING LEGISLATION: SB4

§42.07, Harassment, is amended by means of a bill known as “David’s Law.” To quote from an article about this law that appeared in the April 11, 2017, edition of the Texas Tribune (written by Jackie Wang), “David Molak had been harassed online by classmates who mocked his appearance and threatened physical violence. After months of cyberbullying, the 16-year-old Alamo Heights High School student took his own life in January 2016.” David’s Law makes changes to the Education Code, the Civil Practice and Remedies Code, the Health & Safety Code, and the Penal Code. For purposes of PC §42.07, Harassment, it adds to the definition of “Electronic communication” and makes this crime a M/A if:
(2) the offense was committed under Subsection (a)(7) [repeated electronic communication] and:
   (A) the offense was committed against a child under 18 years of age with the intent that the child:
      (i) commit suicide; or
      (ii) engage in conduct causing serious bodily injury to the child; or
   (B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practices and Remedies Code. These orders are civil and initiated by the parents of bullied children, not law enforcement. The existence of such an order may be used to enhance this offense.

ENABLING LEGISLATION: SB179

ADDITIONAL LINK FOR MORE INFORMATION: David's Legacy Foundation

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7 Edmonds, p. 10, referencing Local Government Code §87.031
§42.08, Abuse of Corpse, is amended by increasing the level of the offense from a M/A to a SJF. The M/A punishment is retained when the only prohibited act committed is vandalism of the grave.

ENABLING LEGISLATION: SB524

§42.092, Cruelty to Non-Livestock Animals. Senate Bill 762 amends the Penal Code to revise the penalties associated with certain conduct constituting cruelty to non-livestock animals. It also repeals a Health and Safety Code provision that made the statement of an allegedly cruelly treated animal’s owner, made at a hearing regarding the animal’s disposition, inadmissible in the owner’s trial for cruelty to a livestock or non-livestock animal. Section 42.092 is amended by increasing the level of offense from a SJF to a F/3 if a person

(b)(1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal; or
(b)(2) without the owner’s effective consent, kills, administers poison to, or causes serious bodily injury to an animal.

If the actor has a prior conviction for conduct under the following, the offense is a F/2:

• subsections (b)(1) or (b)(2); or
• (b)(7) causes one animal to fight another (if either animal is not a dog); or
• (b)(8) uses an animal as a live lure in dog race training or in dog coursing on a racetrack; or
• under §42.09, Cruelty to Livestock Animals.

ENABLING LEGISLATION: SB762

§43.02, Prostitution, is updated in multiple ways. Many of these changes were intended to help clarify and clean up changes made to this section during the 84th Legislature. Among the many changes made during this session, the legislature clarified the meaning of “fee” for purposes of this offense. “Fee” now means the payment, or offer of payment, in the form of money, goods, services, or other benefit.

Subsection (a) now simply states that a person commits an offense if he or she “knowingly offers or agrees to receive a fee from another to engage in sexual conduct.” The previous language that “a person commits the offense if, in return for receipt of a fee, the person knowingly offers to engage, agrees to engage, or engages in sexual conduct, or solicits another in a public place to engage with the actor in sexual conduct for hire,” is removed from the statute.

The rewritten subsection (b) now provides that a person commits an offense if the person 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 rewrite deletes the existing language that “a person commits an offense if, based on the payment of a fee by the actor or another person on behalf of the actor, the person knowingly offers to engage, agrees to engage, or engages in sexual conduct, or solicits another in a public place to engage with the actor in sexual conduct for hire.”
There are some changes in the levels and degrees of punishment for this offense as well.

**Enabling Legislation:** HB29

§43.03, *Promotion of Prostitution*, is amended by increasing the level of the offense from a M/A to a SJF. Additionally, the level of offense is enhanced to a F/3 if the actor has been previously convicted of an offense under this section. The offense is a F/2 if the actor engages in the conduct prohibited by this section involving a person younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense. The previous “at the time the actor commits the offense” language is replaced with “at the time of the offense.”

**Enabling Legislation:** HB29

§43.04, *Aggravated Promotion of Prostitution*, is amended by increasing the level of the offense from a F/3 to a F/2. The offense is a F/1 if the prostitution enterprise uses as a prostitute, one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense. The previous “at the time the actor commits the offense” language is replaced with “at the time of the offense.”

**Enabling Legislation:** HB29

§43.05, *Compelling Prostitution*, is amended by removing “at the time the actor commits the offense” and replacing it with “at the time of the offense.”

**Enabling Legislation:** HB29

§43.25, *Sexual Performance by a Child*, is amended by editing Subsections (c) and (e), as well as adding Subsection (h).

Subsections (c) and (e) are updated by removing “at the time the actor commits the offense” and replacing it with “at the time of the offense.” Subsection (h) states that conduct under this section constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

**Enabling Legislation:** HB29

§43.251, *Employment Harmful to Children*, is amended by editing Subsection (c) and adding Subsection (d).

Subsection (c) is amended by removing “at the time the actor commits the offense” and replacing it with “at the time of the offense.” Subsection (d) states that conduct under this section constitutes an offense regardless of whether the actor knows the age of the child at the time of the offense.

**Enabling Legislation:** HB29
§43.262, Possession or Promotion of Lewd Visual Material Depicting Child. House Bill 1810 amends the Penal Code to create the SJF offense of Possession or Promotion of Lewd Visual Material Depicting Child.

(a) In this section:
   (1) “Promote” and “sexual conduct” have the meanings assigned by Section 43.25.
   (2) “Visual material” has the meaning assigned by Section 43.26.

(b) A person commits an offense if the person knowingly possesses, accesses with intent to view, or promotes visual material that:
   (1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;
   (2) appeals to the prurient interest in sex; and
   (3) has no serious literary, artistic, political, or scientific value.

(c) An offense under this section is a state jail felony, except that the offense is:
   (1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under this section or Section 43.26; and
   (2) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under this section or Section 43.26.

(d) It is not a defense to prosecution under this section that the depicted child consented to the creation of the visual material.

Before using this section, please consult your local prosecutor because many forms of conduct may be prosecutable under other statutes and potential constitutional issues should be resolved.

Enabling legislation: HB1810

§46.01, Definitions, has several amended definitions.

This section is further amended by editing Subsection (6) the term “illegal knife” and replacing it with “location-restricted knife.” “Location-restricted knife” means a knife with a blade over five and one-half inches. All other previous definitions regarding unlawful edged weapons are removed.

Enabling legislation: HB1935

(18) “Volunteer emergency services personnel” includes a volunteer firefighter, an emergency medical services volunteer as defined by Section 773.003, Health and Safety Code, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001 Occupations Code, who is performing law enforcement duties.

Enabling legislation: HB435
Two bills added subsections with the number (18). To distinguish between the two, the online statutes reference each as “Text of section as added by [bill number]. The second subsection (18) is added by HB913, defining “Improvised explosive device.” “Improvised explosive device” means “a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. The term does not include:

(A) unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval; or

(B) an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary explosive.”

**ENABLING LEGISLATION:** **HB913**

§46.02, *Unlawful Carrying of Weapons*, is amended by striking “illegal knife” and adding Subsection (a-4).

(a-4) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife;

(2) is younger than 18 years of age at the time of the offense; and

(3) is not:

(A) on the person's own premises or premises under the person's control;

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; or

(C) under the direct supervision of a parent or legal guardian of the person.

(d) An offense under Subsection (a-4) is a Class C misdemeanor.

**ENABLING LEGISLATION:** **HB1935**

§46.03, *Places Weapons Prohibited.* HB1935 amends the Family Code and Penal Code to replace references to an illegal knife with references to a location-restricted knife in certain provisions governing weapons-related offenses and juvenile justice proceedings. The bill establishes penalties for carrying or possessing a location-restricted knife based on the actor's age and the premises on which and circumstances under which the knife is carried or possessed, as applicable. Penal Code §46.03 is amended by removing the term “illegal knife” and adds the term “location-restricted knife” to the weapons prohibited at the locations listed within this section, as well as the locations listed within §46.035, *Unlawful Carrying of Handgun by License Holder*. These changes make it unlawful for a person to carry a knife with a blade over five and one-half inches in the following locations:

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the institution; or
(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:
   (A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or
   (B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a location-restricted knife:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a location-restricted knife is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility licensed under Chapter 242, Health and Safety Code, unless the person has written authorization of the hospital or nursing facility administration, as appropriate;

(5) on the premises of a mental hospital, as defined by Section 571.003, Health and Safety Code, unless the person has written authorization of the mental hospital administration;

(6) in an amusement park; or

(7) on the premises of a church, synagogue, or other established place of religious worship.

(g) Except as provided by Subsection (g-1), an offense under this section is a felony of the third degree.
(g-1) If the weapon that is the subject of the offense is a location-restricted knife, an offense under this section is a Class C misdemeanor, except that the offense is a felony of the third degree if the offense is committed under Subsection (a)(1).\(^8\)

**ENABLING LEGISLATION: **HB1935

§46.035, *Unlawful Carrying of Handgun by License Holder.* HB435 establishes a defense to prosecution for the unlawful carrying of a handgun by a license holder on certain specified premises that the actor is volunteer emergency services personnel engaged in providing emergency services. The first change we need to cover was by adding subsection (h-1), which says that it is a defense to prosecution under subsections (b)(1) [the 51% law], (b)(2) [a school sporting event], (b)(4) [a hospital / nursing facility], (b)(5) [certain amusement parks], (b)(6) [religious place] and (c) [meeting rooms], that at the time of the commission of the offense, the actor was:

1. a judge or justice of a federal court;
2. an active judicial officer, as defined by Section 411.201, Government Code; or
3. the attorney general or a United States attorney, assistant United States attorney, assistant attorney general, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

Section 46.035 also now has a new subsection (m), which reads as follows: “It is a defense to prosecution under subsections (b) and (c) that the actor is volunteer emergency services personnel engaged in providing emergency services.” These defenses include everything except carrying when intoxicated, openly (without a belt or shoulder holster), or where notice is provided on colleges and universities.

**ENABLING LEGISLATION: **HB435

§46.05, *Prohibited Weapons,* is amended by two bills. HB1819 amends this section to exclude a firearm silencer possessed, manufactured, transported, repaired, or sold in compliance with federal law from the applicability of the offense for engaging in certain conduct with respect to prohibited weapons. Specifically,

(a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

1. any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice:
   - an explosive weapon;
   - a machine gun; or
   - a short-barrel firearm;

In plain English: the location-restricted knife offense is a M/C unless the offense occurs at a school, in which case it is a F/3.
(2) knuckles;
(3) armor-piercing ammunition;
(4) a chemical dispensing device;
(5) a zip gun; [or]
(6) a tire deflation device; or
(7) a firearm silencer, unless the firearm silencer is classified as a curio or relic by
the United States Department of Justice or the actor otherwise possesses,
manufactures, transports, repairs, or sells the firearm silencer in compliance with
federal law.

ENABLING LEGISLATION: **HB1819**

**House Bill 913** also amends this section to include an improvised explosive device
among the weapons whose intentional or knowing possession, manufacture, transport,
repair, or sale constitutes a F/3 offense. HB913 lists IED as number (7) in this section,
which the previous bill used for the firearm silencer. Because these don’t conflict with
one another, the duplication in numbers shouldn’t be an issue.

ENABLING LEGISLATION: **HB913**

§ 46.15, *Nonapplicability*, is amended by **House Bill 435**. The bill expands the group of
persons exempt from application of the offenses of unlawful carrying of weapons and
the possession or going with a prohibited weapon on certain premises to include the
attorney general, a United States attorney, their respective assistants, and volunteer
emergency services personnel engaged in providing emergencies services. Please refer
to the bill itself for the specific language.

ENABLING LEGISLATION: **HB435**

§49.09, *Enhanced Offenses and Penalties*, is amended by changing the enhancement to
§49.09, Penal Code, *Intoxication Assault*. If the actor in this offense caused serious bodily
injury to a judge or peace officer while that official was in the actual discharge of official
duties, the offense is now an F/1.

ENABLING LEGISLATION: **HB2908**

UNIT IV: CHANGES TO THE TEXAS CODE OF CRIMINAL PROCEDURE

LEARNING OBJECTIVE: The SWBAT recognize selected changes to the Texas Code of
Criminal Procedure.

Chapter 2, CCP, is amended by adding a prohibition on barring peace officers and special
investigators from entering certain places while armed.

Art. 2.1305, *Carrying Weapon on Certain Premises*. **House Bill 873** amends the Code of
Criminal Procedure to prohibit certain establishments serving the public from restricting
a peace officer or special investigator from carrying an authorized weapon on the
establishment’s premises regardless of whether the peace officer or special investigator
is engaged in the actual discharge of official duties while carrying the weapon.
“Establishment serving the public” means
- Hotel, motel or other place of lodging
- Restaurant or other place food is offered for sale to the public
- Retail or other commercial establishment or office building where the general public is invited
- Sports venue
- Any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

For purposes of this new article, “sports venue” is defined as “an arena, coliseum, stadium, or other type of area or facility that is primarily used or is planned for primary use for one or more professional or amateur sports or athletic events and for which a fee is charged or is planned to be charged for admission to the sports or athletics events, other than occasional civic, charitable or promotional events.”

**ENABLING LEGISLATION:** HB873

**Article 2.132, Law Enforcement Policy on Racial Profiling**

There are several changes to this article. The first part, which is effective on September 1, 2017, amends the official race or ethnicity categories tracked by the state, reconciling differences with national databases to the following:
- Alaska native / American Indian
- Asian / Pacific Islander
- Black
- White
- Hispanic / Latino

The second change adds additional reporting requirements to information gathered on traffic stops, expanding the reporting requirements to include warnings as well. Adds multiple changes requiring policy on review of video and data gathered by the chief administrator of the agency.

**Enabling Legislation:** HB3051 and SB1849 (Sandra Bland Act)

**Part effective on 09/01/2017; part effective for stops made on or after 01/01/2018.**

**Article 2.139, Reports Required for Officer-Involved Injuries or Deaths.** House Bill 245

amends the Code of Criminal Procedure to require the Office of the Attorney General to conduct an investigation after receiving a report asserting that a law enforcement agency failed to submit a required report for officer-involved injury or death or for injuries or deaths of peace officers and, if appropriate, to notify the agency of the failure to report. The bill makes an agency that fails to submit such a report liable for a civil penalty and requires collected penalties to be deposited to the crime victims’ compensation fund. The bill amends Art. 2.139 (1)(c) and (e) by striking the previous requirement that LE agencies post the required AG’s report to the agency’s web site (if one exists). The reports of officer-involved injuries or deaths are still required, but are no longer required to be posted on the web site.

**Enabling Legislation:** HB245
Art. 2.13951, Notice of Violation of Reporting Requirements for Certain Injuries or Deaths; Civil Penalty. This new article is added to the Code of Criminal Procedure. This statute creates a civil penalty for agencies that fail to comply with the reporting requirements.

ENABLING LEGISLATION: HB245

Article 2.251, Duties Related to Immigration Detainer Request. This article requires law enforcement to comply with, honor, and fulfill requirements in ICE detainer requests.

ENABLING LEGISLATION: SB4

Article 2.32, Electronic Recording of Custodial Interrogations. Along with multiple other substantive changes, House Bill 34 establishes requirements for LE agencies relating to the electronic recording of certain custodial interrogations that occur in a place of detention and providing for the admissibility in a criminal proceeding of a statement made as a result of such an interrogation. The bill requires TCOLE to establish an education and training program on eyewitness identification to be completed by each peace officer who performs eyewitness identification procedures, revises requirements relating to photograph and live-lineup identification procedures, and provides for the admissibility of an in-court identification of an accused under limited circumstances.

Senate Bill 1253 amends the Code of Criminal Procedure to require a law enforcement agency to make a complete and contemporaneous electronic recording of any custodial interrogation that occurs on or after March 1, 2018, in a place of detention and that is of a person suspected of committing or charged with the commission of certain offenses, unless electronic recording is infeasible as prescribed by the bill. The bill exempts such a recording from public disclosure under state public information law and provides for the admissibility of such a recording in a criminal proceeding against the accused.

These changes require electronic recording of custodial interrogations made in a “place of detention” such as police station, etc., if the interrogation is of a person suspected of committing or charged with the commission of an offense under: Murder; Capital Murder; Trafficking of Persons; Continuous Trafficking of Persons; Continuous Sexual Abuse of Young Child or Children; Aggravated Sexual Assault; Sexual Assault; Indecency With a Child; Sexual Performance by a Child; or Improper Relationship Between Educator and Student. There is a general “good cause” exception and five specific good cause examples are listed in the article. Please check the enabling legislation for the specific wording. Please also note the different effective dates.

ENABLING LEGISLATION: HB34 and SB1253

Effective Dates: 09/01/2017 and 03/01/2018

Article 12.01, Felonies

Adds Section (3)(H) to add Exploitation of Child, Elderly Individual, or Disabled Individual under §32.53, Penal Code to offenses with a seven-year statute of limitation.

ENABLING LEGISLATION: SB998
Article 13.37, *Obstruction or Retaliation.*
Expands venue in these cases to any county where the harm occurred, the threat originated or the threat was received.
**ENABLING LEGISLATION:** [HB268](#)

Article 14.055, *Duty of Officer to Notify Probate Court*
Requires an officer who arrests or detains a ward of the court to notify the court as soon as practicable, but no later than one working day following the detention or arrest.
*Similar application made to Chapter 15, *Arrest Under Warrant*, Article 15.171*
**ENABLING LEGISLATION:** [SB1096](#)
**Effective date July 1, 2018**

Article 14.06, *Must Take Offender Before Magistrate*
Requires M/C citations to include information on alternatives to full payment of fine or costs. These changes also require courts to provide the same notices and options during pleadings in misdemeanor cases.
**ENABLING LEGISLATION:** [HB351](#) and [SB1913](#)

Article 15.21, *Release on Personal Bond if not Timely Demanded*
**House Bill 3165** amends the Code of Criminal Procedure to update and revise provisions relating to certain pretrial procedures in criminal cases, including procedures for the release on personal bond of an arrested person not timely demanded. The bill revises the information regarding persons released on bond before sentencing that is required to be included in a personal bond pretrial release office's annual report.

For jail personnel, a major change: if an out-of-county warrant arrest is not picked up before the 11th day the person is committed to jail and notice has been sent that he’s ready for transport, that person is to be released on a personal bond by magistrate in the county where arrested. The PR bond is to be forwarded to either the sheriff of the county where the offense is alleged to have been committed, or the court that issued the warrant of arrest. Previously, the statute simply said that “the arrested person shall be discharged from custody.”
**ENABLING LEGISLATION:** [HB3165](#)

Article 16.22, *Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability.* In addition to adding the term “intellectual disability,” this change expands the duty to report to the sheriff or municipal jailer in providing notice to the magistrate no later than 12 hours after taking custody of an individual suspected of having mental Illness or who suffers from an intellectual disability. This change applies to M/B and above offenses.
**ENABLING LEGISLATION:** [SB1326](#)

Article 18.01, *Search Warrant.* **House Bill 3237** amends the Code of Criminal Procedure to clarify that a sworn affidavit setting forth substantial facts establishing probable cause for a search warrant becomes public information when the warrant is served instead of signed.
Article 18.10, How Return Made.

House Bill 3237 also sets a three-day deadline by which an officer is required to submit a return of an executed search warrant, and establishes that an officer’s failure to make a timely return and inventory does not bar the admission of evidence.

Enabling Legislation: HB3237

Chapter 24, Subpoena and Attachment

“Jenny’s Law” – creates a new process and requirements throughout the chapter requiring attached witnesses to have an attorney appointed, an open court hearing, and to be allowed bond or personal bond for the attachment. The bill requires a sheriff to make notification of custody “as soon as practicable” to the court after taking custody of a witness under the writ. It also requires the attorney to make a sworn affidavit setting forth the witnesses materiality.

Enabling Legislation: SB291

For some background on “Jenny’s Law,” click HERE.

Chapter 24A, Responding to Subpoenas and Certain Other Court Orders; Preserving Certain Information

Article 24A.001, Applicability of Subchapter

This article was expanded to include, in addition to the offenses previously listed in the article, the following:

- Indecency with a Child
- Sexual Assault & Aggravated Sexual Assault
- Trafficking of Persons crimes
- Public Indecency Crimes

Article 24A.0015, Definitions

“Online service provider” definition added, replacing “internet service provider” throughout the code.

Enabling Legislation: HB29 and SB1203

Article 38.01, Texas Forensic Science Commission.

The TFSC’s responsibilities include overseeing the Texas Crime Laboratory Accreditation Program. The TFSC established an accreditation process for crime laboratories and other entities conducting forensic analyses for use in criminal proceedings. As part of its accreditation mandate, the TFSC is responsible for establishing procedures, policies, and practices to improve the quality of forensic analyses conducted in Texas.

The TFSC established licensing programs for forensic disciplines subject to accreditation in Texas. The TFSC may also by rule establish licensing programs for disciplines not subject to accreditation. Forensic analysts in Texas are required to be licensed by January 1, 2019. Senate Bill 298 added section (13), Texas Forensic Science Commission Operating Account, to Article 38.01. The addition reads as follows:
(13) The Texas Forensic Science Commission operating account is an account in the general revenue fund. The commission shall deposit fees collected under Section 4-a for the issuance or renewal of a forensic analyst license to the credit of the account. Money in the account may be appropriated only to the commission for the administration and enforcement of this article.

**ENABLING LEGISLATION: SB298**

Article 38.075, *Corroboration of Certain Testimony Required.*

As stated earlier, **House Bill 34** makes multiple, major changes. One such change is Article 38.075, which amends the Code of Criminal Procedure to establish requirements for a prosecutor relating to tracking the use of testimony of a person to whom a defendant made a certain statement while the person was imprisoned or confined in the same correctional facility as the defendant and any related benefits offered or provided to a person in exchange for that testimony. In other words, get with your prosecutor ASAP to clarify procedures for tracking the use of statements from jailhouse informants. It also opens all criminal justice information about the jailhouse informant to mandatory discovery to the defense.

**ENABLING LEGISLATION: HB34**

Art. 38.20, *Photograph and Live Lineup Identification Procedures*  

Multiple changes that require law enforcement agencies to conform by policy to evidence-based practices. The bill revises requirements relating to photograph and live-lineup identification procedures, and provides for the admissibility of an in-court identification of an accused under limited circumstances. There is also a new requirement under subsection (d), which states that “a witness who makes an identification based on a photograph or live lineup identification procedure shall be asked immediately after the procedure to state, in the witness’s own words, how confident the witness is in making the identification.”

**ENABLING LEGISLATION: HB34**

Article 42.014(a), *Finding That Offense Was Committed Because of Bias or Prejudice,* is amended to add, “or by status as a peace officer or judge” to the list of potential victims of a hate crime.

**ENABLING LEGISLATION: HB2908**

Article 42.0196, *Finding Regarding Offense Related to Performance of Public Service*  

Adds a sanction to prevent elected officials convicted of certain felony offenses related to the office they held from collecting public retirement benefits.

**ENABLING LEGISLATION: SB500**
Chapter 42, *Judgments*, and Chapter 45, *Justice and Municipal Courts*

**House Bill 351** amends the CCP, Government Code, Penal Code, and Transportation Code to revise provisions relating to the consequences imposed on defendants who are indigent or do not have sufficient resources or income to pay all or part of fines or costs for certain criminal offenses. The bill, among other things, requires information regarding alternatives to the full payment of fine or costs assessed against a defendant who is unable to pay that amount to be provided to the defendant and revises provisions relating to community service performed by a defendant in satisfaction of a fine or costs.

**Senate Bill 1913** amends the CCP and Transportation Code to revise provisions relating to the 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.

Put much more simply, there are changes to multiple parts of this chapter regarding alternate methods of payment; requiring greater use of personal bonds; and setting criteria to limit the automatic issuance of warrants for fine-only misdemeanors. These changes provide for “sealing” from public release, justice or municipal court records after five years from the date of final conviction or dismissal (there are listed exceptions for release). Issuance of capias pro fine now requires a hearing with notice mailed to the defendant, and evidence presented at the hearing that a capias is necessary. The statutory “lay out” credit is doubled, from $50 to $100 per day.

**ENABLING LEGISLATION:** HB351 and SB1913

For more information, go to the [Texas Municipal Court Education Center](https://www.tcm.gov).

Chapter 46B, *Incompetency to Stand Trial.*

Creates authority for “jail based competency restoration program.” Counties may contract with local mental health authority or behavioral health authority.

Enabling Legislation: **SB1326**

Chapter 47, *Disposition of Stolen Property*

**Article 47.01A & Article 47.02**

**Senate Bill 631** amends CCP provisions relating to venue for the disposition of stolen property to include certain magistrates in the county or municipality in which property is alleged to have been stolen among the magistrates authorized to hold a hearing to determine the right to possession of the property. Property hearings may be held in the county where the property was taken or where the property is located. The property owner is still responsible for transport of the property after the hearing.

Enabling legislation: **SB631**
Chapter 49. Inquests Upon Dead Bodies
Article 49.52, Parental Right to View Deceased Child
Requires that parents be allowed to view the body of their deceased child prior to the JP taking control of the body. Sets conditions on process for supervision of the viewing. Enabling legislation: **SB239**

Chapter 62, Sex Offender Registration Program
Article 62.001, Definitions
Adds Penal Code §21.09, Bestiality, to the list of reportable convictions.

Article 62.051, Registration; General
Adds vehicle registration information and description to the sex offender registration form.

Article 62.064, Prohibited Location of Residence
Prohibits residence on campus of public or private college unless the offender is a low-risk level one **AND** the institution approves the housing on campus.

Article 62.064, Entry onto School Premises; Notice Required
Requires notification by the registrant to the school administration of their presence and registration status. All new registration requirements are prosecutable under the general “failure to register” provisions (Note: this change applies to current registrants, regardless of offense date).

**ENABLING LEGISLATION:** **HB29, HB355, SB1553**

Chapter 63, Missing Children and Missing Persons
Article 63.0041, Reporting of Attempted Child Abduction
New subsection (a) requires law enforcement to input information on attempted child abductions as soon as practicable but **not later than eight hours** after receiving the report.

Enabling legislation: **HB1503**

**UNIT V: CHANGES TO THE TEXAS TRANSPORTATION CODE**

**LEARNING OBJECTIVE:** The SWBAT recognize selected changes to the Texas Transportation Code.

§22.091, Airport Security Vehicles.
This bill creates TRC §22.091, which defines “airport security vehicles” and establishes that they may be equipped with flashing blue and amber lights.

**ENABLING LEGISLATION:** **SB1024**
NOTE: The next change affects various sections and chapters related to vehicle titles.

**Senate Bill 2076** makes changes regarding the titling of motor vehicles in Texas. This bill changes the definition of a travel trailer in §501.002 (30) by allowing for a maximum width of eight feet, six inches and a maximum length of 45 feet (8.5’ x 45’). It changes the definition of a house trailer in §501.201(5) by allowing for a maximum length of 45 feet. It also removes the titling requirement for certain vehicles including farm trailers or semitrailers with a gross vehicle weight of not more than 34,000 pounds.

Enabling Legislation: **SB2076**

NOTE: The next change covers various sections and chapters related to Texas farm tags. **Senate Bill 2075** changes the language relating to farm tags and the requirements to secure those tags. This bill changes the wording in §§502.146 and 502.433 relating to farm license plates. These plates were previously referred to as “specialty” license plates but will now be referred to as “distinguishing” license plates. SB2075 also requires that in order to be issued or to renew a farm plate, the person must present proof of registration with the comptroller’s office.

Enabling Legislation: **SB2075**

§§521.121, *General Information on Driver's License.*

**House Bill 1345** changes the requirements for the photograph on a Texas Driver’s License. This bill removes the requirement that the photograph on a Texas Driver’s License be in color.

Enabling Legislation: **HB1345**

§§521.127, *Use of Diacritical Marks; 522.030, Content of License.*

**House Bill 1823** makes changes to both the HSC and the TRC to requires certain agencies to include diacritical marks on various records, certificates or licenses. The term includes accents, tildes, graves, umlauts, and cedillas. Thus, Jose Hernandez will become José Hernández; Pablo Pena will be Pablo Peña; and Francois Mitterand becomes François Mitterrand.

This bill defines a diacritical mark as a mark used in Latin script to change the sound of the letter to which it is added or used to distinguish the meaning of the word in which the letter appears. It requires the state registrar to include these marks on all vital statistic records. It also requires the DPS to include said marks on all driver’s licenses and identification certificates.

Enabling Legislation: **HB1823**
§§521.292, Department's Determination for License Suspension; 521.294, Department’s Determination for License Revocation; 521.300, Hearing: Location; Presiding Officer; 521.314, Cancellation Authority.

**House Bill 3272** addresses confinement of juveniles and license suspensions for someone under 18 years of age. This bill adds *Failure to Appear* to the list of offenses in Article 45.050(b) for which a justice or municipal court judge cannot order confinement. It also makes a change to TRC §521.292 and subjects a person under 18 years of age with two or more moving violations in a 12-month period to possible license suspension. This removed the old requirement that the person hold a provisional license in order to be suspended.

**Enabling Legislation:** [HB3272](#)

**Note:** The next change covers multiple sections and chapters related to drivers’ licenses. **House Bill 3050** makes multiple changes relating to driver’s and learner’s licenses and who can issue certain driver license and ID certificates. See [HB3050](#) for the specific list of statutes affected. This bill changes the wording for a license issued to a person under 18 from an instruction *permit* to a learner *license*. In addition to counties, it now includes municipalities that can enter into an agreement with the DPS to provide driver’s license services at specified locations.

Of additional interest to law enforcement officers, HB3050 also modifies §521.121, which deals with the address shown on the driver’s license of a peace officer. It allows for the issuance of the license to a peace officer with an address other than the residence address of the officer. The address can be in the county where the officer lives or works.

**Enabling Legislation:** [HB3050](#)

§543.202, Form of Record.

**House Bill 3051** amends the Code of Criminal Procedure and Transportation Code to modify the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses. Specifically, this bill redefines the broad categories for race and ethnicity as they apply to persons stopped for or convicted of traffic offenses. The new categories are intended to decrease the likelihood that someone’s race or ethnicity will be misidentified.

**Enabling Legislation:** [HB3051](#)

§545.062, Following Distance.

**House Bill 1791** allows for the use of connected braking systems. This bill allows for the use of connected braking systems between vehicles so equipped to allow for the safe operation of these vehicles while these systems are in use. Connected braking systems have the ability to “talk” between vehicles and allow for the vehicle in front to activate the brakes of the following vehicle automatically should both vehicles need to stop.

**Note:** Effective immediately

**Enabling Legislation:** [HB1791](#)
§§545.4251, Use of Portable Wireless Communication Device for Electronic Messaging; Offense; 543.004, Notice to Appear Required: Certain Offenses.

House Bill 62, the “Alex Brown Memorial Act,” amends the Transportation Code to create a misdemeanor offense for the operator of a motor vehicle who uses a portable wireless communication device to read, write, or send an electronic message while operating the vehicle, unless the vehicle is stopped.

This bill adds §545.4251 to the TRC which creates an offense if an operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. HB62 adds an affirmative defense if the device is used in connection with an emergency. It further restricts an officer from taking possession of or otherwise inspecting a portable wireless communication device while on a traffic stop unless authorized to do so by the CCP, Penal Code, or other law. In other words, to look at the phone, the officer must have consent, an exigent circumstance, or a warrant. Finally, HB62 amends §543.004(a) to include a violation of §545.4251 to the list of offenses that require the issuance of a written notice to appear rather than a custody arrest. Officers now must offer violators the opportunity to sign the citation when those violators are being charged with speeding, the so-called open-container law (Penal Code §49.03), or texting while driving.

ENABLING LEGISLATION: HB62

For more information about Alex Brown, click HERE.

§547.001, Definitions.

House Bill 3087 adds definitions for “Highway Maintenance Vehicle” and “Service Vehicle” to TRC §547.001. This is significant as it relates to what vehicles can be equipped with, and use, flashing blue lights under certain circumstances.

House Bill 3654 amends the Transportation Code to define "road machinery," for purposes of statutory provisions governing vehicle equipment, as a self-propelled vehicle that was originally and permanently designed as machinery, is not designed or used primarily to transport persons or property, and is only incidentally operated on a highway.

ENABLING LEGISLATION: HB3087 and HB3654

§547.305, Restrictions on Use of Lights

House Bill 2812 defines “Security Patrol Vehicles” and establishes approved lighting for said vehicles. These vehicles may be equipped only with green, amber, or white lights. This bill also, and for the first time, defines what it means to be “equipped” with certain lights. It states that a vehicle is equipped with a lamp or illuminating device regardless of whether the lamp or device is permanently attached to the vehicle or activated.

NOTE: This Act takes effect September 1, 2018.

ENABLING LEGISLATION: HB2812

§547.701, Additional Equipment Requirements for School Buses and Other Buses Used to Transport Schoolchildren.
Senate Bill 693 modifies TRC §547.701 and includes school-chartered buses among those that must be equipped with seat belts when transporting schoolchildren. It mandates that a bus used to transport schoolchildren shall be equipped with a three-point seat belt for each passenger, including the driver. Specifically exempted are:

- buses of a model year of 2017 or earlier purchased by a school; and
- a bus of model year of 2018 or later purchased by a school, if the school board determines it does not have the budget to purchase the bus with the required belts, and it is voted on in a public meeting.

ENABLING LEGISLATION: SB693

§ 548.052, Vehicles Not Subject to Inspection.
This change exempts from the inspection law those trailers that have a gross weight or registered gross weight of 7,500 pounds or less. This exemption was 4,500 pounds or less.

ENABLING LEGISLATION: SB1001

Senate Bill 1187 relates to the issuance of a citation under §601.191 for Failure to Maintain Financial Responsibility. This bill clearly states that an officer may not issue a citation under §601.191 unless they first verify, through the verification program, that financial responsibility for the vehicle has been established. It also requires that a citation issued for this offense include an affirmative indication that the officer was unable to verify through the program that financial responsibility had been established.

NOTE: Effective 06-01-2017
ENABLING LEGISLATION: SB1187

§663.037, Operation on Public Roadway Prohibited.
House Bill 920 changes operational requirements for off-highway vehicles. This bill changes the length of the pole from 8-feet to 6-feet upon which a required orange flag must be suspended and attached on an off-highway vehicle. It also decreases the mileage limit from 25 miles to 10 miles when the vehicle is used for a law enforcement or other emergency operation.
ENABLING LEGISLATION: HB920

NOTE: The next change covers various sections and chapters related to off-highway vehicles.
See House Bill 1956 for the specific list of statutes affected. HB1956 addresses the definition and operation of off-highway vehicles. This bill removes the definition and operational regulations for utility vehicles from Chapter 551 and moves them to Chapter 663. It creates a new definition for utility vehicles and classifies them along with all-terrain vehicles and recreational off-highway vehicles as off-highway vehicles. This allows for a wider operational use of utility vehicles than previously existed.
ENABLING LEGISLATION: HB1956
**Senate Bill 312** makes changes to crash reporting in Texas. This is a 61-page bill that makes multiple changes to a number of areas in the TRC. Of particular interest,

- the bill removes TRC §550.061, Operator’s Accident Report. **This does away with the old “blue form.”** Only the CR3 Peace Officer’s Accident Report remains.
- It creates a mandate that, effective 09/01/2019, **all** CR3 crash reports must be submitted **electronically** to TxDOT.
- This bill makes changes to §547.701 dealing with seatbelts on buses used to transport school children. It expands the meaning of a bus to include **any** bus used for the transportation of school children, including chartered buses. It exempts buses of a model year of 2017 or earlier and 2018 or later if the local school cannot afford the expense associated with adding seat belts and the board approves the purchase of the bus without the belts in a public meeting. Please note that **Senate Bill 693** also made some changes to seatbelt requirements on buses.

**Enabling Legislation:** **SB312**

Subchapter J, *Operation of Automated Motor Vehicles*

**Senate Bill 2205** amends the Transportation Code to authorize an automated motor vehicle on which an automated driving system is installed to operate in Texas with that system engaged, regardless of whether a human operator is physically present in the vehicle. The bill prohibits a political subdivision or a state agency from imposing a franchise or other regulation related to the operation of such a vehicle or system. This bill adds Subchapter J, *Operation of Automated Motor Vehicles*, to the TRC. This subchapter defines several terms as they apply to automated vehicles and sets forth the parameters for the legal operation of automated vehicles.

**Enabling Legislation:** **SB2205**

§728.022., *Sale or Transfer of Law Enforcement Vehicle.*

**House Bill 3223** amends the Local Government Code and the Transportation Code to prohibit a person both from selling or transferring a law enforcement motor vehicle to the public unless the person first removes any equipment or insignia that could mislead a reasonable person to believe that the vehicle is a law enforcement motor vehicle and from selling or transferring such a vehicle to a licensed security services contractor unless each emblem or insignia that identifies the vehicle as a law enforcement motor vehicle is removed before the sale or transfer. The bill imposes liability on a person or political subdivision that violates such prohibitions for damages proximately caused by the use of that vehicle during the commission of a crime and to the state for a civil penalty of $1,000.

This bill requires that all law-enforcement-related equipment be removed from a vehicle prior to its sale to the public. Most law enforcement equipment is already removed from a vehicle prior to sale, but this legislation also requires that spotlights be removed, which are often left on these units. It requires the removal of any emblems and even requires the removal of the outline of any emblems from the vehicle. It creates a civil liability for any damages caused by the sale of these vehicles without the removal of said equipment.
Enabling Legislation: **HB3223**

**UNIT VI: CHANGES TO THE TEXAS HEALTH AND SAFETY CODE**

§481.103, *Penalty Group 2.*

**HB2671** and **SB227** repealed the improperly drafted subsection (d), restoring commonly abused prescription drugs, such as Adderall, to the PG 2 substances list. This section now allows for the proper charging and prosecution under this section, as opposed to having to rely on the catch-all §483.041, *Possession of Dangerous Drugs.*

**ENABLING LEGISLATION:** **HB2671** and **SB227**

§481.104, *Penalty Group 3.*

**HB2671** added the following substances to PG 3: Carisoprodol ("Soma"); Etizolam; and Tramadol.

**ENABLING LEGISLATION:** **HB2671**

§552.002, *Carrying of Handgun by License Holder in State Hospital.*

Among many other things, **HB435** authorizes a state hospital to prohibit a license holder from carrying a handgun on the hospital’s property by providing written notice, and imposes a civil penalty on a license holder who violates that prohibition.

(a) In this section:

(1) "License holder" has the meaning assigned by Section 46.035(f), Penal Code.  
(2) "State hospital" means the following facilities:

(A) the Austin State Hospital;  
(B) the Big Spring State Hospital;  
(C) the El Paso Psychiatric Center;  
(D) the Kerrville State Hospital;  
(E) the North Texas State Hospital;  
(F) the Rio Grande State Center;  
(G) the Rusk State Hospital;  
(H) the San Antonio State Hospital;  
(I) the Terrell State Hospital; and  
(J) the Waco Center for Youth.

The hospitals must post signage similar to that required by PC §30.06. The location, coloring, size, and language requirements are the same (i.e., in both English and Spanish, contrasting colors, block letters of at least one-inch in height, displayed in a conspicuous manner clearly visible to the public at each entrance to the property, etc.). The wording must read **exactly** as follows:
Pursuant to Section 552.002, Health and Safety Code (carrying of handgun by license holder in state hospital), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun.

The penalty for violations of this section are civil fines: $100 for the first violation; $500 for the second or subsequent violation.

ENABLING LEGISLATION: HB435

UNIT VII: CHANGES TO OTHER TEXAS STATUTES

LEARNING OBJECTIVE: The SWBAT recognize pertinent selected changes to other Texas statutes.

Civil Practices and Remedies Code changes
§112.001. Certain Actions of Volunteer Emergency Services Personnel.
(a) In this section:
(1) "Governmental unit" has the meaning assigned by Section 101.001.
(2) "Volunteer emergency services personnel" has the meaning assigned by Section 46.01, Penal Code.
(b) A governmental unit is not liable in a civil action arising from the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun under Subchapter H, Chapter 411, Government Code.
(c) The discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun under Subchapter H, Chapter 411, Government Code, is outside the course and scope of the individual's duties as volunteer emergency services personnel.
(d) This section may not be construed to waive the immunity from suit or liability of a governmental unit under Chapter 101 or any other law.

ENABLING LEGISLATION: HB435

Family Code changes
House Bill 3649 amends the Family Code to provide for the confidentiality of certain written or oral communications between a family violence advocate and a family violence victim and for the victim's privilege to refuse to disclose and to prevent another from disclosing such confidential communications.

ENABLING LEGISLATION: HB3649

Government Code changes
§411.179(c), Form of License, is amended and allows for a License to Carry to display certain titles of state and federal judges, prosecutors, and instructors.

ENABLING LEGISLATION: HB435

§411.201(h), Active and Retired Judicial Officers, is amended and requires DPS to issue a License to Carry and the waiving of fees for US Attorneys and felony prosecutors.

ENABLING LEGISLATION: HB435

State agencies and political subdivisions may not post signage preventing entry to persons licensed to carry a concealed handgun (PC §30.06, *Trespass by License Holder with a Concealed Handgun*). Property owned or leased by the state, cities, and counties (or any other political subdivision) cannot prohibit the licensed-carry of a concealed handgun. The only exceptions are state hospitals (listed by name in HSC) or any place specifically named in PC §46.03, *Places Weapons Prohibited*, or PC §46.035, *Unlawful Carry of Handgun by License Holder*. The state hospitals must provide signage. That signage is different than the signage for PC §30.06. The penalties are different as well. It is not a violation of PC §30.06 to carry a licensed concealed handgun onto a state hospital.

**ENABLING LEGISLATION:** HB435

§552.117, Exception: Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information.

*House Bill 1278* amends the Government Code and Tax Code to provide for the nondisclosure and confidentiality under state public information law of certain personal information of a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters and current or former employees of such attorneys, as well as for the confidentiality of personal information of such attorneys in appraisal records. They are now afforded the same protection of personal information as former and current peace officers, former and current employees of TDCJ, TJJD, and others.

**ENABLING LEGISLATION:** HB1278

Chapter 752, Government Code is amended by adding:

Subchapter C, *Enforcement of State and Federal Immigration Laws by Local Entities and Campus Police Departments*. Important note: this statute is lengthy and covers multiple topics related to cooperation with, and enforcement of, immigration laws. The following are highlights intended to reach a broad audience of law enforcement officers. It is not all-inclusive.

This subchapter establishes the applicable definitions, inclusions, and exclusions. Those *excluded* by this bill are:

- School districts or open-enrollment charter schools and peace officers employed or contracted by them.
- Hospitals and hospital districts and peace officers employed or contracted by them (while working in that capacity).
- Peace officers employed by religious organizations (while working in that capacity).

Those *included* by this bill are:

- Essentially all cities, counties, special districts or authorities, including a sheriff, municipal police department, municipal attorney, county attorney or district attorney and all their employees.
**Senate Bill 4** prohibits any of these entities from creating a policy, pattern, or practice that prohibits employees from any of the following:

- Inquiring into the immigration status of an arrested person including the person’s place of birth.
- Sending the information to, requesting or receiving information from ICE.
- Maintaining the information.
- Exchanging the information with another local entity, campus police department, state or federal governmental entity.
- If requested, assisting or cooperating with a federal immigration officer as reasonable and necessary, including providing enforcement assistance; or permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws.

These entities may prohibit employees from cooperating or assisting the federal immigration officer if the activity occurs at a place of worship. It further prohibits discrimination by considering race, color, religion, language or national origin while enforcing immigration laws.

A violation of this portion of the statue could result in a fine to the entity of:

- Not less than $1000 or more than $1,500 for the first offense; and
- Not less than $25,000 or more than $25,500 for each subsequent offense.

Each day of a continuing violation constitutes a subsequent offense.

The Government Code is amended by adding that a person who holds an elective or appointive position and is found in violation of this code will be removed from office.

What else the bill does:

- The bill establishes a complaint process for any citizen residing in the jurisdiction who believes one or more of the named entities are acting in violation of the bill.
- It requires the Attorney General to defend a local entity, when requested, in actions arising out of claims involving the entity’s good faith enforcement of the bill and makes the state liable for related expenses, costs and judgments.
- It amends the Code of Criminal Procedure to require any law enforcement agency that has custody of a person subject to an ICE detainer to comply with the detainer and inform the person of the detainer. This is not required if the person can provide proof to the agency that they are a United States citizen or lawful immigration status in the United States, such as a Texas driver’s license or similar government-issued identification.
- It requires the judge in any case where a defendant is sentenced to confinement, and subject to an ICE detainer, to order that the defendant serve the final portion of the sentence in federal custody; not to exceed seven days. The federal government must consent to the transfer. The judge is required to issue the order at the time of sentencing unless the detainer request is not yet available. If the detainer request becomes available sometime after sentencing, the judge must issue the order at that time.
The bill also states that a peace officer may inquire as to the nationality or immigration status of a victim or witness only if the officer determines that the inquiry is necessary to:

- Investigate the offense; or
- Provide them with information about federal visas designed to protect individuals providing assistance to law enforcement.

This does not prohibit a peace officer from conducting a separate investigation of any other alleged criminal offense or inquiring as to the nationality or immigration status of a victim or witness to a criminal offense if the officer has probable cause to believe that the same person has engaged in specific conduct constituting a separate criminal offense. Additionally, this bill creates a new Penal Code offense relating to failure to comply with an ICE detainer.

**ENABLING LEGISLATION: SB4**

**Local Government Code changes**

*Article 5, Prohibited Conduct by Sheriff or Constable*

Section 87.031, Local Government Code, is amended by adding Subsection (c) to read as follows: (c) For purposes of Subsection (a), "a misdemeanor involving official misconduct" includes a misdemeanor under Section 39.07, Penal Code (Failure to Comply with Immigration Detainer).

**ENABLING LEGISLATION: SB4**

§272.006, *Sale or Transfer of Law Enforcement Vehicle.*

As previously discussed in TRC §728.022, **House Bill 3223** amends the Local Government Code and the Transportation Code to prohibit a person both from selling or transferring a law enforcement motor vehicle to the public unless the person first removes any equipment or insignia that could mislead a reasonable person to believe that the vehicle is a law enforcement motor vehicle and from selling or transferring such a vehicle to a licensed security services contractor unless each emblem or insignia that identifies the vehicle as a law enforcement motor vehicle is removed before the sale or transfer. The bill imposes liability on a person or political subdivision that violates such prohibitions for damages proximately caused by the use of that vehicle during the commission of a crime and to the state for a civil penalty of $1,000.

**ENABLING LEGISLATION: HB3223**

§341.904(b), *Possession or Use of Law Enforcement Identification, Insignia or Vehicle in a Municipality.*

This statute previously applied only to municipalities with a population of 1.18 million or more located primarily in a county with a population of two million or more. It is now amended to apply to any municipality. This statute makes it an offense if a person, in a municipality, intentionally or knowingly:

1. uses, possesses, or wears:
   1. a police identification item of the municipal police department;
(B) an item bearing the insignia or design prescribed by the police chief of the municipality for officers and employees of the municipal police department to use while engaged in official activities; or
(C) within the municipal police department's jurisdiction, an item that is deceptively similar to a police identification item of the department;
(2) uses, within the municipal police department's jurisdiction, the name of the department in connection with an object to create the appearance that the object belongs to or is used by the department; or
(3) uses, possesses, or operates, within the municipal police department's jurisdiction, a marked patrol vehicle that is deceptively similar to a department patrol vehicle.

An offense under this section is a M/B. There is a long list of affirmative defenses to this offense that is very similar to the defenses under §37.12 PC.

ENABLING LEGISLATION: **HB683**

**Water Code changes**

§§7.351, Civil Suits; 7.3511, Procedure for Civil Penalty; Required Notice.
House Bill 2533 amends the Water Code to require a local government, a person affected, or an authorized agent, before instituting any claim for a civil penalty in a civil suit for a violation of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality (TCEQ), to provide to the attorney general and the executive director of TCEQ written notice of each alleged violation, the facts in support of the claim, and the specific relief sought. The bill authorizes a local government, a person affected, or an authorized agent to institute a claim after a certain period after the receipt of the notice unless TCEQ has commenced an administrative penalty proceeding or the attorney general has commenced a civil suit concerning at least one of the alleged violations set forth in the notice.

ENABLING LEGISLATION: **HB2533**